



**CITY OF HARRISONBURG  
COMMUNITY  
DEVELOPMENT**

**Preliminary Subdivision  
Plat Application**

[www.harrisonburgva.gov/subdividing-property](http://www.harrisonburgva.gov/subdividing-property)

**PROPERTY INFORMATION**

Title of Subdivision: Bluestone Town Center

See attached Sheet 115-B-1,4; 117-C-3  
Property Address(es) Tax Map Parcel(s)/ID(s)  
63.66 (27.89± acres to be platted) 156 R-7  
Total Acreage Number of Lots Proposed Zoning Classifications

**PROPERTY OWNER INFORMATION**

EP HARRISONBURG OWNER LLC 601 506 5026  
Property Owner Name Telephone  
1888 MAIN ST SUITE C163 tmccarty@equityplusllc.com  
Street Address E-Mail  
Madison MS 39110  
City State Zip

**OWNER'S REPRESENTATIVE INFORMATION (if applicable)**

Owner's Representative Telephone  
Street Address E-Mail  
City State Zip

**SURVEYOR INFORMATION**

AES Consulting Engineers; Attn: Joe Flint 804-330-8040  
Name Telephone  
4120 Cox Road Suite D Joseph.flint@aesva.com  
Street Address E-Mail  
Glen Allen VA 23060  
City State Zip

VARIANCES

No variances requested. (Continue to next section.)

Variance requested. **If a variance is requested, please provide the following information:** See attached sheet

I (we) hereby apply for a variance from:

The Harrisonburg Subdivision Ordinance section(s): \_\_\_\_\_

The Harrisonburg Design and Construction Standards Manual section(s): \_\_\_\_\_

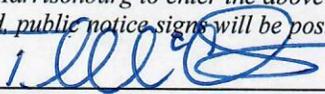
which requires:

The attached letter shall describe why the applicant believes a variance should be granted based on the following "unnecessary hardship" which is peculiar to the property in question. (See Section 10-2-2 of the Subdivision Ordinance.)

CERTIFICATION

The City of Harrisonburg's preliminary plat and subdivision requirements are in the code of the City of Harrisonburg, Subdivision Ordinance Sections 10-2-1 through 10-2-86. Please read these requirements carefully.

*I have read the ordinance requirements. I certify that the information supplied on this application and on the attachments provided (plats and other information) is accurate and true to the best of my knowledge. In addition, I hereby grant permission to the agents and employees of the City of Harrisonburg to enter the above property for the purposes of processing and reviewing this application. I also understand that, when required, public notice signs will be posted by the City on any property.*

  
PROPERTY OWNER

1/7/24  
DATE

REQUIRED ATTACHMENTS

- Letter explaining proposed use & reasons for seeking Preliminary Subdivision Plat Approval.
- Plat of properties meeting requirement of Subdivision Ordinance Section 10-2-23 – see checklist.
- Traffic Impact Analysis (TIA) Determination Form OR Traffic Impact Analysis (TIA) Acceptance Letter signed by Public Works Department. Applicant is responsible for coordinating with Public Works prior to submitting this application. For more information, visit [www.harrisonburgva.gov/traffic-impact-analysis](http://www.harrisonburgva.gov/traffic-impact-analysis). TIA completed at rezoning phase.

TO BE COMPLETED BY PLANNING & ZONING DIVISION

\_\_\_\_\_  
Date Form Received

\_\_\_\_\_  
Form Received By

Total Fees Due: \$ \_\_\_\_\_  
Application Fee:  
w/o Variance Request \$175.00 plus \$20.00 per lot  
with Variance Request \$200.00 plus \$20.00 per lot



566 East Market Street  
Harrisonburg, VA 22801  
Phone (540) 432-9555  
aesva.com

January 2, 2024

Thanh Dang  
Department of Planning and Community Development  
409 South Main Street  
Harrisonburg, VA 22801  
Thanh.Dang@harrisonburgva.gov

SUBJECT: Bluestone Town Center Preliminary Subdivision Plat Application B02935

Dear Ms. Dang,

AES Consulting Engineers, on behalf of EP Harrisonburg Owner LLC, is submitting a preliminary subdivision plat application for TM 115 B 1 4 & 117 C 3.

The application submitted is for the subdivision of Phase 1 of the Bluestone Town Center Project. It is a portion of the Bluestone Town Center rezoning (File # ID 23-018 Version: 1) that was approved by City Council on February 28, 2023.

The preliminary plat divides two existing parcels into 156 lots (106 townhome lots, 38 single family detached lots, 2 multifamily lots, 9 common area lots, and a lot that contains the remainder of 115 B 1 4). A portion of the property will also be dedicated as public ROW.

We thank you for your time in reviewing this preliminary subdivision plat application.

Cordially,

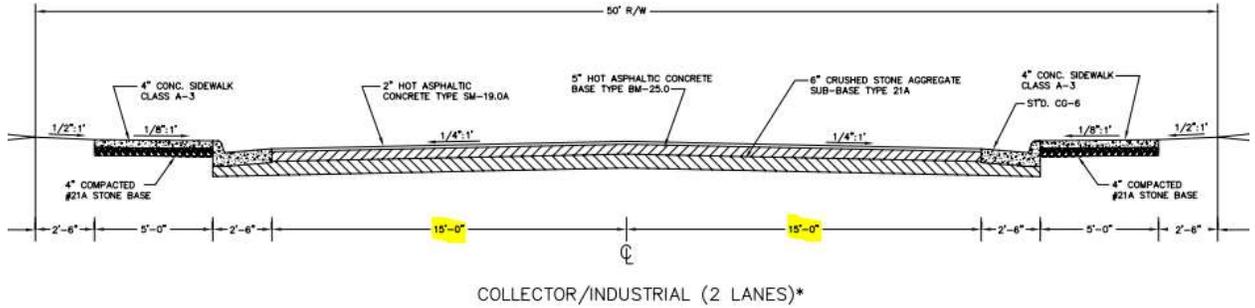
A handwritten signature in black ink, appearing to read 'Edmond H. Blackwell'.

Edmond H. Blackwell, P.E.  
Civil Engineer

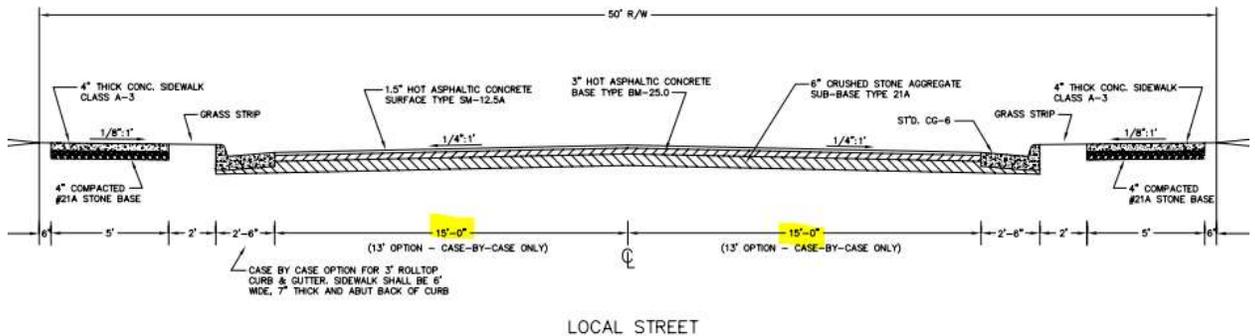
I (we) hereby apply for a variance from:

From the Design and Construction Standards Manual:

1. Section 3.10.2.3 states that commercial and multifamily entrances on local streets must be a minimum of 50' away from public street intersections, measured from end of curb radius at street intersection on the local street, along face of curb to beginning of curb radius for proposed entrance. The applicant requests a variance to allow the beginning of the curb radius of the entrance to Lot 146 be 47.5' away from the intersection, to allow the entrance to be equidistantly spaced between entrance to lot 145 and the intersection of Mountain Mint & Iris.
2. Section 3.6.4.1 states that typical street sections be governed by Appendix F, which requires a minimum 50' ROW for collector streets. The applicant requests a variance from the 50' width requirement, and is proposing a 42' ROW on the section of Bluebell Drive from Hidden Creek Lane to Blazing Star as notated in the Typical Road Section schedule on Sheet 2 of the preliminary plat (which is a revised version of the schedule on Sheet 2 of the approved master plan that was coordinated with the Department of Public Works at the rezoning phase).
3. Section 3.6.4.1 states that typical street sections be governed by Appendix F, which requires a minimum 50' ROW for local streets. The applicant requests a variance from the 50' width requirement, and is proposing a 45' ROW on several local streets as notated in the Typical Road Section schedule on Sheet 2 of the preliminary plat (which is a revised version of the schedule on Sheet 2 of the approved master plan that was coordinated with the Department of Public Works at the rezoning phase).
4. Section 3.6.4.1 states that typical street sections be governed by Appendix F, which requires a minimum 15' lane width, exclusive of gutter, for 2-lane collector/industrial streets (see Appendix F extract, below). The applicant is requesting a variance from the collector street width minimum, instead proposing 11' wide lanes, exclusive of gutter, on the collector street segments, as notated in the Typical Road Section schedule on Sheet 2 of the preliminary plat. The 11' lane width is in accord with Geometric Design Standard for urban collector streets found in the Virginia Department of Transportation's Road Design Manual and decided upon in cooperation with the Public Works Department. Road segments using the 11' lane width will have a marked centerline, and no on-street parking will be permitted.



5. Section 3.6.4.1 states that typical street sections be governed by Appendix F, which requires a minimum 30' pavement width (15' lane width), exclusive of gutter, for local streets (see Appendix F extract, below). Section 3.6.4.3 states that a "reduction in street width to 26 feet of pavement, exclusive of gutter, shall be allowed for Local Streets carrying less than 200 vehicles per day if requested by the applicant during review of the preliminary plat. Such reduction, however, must be accompanied by the restriction of on street parking to one side of the street only. Plans shall show required "No Parking This Side" signage where appropriate and in accordance with MUTCD and City Standards. The developer shall install such signage." The applicant is requesting a variance to both the 30' and 26' street width minimums (15' and 13' lanes, respectively), instead proposing a 25' street width (12.5' lanes), exclusive of gutter, for two-lane local streets, with parking on one side. This width is a modified version of VDOT's Geometric Standard for Residential and Mixed Use Subdivision Streets, found in the VDOT Road Design Manual, and decided upon in cooperation with the Public Works Department. Additionally, the applicant requests that vehicles per day be removed as a restriction for allowing a minimum lane width reduction. "No parking signs" will be posted in accordance with Harrisonburg Police Department requirements for enforceability.



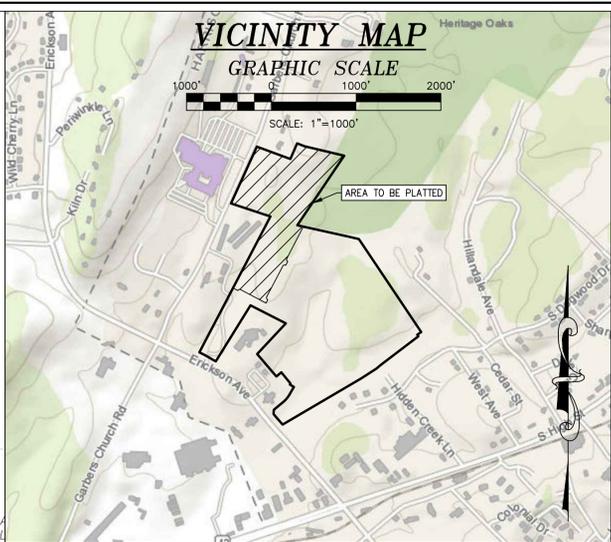
From the Harrisonburg Subdivision Ordinance:

6. Sec. 10-2-42.(c) states that "All lots shall front on a public street and no lot shall embrace any portion of a street or alley." The applicant is requesting a variance for this on townhome lots, as not all townhome lots are adjacent to public streets. Street layout is

per the approved master plan that was coordinated with the department of public works at the rezoning phase.

7. Sec. 10-2-43 states that “a ten-foot-wide utility easement shall be provided along front lot lines or any lot line adjacent to a public right-of-way. In addition, easements at least ten (10) feet wide, centered on the side or rear lot lines, shall be provided for utilities and drainage.” The preliminary plat illustrates 10-ft public general utility easements at modified locations, where the 10-ft easement might not be centered on side or rear lot lines.

- LEGEND**
- IRF ○ IRON ROD FOUND
  - IPF ○ IRON PIPE FOUND
  - BENCHMARK
  - SEWER MANHOLE
  - STORM MANHOLE
  - STORM GRATE
  - ELECTRICAL BOX
  - GUY WIRE
  - UTILITY POLE
  - WATER VALVE
  - FIRE HYDRANT
  - BUSH/TREE
  - OVERHEAD UTILITIES
  - S — SEWER LINE
  - T — TREE LINE
  - B — BRUSH LINE
  - X — FENCE LINE
  - — EXISTING CONTOUR
  - — EXISTING INDEX CONTOUR
  - — EXISTING PROPERTY LINE



**CIVIL DESIGN:**  
 AES CONSULTING ENGINEERS  
 ATTN: HUNTER KNOPP  
 566 EAST MARKET STREET  
 HARRISONBURG, VA 22801  
 540-432-9555

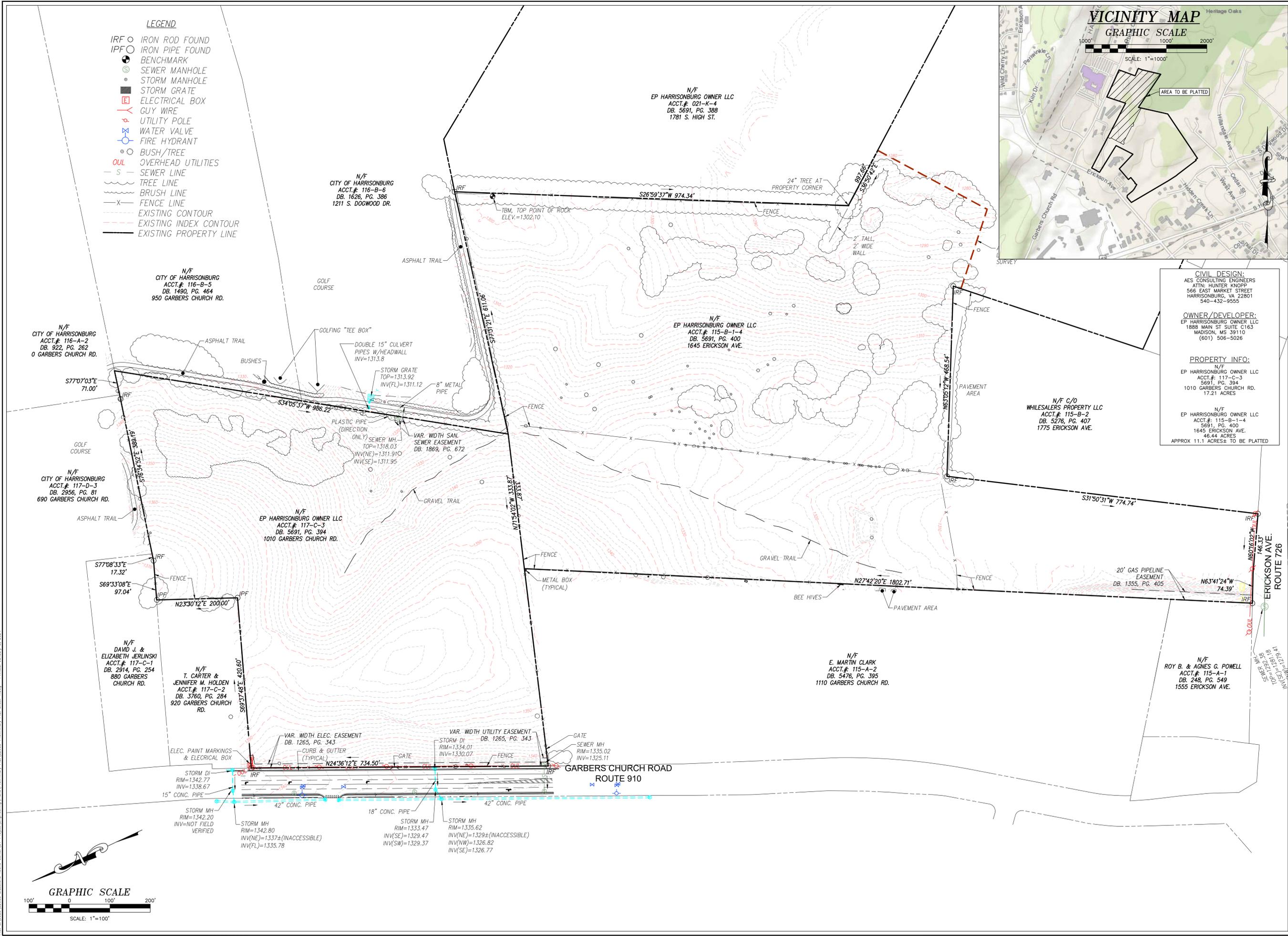
**OWNER/DEVELOPER:**  
 EP HARRISONBURG OWNER LLC  
 1888 MAIN ST SUITE C163  
 MADISON, MS 39110  
 (601) 506-5026

**PROPERTY INFO:**  
 N/F  
 EP HARRISONBURG OWNER LLC  
 ACCT.#: 117-C-3  
 5691, PG. 394  
 1010 GARBERS CHURCH RD.  
 17.21 ACRES

EP HARRISONBURG OWNER LLC  
 ACCT.#: 115-B-1-4  
 5691, PG. 400  
 1645 ERICKSON AVE.  
 46.44 ACRES

APPROX 11.1 ACRES± TO BE PLATTED

REV.	DATE	DESCRIPTION
1	11/02/2024	REVISED EASMENTS
2	11/02/2024	SHIFTED LOT LINES
3	12/21/2023	REVISED PER CITY COMMENTS
4	11/03/2023	REVISED BLAZING START TYPICAL SECTION
5	11/03/2023	REVISED PER CITY COMMENTS



**THIS PLAN HAS NOT RECEIVED FINAL APPROVAL AND IS NOT APPROVED FOR CONSTRUCTION.**

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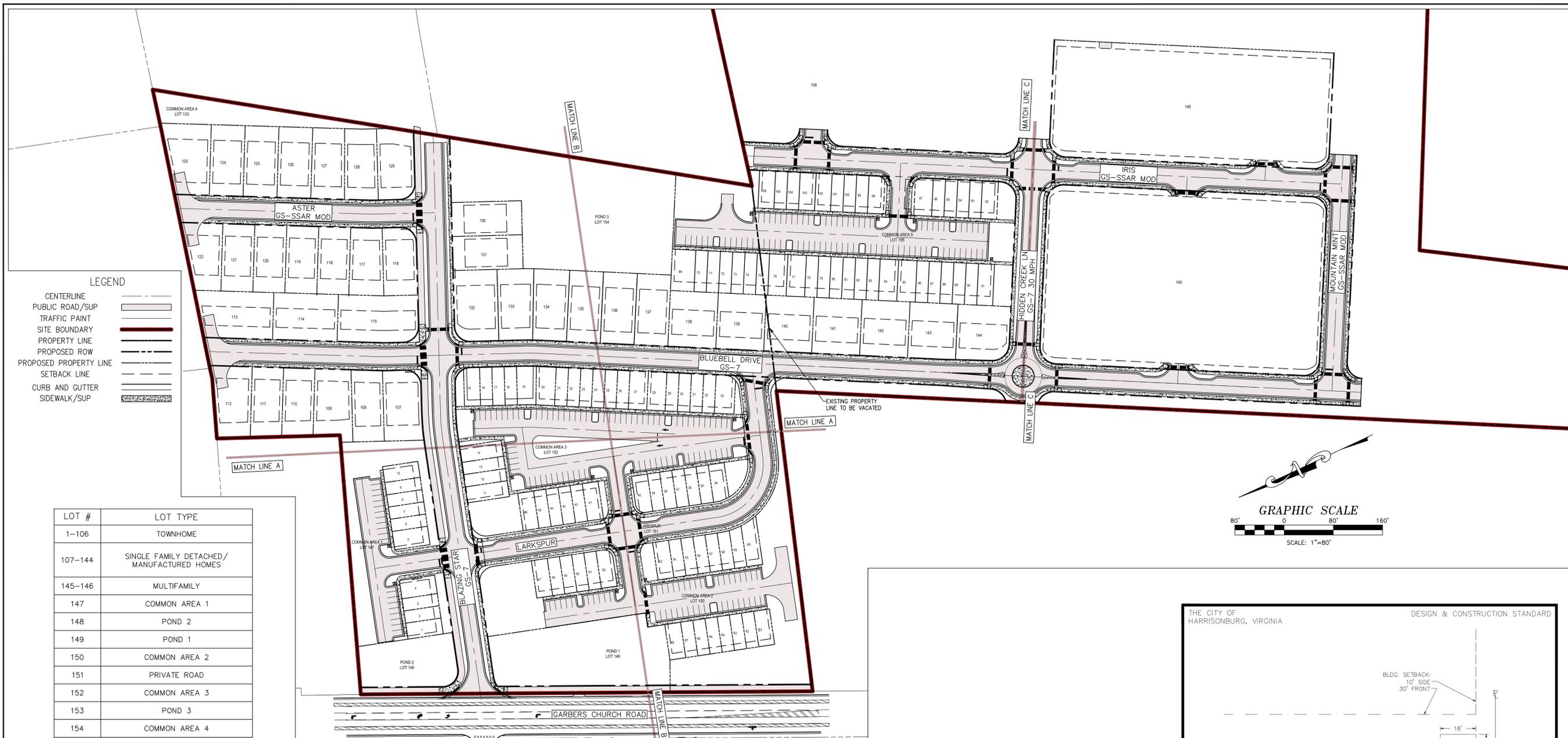
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 A Professional Engineering Firm  
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PRELIMINARY PLAT FOR  
**BLUESTONE TOWN CENTER**  
 PHASE 1  
**EQUITY PLUS, LLC**  
 CITY OF HARRISONBURG, VIRGINIA

Project Contacts: NHK  
 Project Number: B2935-01  
 Scale: AS NOTED  
 Date: 10/5/2023  
 Sheet Title: EXISTING CONDITIONS  
 Sheet Number: 1

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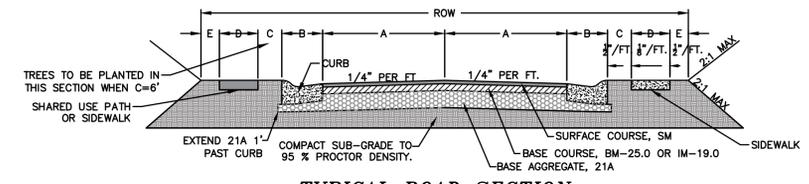
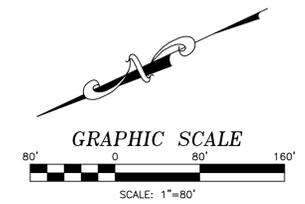
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**LEGEND**

CENTERLINE	---
PUBLIC ROAD/SUP	---
TRAFFIC PAINT	---
SITE BOUNDARY	---
PROPERTY LINE	---
PROPOSED ROW	---
PROPOSED PROPERTY LINE	---
SETBACK LINE	---
CURB AND GUTTER	---
SIDEWALK/SUP	---

LOT #	LOT TYPE
1-106	TOWNHOME
107-144	SINGLE FAMILY DETACHED/ MANUFACTURED HOMES
145-146	MULTIFAMILY
147	COMMON AREA 1
148	POND 2
149	POND 1
150	COMMON AREA 2
151	PRIVATE ROAD
152	COMMON AREA 3
153	POND 3
154	COMMON AREA 4
155	COMMON AREA 5
156	REMAINDER OF TM# 115 B 1 4
-	PUBLIC ROW

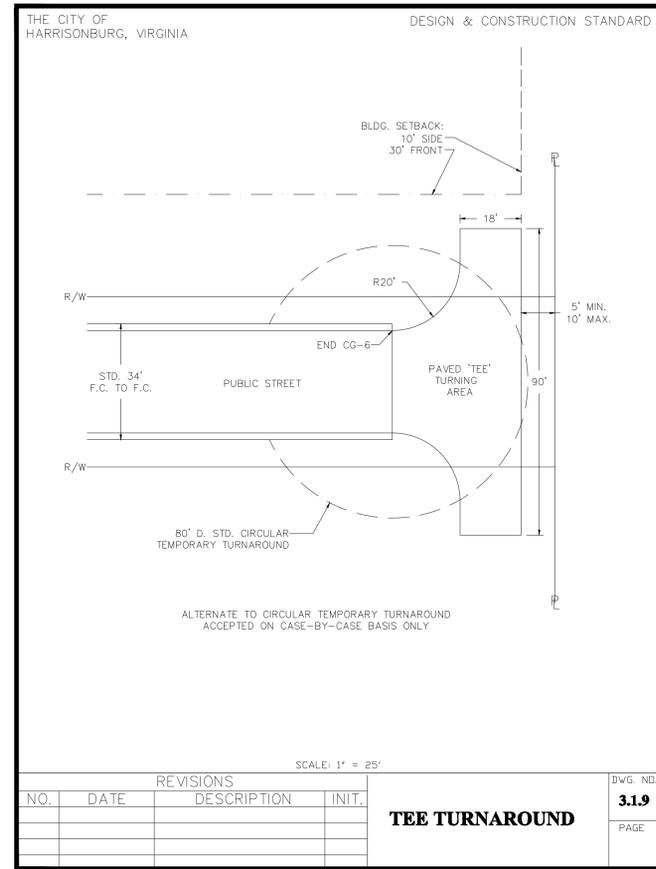


**TYPICAL ROAD SECTION SCHEDULE**

VARIANCE NUMBER	ROAD	START STATION	END STATION	FUNCTIONAL CLASSIFICATION	DESIGN STANDARD	Design Speed	ON-STREET PARKING	TRAFFIC CALMING MEASURES	ROW	A	B	C	D	E	CURB FACE-TO-FACE	CURB TYPE
4	HIDDEN CREEK LANE	IRIS	BLUEBELL DRIVE	Collector/Avenue	GS-7 (Urban Collector)	30 mph	NO	NO	50'	11'	2.5'	6' SW	5' SW	0.5' SW	26'	CG-6
	LARKSPUR	START	END	Local	Private	25 mph	ONE SIDE	NO	45' MIN.	12.5'	2.5'	2'	5'	0.5'	29'	CG-6
3.5	BLUEBELL DRIVE	ERICKSON	HIDDEN CREEK LN	Local	GS-SSAR MOD (2001-4000)	25 mph	ONE SIDE	YES	45'	12.5'	2.5'	2'	5'	0.5'	29'	CG-6
2.4	BLUEBELL DRIVE	HIDDEN CREEK LN	BLAZING STAR	Collector/Avenue	GS-7 (Urban Collector)	25 mph	NO	NO	42'	11'	2.5'	2'	5'	0.5'	26'	CG-6
3.5	BLUEBELL DRIVE	BLAZING STAR	END	Local	GS-SSAR MOD (2001-4000)	25 mph	ONE SIDE	NO	45'	12.5'	2.5'	2'	5'	0.5'	29'	CG-6
3.5	ASTER	START	END	Local	GS-SSAR MOD (UP TO 2000)	25 mph	ONE SIDE	NO	45'	12.5'	2.5'	2'	5'	0.5'	29'	CG-6
1.3.5	IRIS	START	END	Local	GS-SSAR MOD (UP TO 2000)	25 mph	ONE SIDE	NO	45'	12.5'	2.5'	2'	5'	0.5'	29'	CG-6
3.5	MOUNTAIN MINT	START	END	Local	GS-SSAR MOD (UP TO 2000)	25 mph	ONE SIDE	NO	45'	12.5'	2.5'	2'	5'	0.5'	29'	CG-6
4	BLAZING STAR	GARBERS CHURCH RD	BLUEBELL DRIVE	Collector/Avenue	GS-7 (Urban Collector)	25 mph	NO	NO	55.5'	11'	2.5'	6' SUP* 6' SW	10' SUP 5' SW	1.0' SUP 0.5' SW	26'	CG-6
5	BLAZING STAR	BLUEBELL DRIVE	END	Local	GS-SSAR MOD (UP TO 2000)	25 mph	ONE SIDE	NO	58.5'	12.5'	2.5'	6' SUP* 6' SW	10' SUP 5' SW	1.0' SUP 0.5' SW	29'	CG-6

\*SUP = SHARED USE PATH; SW = SIDEWALK

• CITY TO PROVIDE INFORMATION ON TREES TO BE PLANTED IN THE 6' BUFFER SPACE BETWEEN THE CURB AND SUP (SEE COLUMN C FOR SECTIONS WITH 6' BUFFER\*).  
 • AN EASEMENT THAT EXTENDS 1' AND 0.5' PAST THE EDGE OF THE SHARED-USE-PATH AND SIDEWALK, RESPECTIVELY, WILL BE REQUIRED FOR ANY PART OF A SHARED-USE-PATH OR SIDEWALK THAT EXTENDS PAST THE R.O.W. [TO BE FINALIZED ON FINAL PLAT]



REVISIONS

NO.	DATE	DESCRIPTION	INIT.

D/WG. NO. **3.1.9**  
 PAGE

REVISED ENACTMENTS	DATE	DESCRIPTION	REVISION BY
4	1/5/2024	REVISED ENACTMENTS	
3	1/7/2024	SHIFTED LOT LINES	
2	1/27/2023	REVISED PER CITY COMMENTS	
2	11/30/2023	REVISED BLAZING STAR TYPICAL SECTION	
1	11/30/2023	REVISED PER CITY COMMENTS	

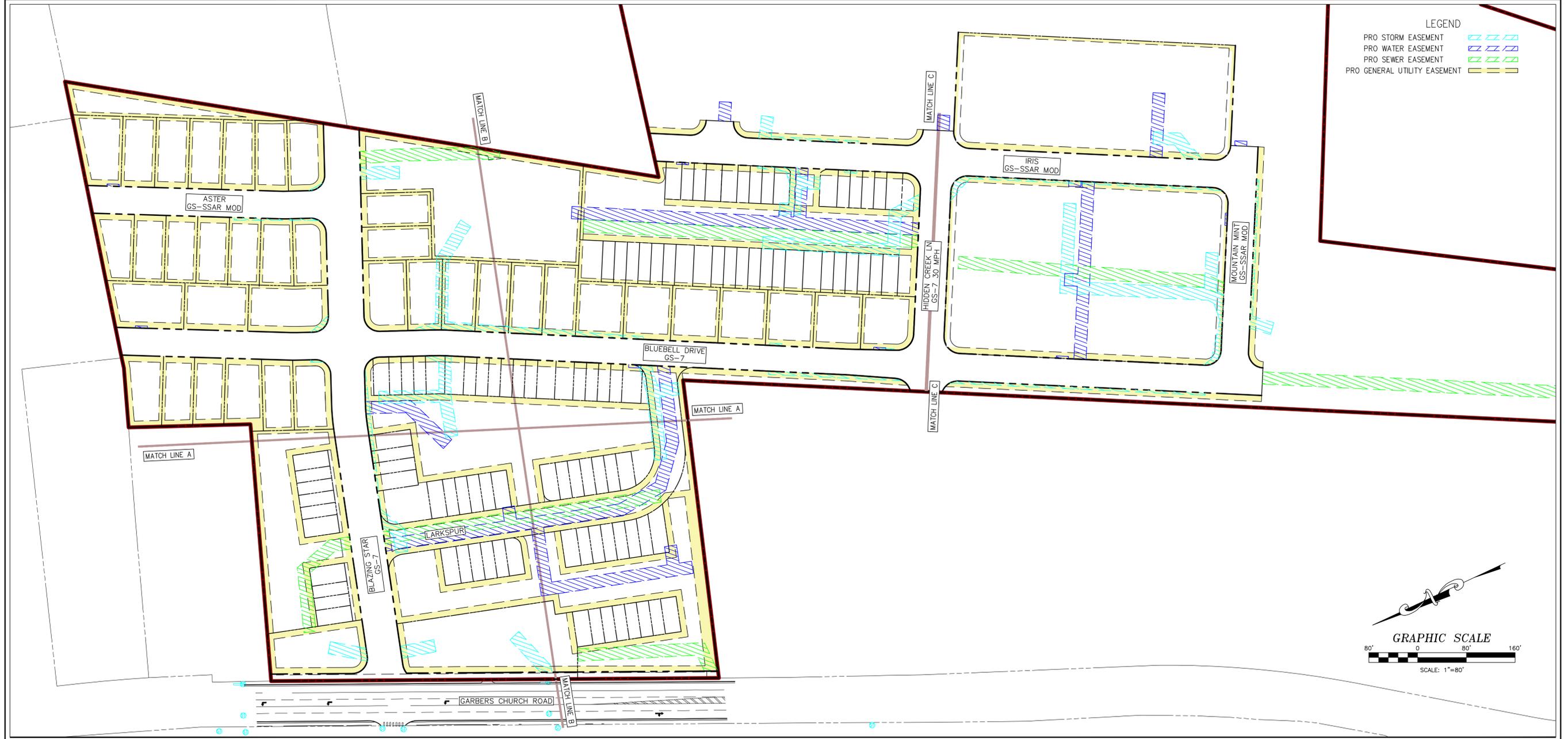
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 Harrisonburg, Virginia 22801  
 Phone: (540) 432-9555  
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 CONSULTING ENGINEERS  
 Formerly Blackwell Engineering  
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PRELIMINARY PLAT FOR  
**BLUESTONE TOWN CENTER**  
 PHASE 1  
**EQUITY PLUS, LLC**  
 CITY OF HARRISONBURG, VIRGINIA

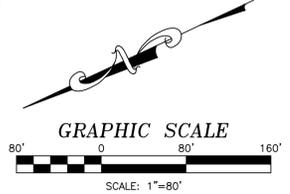
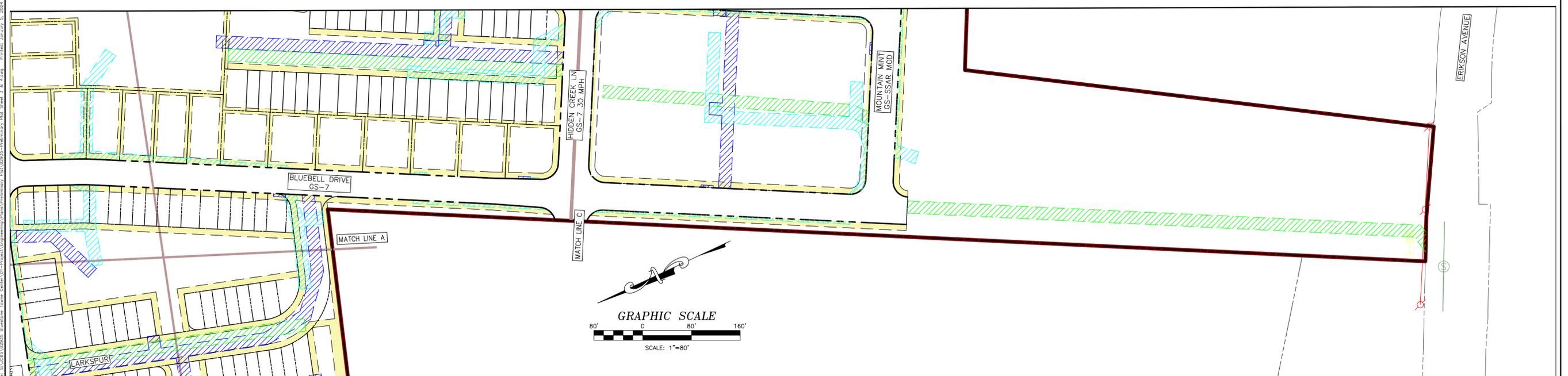
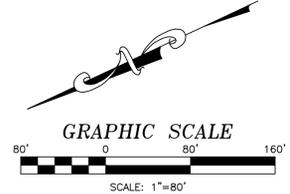
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 Project Number: B235-01  
 Scale: 1" = 80'  
 Date: 10/5/2023

Sheet Title:  
**LOT LAYOUT**  
 Sheet Number:  
**2**



LEGEND

PRO STORM EASEMENT	
PRO WATER EASEMENT	
PRO SEWER EASEMENT	
PRO GENERAL UTILITY EASEMENT	



Rev.	Date	Description	By
4	1/10/2024	REVISED EASEMENTS	BWK
3	1/7/2024	SHIFTED LOT LINES	BWK
2	12/27/2023	REVISED PER CITY COMMENTS	BWK
1	11/01/2023	REVISED BLAZING STAR TYPICAL SECTION	BWK
1	11/01/2023	REVISED PER CITY COMMENTS	BWK

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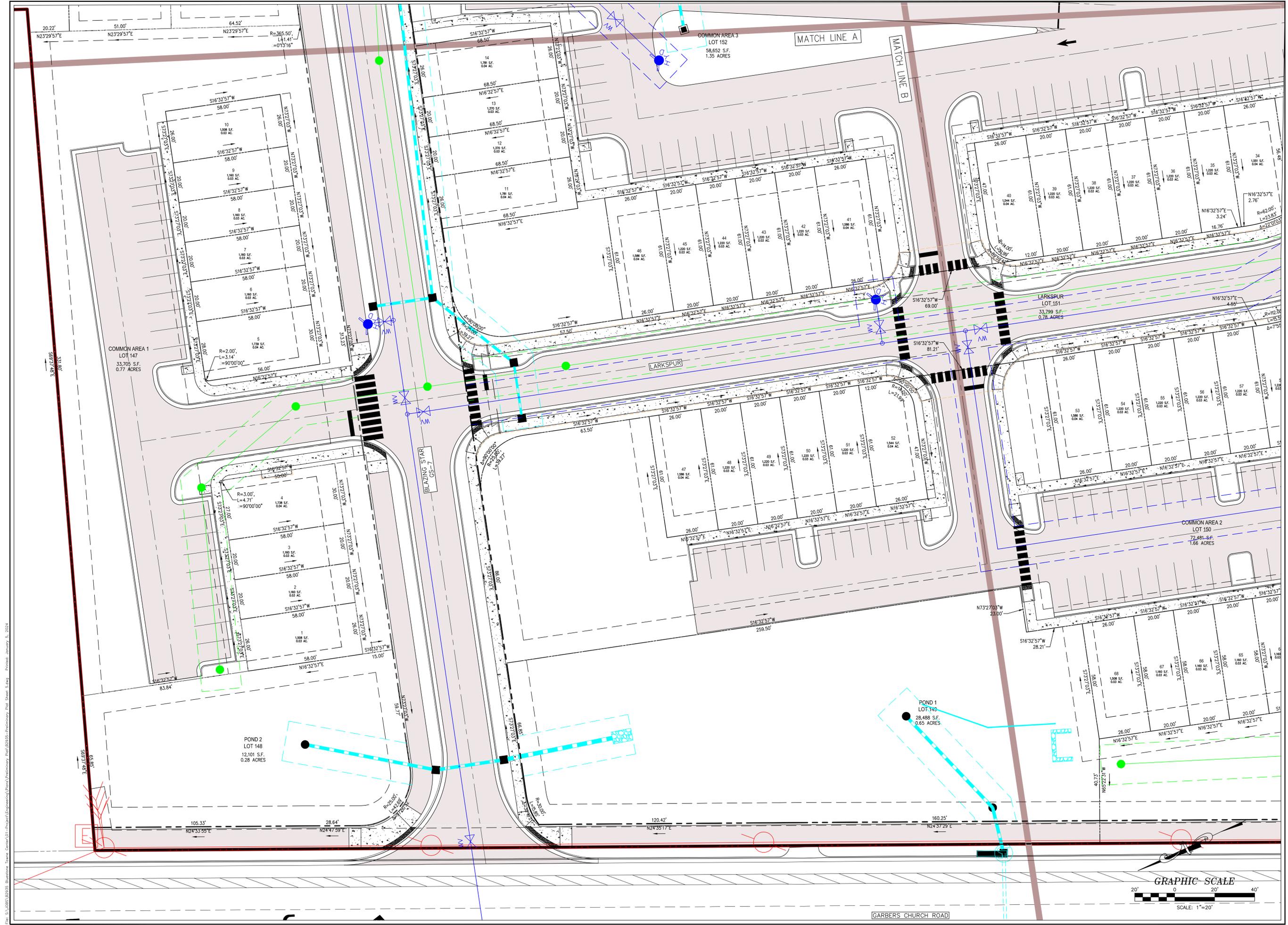
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PRELIMINARY PLAN FOR  
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PHASE 1  
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CITY OF HARRISONBURG, VIRGINIA

Project Contacts: NHK  
Project Number: B2335-01  
Scale: 1" = 80' Date: 10/5/2023  
Sheet Title: UTILITY EASEMENTS

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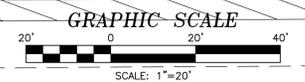
Rev.	Date	Description
1	11/09/2023	REVISED PER CITY COMMENTS
2	11/13/2023	REVISED PER CITY COMMENTS
3	10/22/2024	REVISED PER CITY COMMENTS
4	10/22/2024	REVISED PER CITY COMMENTS

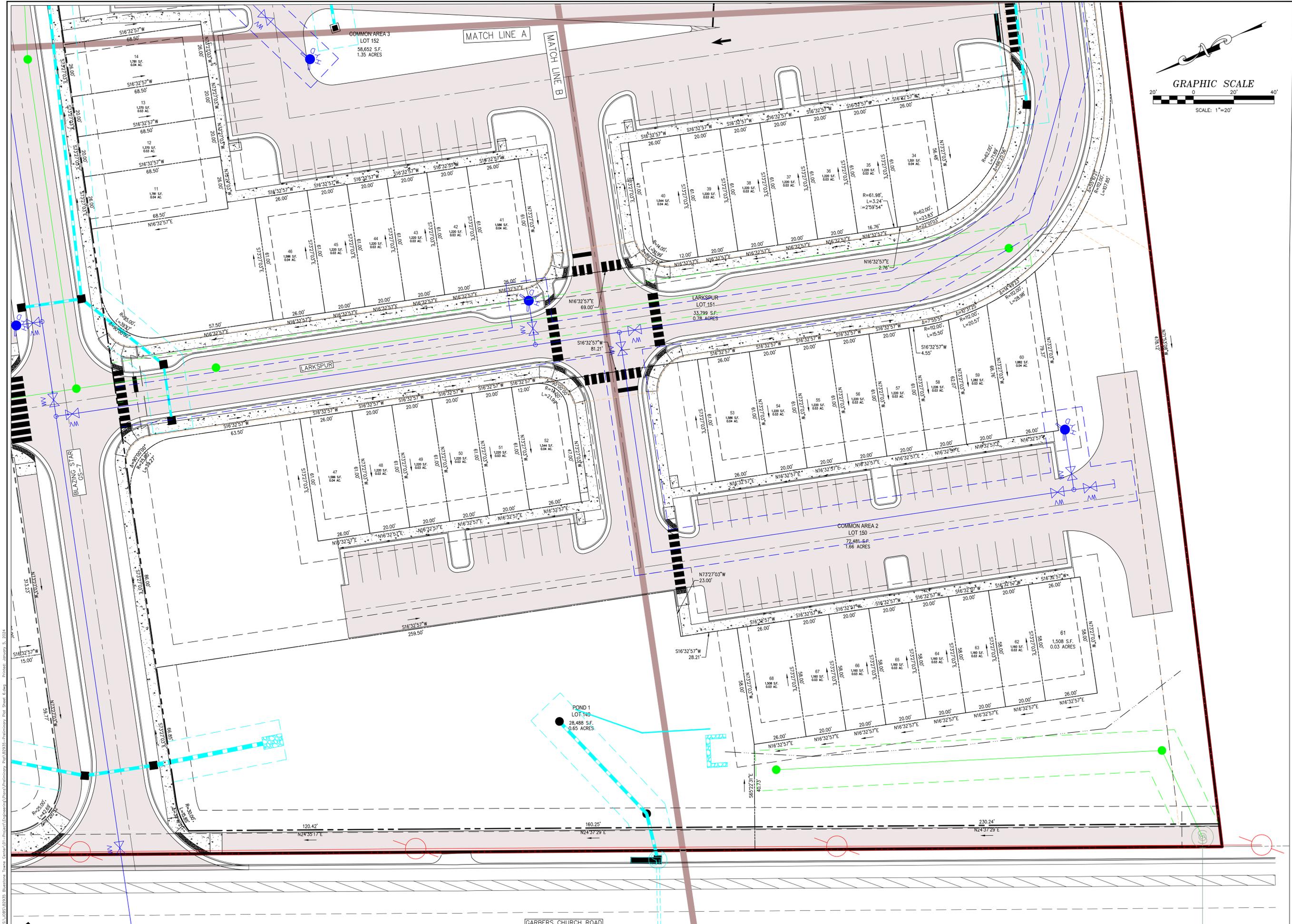
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**ABS**  
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 www.absva.com  
 A Professional Engineering Firm  
 Hampton Roads | Central Virginia | Middle Peninsula | Shenandoah Valley

PRELIMINARY PLAT FOR  
**BLUESTONE TOWN CENTER**  
 PHASE 1  
**EQUITY PLUS, LLC**  
 CITY OF HARRISONBURG, VIRGINIA

Project Contacts:	NHK
Project Number:	B2835-01
Scale:	Date:
1" = 20'	10/5/2023
Sheet Title:	
<b>METES &amp; BOUNDS NORTH WEST</b>	
Sheet Number:	
<b>5</b>	





Revised	Date	Description
4	1/10/2024	REVISED ENUMENTS
3	1/7/2024	SHIFTED LOT LINES
2	1/22/2023	REVISED PER CITY COMMENTS
1	11/01/2023	REVISED BLAZING STAR TYPICAL SECTION
	11/01/2023	REVISED PER CITY COMMENTS

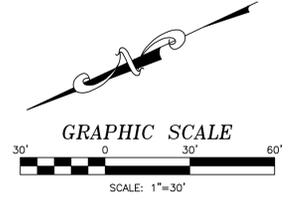
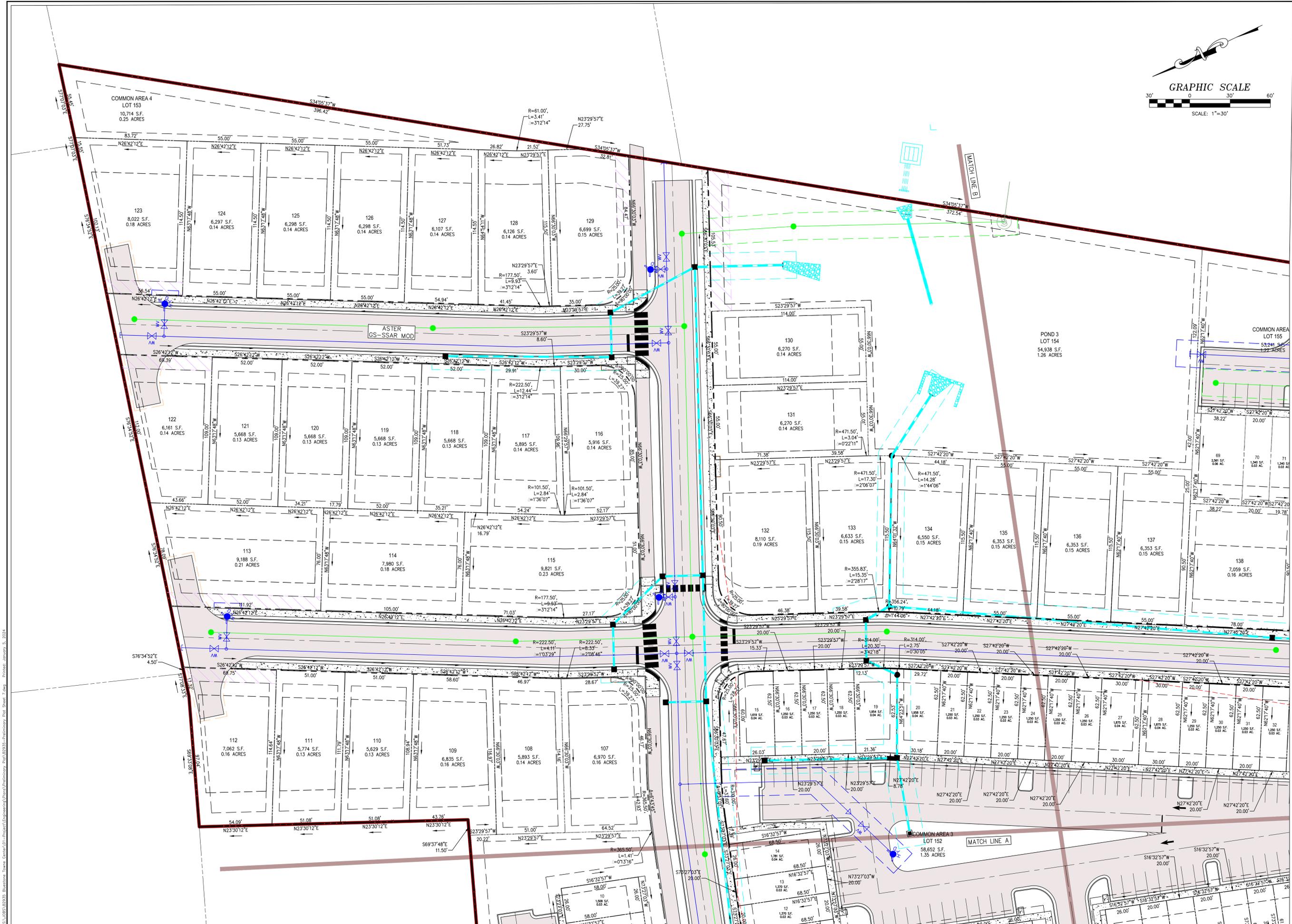
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 Henric, Virginia 23061  
 Phone: (804) 432-9555  
 www.aeva.com

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 PHASE 1  
**EQUITY PLUS, LLC**  
 CITY OF HARRISONBURG, VIRGINIA

Project Contacts: NHK  
 Project Number: B2935-01  
 Scale: 1" = 20'  
 Date: 10/5/2023  
 Sheet Title: METES & BOUNDS WEST



Rev.	Date	Description
4	1/10/2024	REVISED ENUMENTS
3	1/7/2024	SHIFTED LOT LINES
2	1/27/2023	REVISED PER CITY COMMENTS
1	11/01/2023	REVISED BLAZING STAR TYPICAL SECTION
1	11/01/2023	REVISED PER CITY COMMENTS

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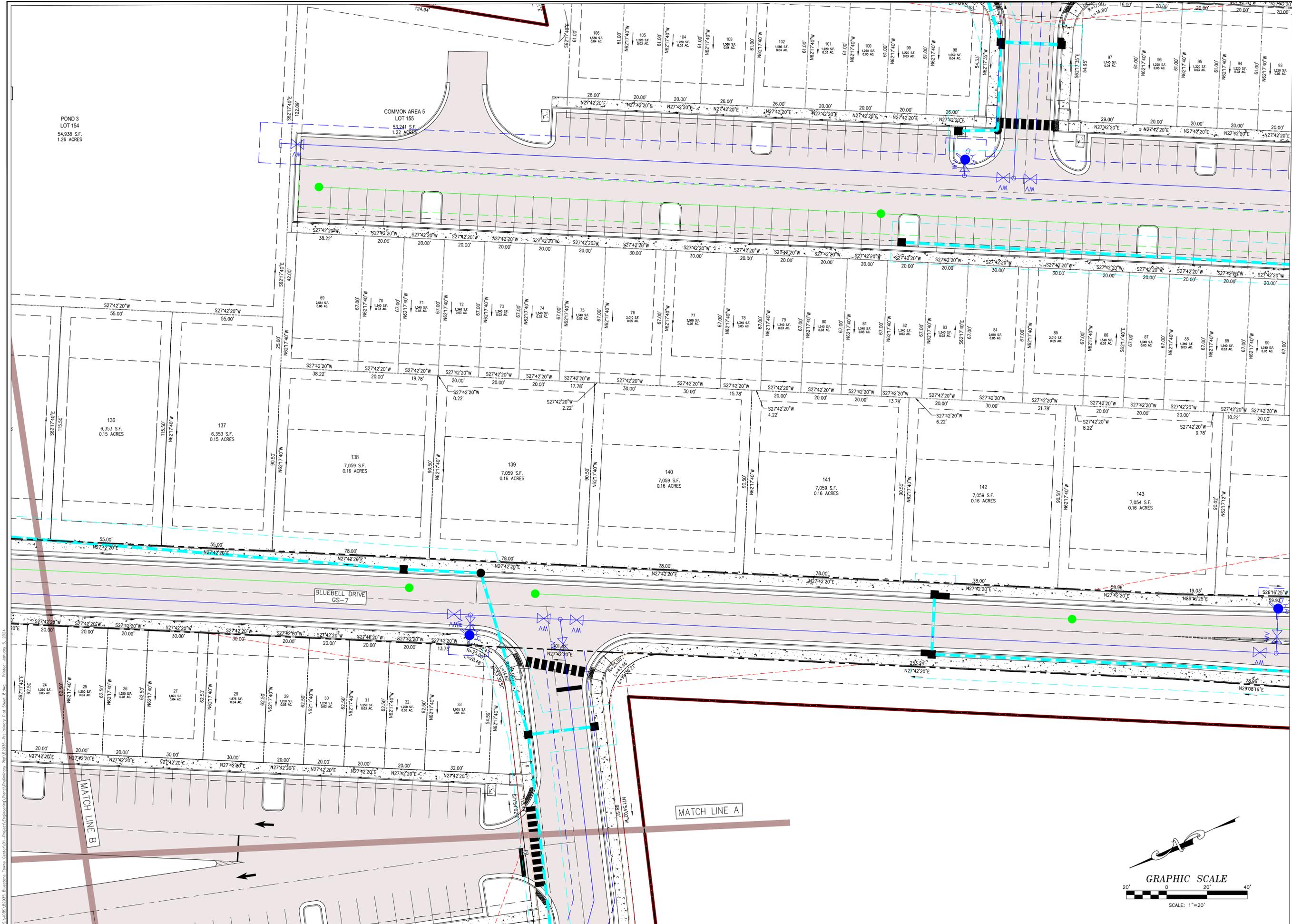
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PRELIMINARY PLAT  
FOR  
**BLUESTONE TOWN CENTER**  
PHASE 1  
EQUITY PLUS, LLC  
CITY OF HARRISONBURG, VIRGINIA

Project Contacts: NHK  
Project Number: B2935-01  
Scale: 1" = 30'  
Date: 10/5/2023  
Sheet Title: METES & BOUNDS NORTH EAST

P:\S\2023\2935 - Bluestone Town Center\01 - Project\Engineering\Drawings\Preliminary Plat\Sheet 7.dwg Printed: January 5, 2024



Rev.	Date	Description
4	1/10/2024	REVISED EASEMENTS
3	1/7/2024	SHIFTED LOT LINES
2	12/21/2023	REVISED PER CITY COMMENTS
1	11/01/2023	REVISED BLAZING STAR TYPICAL SECTION
1	11/01/2023	REVISED PER CITY COMMENTS

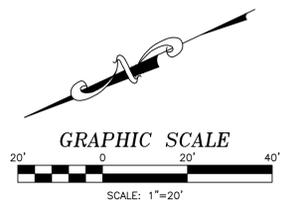
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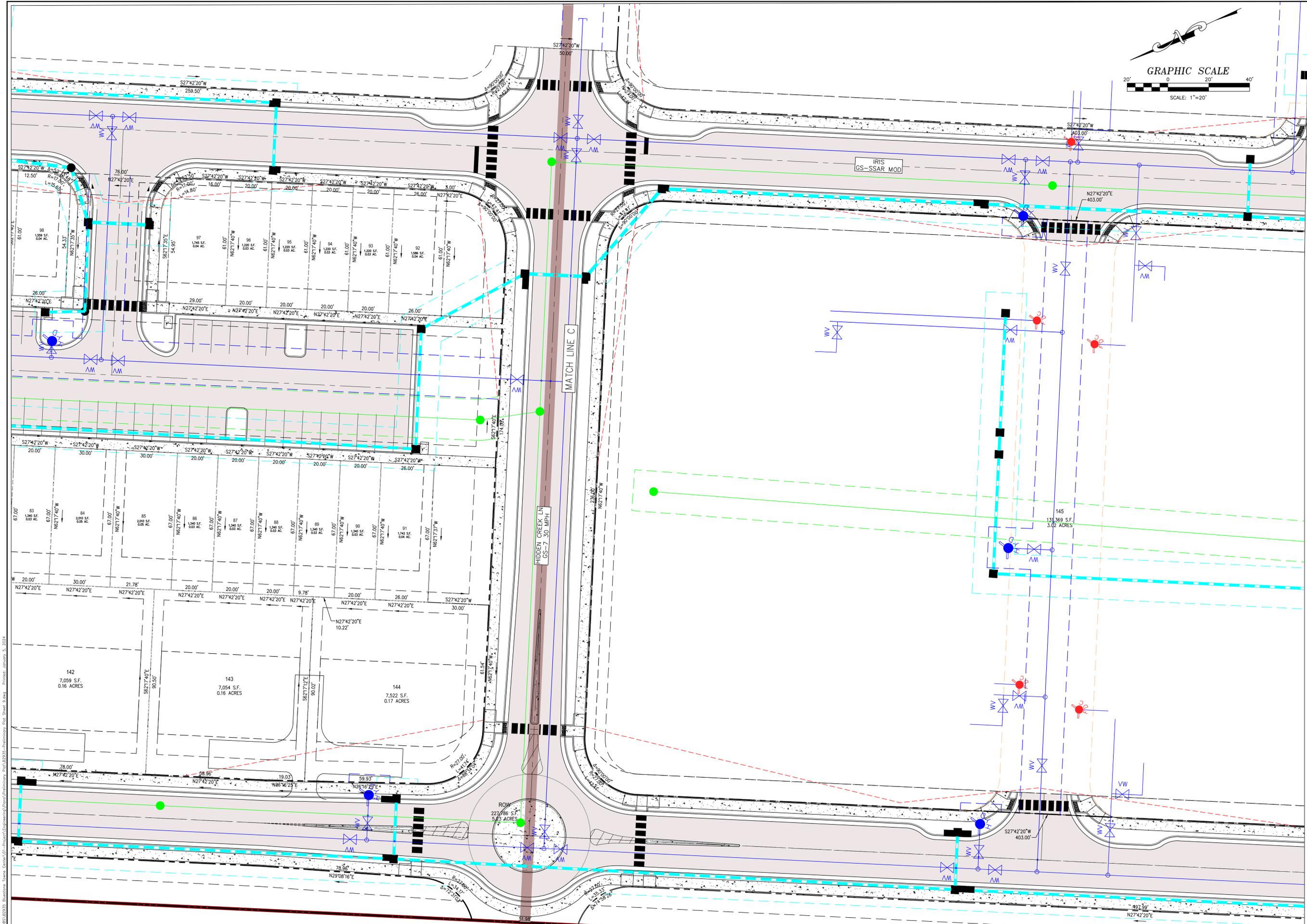
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PRELIMINARY PLAN FOR  
**BLUESTONE TOWN CENTER**  
 PHASE 1  
**EQUITY PLUS, LLC**  
 CITY OF HARRISONBURG, VIRGINIA

Project Contacts: NHK  
 Project Number: B2935-01  
 Scale: 1" = 20'  
 Date: 10/5/2023  
 Sheet Title: METES & BOUNDS CENTER





Rev.	Date	Description
4	1/10/2024	REVISED EASEMENTS
3	1/7/2024	SHIFTED LOT LINES
2	1/27/2023	REVISED PER CITY COMMENTS
1	1/10/2023	REVISED BLAZING STAR TYPICAL SECTION
	1/10/2023	REVISED PER CITY COMMENTS

THIS PLAN HAS NOT RECEIVED FINAL APPROVAL AND IS NOT APPROVED FOR CONSTRUCTION.

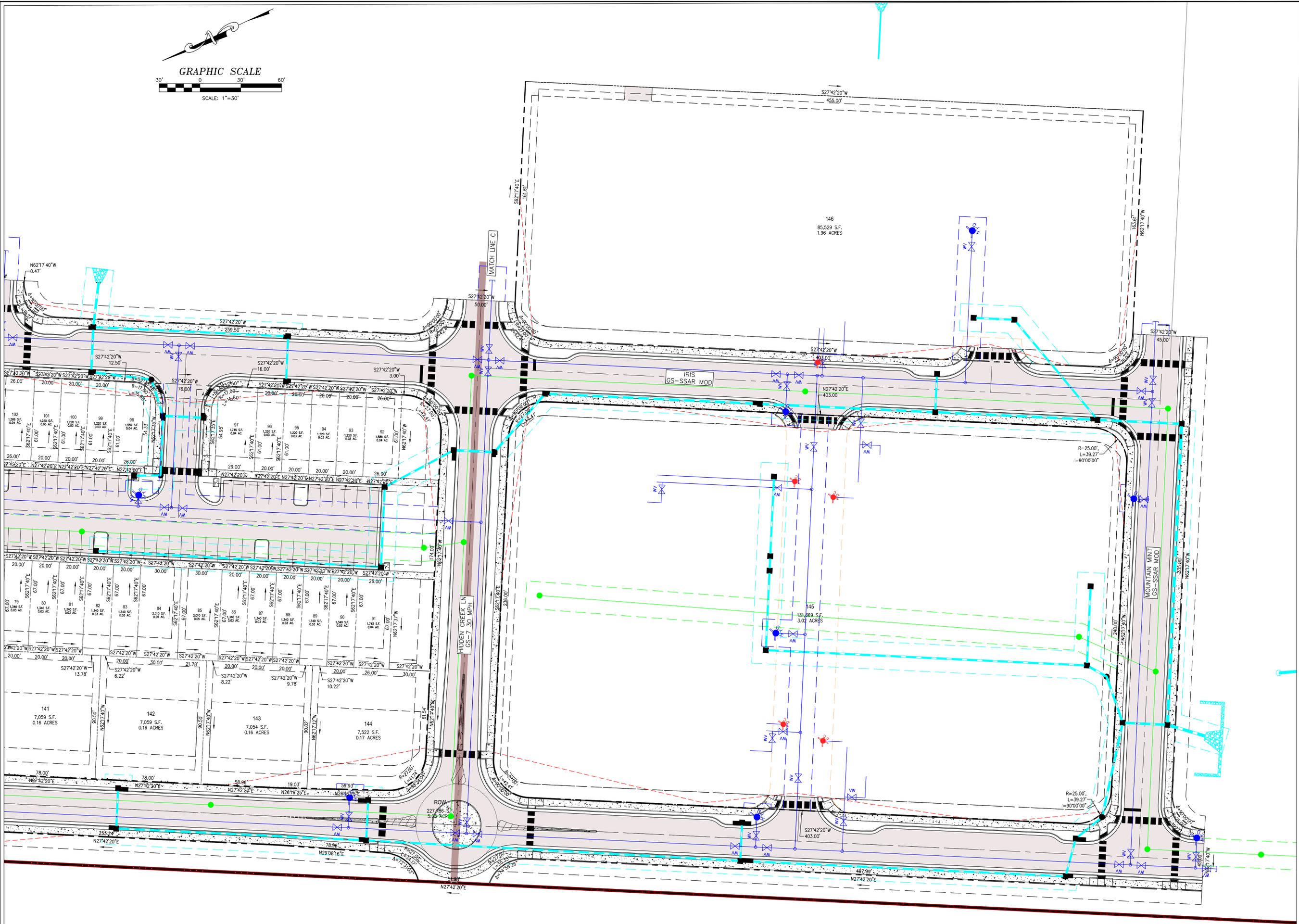
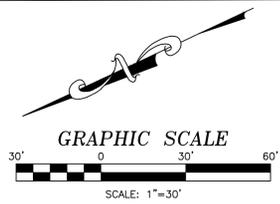
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PRELIMINARY PLAN FOR  
**BLUESTONE TOWN CENTER**  
 PHASE 1  
**EQUITY PLUS, LLC**  
 CITY OF HARRISONBURG, VIRGINIA

Project Contacts: NHK  
 Project Number: B2935-01  
 Scale: 1" = 20' Date: 10/5/2023  
 Sheet Title: METES & BOUNDS SOUTH  
 Sheet Number: 9

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Rev.	Date	Description
4	10/20/24	REVISED EASEMENTS
3	1/7/2024	SHIFTED LOT LINES
2	12/27/2023	REVISED PER CITY COMMENTS
1	11/01/2023	REVISED BLAZING STAR TYPICAL SECTION
1	11/01/2023	REVISED PER CITY COMMENTS

THIS PLAN HAS NOT RECEIVED FINAL APPROVAL AND IS NOT APPROVED FOR CONSTRUCTION.

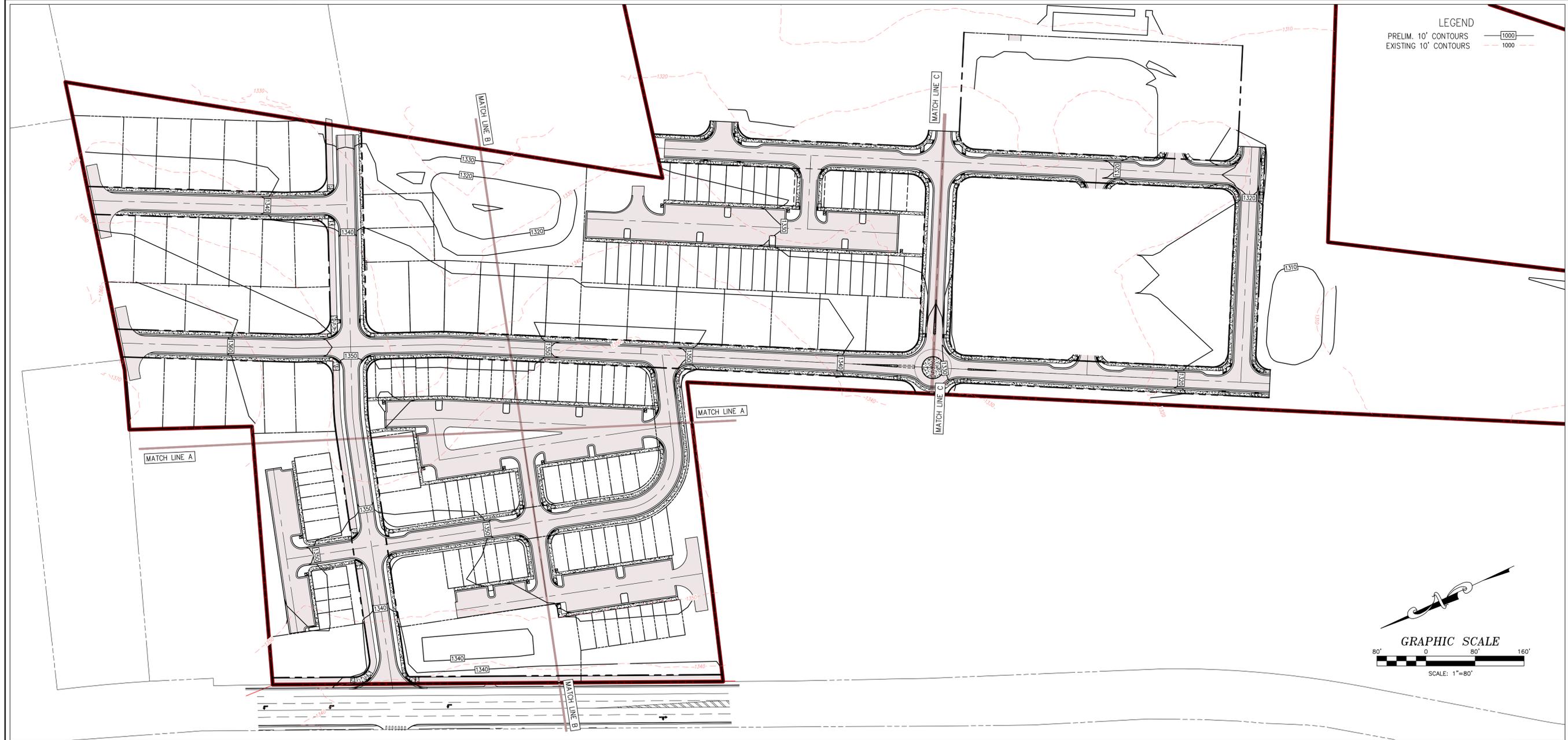
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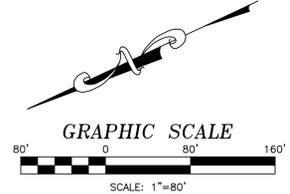
PRELIMINARY PLAN FOR  
**BLUESTONE TOWN CENTER**  
 PHASE 1  
**EQUITY PLUS, LLC**  
 CITY OF HARRISONBURG, VIRGINIA

Project Contacts: NHK  
 Project Number: B2935-01  
 Scale: 1" = 30' Date: 10/5/2023  
 Sheet Title: METES & BOUNDS APARTMENTS

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**LEGEND**  
 PRELIM. 10' CONTOURS [Symbol: Dashed line with '1000']  
 EXISTING 10' CONTOURS [Symbol: Dashed line with '1000']



Rev.	Date	Description	Revised By
4	1/5/2024	REVISED EASEMENTS	BWK
3	1/2/2024	SHIFTED LOT LINES	BWK
2	12/27/2023	REVISED PER CITY COMMENTS	BWK
1	11/01/2023	REVISED BLAZING STAR TYPICAL SECTION	BWK
1	11/01/2023	REVISED PER CITY COMMENTS	BWK

THIS PLAN HAS  
 NOT RECEIVED  
 FINAL APPROVAL  
 AND IS NOT  
 APPROVED FOR  
 CONSTRUCTION.

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 Harrisonburg, Virginia 22801  
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PRELIMINARY PLAN  
 FOR  
**BLUESTONE TOWN CENTER**  
 PHASE 1  
**EQUITY PLUS, LLC**  
 CITY OF HARRISONBURG, VIRGINIA

Project Contacts: NHK  
 Project Number: B2935-01  
 Scale: 1" = 80'  
 Date: 10/5/2023

Sheet Title:  
**PROPOSED  
 STREET GRADING**

Sheet Number  
**11**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
BLUE STONE TOWN CENTER**

This Declaration of Covenants, Conditions and Restrictions made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by **EP HARRISONBURG OWNER, LLC**, a Virginia limited liability company (hereinafter “Declarant”), Grantor.

W I T N E S S E T H

**The Factual Background.** Declarant is the owner of certain real property more particularly shown and described as all those certain lots or parcels of land lying and being situate in the City of Harrisonburg, Virginia, consisting of approximately \_\_\_\_ acres, more or less. Declarant has subdivided this property as shown on the following plat entitled “Final Plat of Blue Stone Town Center, Section \_\_\_\_ (“Subdivision Plat”) recorded in the Clerk’s Office of the Circuit Court of Rockingham County, Virginia, at Deed Book \_\_\_\_, page \_\_\_\_\_. Declarant desires to subject the above lots shown on the Subdivision Plat to the Covenants, Restrictions, Conditions and Easements set forth herein, each of which are for the benefit of the Owners of these Lots.

NOW THEREFORE, the Declarant declares that the real property as shown on the Subdivision Plat shall be held, transferred, sold, conveyed and occupied subject to the Restrictions, Covenants, Conditions and Easements herein. These Restrictions, Covenants, Conditions and Easements shall be Covenants running with the land and shall be binding upon any and all parties who have or acquire title to all or any part of Blue Stone Town Center Subdivision, and shall inure to the benefit of each of the Owners thereof.

ARTICLE I  
DEFINITIONS

Section 1.01. **Association.** The term Association as used herein shall mean the Blue Stone Town Center Homeowners Association, Inc., a Virginia non-stock corporation, its successor and assigns.

Section 1.02. **Board of Directors.** The term Board of Directors as used herein shall mean the Board of Directors of the Association.

Section 1.03. **Committee.** The term Committee as used herein shall mean the Architectural Review Committee as set forth in Article VI, and during the applicable time period it shall reference both sub-committees thereunder.

Section 1.04. **Common Area.** The term Common Area as used herein shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Members, and shown on the Subdivision Plat as “Common Area” or “Open Space” as modified as set out herein.

Section 1.05. **Declarant.** The term Declarant as used herein shall mean EP Harrisonburg Owners, LLC, its successors and assigns. The Declarant may appoint a successor Declarant by an instrument recorded in the Clerk’s Office of the Circuit Court of Rockingham County, Virginia, said instrument shall set out the rights hereunder being transferred.

Section 1.06. **Declaration.** The term Declaration as used herein shall mean the restrictions, covenants, conditions and easements, and all other provisions herein set forth in this document, as it may from time to time be amended.

Section 1.07. **Lot.** The term Lot as used herein shall mean and refer to any plot or parcel of land designated as one of the Lots shown on the Subdivision Plat.

Section 1.08. **Owner.** The term Owner as used herein shall mean and refer to the record Owner, whether one or more persons or entities of the fee simple title to any Lot, including contract sellers, but excluding purchasers who have not yet taken title, and further excluding those holding such interest solely as security for the performance of an obligation. In the case where a Lot is held by one or more persons for life, with the remainder to another or others, the term Owner shall mean and refer only to such life tenant or tenants until such time as the remainderman or remaindermen shall come into use, possession, or enjoyment of such Lot. If more than one (1) person or entity is the record Owner of a Lot, the term "Owner" as used herein shall mean and refer to such owners collectively, so that there shall be only one (1) Owner of each Lot.

Section 1.09 **Single Family.** The term Single Family as used herein shall mean and refer to a single housekeeping unit which includes not more than two (2) adults who are not legally related by marriage, blood, ~~or~~ adoption, or under approved foster care.

Section 1.10. **Subdivision.** The term Subdivision as used herein shall mean and refer to the aforesaid Lots and Common Area as shown on the Subdivision Plat.

## ARTICLE II

### MEMBERSHIP

Section 2.01 **Membership.** Every Owner of a Lot shall be a Member of the Association as set out herein. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

## ARTICLE III

### VOTING RIGHTS

Section 3.01. **Voting Rights.** The Association shall have two classes of voting Membership:

Class A. Class A Members shall be all those Owners as defined in Article II with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot. For so long as the Class B Member exists, the Class A Members are non-voting Members.

Class B. The Class B Member shall be the Declarant, its successors and assigns. The Class B Member shall be entitled to ten (10) votes for each Lot it owns. The Class B membership shall cease upon the happening of the earlier of (i) Declarant, or its successor declarant, no longer owning any Lots, or (ii) the surrender of the Class B membership by Declarant, its successors and assigns, which membership shall, upon such surrender, be converted to Class A Membership with respect to each Lot, with such surrender being evidenced by the recordation of a written instrument in the Clerk's Office of Rockingham County, Virginia.

## ARTICLE V

### PROPERTY SUBJECT TO THE DECLARATION

Section 5.01. **Subject Property.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in [the City of Harrisonburg](#)~~Rockingham County~~, Virginia, and is shown and described as Lots \_\_\_\_\_ on the Subdivision Plat.

Section 5.02. **Subdivision.** These Lots shall not be further subdivided except by the Declarant as provided in Article VII.

Section 5.03. **Additions.** The Declarant shall have the absolute and unqualified right (but shall not be obligated) to bring within the terms of this Declaration additional property, so long as such property is adjacent to the property shown on the Subdivision Plat or on later plats brought within the Declaration. Such additions shall be made by recording a supplemental declaration in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, indicating what additional property shall be subject to this Declaration. Any additional property added to this Declaration shall be treated for all purposes as part of the Subdivision, except as may otherwise be provided in such supplemental declaration.

## ARTICLE VI

### ARCHITECTURAL REVIEW

Section 6.01. **Committee Composition.** The Architectural Review Committee, hereinafter the "Committee", will be composed of three (3) individual members. So long as the Declarant or successor declarant is a Class B Member, the Committee shall be composed of three (3) individuals designated by the Declarant. After the time that the Declarant is no longer a Class B Member, the Committee shall be composed of three Owners, who shall be appointed by the Board of Directors.

Section 6.02. **Purpose.** The Committee shall regulate the external design, appearance, use, site, elevation and location of all improvements on the Lots thereon in such a manner as to preserve and enhance the value of the Lots, maintaining a harmonious relationship among the structures, landscaping, and natural vegetation and topography of the Subdivision and to conserve the existing natural amenities.

Section 6.03. **Removal, Vacancies and Officers.** For so long as the Class B Member exists, the Declarant may remove members of the Committee at any time with or without cause. After the Declarant is no longer in control of the Committee, members of the Committee may be removed by the Board of Directors at any time with or without cause. Appointments to fill vacancies in unexpired terms shall be made in the same manner as the original appointment. The Committee shall elect from among themselves a chairperson, a vice-chairperson and a secretary who shall perform the usual duties of their respective offices.

Section 6.04. **Conditions.** No improvements, alterations, repairs, excavations, changes in grade, major landscaping, clearing, tree cutting or other work which in any way alters the exterior appearance of any Lot or improvement located thereon from its natural or improved state shall be made or done until the construction plans, site plans, landscaping plans, specifications, working drawings, and proposals for the same showing the nature, kind, shape, color, type, materials, elevations and location thereof, shall have been submitted and approved in writing by the Committee. No building, fence, wall, structure, alteration, landscaping or other improvement shall be commenced without prior written approval of the Committee. Written approval shall also be obtained for the location of the house, driveway and any other structure. Refusal of approval of plans, location, etc., may be based upon any ground, including purely aesthetic reasons, in the sole discretion of the Committee. No shrubbery, bushes or trees shall be planted, installed or allowed within any access easement, drainage easement or storm water management easement. Site plan approval requires that one (1) set of building permit ready working drawings must be submitted to the Committee and shall include the following:

- (a) Site Plan Information Required For Approval

(i) Accurate building footprint including elevations for proposed finished floor and garage floor, decks, porches, stoops, or other detached secondary structures such as storage buildings, etc.

(ii) Accurate “hardscape” information including driveways, parking areas, walkways, and on-site storm water drainage (NOTE: where needed, standard corrugated metal pipe (“CMP”) road pipes must be a minimum of 15” x 24’)

(iii) Landscaping plan

(b) House Plan Information Required For Approval

(i) Floor plans;

(ii) House elevations at  $\frac{1}{4}'' = 1'-0''$  scale with notes indicating all exterior finishes and materials, and with all accurate grade lines shown;

(iii) One wall section at  $\frac{3}{4}'' = 1'-0''$  scale fully noted

(iv) Indicate location for HVAC unit, electric, and gas hookups.

Final approval will not be granted until plans are submitted specifying exterior textures, including siding and/or brick, stone or drivet, roofing material, foundation facing material, windows, and doors. Colors may be submitted at this time or later, but must be submitted and approved prior to application. After reviewing the properly submitted plans, the Committee will return one copy to the Owner with comments and maintain the other for its files. Approval to build, additional information, or required modifications will be made in writing by the Committee within thirty (30) days after submittal.

Section 6.05. **Procedure.** The Committee shall promptly review and act on all requests for approval of improvements submitted pursuant to Article VI. In the event that the Committee

fails to approve, modify, or disapprove in writing a request for approval required herein within thirty (30) days after the plans, specifications, and other required materials have been received by the Committee, approval will be deemed to have been granted; provided, however, nothing specifically prohibited by this Declaration shall be deemed to be approved and said failure to act shall not constitute a waiver by the Committee except as set out in Section 6.07. All actions shall be by majority vote.

Section 6.06. **Enforcement.** Any exterior addition, change or alteration made without application to, and approval of, the Committee shall be deemed to be in violation of these covenants and may be required by the Board of Directors (or by the Declarant during such time as there is a Class B Member) to be restored to its original condition at the offending Owner's sole cost and expense.

Section 6.07. **Exceptions.** Notwithstanding the foregoing, the provisions and requirements of this Article shall be deemed waived if no suit in equity or action at law has been filed with notice of lis pendens, in the Circuit Court of the County of Rockingham, Virginia, with respect to any violation of this Article within six (6) months after the initial occurrence of the violation.

Section 6.08. **Appeal.** Any aggrieved party may appeal a decision of the Committee to the Board of Directors by giving written notice of such appeal to the Association or any director within twenty (20) days of the adverse ruling.

Section 6.09. **Exception as to the Declarant.** Notwithstanding anything to the contrary herein, Declarant and the construction by Declarant of any buildings, structures or improvements on the Property shall be exempt from Committee review and shall not be subject to the provisions of this Article.

## ARTICLE VII

### BUILDING AND USE RESTRICTIONS

Section 7.01. The Lots shall be occupied and used as follows:

(a) No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that:

(i) dogs, cats and other common and normal household pets may be kept on any Lot subject to reasonable rules and regulations adopted by the Board of Directors such pets shall be confined to the Owner's Lot or on leashes, and be under the control of a responsible person and obedient to the person's command at all times. Owners of household pets shall promptly clean up and properly dispose of pet wastes wherever deposited on the Property. In no event shall more than three (3) domestic pets be permitted.

(ii) the Board may prohibit keeping certain types or breeds of animals which the Board reasonably believes to be unsafe.

(b) No building or buildings of any kind whatsoever shall be erected or maintained on any Lot except one (1) private dwelling house, designed for use and used by a Single Family and a private garage and utility building for the sole use of a Single Family upon the Lot on which they are located. Lots shall be used for Single Family residential purposes only; provided, however, that the use of a portion of a residence as an office by the occupant shall be allowed (i) if such use does not create employee, customer, client, or other traffic to and from the Lot and (ii) such use is in compliance with applicable zoning regulations. In addition,

notwithstanding other provisions herein, the Declarant or anyone approved by Declarant may use one or more residences as model homes.

- (c) No sign of any kind, with the exception of a standard real estate “For Sale” or “For Rent” sign no more than seven (7) square feet in area shall be displayed to the public view from any Lot without prior written consent of the Committee.
- (d) No obnoxious, boisterous, or offensive activities shall be permitted on any Lot, nor shall anything be done thereon that may be an annoyance or nuisance to the Owners of other Lots in the Subdivision.
- (e) No burning of paper, household trash, cardboard, construction materials or other refuse shall be permitted on any Lot.
- (f) The Declarant may subdivide Lots and rearrange boundary lines without the consent of the Committee.
- (g) No structures of a temporary character, tent, or trailer shall be used as a residence on any Lot at any time.
- (h) Except as required by law, no exterior or roof antenna or satellite dish or similar device shall be attached to or installed on an Lot or on the exterior portion of any structure on any Lot. Small satellite dishes such as customary for DirecTV or Dish services may be placed with prior Committee approval as to mounting location.
- (i) No unlicensed or inoperable vehicles, trucks with gross vehicle weight over  $\frac{3}{4}$  ton, school buses, other buses, RV’s, boats, wreckers, or other large

commercial vehicles shall be parked on any Lot or road bordering a Lot overnight unless within a garage.

(j) It shall be the responsibility of each Owner and tenant to prevent the development of any unclean, unsightly, or unkept conditions of buildings or ground on their Lot.

(k) Should any dwelling unit or other structure on any Lot be destroyed in whole or in part, it shall be reconstructed, or the debris therefrom removed, and the Lot restored to a neat and sightly condition within six (6) months of the damage or loss.

(l) All driveways shall have a paved or concrete surface which has been approved by the Committee.

(m) All exterior finishes must be brick, stone, stucco, Hardiplank or vinyl.

(n) No mobile home, double-wide manufactured home, house trailer or modular home shall be constructed or placed on any Lot that does not have a permanent foundation. .There shall be no manufactured or modular homes placed on any Lot and there shall be no flat roofs, except for porches, and no roof with a primary pitch of less than a ratio of 4 to 12.

(o) No structure of a temporary character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to shelters or temporary structures used by the contractor during the construction of the main dwelling house, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the Lot after

completion of construction of the main dwelling house. The design and color of structures temporarily placed on a Lot by a contractor shall be subject to reasonable aesthetic control by the Committee.

(p) Any and all exterior lighting shall be subject to approval by the Committee. No lighting fixtures or devices shall be installed in any tree. No lighting fixture shall be directed toward a road or adjoining Lot.

(q) There shall be no exterior clothes lines erected on any Lot.

(r) Fences will be allowed on property lines. All fences must be approved by the Committee as provided in Article VI. Fences are to be no higher than six (6) feet tall and must be behind the front-most portion of the residence. No chain link ~~or wood~~ fences will be allowed.

(s) The exterior of all residences and other structures must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner and builder due to strikes, fires, national emergency or natural calamities. During the continuance of construction, the Owner of the Lot shall require the contractor to maintain the Lot in a reasonably clean and uncluttered condition.

(t) No part of any Lot shall be used as a right-of-way, easement or road for access to any property outside the Subdivision.

(u) No mailbox or newspaper box shall be erected on any Lot.

(w) No inground or above ground pools shall be installed on any Lot without Committee approval.

(v) Trash cans must be stored in garages or screened from view by an Committee approved structure at all times except for the twenty-four (24) hour period before and after pick up day.

## ARTICLE VIII

### EASEMENTS

Section 8.01. **Existing Easements.** The Lots shall be conveyed subject to easements shown on the Subdivision Plat, and such other easements as may exist of record at the time of conveyance. All easements shown on the Subdivision Plat are reserved for the benefit of the Declarant, its successors and assigns, which easements may be conveyed by the Declarant to one or more grantees.

Section 8.02. **Utility Easements.** In addition to all other easements provided for on the Subdivision Plat and in this Declaration, the Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right of way on, above and underground through all areas of each Lot, excepting only such land either designated by the Committee as approved building sites or upon which a structure other than trees, shrubbery, or fences approved by the Committee is constructed. The purpose of said easement shall be to construct, maintain, inspect, re-grade, replace, and repair vegetation, road shoulders, lines, wires, cables, conduits, sewers, pipes, water mains, and other suitable equipment and facilities for the conveyance of water, sewer, gas, telephone, electricity, television cable, exterior lighting, storm water, and other utilities and public conveniences, for any purpose required by the City of Harrisonburg or Virginia Department of Transportation in conjunction with the acceptance of the roads shown on the Subdivision Plat into the Virginia State Highway System for maintenance,

and for storm and surface water drainage including pipes, ditches, culverts, swales, and other suitable facilities for the disposition of storm and surface drainage together with the right of ingress and egress to all such facilities and easements for the construction and maintenance thereof.

The phrase “land designated by the Committee as approved building sites” shall mean (i) the area under buildings, patios, walks, decks, porches, or other improvements not including driveways, fences, shrubs and trees constructed by Declarant or its agents, contractors, or sub-contractors; (ii) the area under other buildings, patios, walks, decks, porches, or other improvements not including driveways, fences, shrubs, and trees; the location of which is approved by the Committee in accordance with Article VI of this Declaration.

The easements provided for herein shall include the right to cut any trees, brush, and shrubbery; dig or grade any soil; and take any other similar action as reasonably necessary for the use of the easement.

The rights herein reserved may be exercised by any licensee, successor or assignee of Declarant but shall not be deemed to impose any obligation upon Declarant to provide, maintain, or be responsible for the lapse or temporary interruption of services except as herein otherwise provided. Any damage to the servient property resulting from the use of the easements hereby reserved shall be promptly repaired at the expense of the party causing such damage. The rights herein reserved shall include the right to temporarily interrupt utility service as necessary or appropriate upon reasonable notice to the Owner of the servient property.

**Section 8.03. Entrance Structure Easement.** The Declarant reserves unto itself, its successors and assigns, perpetual and alienable easements for the construction and maintenance of an entrance sign.

Section 8.04. **Drainage Easements and Drainage and Storm Water Management Easements.** The Declarant reserves unto itself, its successors and assigns, perpetual and alienable drainage easements as shown on the Subdivision Plat. These easements are solely for surface and storm water drainage purposes and are not to be used for access or any other purpose by the public or any other Owner. The maintenance of the portion of each of these easements within each Lot shall be the responsibility of the Owner of that Lot except for any biofilters designated on the Subdivision Plat to be maintained by the Association. The Association shall maintain, operate, repair and replace the any drainage easements or storm water facilities not located upon a Lot in accordance with the requirements of the City of Harrisonburg, Virginia.

Section 8.05. **Maintenance Responsibilities.** Except as otherwise set forth herein, the Owner of each Lot shall be responsible for the maintenance of the surface area of any portion of any easement within the boundaries of that Lot.

## ARTICLE IX

### ROADS

Section 9.01. **Subdivision Roads.** The roads shown on the Subdivision Plat serving the Lots within the Subdivision shall be constructed by Declarant to applicable [City of Harrisonburg, Virginia](#) ~~Virginia Department of Transportation~~ standards and the Declarant shall arrange for the acceptance of such roads into the ~~City road system~~ [Virginia Highway System](#). All driveways serving the Lots shall be private and shall be subject to approval by the Committee pursuant to Article VI of this Declaration and shall be maintained by and at the expense of the Owner of the Lot which they serve.

## ARTICLE X

### SET BACK

Section 10.01. **Building Set Backs.** Building set backs from Lot boundaries shall be as shown on the Subdivision Plat.

## ARTICLE XI

### LANDSCAPING MAINTENANCE

Section 11.01. **Landscaping Maintenance by Association.** The Association shall perform Landscaping Maintenance upon the Common Areas as determined by the Board. “Landscaping Maintenance” as used herein may include, but shall not necessarily be limited to: the cutting or trimming of grass, trees and shrubs; the re-seeding, re-sodding or replanting of grass; the replanting trees or shrubs; the re-mulching and weeding of mulched areas, the repair and replacement of any irrigation installed by the Declarant or the Association; and the routine, customary application of fertilizer, pesticide and algacide or fungicide, if necessary or recommended, and determined by the Association or its agent. The Association shall have the right to remove any landscaping located in the Subdivision which becomes a nuisance. The Association shall have the sole discretion to determine the time at which such Landscaping Maintenance performed by Association shall take place, the manner and materials to be used. Except as set forth in the foregoing, each Owner shall be responsible for the maintenance of their respective Lot (including without limitation individual Lot lawn and landscaping) and the improvements thereon in a neat, orderly and attractive manner consistent with the standards set forth in Section 11.05. Notwithstanding the foregoing, the Association shall maintain retaining walls located in the Subdivision, other than those located on a Lot and that exclusively serve that

Lot. The Association shall have the power, but not the obligation, in its sole discretion, to undertake maintenance of any improvements located in the Subdivision.

**Section 11.02. Remedies for Non-Compliance.** In the event an Owner fails to maintain or cause to be maintained his Lot and the improvements thereon in accordance with this Article, the Association shall have the right (but not the obligation), upon five (5) days' prior written notice to the Owner at the address last appearing in the records of the Association, to enter upon such Lot and perform such work as is necessary to bring the Lot or improvements thereon, as applicable, into compliance with the standards set forth in Section 11.05. Such work may include, but shall not necessarily be limited to, Landscaping Maintenance, the repainting or re-staining of exterior surfaces of an improvement, the repair of walls, fences, roofs, doors, windows and other portions of improvements on a Lot; and such other remedial work as is judged necessary by the Association. The remedies provided for herein shall be cumulative with all other remedies available under this Declaration or other applicable covenants or deed restrictions.

**Section 11.03. Costs of Remedial Work; Surcharges.** In the event that the Association performs any remedial work on a Lot or the improvements thereon pursuant to this Article or any other applicable covenants or deed restrictions, the costs and expenses thereof may at the determination of the Association, in its sole discretion, be deemed a special assessment under Article XII of this Declaration and may be immediately imposed upon the Owner of such Lot by the Association. In order to discourage Owners from abandoning certain duties hereunder and, additionally, to reimburse itself for administrative expenses incurred, the Association may impose a surcharge of not more than twenty-five (25%) percent of the cost of the applicable remedial work, such surcharge to be a part of the Individual Assessment. No bids need be

obtained for any of the work performed pursuant to this Section and the Person(s) performing such work may be selected by the Association in its sole discretion.

Section 11.04. **Easement for Maintenance.** There is hereby created an easement in favor of the Association and its designees, over each Lot including the improvements thereon for the purpose of entering onto the Lot in the performance of the Landscaping Maintenance, and any other maintenance for which the Association is permitted to provide or undertake, provided that the Association shall exercise such easement for entry during reasonable hours.

Section 11.05. **Standards for Maintenance and Repair.** All maintenance and repair performed by an Owner of a Lot or the Association shall be performed in a manner consistent with the general appearance of the developed portions of the Subdivision.

Section 11.06. **Common Area Maintenance.** The Association shall at all times maintain in good repair, operate, manage, insure, and replace as often as necessary the Common Areas and all improvements situated on the Common Areas (upon completion of construction by Declarant or its affiliates, if applicable) in a neat, orderly and attractive manner consistent with the standards set forth in Section 11.05. Without limiting the generality of the foregoing, the Association shall assume all of Declarant's, its affiliates' (and its and their predecessors') responsibility to the City, its respective governmental and quasi-governmental subdivisions and similar entities of any kind with respect to the Common Areas, including roads and entry features, and shall indemnify Declarant and its affiliates and hold Declarant and its affiliates harmless with respect thereto.

Section 11.08. **Other Trees.** No trees on a Lot having a caliper of four (4) inches or greater shall be cut unless approved by the Committee.

## ARTICLE XII

### HOMEOWNERS ASSOCIATION

Section 12.01. **Formation.** The Declarant shall form a non-stock corporation, to be known as the “Blue Stone Town Center Homeowners Association, Inc.”, not later than the time it conveys to a third party its interest in the last Lot it owns within the Subdivision. The membership in the Association shall be as set forth in Article II. Declarant may, but shall not be required to, assign to the Association all of Declarant’s rights and responsibilities under this Declaration.

The Declarant’s responsibility for maintaining the easements under Article VIII shall be assigned to the Association at the discretion of the Declarant, and upon the assignment the Declarant shall have no further responsibilities for such maintenance.

Section 12.02. **Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Subdivision, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorney’s fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation shall

not pass to his successors in title unless expressly assumed by them, although it shall remain a lien on the Lot.

Section 12.03. **Determination of Assessments.** The Association shall, in November of each year, after Declarant has assigned its rights and responsibilities with respect to the easements and Common Area under this Declaration to the Association, estimate the amount of money which shall be required during the next calendar year to maintain the surface of all easements located therein, the easement and sign at the entrance to the Subdivision and create a reserve for the maintenance, repair or replacement of any improvements to the Common Area, and the performance of the Association's maintenance obligations pursuant to Article XI, and shall allocate this amount equally among the Lots not owned by the Declarant and assess the Owners of each such Lot for their proportional share. However, no assessment or allocation shall be made to any Lot owned by the Declarant. In the event that two or more Lots (which are not owned by the Declarant) should be combined into a single Lot, this shall not affect the allocation and assessment of such costs to the Owner, and the Lots which have been combined shall be allocated and assessed for the same amount as they would have been had the Lots not been combined. The Association shall notify each Owner in writing of the assessment not later than December 31 of each year, and of the date upon which payment of the assessment is due. Payment of the assessment shall be due at such time and location as the Association shall determine from year to year, which time shall not be earlier than February 1 each year. Should natural causes, requirements imposed by the City of Harrisonburg, or any other circumstances require a level of maintenance during a year which exceeds the estimate previously determined by the Association or for any other cost incurred by the Association, the Association shall determine the additional funds that will be required in addition to those already assessed for the

year, and assess an equal portion of such additional required funds upon each Lot in the same manner provided above. Notice of such special assessment shall be given in writing as soon as reasonably practical to each Owner, and the Owner shall be given a minimum of thirty (30) days from the date of mailing of the notice within which to pay the assessment. The initial annual assessment shall be \_\_\_\_\_ on each Lot sold to an Owner after \_\_\_\_\_. The Declarant covenants and agrees to fund any operating budget deficits until the Declarant has conveyed one hundred percent (100%) of the Lots which it owns.

Section 12.04. **Initial Working Fund.** There shall be levied a one-time “initial” assessment at settlement against the Owner of a Lot (not to include Declarant) at the time of conveyance. Such initial assessment shall be \_\_\_\_\_ (\$\_\_\_\_\_), and shall be used for working capital and commencing the business of the Association or any other purpose established by the Board of Directors.

Section 12.05. **Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the current legal rate, there shall be a late fee as set by the Board of Directors and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot, and interest, costs, and reasonable attorney’s fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of the Lot.

Section 12.06. **Subordination of the Lien to Deeds of Trust.** The lien of the assessments provided for herein shall be subordinate to the lien of any first deed of trust. Sale or

transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any deed of trust, pursuant to a deed of foreclosure by a first deed of trust, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability from any assessments thereafter becoming due or from the lien thereof.

### ARTICLE XIII

#### GENERAL PROVISIONS

Section 13.01. **Notice.** Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed postage prepaid to the address of record of the Owner as last provided to the Association, or if no address is shown in the Association records, the address of the Owner shown on the real estate tax records of the City of Harrisonburg, Virginia.

Section 13.02. **Enforcement.** Enforcement of the provisions of this Declaration shall be by proceedings at law or in equity against any person or persons violating or attempting to violate said provisions, either to restrain violation or recover damages, or both. Such action may be brought by the Declarant, any Owner, or the Association. In addition, the Declarant and/or the Association shall have the power to suspend an Owner's (i) voting rights, (ii) right to hold office on the Board of Directors or Committee, and (iii) right to use the Common Area, facilities or services provided directly through the Declarant or the Association to the extent that access to the Lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety or property of the Owner, tenant or occupant and to assess charges against any Owner for any violation of the provisions of this Declaration for which the Owner or his family members, tenants, guests or other invitees are responsible. Before any action is taken

hereunder, the Owner shall be given an opportunity to be heard by the Declarant and/or the Association and to be represented by counsel. Notice of a hearing, including the charges or other sanctions that may be imposed shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the Owner at the address of record with the Association, at least fourteen (14) days prior to the hearing. The amount of any charges so assessed shall not be limited to the expense or damage to the Declarant or the Association caused by the violation, but shall not exceed \$150.00 for a single offense or \$10.00 per day for any offense of a continuing nature. The total charges for any offense of a continuing nature shall not be assessed for a period exceeding ninety (90) days. A suspension or assessment of charges may be enforced through an action filed in the Courts for the City of Harrisonburg, Virginia. The Declarant, Association or any Owner bringing a successful action pursuant to this Section shall be entitled to recover its court costs and reasonable attorneys' fees.

Section 13.03. **Costs.** Should the Association, Declarant or any Owner prevail in any action at law or in equity enforcing any of the restrictions, conditions, covenants, reservations, liens and charges imposed hereunder, the Association, Declarant or Owner shall also be entitled to an award for reasonable attorney's fees incurred by the Association, Declarant or Owner in consulting with an attorney regarding enforcement and in the enforcement action. The award for attorney's fees shall be assessed against the Lot against which the action is taken and shall be added to and become a part of such annual assessment or charge to which such Lot is subject under Article XII hereof; and as a part of such annual assessment or charge, shall be a lien or obligation of the Owner and shall become due and payable in all respects as provided in Article XII hereof.

Section 13.04. **Severability.** Invalidation of one or more of the provisions of this Declaration by judgment, court order or otherwise, shall in no way affect any other provisions, which shall remain in full force and effect.

Section 13.05. **Amendments.** This Declaration may be modified or amended in whole or in part by recorded instrument bearing the signature of the Declarant, until such time as the Declarant has conveyed its interest in all of the Lots in the Subdivision to a third party, not to include a successor declarant. After said termination of Declarant's amendment rights, this Declaration may be amended only by an affirmative vote of two-thirds (2/3) of the Owners present at a duly convened meeting of the Association. Any amendment must be properly executed and acknowledged by the Declarant or the Association (in the manner required by law for the execution and acknowledgment of deeds) and recorded among the appropriate land records.

Section 13.06. **Duration.** The provisions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date hereof, and thereafter shall be renewed automatically for successive periods of ten (10) years each, unless modified or amended as provided in the foregoing Section 13.05.

Section 13.07. **Waiver.** The Declarant, as the present most interested party in maintaining the high quality of development which by these covenants is sought to be assured for the Subdivision, hereby expressly reserves unto itself, so long as these restrictions are in effect, the unqualified right to waive or alter from time to time such of the herein contained restrictions as it may deem best, as to any one or more of the Lots.

Section 13.08. **Dissolution.** The Association may be dissolved with the approval of more than two-thirds (2/3) of all the votes cast at a meeting at which a quorum exists in accordance with Title 13.1, Chapter 10, Article 13 of the Code of Virginia.

**IN WITNESS WHEREOF**, EP Harrisonburg Owner, LLC., a Virginia limited liability company, being the Declarant herein, has caused this Declaration to be executed in its name by its duly authorized Manager on this \_\_\_\_ day of \_\_\_\_\_, and the Sole-Acting Trustees, and Noteholders, join herein to evidence their consent to this Declaration.

EP HARRISONBURG OWNER, LLC

By: \_\_\_\_\_ (Seal)  
\_\_\_\_\_, Manager

STATE OF VIRGINIA AT LARGE, to-wit:  
CITY/COUNTY OF \_\_\_\_\_

I, the undersigned, a Notary Public in and for the State of Virginia at Large, do hereby certify that \_\_\_\_\_ as Manager of EP Harrisonburg Owner, LLC, has on this \_\_\_\_ day of \_\_\_\_\_, 2023, acknowledged the same before me in the City or County aforesaid.

Given under my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

My commission expires: \_\_\_\_\_  
Notary Registration Number: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_ TRUSTEE

By: \_\_\_\_\_ (Seal)  
Sole-Acting Trustee

STATE OF VIRGINIA AT LARGE, to-wit:  
CITY/COUNTY OF \_\_\_\_\_

I, the undersigned, a Notary Public in and for the State of Virginia at Large, do hereby certify that \_\_\_\_\_, Sole-Acting Trustee, has on this \_\_\_\_ day of \_\_\_\_\_, 2023, acknowledged the same before me in the City or County aforesaid.

Given under my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

My commission expires: \_\_\_\_\_

Notary Registration Number: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

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**BY-LAWS**  
**OF**  
**BLUE STONE TOWN CENTER HOMEOWNERS ASSOCIATION, INC.**

ARTICLE I  
Definitions

1.1 Association. "Association" shall mean and refer to Blue Stone Town Center Homeowners Association, Inc., a Virginia non-stock corporation, its successors and assigns.

1.2 Properties. "Properties" shall mean and refer to those certain lots of real property as shown on a Subdivision Plat which are designated as Lots "\_\_\_\_\_", and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

1.3 Roads. "Roads" shall mean the common roadways used for access to the Lots and as shown on the Subdivision Plat.

1.4 Lot. "Lot" shall mean and refer to any plot of land shown upon the Subdivision Plat, as a Lot and subsequently to be recorded in the Clerk's Office of Rockingham County, Virginia, as individual Lots.

1.5 Member. "Member" shall mean and refer to every person or entity who becomes an Owner of one or more of the Lots.

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

1.7 Declarant. "Declarant" shall mean and refer to EP Harrisonburg Owner, LLC, a Virginia limited liability company, its successors and assigns, if such successors or assigns are specifically designated by EP Harrisonburg Owner, LLC a successor declarant in a recorded instrument.

1.8 Declaration. "Declaration", "Restrictions" or "Covenants" shall, unless the context otherwise indicates, mean and refer to any or all of those restrictions and covenants contained in the Declaration of Covenants, Conditions and Restrictions of Blue Stone Town Center, recorded in the aforesaid Clerk's Office in Deed Book \_\_\_\_, page \_\_\_\_, as the same may be amended from time to time.

1.9 Subdivision. "Subdivision" shall mean and refer to the Lots, Common Area, and Open Spaces as shown on the Subdivision Plat.

1.10 Subdivision Plat. "Subdivision Plat" shall mean and refer to the Plat of Blue Stone Town Center, \_\_\_\_\_ for Lots \_\_\_\_\_, such plat being recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, in Deed Book \_\_\_\_ page \_\_\_\_\_, as the same may be amended from time to time.

ARTICLE II  
Membership

2.1 Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

ARTICLE III  
Meetings of Members

3.1 Places of Meetings. All meetings of the Members shall be held at such place, either within or without the Commonwealth of Virginia, as from time to time may be fixed by the Board of Directors.

3.2 Annual Meetings. The first annual meeting of the Members shall be held within twelve (12) months after the incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held approximately twelve (12) months after the previous annual meeting, at such day and time as shall be set by the Board of Directors.

3.3 Special Meetings. A special meeting of the Members for any purpose or purposes may be called at any time by the President, by a majority of the Board of Directors, or by Members together holding at least one-tenth of the voting interests of the Association at the time outstanding and entitled to vote with respect to the business to be transacted at such meeting. At a special meeting no business shall be transacted, and no corporate action shall be taken other than that stated in the notice of the meeting.

3.4 Notice of Meetings. Written or printed notice stating the place, day and hour of every meeting of the Members and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be mailed (including by e-mail or facsimile) not less than ten (10) nor more than sixty (60) days before the date of the meeting to each Member of record or entitled to vote at such meeting, at his address which appears in the records of the Association. Such further notice shall be given as may be required by law, but meetings may be held without notice if all the Members entitled to vote at the meeting are present in person or by proxy or if notice is waived in writing by those not present, either before or after the meeting.

3.5 Quorum. The presence at the meeting of Members or their proxies entitled to cast at least twenty-five percent (25%) of the votes of each class of Members shall constitute a quorum for any action, except as otherwise provided in Articles of Incorporation, the Declaration or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting and to call another meeting without notice other than announcement at the meeting prior to adjournment, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

3.6 Waiver of Notice. A Member may waive any notice required by the Articles of Incorporation of the Association, these By-Laws or the Virginia Non-Stock Corporation Act (the “Act”) before or after the date and time of the meeting that is the subject of such notice. The waiver shall be in writing, be signed by the Member entitled to such notice and be delivered to the Secretary for inclusion in the minutes or filing with the Association’s records. A Member who attends a meeting (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

3.7 Proxies. At all meetings of Members, each Member may vote in person or by proxy. All Proxies shall be in writing, in the form required by law, and filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of its Lot.

3.8 Conduct of the Meeting. The President of the Association shall act as Chairman at each meeting of the Members. In his absence, the Vice President, or should he be also absent, then a Member chosen by a majority vote of the Members present and entitled to vote, shall act as Chairman of the meeting. The Secretary of the Association, or an Assistant Secretary, or in their absence, any Member designated by the Chairman, shall act as secretary of the meeting.

The Chairman shall determine the order of the business at each meeting of the Members of the Association, but such order may be changed by a majority in voting power of the Members present, either in person or by proxy, and entitled to vote at such meeting.

#### ARTICLE IV Voting

4.1 Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all those Owners as defined in Article II with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine among themselves, but in no event shall more than one vote be cast with respect to any Lot. For so long as the Class B Member exists, the Class A Members are non-voting Members.

Class B. The Class B Member shall be the Declarant, its successors and assigns. The Class B Member shall be entitled to ten (10) votes for each Lot it owns. The Class B membership shall cease as provided in the Articles of Incorporation of the Association.

ARTICLE V  
Directors

5.1 General Powers. The property, affairs and business of the Association shall be managed by the Board of Directors, and, except as otherwise expressly provided by law, the Articles of Incorporation or these By-Laws, all of the powers of the Association shall be vested in such Board.

5.2 Number of Directors. The number of Directors constituting the Board of Directors shall be not less than three (3) nor more than five (5).

5.3 Election and Removal of Directors; Quorum.

(a) Directors shall be elected at each annual meeting of Members to succeed those Directors whose terms have expired and to fill any vacancies then existing.

(b) Directors shall hold their offices for terms of one (1) year and until their successors are elected. Any Director may be removed from office at a meeting called expressly for that purpose by the voting of Members holding not less than a majority of the shares entitled to vote at an election of Directors.

(c) Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of the majority of the remaining Directors though less than a quorum of the Board, and the term of office of any Director so elected shall expire on the date fixed for the expiration of the term of office of the Director to which such Director was so elected.

(d) A majority of the number of Directors elected and serving at the time of any meeting shall constitute a quorum for the transaction of business. The act of a majority of Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. Less than a quorum may adjourn any meeting.

5.4 Meetings of Directors. An annual meeting of the Board of Directors shall be held as soon as practicable after the adjournment of the annual meeting of Members at such place as the Board may designate. Other meetings of the Board of Directors shall be held at places within or without the Commonwealth of Virginia and at times fixed by resolution of the Board, or upon call of the President or any two (2) of the Directors. The Secretary or officer performing the Secretary's duties shall give not less than ten (10) days notice by letter, telephone, e-mail, or facsimile (or in person) to the Board Member at his last known address (post office, e-mail, or facsimile) of all meetings of the Board of Directors, provided that notice need not be given of annual meetings or of regular meetings held at times and places fixed by resolution of the Board. The Board of Directors may participate in a meeting by means of a conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other. A written record shall be made of the action taken at any such meeting. Directors may act without a meeting if a consent in writing setting forth the action so taken shall be signed by all the Directors either before or after such action. At any meeting at which every member of the Board of Directors shall be present, although held without notice, any business may be transacted which might have been transacted if the meeting had been duly called. Meetings may be held at any time without notice if all of the Directors are present, or if those not present waive notice in writing either before or after the meeting.

ARTICLE VI  
Officers

6.1 Election of Officers; Terms. The officers of the Association shall consist of a President, Treasurer, and a Secretary. Other officers, including a Chairman of the Board, one or more Vice-Presidents (whose seniority and titles, including Executive Vice-Presidents and Senior Vice-Presidents, may be specified by the Board of Directors), and assistant and subordinate officers, may from time to time be elected by the Board of Directors. All officers shall hold office until the next annual meeting of the Board of Directors and until their successors are elected. The President shall be chosen from among the Directors. Any two offices may be combined in the same person as the Board of Directors may determine.

6.2 Removal of Officers; Vacancies. Any officer of the Association may be removed summarily with or without cause, at any time, by the Board of Directors. Vacancies may be filled by the Board of Directors.

6.3 Duties. The officers of the Association shall have such duties as generally pertain to their offices, respectively, as well as such powers and duties as are prescribed by law or are hereinafter provided or as from time to time shall be conferred by the Board of Directors. The Board of Directors may require any officers to give such bond for the faithful performance of his duties as the Board may see fit.

ARTICLE VII  
Property

7.1 General. The Association shall have the ability to acquire and hold property, both real and personal, for the aesthetic, recreational and general civic benefit of the Subdivision and the Association.

7.2 Recreational and other facilities. The Association shall have the ability to purchase, construct, maintain and operate recreational or other facilities for the use and enjoyment of residents of the Subdivision.

7.3 Easements. The Association shall have the right to grant easements for public utility purposes to any municipality or public utility for the purpose of installation or maintenance of utilities to serve any lot located in the Subdivision including the extension of said utility to adjacent properties.

7.4 Maintenance. The Association shall maintain the Roads until the same are accepted into the into the City of Harrisonburg road system~~Virginia State Highway System~~.

7.5 Policing. The Association shall be charged with general public policing and control of the Subdivision and the Board of Directors of the Association shall have the power to make any reasonable regulations for the control of such and the prevention of nuisances within the Subdivision.

ARTICLE VIII  
Indemnity of Officers and Directors

8.1 Definitions. In this Article:

"Applicant" means the person seeking indemnification pursuant to this Article.

"Expenses" includes legal fees.

"Liability" means the obligation to pay a judgment, settlement, penalty, fine, including any excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

"Official Capacity" means (i) when used with respect to a director, the office of director in the Association; or (ii) when used with respect to an individual other than a director, the office in the Association held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the Association. "Official Capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise.

"Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

"Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

8.2 General. The Association shall indemnify any person who was or is a Party to any proceeding, including a proceeding by or in the right of the Association to procure a judgment in its favor, by reason of the fact that he is or was a director, officer, employee, or agent of the Association, or is or was serving at the request of the Association as a director, trustee, partner, or officer of another Association, partnership, joint venture, trust, employee benefit plan or other enterprise, against any Liability incurred by him in connection with such proceeding if (i) he believed, in the case of conduct in his Official Capacity, that his conduct was in the best interests of the Association, and in all other cases that his conduct was at least not opposed to its best interests, and, in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful, and (ii) he was not guilty of gross negligence or willful misconduct. A person is considered to be serving an employee benefit plan at the Association's request if his duties to the Association also imposes duties on, or otherwise involves services by, him to the plan or to participants in or beneficiaries of the plan. A person's conduct with respect to an employee benefit plan for a purpose he believed to be in the interests of the participants and beneficiaries of the plan is conduct that satisfies the requirement of this section.

8.3 Impact of Legal Proceeding. The determination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere is not, of itself, determinative that the Applicant did not meet the standard of conduct described in this Article.

8.4 Limit on Indemnification. Notwithstanding the provisions of Section 8.2 of this Article, provided there is a finding of gross negligence or willful misconduct, no indemnification shall be made in connection with any proceeding charging the Applicant with improper benefit to himself,

whether or not involving action in his Official Capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

8.5 Indemnification of Expenses. To the extent that the Applicant has been successful on the merits or otherwise in defense of any proceeding referred to in Section 8.2 of this Article, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses actually and reasonably incurred by him in connection therewith.

8.6 Procedure. Any indemnification under Section 8.2 of this Article (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Applicant is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 8.2 and Section 8.4.

The determination shall be made:

(a) By the Board of Directors by a majority vote of a quorum consisting of Directors not at the time parties to the proceeding;

(b) If a quorum cannot be obtained under subsection (a) of this section, by majority vote of a committee duly designated by the Board of Directors (in which designation Directors who are parties may participate), consisting solely of two (2) or more Directors not at the time parties to the proceeding;

(c) By special legal counsel;

(i) Selected by the Board of Directors or its committee in the manner prescribed in subsections (a) or (b) of this section; or

(ii) If a quorum of the Board of Directors cannot be obtained under subsection (a) of this section and a committee cannot be designated under subsection (b) of this section, selected by majority vote of the full Board of Directors, in which selection Directors who are parties may participate; or

(d) By the Members, but shares owned by or voted under the control of Directors who are at the time parties to the proceeding may not be voted on the determination.

Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (c) of this section to select counsel.

8.7 Advance Payment/Reimbursement.

(a) The Association may pay for or reimburse the reasonable expenses incurred by any Applicant who is a Party to a proceeding in advance of final disposition of the proceeding if:

(i) The Applicant furnishes the Association a written statement of his good faith belief that he has met the standard of conduct described in Section 8.2 and Section 8.4;

(ii) The Applicant furnishes the Association a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and

(iii) A determination is made that the facts then known to those making the determination would not preclude indemnification under this Article.

(b) The undertaking required by paragraph (ii) of subsection (a) of this section shall be an unlimited general obligation of the Applicant but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in Section 8.6.

8.8 Expanded Indemnity. The Board of Directors is hereby empowered, by majority vote of a quorum of disinterested Directors, to cause the Association to indemnify or contract in advance to indemnify any person not specified in Section 8.2 of this Article who was or is a Party to any proceeding, by reason of the fact that he is or was an employee or agent of the Association, or is or was serving at the request of the Association as an employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, to the same extent as if such person were specified as one to whom indemnification is granted in Section 8.2. The provisions of Section 8.3 through Section 8.7 of this Article shall be applicable to any indemnification provided hereafter pursuant to this Section 8.8.

8.9 Insurance Option. The Association may purchase and maintain insurance to indemnify it against the whole or any portion of the Liability assumed by it in accordance with this Article and may also procure insurance, in such amounts as the Board of Directors may determine, on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against any Liability asserted against or incurred by him in any such capacity or arising from his status as such, whether or not the Association would have power to indemnify him against such Liability under the provisions of this Article.

8.10 Definitions. Every reference herein to directors, officers, employees, or agents shall include former directors, officers, employees, and agents and their respective heirs, executors, and administrators. The indemnification hereby provided and provided hereafter pursuant to the power hereby conferred on the Board of Directors shall not be exclusive of any other rights to which any person may be entitled, including any right under policies of insurance that may be purchased and maintained by the Association or others, with respect to claims, issues, or matters in relation to which the Association would not have the power to indemnify such person under the provisions of this Article.

ARTICLE IX  
Restrictive Covenants

9.1 General. The Association, or any Owner, shall have the right to enforce by a proceeding at law or in equity, the restrictions, conditions and covenants imposed by the Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE X  
Amendments

10.1 By the Directors. The Board of Directors by a majority vote thereof shall have the power to make, alter, amend or repeal the By-Laws of the Association at any regular or special meetings of the Board. This power shall not be exercised by the executive committee or any other committee of directors.

10.2 By the Members. At any annual or special meeting, By-Laws may be adopted, and all By-Laws shall be subject to amendment, alteration, or repeal by a majority of all Members entitled to vote. Pursuant to resolution adopted by a majority of the Members entitled to vote, the Members may provide that certain By-Laws adopted, approved, or designated by them may not be amended, altered, or repealed, except by a certain specified vote of the Members.

10.3 Special Amendments. Notwithstanding anything herein to the contrary, the Declarant may unilaterally amend these By-Laws to make any amendment (a) it deems necessary to make a non-material, clarifying or corrective change, or (b) required by any of the federal mortgage agencies, such as the Veterans Administration, Federal Housing Administration, Fannie Mae or Freddie Mac, or by a local development of the Blue Stone Town Center Subdivision or the operation of the Association, by the filing of Articles of Amendment with the Virginia State Corporation Commission, and shall give written notice to the Members of any amendments made pursuant to clause (b). This right of the Declarant to amend these By-Laws as aforesaid shall continue notwithstanding the lapse of the Declarant's Class B membership.

10.4 Conflict. In the case of any conflict between the Declaration and these By-Laws, the Declaration shall control, and in the case of any conflict between these By-Laws and the Articles, the Articles shall control.

ARTICLE XI  
Miscellaneous Provisions

11.1 Seal. The seal of the Association shall consist of a flat-faced circular die, of which there may be any number of counterparts, on which there shall be engraved the word "Seal" and the name of the Association.

11.2 Fiscal Year. The fiscal year of the Association shall end on such date and shall consist of such accounting periods as may be fixed by the Board of Directors.

11.3 Checks, Notes and Drafts. Checks, notes, drafts and other order for the payment of money shall be signed by such persons as the Board of Directors from time to time may authorize, however, the signature of any such person may be a facsimile.

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DRAFT

THIS DOCUMENT WAS PREPARED BY  
THOMAS B. GLADIN (VSB #89195)  
FLORA PETTIT, PC  
90 NORTH MAIN STREET, SUITE 201  
HARRISONBURG, VIRGINIA 22802

CITY OF HARRISONBURG MAP No.:

**DECLARATION OF  
COVENANTS FOR  
BLUE STONE TOWN CENTER TOWNHOMES**

THIS DECLARATION (as amended from time to time, the “Declaration”) is made as of \_\_\_\_\_, 2023, by **EP HARRISONBURG OWNER LLC**, a Virginia limited liability company (together with its successors and assigns “Declarant”).

Declarant is the owner of all those certain lots or parcels of land, with the improvements, together with all rights, privileges, appurtenances, easements and rights-of-way thereunto belonging or in anywise appertaining, located in the City of Harrisonburg, consisting of approximately \_\_\_\_ acres a portion of which will be Blue Stone Town Center Townhomes. Declarant has subdivided this property as shown on the plat entitled “Final Plat of Blue Stone Town Center, Section \_\_\_\_\_” of which only Lots \_\_\_\_\_ are subject hereto (the “Property”), said plat being dated \_\_\_\_\_, 2023, and made by AES Consulting Engineers, recorded in the Office of the Clerk of the Circuit Court of Rockingham County, Virginia, in Deed Book \_\_\_\_, page \_\_\_\_ (the “Subdivision Plat”).

Declarant is developing a townhome community to be known as Blue Stone Town Center Townhomes on the Property, with reserved rights to expand such community to include all or any portion of the Additional Property, and so hereby declares that the Property shall be held, sold and conveyed subject to the easements, covenants, restrictions and conditions set forth in this Declaration, which shall run with the Property and shall be binding on all parties having or acquiring any rights, title or interest in the Property or any part thereof, and shall inure to the benefit of each Owner as defined below.

**ARTICLE ONE**  
**DEFINITIONS**

1.1 “Access Easement” means the entire road system within the Property and the Additional Property as so designated on the Subdivision Plat and future plats related to the Additional Property. The Subdivision Plat shows the Access Easement as being \_\_\_\_\_,

and the Access Easement shall include any street shown as \_\_\_\_\_ Right-of-Way on any plat for Additional Property.

1.2 “Association” shall mean and refer to the Blue Stone Town Center Townhomes Homeowners Association, Inc., a Virginia non-stock corporation, its successors and assigns.

1.3 “Common Area” shall mean all property and easements or other interests owned or leased by the Association, or which the Association is obligated to maintain, for the common use and enjoyment of the members of the Association. The Common Area includes, without limitation, the entrance signage and the Access Easement affording access to the Lots, parking (subject to Section 6.1), Open Space as shown on the Subdivision Plat, and any private utility and access improvements benefiting the Lots.

1.4 “Declarant” has the meaning assigned to it in the initial paragraph of this Declaration. Owners acquiring one or more Lots from Declarant are not a successor “Declarant” unless specifically designated by EP HARRISONBURG OWNER LLC as a successor declarant in a recorded instrument.

1.5 “Declaration” means this Declaration of Covenants as it may be amended or supplemented from time to time in accordance with its terms.

1.6 “Additional Property” means additional property, which is adjacent to the Property shown on the Subdivision Plat or on later plats brought within the Declaration. Such additions shall be made by recording a supplemental declaration in the Clerk’s Office of the Circuit Court of Rockingham County, Virginia, indicating what additional property shall be subject to this Declaration in accordance with the provisions of Article Twelve of this Declaration.

1.7 “Governing Documents” means this Declaration, any bylaws adopted to govern the Association, and its Articles of Incorporation.

1.8 “Lot” means and refers to any plot of land shown and designated by number upon the Plat, as it may be amended or modified in the future, and includes the Lots identified in the Recitals above as shown on the Subdivision Plat.

1.9 “Member” or “Owner” means the record owner, whether one or more persons or entities, of the fee simple title to any Lot, whether acquired by purchase, gift, inheritance, foreclosure or otherwise, but excluding persons or entities having an interest merely as a security for the performance of an obligation.

1.10 “Subdivision Plat” means the subdivision plat for Blue Stone Town Center Townhomes, Section \_\_\_\_, as more particularly described in the Recitals above, as it may be amended in accordance with the terms hereof and applicable law, and all subdivision plats for future sections or phases of the Blue Stone Town Center Townhomes project on all or any part of the Additional Property added to this Declaration as provided in Article Twelve below.

1.11 “Property” has the meaning given to it in the Recitals above.

1.12 “Single Family” shall mean and refer to a single housekeeping unit which includes not more than two (2) adults who are not legally related by marriage, blood, ~~or~~ adoption, or under approved foster care.

1.13 “Unit” shall mean and refer to any townhome situated upon a Lot.

## **ARTICLE TWO** **ASSOCIATION**

2.1 Association. The Association will be a Virginia non-stock corporation governed by the Governing Documents and the provisions of the Property Owners Association Act as in effect in the Commonwealth of Virginia.

2.2 Purposes and Powers.

(a) The Association's purposes are to: (i) manage, operate, construct, improve and maintain the Common Areas, as necessary or appropriate; along with the maintenance of the grounds and other services set out herein; (ii) administer and enforce the covenants, conditions, restrictions, reservations and easements created by this Declaration; (iii) levy, collect and enforce the assessments, liens, charges and penalties imposed pursuant hereto; (iv) take any action reasonably necessary or appropriate to protect the general welfare and safety of Owners and residents of the community and their guests, and (v) regulate and manage Blue Stone Town Center Townhomes with the goal of enhancing and protecting its value.

(b) Unless expressly prohibited by law or any of the Association’s Governing Documents, the Association may take any and all actions that it deems necessary or advisable to fulfill its purposes.

(c) Insurance. The Association shall maintain general liability insurance in an amount determined by the Board of Directors from time to time, and such other insurance as is required by law or deemed appropriate by the Board of Directors.

(d) Rules and Regulations. The Board of Directors shall have the authority to adopt and modify from time to time reasonable rules and regulations to govern use of the Common Areas and the community at large.

2.3 Board of Directors. The business of the Association shall be managed by its Board of Directors. The members of the Board of Directors shall be appointed by Declarant for so long as Declarant owns any Lot or any portion of the Additional Property, unless earlier transition of control is required by Virginia’s Property Owners Association Act. Upon transfer of control of the Association by Declarant, the Board of Directors shall be elected by the Owners as provided in Article 3 below.

2.4 Books and Records. Upon request, the Association shall allow Owners and mortgagees to inspect current copies of the Association's Governing Documents, published rules and regulations, and the books, records, budgets and financial statements of the Association at reasonable times and under other reasonable circumstances. The Association may charge a reasonable fee for copying such materials as well as for the time of Association members associated with such inspection.

2.5 Personal Liability and Indemnification. No officer, director, employee, or committee member of the Association shall be personally liable to the Association or any Owner for any injury, damage, loss, cost or expense suffered or incurred by reason of any act or omission of such officer, director, employee, agent or committee member unless a court of competent jurisdiction finds that such officer, director, employee, agent or committee member engaged in willful misconduct or knowing violation of criminal law. The Association shall indemnify and hold harmless its present and future officers and directors to the maximum extent permitted by law and its Governing Documents.

2.6 Delegation of Duties. The Association, by decision of its Board, may delegate its responsibility including the collection of assessments and records pertaining thereto, to a management company that is in the business of managing homeowner associations.

### **ARTICLE THREE** **MEMBERSHIP AND VOTING**

3.1 Membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership. No Owner shall have more than one membership. Each Member shall have the rights, duties and obligations set forth in the Association's Governing Documents. Any attempt to transfer a membership apart from transfer of ownership of a Lot shall be null and void.

3.2 Meetings. All meetings at which the Owners will be presented with matters to vote on shall be called by the Board of Directors of the Association upon such notice as is required by the Governing Documents of the Association and applicable law.

3.3 Voting. A Member shall be entitled to one (1) vote for each Lot owned. Unless otherwise provided in the Association's Bylaws (if any), any matter coming before the Members for vote at any properly called meeting shall be approved only if it receives the affirmative vote of Members holding more than fifty percent (50%) of membership voting rights who are voting in person or by proxy at a meeting duly called meeting at which a quorum is present (or such higher percentage as is required by the Governing Documents or applicable law). A quorum shall be twenty-five percent (25%) of the Members, as represented by their voting rights. Notwithstanding anything herein to the contrary, when determining whether a requisite percent vote has been obtained, the total number of Members shall be based on the Lots to which membership is appurtenant, rather than the total number of Members.

3.4 Election of Directors. The members of the Board of Directors shall be appointed by Declarant for so long as Declarant owns any portion of the Property or Additional Property or, if earlier, the time that Declarant elects to waive its right to appoint directors and calls for an election by the Association (as to any one or more directors). At the initial election of directors by the Association's members, the person receiving the highest number of votes shall serve a term of three (3) years; the person receiving the next highest number of votes shall serve a term of two (2) years; and the person receiving the third highest number of votes shall serve a term of one (1) year. Thereafter, all directors elected shall serve for a term of three (3) years.

The Association shall give written notice to all Owners of the election of members of the Board of Directors. The notice shall be hand delivered or mailed first-class at least thirty (30) days in advance of the proposed election to each improved Lot (or if a Lot is unimproved, to the address for the Owner of such Lot in the real property tax records of the City). The notice shall include a ballot containing the names of at least one nominee for each open Board seat and space for write-in candidates if an Owner desires to nominate and vote for an alternative candidate. The notice may be written as a proxy allowing the Owner to check off his or her desired vote(s) and return that to the Association to be counted as a proxy vote.

#### **ARTICLE FOUR** **ARCHITECTURAL CONTROLS**

4.1 No building, fence or other improvement (which shall include, but not be limited to, solar panels) shall be erected or placed on any portion of the Property, nor shall any exterior addition, change or alteration to any existing improvement on any portion of the Property be made until approved by the Board of Directors of the Association, acting as an architectural control committee (or, if the Board so elects, by a third party architect or property management company retained by the Association to provide architectural review services for a fee) (in such capacity, the "ACC"). Plans and specifications showing the nature, kind, shape, height and materials and a plat showing the location of the same shall be submitted to the ACC, which shall review the same as to the harmony of external design and location in relation to surrounding structures and topography. Without limitation, ACC has the authority to approve changes of exterior finishes or colors, storm or screen door style and color, installation of basketball hoops, exterior lighting changes and installation of fences, walls or hedges.

4.2 The ACC shall have full and complete discretion to approve or reject any proposed building, fence or other improvement or alteration on any Lot. The ACC may base its approval or rejection of plans and specifications upon any grounds it deems sufficient, including purely aesthetic considerations. The ACC shall not be bound to approve any proposed building or improvement solely because it complies with the restrictions and covenants herein or is comparable in cost, value or appearance to existing buildings and improvements on other Lots. The ACC may, however, approve any proposed building or improvement that does not meet the requirements of this Declaration if, in the ACC's opinion, such deviations are not harmful to the value of adjoining Lots. The ACC shall have no duty to exercise this power, nor shall the ACC have authority to permit deviations from Section 5.1 of this Declaration. The ACC shall determine all matters by majority vote.

4.3 The ACC shall, within thirty (30) days after submission of plans and other required items to the ACC for review, notify the requesting Owner, in writing, that the plans are (i) approved, (ii) approved with conditions, (iii) rejected (with the reasons for rejection clearly stated), or (iv) that additional information is required to permit the ACC to make its decision. If the ACC fails to act within thirty (30) days after receiving a submission, the submission shall be deemed approved; provided however, the ACC's failure to act shall not be construed as a waiver of any violation of this Declaration. If the ACC requests additional information, a new thirty (30) day period shall commence when all requested additional information is received by the ACC.

4.4 Representatives of the ACC may inspect any building or other improvements during construction to ensure that it conforms to the approved plans and specifications. If discrepancies exist, the ACC may require corrective work or issue a notice to cease construction until conformity is assured to its satisfaction. Failure to heed such a notice from the ACC shall be a default under this Declaration.

4.5 Neither Declarant nor the ACC shall be liable to any Owner or other person for any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or other person arising out of or in any way related to the subject matter of any required review, acceptance, inspection, permission, consent or approval, whether given or withheld.

4.6 Any purchaser for value of a Lot and any lender who secures a lien on a Lot may assume that any improvements on the Lot completed for more than six (6) months are satisfactory to the ACC.

4.7 The ACC shall not be responsible for reviewing, nor shall its approval of any project be deemed approval of, any proposed construction from the standpoint of safety, whether structural or otherwise. Approval of plans and specifications pursuant to this Declaration shall not relieve any Owner of the responsibility to comply with all applicable governmental laws or regulations.

4.8 The ACC may establish a reasonable processing and review fee to defer its costs in considering requests, which fee shall be paid at the time the request for approval is submitted.

4.9 Notwithstanding anything to the contrary herein, Declarant and the construction by Declarant of any buildings, structures or improvements on the Property shall be exempt from ACC review and shall not be subject to the provisions of this Article.

## **ARTICLE FIVE** **USE RESTRICTIONS**

5.1 Residential Use. No Lot shall be used except for residential purposes for one (1) single family dwelling. Declarant may use a Unit as a model home and otherwise use Lots for business purposes in connection with development, sale and operation of the Property and Additional Property. The restriction to use for residential purposes does not prohibit (a) rental of property to individuals who use such improvements for residential purposes so long as such rentals are subject to a written lease of at least twelve (12) months' duration, nor (b) use of a portion of a dwelling as a home office approved under Section 5.2 below. The lease shall refer to this Declaration and the Governing Documents and provide that a default thereunder is a default under the Lease.

5.2 Home Occupations. No profession or home occupation shall be conducted in or on any part of a Lot unless (i) approved by the Board of Directors (ii) ~~and~~ compliant with applicable zoning regulations; and (3) ~~does not create employee, customer, client, or other traffic to and from the Lot.~~

5.3 Temporary Residences. No trailer, tent or other outbuilding erected on any Lot shall be used at any time as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted.

5.4 Structures. No mobile home, double-wide manufactured home, house trailer or modular home shall be constructed or placed on any Lot. Modest construction trailers shall be permitted with ACC approval during the period of construction.

5.5 Garages. Dwellings may have an attached garage, homogeneous in design to the dwelling as a part of initial construction, but may not be modified to provide for an attached garage after such townhome has been built. No detached garage or carport shall be permitted on any Lot nor shall a garage be converted to living space.

5.6 Completion of Construction once Begun. Other than original dwellings constructed by Declarant, the exterior of any dwelling or building on any Lot shall be completed within nine (9) months after construction commences.

5.7 Antenna and Satellite Dishes. No antennae or satellite receiving device of any kind larger than eighteen (18) inches in diameter shall be erected on any Lot or on any structure thereon. The location of any permitted satellite receiving device must be approved by the ACC. This paragraph is subject to federal regulations and if necessary to comply with federal regulations shall be interpreted to afford the Association the maximum regulatory power permitted with respect to satellite dishes and antennae.

5.8 Fences and Hedges. No fence or hedge shall be constructed or erected on any Lot without prior approval from the ACC. This restriction is not applicable to fences or hedges constructed by Declarant. ~~Chain link~~ Neither chain link nor wood fences shall not be permitted.

5.9 Swimming Pools. Above-ground swimming pools (not including hot tubs, Jacuzzis or portable “kiddie” pools) are prohibited.

5.10 Signs. No sign of any kind shall be displayed to public view on any Lot except:

- (a) one (1) sign not exceeding five (5) square feet advertising the Lot for sale or for rent;
- (b) signs used by a builder to advertise the Lot during construction;
- (c) signs required by law or for legal proceedings; and
- (d) one (1) sign not exceeding one-half (½) square foot displaying the name of the Owner or occupant of the Lot.

5.11 Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats and other household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose or in excessive or unusual numbers. Whenever animals are permitted outside, they must be secured by a leash or lead and be under the control of a responsible person and obedient to that person’s command at all times. No dogs shall be left outside unattended. Owners are responsible for cleaning up after their pets, including the immediate removal of droppings from Common Areas.

5.12 Condition. All Lots and the improvements thereon shall be kept at all times in a neat, attractive, safe and structurally sound condition (with some leeway during periods of construction). Weeds, grass and dead trees shall be routinely cut and building exteriors shall be routinely painted (provided that any change of exterior colors shall require prior approval of the ACC).

5.13 Trash. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall be kept in sanitary enclosed containers. All containers shall be appropriately screened from view from any street, except on days of garbage collection. Trash removal is subject to the rights of the Association to arrange for service as provided above. No incinerator or burning of trash shall be permitted on any Lot.

5.14 Repair of Damage. If any building on any Lot is totally or partially damaged by fire, wind or other hazard, the Owner shall, within a period of three (3) months thereafter, (a) commence repairs of the damage or (b) tear the building down and remove the debris from the Lot, subject to party wall rights of any adjoining Owner.

5.15 Association Right to Repair. If any Owner fails to make any required repairs or maintenance, the Association may, after giving ten (10) days’ written notice to that Owner, make or cause such repairs or maintenance to be made on behalf of the Owner. The costs thereof shall be recoverable from the Owner as a default assessment as provided in Section 8.1 and Section 10.2(b) below.

5.16 Vehicles. No motor vehicle shall be kept on any Lot unless it bears a valid state license plate and current inspection sticker unless within a structural enclosure. No vehicle shall

be parked in an area other than on the driveways of each Lot and authorized parking within the Common Area or driven in any area within the community other than roads and thoroughfares intended for vehicle traffic.

5.17 Large Vehicles and Equipment. No trailer, bus, camper, boat, motor home, truck larger than three-quarter ton, commercial equipment, commercial vehicle (including, but not limited to, any tractor trailer or combination of tractor and trailer) or disabled or unlicensed vehicle, or any portion thereof may be parked or stored on any Lot except commercial equipment and vehicles temporarily located therein for the purpose of performing necessary construction or repairs. No stripped down or junk vehicles (licensed or unlicensed) or any sizable parts thereof shall be parked on any Lot or the Common Area. The Association shall have the right to tow any improperly parked vehicle or any vehicle, the keeping or parking of which in the Common Area violates this Declaration upon forty-eight (48) hours' notice posted on the vehicle. All costs for towing shall become a lien upon such Lot and such lien may be enforced in the same manner as an annual assessment.

5.18 Noxious or Offensive Activities. No noxious or offensive use or activity shall be carried on upon any Lot, nor shall any practice be engaged in by any Owner or occupant of a Lot that is an annoyance or nuisance to the neighborhood.

5.19 Clotheslines. Drying of clothes in public view is prohibited, but is permitted on temporary clotheslines within fenced areas screened from view. No permanent clothes lines shall be erected on any Lot.

5.20 Skateboard Ramps. No skateboard ramps or similar structures shall be constructed, placed or used on any Lot.

5.21 Exterior Lights. No exterior watch light shall be erected on any Lot without the prior approval by the ACC. As used herein, a "watch light" is an exterior light typically mounted on a telephone, utility or street light pole or any other light which casts an unacceptable level of light on neighboring Lots.

5.22 ATVs. No dirt bikes, ATVs, three or four wheelers, or other non-licensed vehicles shall be operated on any Lot or the Common Area.

5.23 Storage Tanks. No propane, oil or other storage tank or cylinder shall be permitted on any Lot unless buried or adequately screened as determined by the ACC.

5.24 No Further Subdivision. No Lot shall be subdivided into smaller lots; no portion of any Lot shall be sold or conveyed; boundary lines between Lots shall not be removed or altered; and no Lot or any portion thereof shall be used as an access way or right-of-way for ingress or egress to any other Lot or parcel of land (excluding the Access Easement) without the prior written consent of the Owners of a majority of the Lots. Such consent shall in no way eliminate the need to obtain any necessary local government approval.

5.25 No timeshares. No portion of the Property may be submitted to timeshare or similar arrangement in which fractional ownership is associated with designated occupancy or use rights, without the prior discretionary approval of the Association's Board of Directors.

## **ARTICLE SIX** **PROPERTY RIGHTS AND EASEMENTS**

6.1 Parking Rights. The Association shall regulate parking on any Common Area through the granting of easements or promulgation of rules and regulations.

6.2 Easements Over Sidewalks, Private Access Easement and Common Areas. Each Owner is hereby declared to have an easement and the same is hereby granted by the Declarant over sidewalks, the Access Easement and roads located on all Lots, for the sole purpose of ingress to and egress from the Lots, all in keeping with the provisions of this Declaration. Additionally, each Owner is hereby granted an easement in common with each other Owner for ingress and egress through all of the Common Area (as shown on the Plat, subject to such reasonable rules, regulations and restrictions as may be imposed by the Association). Each Owner is hereby granted a non-exclusive right, use and easement of enjoyment for himself and the members of his family, in common with other Owners and their families, in the Common Area.

6.3 Reserved Easement. Declarant reserves a perpetual, non-exclusive easement across the Common Areas as well as all utility easements shown on the Plat for the installation, repair, maintenance and use of public and private utility facilities serving the Property, the Additional Property and any other land now or hereafter owned by Declarant. The Association has an easement over and across all Lots for the performance of its duties under this Declaration, which includes access to repair and replace the roof of each town home, and for the addition of any utilities deemed necessary by the Association.

6.4 Drainage Easement. Declarant reserves to itself, its successors and assigns, and hereby conveys to the Association for the benefit of the Lots, all drainage easements shown on the Plat, as well as an easement to correct any drainage deficiency, for storm water management and the right to connect to such drainage facilities for the installation, maintenance, repair and replacement of stormwater drainage and detention facilities which can also benefit the Additional Property.

6.5 Access Easement. Declarant reserves to itself, its successors and assigns, and hereby conveys to the Association for the benefit of the Lots, the Access Easement shown on the Plat. The Access Easement shall serve and benefit the Additional Property regardless of whether all or any portion of that Additional Property is ever added to the Blue Stone Town Center Townhome community. If the Additional Property is developed other than as an extension of the Blue Stone Town Center Townhome community and the Access Easement is used to provide access to such unaffiliated development, Declarant shall require the owners of lots in such unaffiliated development to share in the costs of maintenance of the Access Easement on an equitable basis with the Members of the Blue Stone Town Center Townhomes Homeowners

Association, Inc. unless the access improvements so shared have been dedicated to and accepted into the public street system.

6.5 Easement for Encroachments. Each Lot shall be subject to an easement for encroachments (including maintenance and repairs thereto) created by overhangs of abutting structures on adjacent Lots. If a dwelling on one Lot is partially or totally destroyed and then rebuilt, minor encroachments by parts of the adjacent dwelling shall be permitted and a valid easement shall exist for such encroachment and the maintenance and repair thereof. Every portion of any building contributing to the support of an abutting building shall be burdened with an easement of support for the benefit of the abutting building.

## **ARTICLE SEVEN PARTY WALLS**

7.1 Each wall built as a part of the original construction by Declarant of the improvements upon the Lots and placed on the boundary line between the Lots shall be a party wall, subject to the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions to the extent not inconsistent with the provisions of this Declaration.

7.2 Reasonable costs of repair and maintenance of party walls shall be shared by the Owners who make use of the walls in proportion to their use. If an Owner fails to pay his or her share, the Association may levy a default assessment as herein provided, after notice and an opportunity to be heard in accordance with the Property Owners Association Act.

7.3 If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it. If other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to their use without prejudice, subject however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

7.4 Notwithstanding any other provision of this Article, any Owner who causes a party wall to be exposed to the elements by his negligent or willful acts or those of members of his household, his guests, invitees or tenants, shall bear the entire cost of furnishing the necessary protection against the elements.

7.5 The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to and pass with title to the Lot entitled to contribution.

## **ARTICLE EIGHT COVENANTS FOR MAINTENANCE ASSESSMENTS**

8.1 Creation of the Lien and Personal Obligation of Assessments. The Owner of any Lot by acceptance of a Deed to such Lot, whether or not it shall be so expressed in any such Deed or other conveyance, is deemed to covenant and agree to pay to the Association; (i) annual or

regular assessments or charges, and (ii) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided, and (iii) default assessments arising from a default of such Owner under this Declaration. The assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them. However, the lien shall remain attached to the real estate until paid.

With respect to any default assessment, the Owner of the Lot against which the Association seeks to levy the default assessment shall be provided notice and an opportunity to be heard in accordance with the Virginia Property Owners Association Act. Owners of Lots against which default assessments have been levied shall pay such assessments as required by the Association.

8.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Members and in particular for the improvement and maintenance of the Property, services, and facilities devoted to this purpose and relating to the use and enjoyment of the Common Area, and of the townhomes situated upon the Property. Specifically, the annual assessment shall be levied by the Board to each Lot equally to satisfy the obligations of each Owner to share equally in the repair and maintenance costs of the Common Areas, which shall include, but not limited to, the following:

(a) Common Area Maintenance. The Association shall maintain the Common Area, including the Access Easement and any parking areas, and arranging for snow removal (provided snow accumulation is at least three (3) inches), from the roads and sidewalks but excluding any areas that are public streets maintained by the applicable governmental authority. All costs incurred by the Association in that regard shall be shared equally by the Lots as a regular assessment levied by the Association. The regular assessment may include a reserve as deemed reasonable by the Association's Board to create a reserve fund for repaving, relining and other substantial repairs of such access and parking improvements.

Notwithstanding the provisions of this Article, the cost of any common facility maintenance, repair or replacements made necessary by the negligent or intentional acts of any Owner or by members of his household or his tenants, shall be paid by the responsible Owner as a default assessment.

(b) Trash. The Association will select and contract with a private contractor to collect garbage from a dumpster at the Property at least once per week, and the cost of such garbage collection will be allocated equally among the Lots at a shared cost financed by regular assessments in accordance with this Declaration. Lot Owners may not arrange for private garbage pick-up.

(c) Landscaping Maintenance Assessments. The Association shall levy a monthly landscaping maintenance assessment against each Lot to defray the costs of landscape maintenance for such Lot. The Association shall, in addition to its other maintenance responsibilities under this Declaration, perform the following services on the subject townhome Lots: mowing, shrubbery trimming, mulching and other general landscaping maintenance. The Association shall also include within the scope of its services the removal of snow from sidewalks (upon reasonable accumulation as determined by the Association in its sole discretion). Maintenance of unusual or excessive landscaping, as determined by the Association, and all areas within an approved private enclosure or fence shall remain the Owner's responsibility.

8.3 Basis of Annual Assessments. The Declarant shall fix the time for initial assessment of Lots as herein provided. Thereafter, effective January 1 of each year, the Board of Directors may increase the regular assessment, after due consideration by the Board of the current and future maintenance costs and operational responsibilities for the Common Area. The assessment may be made on an annual basis, or on a quarterly, monthly or other periodic basis as determined by the Board of Directors from time to time. The Board of Directors may increase the annual assessment by up to five percent (5%) per year of the prior year's annual assessment. Such increase(s) may be made by the Board, without Member approval, after due consideration by the Board of the current and future maintenance costs and operational responsibilities for the Common Area. Any increase above the annual five percent (5%) must be approved by a majority of the eligible votes of Members represented in person or by proxy at a meeting duly called for this purpose, and at which a quorum is present, and by Declarant so long as Declarant owns any Lot or the Additional Property. The initial annual assessment shall be \_\_\_\_\_ and No/100ths Dollars (\$ \_\_\_\_\_.00) on each Lot sold to an Owner after \_\_\_\_\_. The Declarant covenants and agrees to fund any operating budget deficits until the Declarant has conveyed one hundred percent (100%) of the Lots which it owns.

8.5 Date of Commencement of Annual Assessments: Due Dates. The annual assessment provided for herein shall commence as to each Lot on the date of settlement of the Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

8.6 Initial Working Fund. The Board of Directors shall levy a one-time "initial" assessment at settlement against the Owner of a Lot at the time of conveyance from the Declarant. Such initial assessment shall be \_\_\_\_\_ and No/100ths Dollars (\$ \_\_\_\_\_.00), and shall be used for working capital and commencing the business of the Association or any other purpose established by the Board of Directors.

8.7 Special Assessments for Capital Improvements. In addition to the annual or regular assessments authorized above, the Board of Directors shall have the authority as provided by Va. Code § 55.1-1825 to levy in any assessment year a special assessment applicable to that year only, if the purpose in so doing is found by the Board to be in the best interests of the Association and the proceeds of the assessment to be used primarily for the maintenance and upkeep, including capital expenditures, of the Common Area. A special assessment must receive the affirmative vote

of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose, and at which a quorum is present, written notice of which shall be sent to all Members in accordance with the Association's Governing Documents.

8.8 Reserves for Replacements. The Association shall establish and maintain a reserve fund for replacements of the Common Area by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by the Board of Directors pursuant to Va. Code § 55.1-1826. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited in any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the direction of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve for replacements of the Common Area may be expanded only for the purpose of affecting their repair, replacement or improvement of major repairs to any equipment replacement, and for start-up expenses and operating contingencies of a non-recurring nature. The Association may establish such other reserves for such other purposes as the Board of Directors from time to time consider to be necessary or appropriate. The proportional interest of any Member in any such reserves shall be considered an appurtenance of his Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

The Association shall conduct such studies with respect to reserves as required pursuant to Va. Code § 55.1-1826.

8.9 Declarant Exempt from Assessment. Notwithstanding anything to the contrary herein, Declarant shall not be assessed on any Lots owned by it unless such Lot is improved with an occupied Unit.

8.10 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on an annual basis. Special assessments shall not be made more than once per year and shall not exceed the amount of the annual assessments unless approved by Owners entitled to cast 2/3 of the votes in the Association at that time.

8.11 Certificates. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

8.12 Effect of Nonpayment of Assessment; remedies of the Association. Any assessments that are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, a late fee may be imposed and the assessment shall earn interest from the date of delinquency at the current legal rate, and the Association may bring an action at law against the Owner personally obligated to pay the same, or may perfect the lien against the subject Lot, pursuant to Va. Code § 55.1-1825 or other applicable law. Interests, costs, and reasonable attorney's fees of any such action shall also be added to the amount of such assessment.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

8.13 Subordination of the Lien to Deeds of Trust. Pursuant to Va. Code § 55.1-1100, the lien of the assessments provided for herein shall be subordinate to (i) real estate tax liens on the Lot, (ii) liens and encumbrances recorded prior to the recordation of the Declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of said lien; provided, however, that mechanics' and materialmen's liens shall not be affected by this Article 8.

## **ARTICLE NINE** **TOWNHOME ROOFING ASSESSMENT**

9.1 Creation of Townhome Roofing Assessment Lien. Each Owner of any Lot by acceptance of a Deed, whether or not it shall be so expressed in any such Deed or other conveyance, is deemed to covenant and agree to pay to the Association; (i) all annual townhome roofing assessments, fees and charges, and (ii) all special townhome roofing assessments for major and/or extraordinary roofing and gutter work. The annual and special townhome roofing assessment, together with interest as hereinafter provided, costs of collection, and reasonable attorneys' fees, shall be a charge upon the land and shall be a continuing lien upon the Lot against which each such assessment is made as hereinafter provided.

9.2 Purpose of Townhome Roofing Assessment. The initial annual townhome roofing assessment of \_\_\_\_\_ and No/100ths Dollars (\$ \_\_\_\_\_.00) per Lot per year shall commence upon the conveyance of a Lot from the Declarant and shall be prorated for the remainder of the assessment year from the time of such conveyance. Thereafter, the Board of Directors may increase the annual townhome roofing assessment, after due consideration by the Board of the current and anticipated costs and needs of the Association for the purpose of providing the periodic roofing and gutter work for all townhomes of the Blue Stone Town Center Townhomes. The townhome roofing assessment shall apply ONLY to Lots improved with a townhome Unit, and shall not apply to vacant Lots, Lots under construction, or Lots owned by Declarant. The Board may elect, in its discretion, to establish separate reserve funds for different building groupings within the community, and may charge different roofing assessments to those different groupings based on differences in the age, condition or other factors differentiating the roofs of those different groupings.

9.3 Special Townhome Roofing Assessment. In addition to the annual townhome roofing assessment, the Board may levy a special townhome roofing assessment applicable to that calendar year only for the purpose of defraying, in whole or in part, the costs of any major and/or extraordinary roofing and guttering work of any townhome, provided that any such special townhome roofing assessment must be approved by the affirmative vote of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose, and at which a quorum is present, written notice of which shall be sent to all Members in accordance with the Association's Governing Documents.

**ARTICLE TEN**  
**MAINTENANCE**

10.1 Maintenance by the Association. Subject to other provisions hereof, the Association, at its expense, shall be responsible for and shall maintain, repair and replace all of the Common Areas, including the roads and parking areas, and shall maintain, repair and replace the roofing and guttering of the townhomes when and to the extent determined by the Association to be necessary to maintain the appearance and condition of the same.

10.2 Maintenance by Unit Owner.

(a) Each Owner shall maintain, repair, and replace, at his expense, all portions of his Lot and Unit except the roof and guttering, and landscaping maintenance performed by the Association in accordance with Section 8.2 above. Without limiting the generality of the foregoing, fence maintenance and the grounds within the fence shall be the responsibility of the Owner.

(b) In the event an Owner of any Lot shall fail to maintain a Lot or Unit in a satisfactory manner, the Association shall have the right, through its agents and employees to enter and repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements, without liability to the Owner, after reasonable prior notice to the Owner and at least ten (10) days' prior written notice that the Association will be undertaking such work. The cost of such exterior maintenance with statutory interest, as well as all costs incurred by the Association to collect such cost (including but not limited to reasonable attorneys' fees) shall be added to and become part of the assessments to which such Lot is subject, as a default assessment, and such assessment if unpaid upon demand shall become a lien upon the subject property. Any assessments under this Section 10.2 shall constitute liens and shall be subject to the provisions of Va. Code § 55.1-1833.

10.3 Right of Entry. Whenever it is necessary to enter any Lot for the purpose of inspection, including inspection to ascertain an Owner's compliance with the provisions of this Declaration, or for performing any cleaning, maintenance, alteration or repair to any portion of the Common Areas or parking area, the Owner shall permit an authorized agent of the Association to enter such Unit and Lot so long as such entry is made only at reasonable times and with reasonable advance notice. In the case of emergency such as, but not limited to, fire, flood or running water, entry may be made into a Unit without prior notice or permission.

**ARTICLE ELEVEN**  
**ENFORCEMENT**

11.1 Enforcement of this Declaration. The Association, Declarant or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, Declarant or any Owner to enforce any covenant or

restriction herein contained shall not constitute waiver of the right to do so thereafter. Without limiting the generality of the foregoing, the Association, Declarant or any Owner shall have the right to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such violation or breach.

11.2 Right of Entry. In the event of a violation or breach of any provision of this Declaration, Declarant or the Association may, after giving ten (10) days' written notice to the Owner in breach, enter any Lot or Unit on which, or as to which, a violation or breach exists and summarily abate, provide upkeep to or remove at the expense of the defaulting Owner, any structure, thing or condition that causes the violation or breach, in which case the Declarant or Association shall not be deemed guilty or liable in any manner for trespass.

## **ARTICLE TWELVE**

### **RIGHT TO INCLUDE ADDITIONAL PROPERTY AND RESERVATION OF NAME**

12.1 Right to Include Additional Property. For so long as Declarant owns any portion of the Property or the Additional Property, Declarant may add all or any part of the Additional Property to this Declaration by recording in the Office of the Clerk of the Circuit Court of Rockingham County, Virginia, an instrument signed by Declarant setting forth the following: (a) a statement that the real property to be added is owned by Declarant and is adjacent to the Property, (b) a statement that Declarant has determined that such real property should be included as a part of the Blue Stone Town Center Townhome community, (c) the legal description of the real property to be added, and (d) a statement that the property to be added shall be subject to and governed by the provisions of this Declaration. Upon the recording of such instrument, (i) the real property described therein shall thereafter be part of the Property and shall be governed by all of the provisions herein, and (ii) the Declaration shall be deemed amended to add such additional property to the definition and description of the Property herein.

12.2 Blue Stone Town Center Name. The name "Blue Stone Town Center" may be used by Declarant, its members and their respective affiliates to refer to all or any part of the Additional Property or other nearby properties, regardless of whether such property is ever made subject to the Declaration. The name "Blue Stone Town Center" is proprietary to Declarant and may not be used without Declarant's written authorization.

## **ARTICLE THIRTEEN**

### **MISCELLANEOUS**

13.1 Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

13.2 Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to the Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time

said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended by the affirmative vote of not less than two-thirds (2/3) of the votes at a meeting of the Members, with approval of the Declarant required for any such amendment so long as Declarant owns any Lot or any portion of the Additional Property. Any amendment must be properly recorded. Additionally, Declarant can amend this Declaration without the consent of the Members of the Association within five (5) years after the date of recordation of this Declaration.

Notwithstanding anything to the contrary herein, Declarant reserves the right to unilaterally execute and record a corrective amendment or supplement to this Declaration (to correct a math mistake, inconsistency or scrivener's error or to clarify an ambiguity), or any amendment necessary to ensure that the community complies with the requirements of the secondary mortgage market (such as Fannie Mae) within five (5) years after the date of recordation of this Declaration, without the consent of any Owner.

**IN WITNESS WHEREOF**, EP Harrisonburg Owner LLC, a Virginia limited liability company, being the Declarant herein, has caused this Declaration to be executed in its name by its duly authorized Manager on this \_\_\_\_ day of \_\_\_\_\_, 2023, and the Sole-Acting Trustees, and Noteholders, join herein to evidence their consent to this Declaration.



\_\_\_\_\_  
By: \_\_\_\_\_ (Seal)  
Sole-Acting Trustee

STATE OF VIRGINIA AT LARGE, to-wit:  
CITY/COUNTY OF \_\_\_\_\_

I, the undersigned, a Notary Public in and for the State of Virginia at Large, do hereby certify that, Sole-Acting Trustee, has on this \_\_\_\_ day of \_\_\_\_\_, 2023, acknowledged the same before me in the City or County aforesaid.

Given under my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

My commission expires: \_\_\_\_\_

Notary Registration Number: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

LENDER:

By: \_\_\_\_\_ (Seal)  
Its: \_\_\_\_\_

STATE OF VIRGINIA AT LARGE, to-wit:  
CITY/COUNTY OF \_\_\_\_\_

I, the undersigned, a Notary Public in and for the State of Virginia at Large, do hereby certify that \_\_\_\_\_, as \_\_\_\_\_ on behalf of \_\_\_\_\_, has on this \_\_\_\_ day of \_\_\_\_\_, 2023, acknowledged the same before me in the City or County aforesaid.

Given under my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

My commission expires: \_\_\_\_\_

Notary Registration Number: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

DRAFT

**BY-LAWS**

**OF**

**BLUE STONE TOWN CENTER TOWNHOMES HOMEOWNERS ASSOCIATION, INC.**

ARTICLE I

Definitions

1.1 Association. "Association" shall mean and refer to Blue Stone Town Center Townhomes Homeowners Association, Inc., a Virginia non-stock corporation, its successors and assigns.

1.2 Properties. "Properties" shall mean and refer to that certain real property as shown on a Subdivision Plat of Blue Stone Town Center, \_\_\_\_\_ for Lots \_\_\_\_\_, such plat being recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, in Deed Book \_\_\_\_ page \_\_\_\_\_, "Subdivision Plat" and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

1.3 Roads. "Roads" shall mean the common roadways used for access to the Lots and as shown on the Subdivision Plat.

1.4 Lot. "Lot" shall mean and refer to any plot of land shown upon the Subdivision Plat for Blue Stone Town Center, Section \_\_, Lots \_\_\_\_\_ as a Lot and subsequently to be recorded in the Clerk's Office of Rockingham County, Virginia, as individual Lots.

1.5 Member. "Member" shall mean and refer to every person or entity who becomes an Owner of one or more of the Lots.

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

1.7 Declarant. "Declarant" shall mean and refer to EP Harrisonburg Owner, LLC, a Virginia limited liability company, its successors and assigns, if such successors or assigns are specifically designated by EP Harrisonburg Owner, LLC a successor declarant in a recorded instrument.

1.8 Declaration. "Declaration", "Restrictions" or "Covenants" shall, unless the context otherwise indicates, mean and refer to any or all of those restrictions and covenants contained in the Declaration of the Blue Stone Town Center Townhomes recorded in the aforesaid Clerk's Office in Deed Book \_\_\_\_, page \_\_\_\_\_.

1.9 Subdivision. "Subdivision shall mean and refer to the Lots, Common Area, and Open Spaces as shown on the Subdivision Plat.

ARTICLE II  
Membership

2.1 Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

ARTICLE III  
Meetings of Members

3.1 Places of Meetings. All meetings of the Members shall be held at such place, either within or without the Commonwealth of Virginia, as from time to time may be fixed by the Board of Directors.

3.2 Annual Meetings. The first annual meeting of the Members shall be held within twelve (12) months after the incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held approximately twelve (12) months after the previous annual meeting, at such day and time as shall be set by the Board of Directors.

3.3 Special Meetings. A special meeting of the Members for any purpose or purposes may be called at any time by the President, by a majority of the Board of Directors, or by Members together holding at least one-tenth of the voting interests of the Association at the time outstanding and entitled to vote with respect to the business to be transacted at such meeting. At a special meeting no business shall be transacted, and no corporate action shall be taken other than that stated in the notice of the meeting.

3.4 Notice of Meetings. Written or printed notice stating the place, day and hour of every meeting of the Members and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be mailed (including by e-mail or facsimile) not less than ten (10) nor more than sixty (60) days before the date of the meeting to each Member of record or entitled to vote at such meeting, at his address which appears in the records of the Association. Such further notice shall be given as may be required by law, but meetings may be held without notice if all the Members entitled to vote at the meeting are present in person or by proxy or if notice is waived in writing by those not present, either before or after the meeting.

3.5 Quorum. The presence at the meeting of Members or their proxies entitled to cast at least twenty-five percent (25%) of the votes of each class of Members shall constitute a quorum for any action, except as otherwise provided in Articles of Incorporation, the Declaration or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting and to call another meeting without notice other than announcement at the meeting prior to adjournment, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

3.6 Waiver of Notice. A Member may waive any notice required by the Articles of Incorporation of the Association, these By-Laws or the Virginia Non-Stock Corporation Act (the “Act”) before or after the date and time of the meeting that is the subject of such notice. The waiver shall be in writing, be signed by the Member entitled to such notice and be delivered to the Secretary for inclusion in the minutes or filing with the Association’s records. A Member who attends a meeting (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

3.7 Proxies. At all meetings of Members, each Member may vote in person or by proxy. All Proxies shall be in writing, in the form required by law, and filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of its Lot.

3.8 Conduct of the Meeting. The President of the Association shall act as Chairman at each meeting of the Members. In his absence, the Vice President, or should he be also absent, then a Member chosen by a majority vote of the Members present and entitled to vote, shall act as Chairman of the meeting. The Secretary of the Association, or an Assistant Secretary, or in their absence, any Member designated by the Chairman, shall act as secretary of the meeting.

The Chairman shall determine the order of the business at each meeting of the Members of the Association, but such order may be changed by a majority in voting power of the Members present, either in person or by proxy, and entitled to vote at such meeting.

#### ARTICLE IV Voting

4.1 Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all those Owners as defined in Article II with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine among themselves, but in no event shall more than one vote be cast with respect to any Lot. For so long as the Class B Member exists, the Class A Members are non-voting Members.

Class B. The Class B Member shall be the Declarant, its successors and assigns. The Class B Member shall be entitled to ten (10) votes for each Lot it owns. The Class B membership shall cease as provided in the Articles of Incorporation of the Association.

ARTICLE V  
Directors

5.1 General Powers. The property, affairs and business of the Association shall be managed by the Board of Directors, and, except as otherwise expressly provided by law, the Articles of Incorporation or these By-Laws, all of the powers of the Association shall be vested in such Board.

5.2 Number of Directors. The number of Directors constituting the Board of Directors shall be not less than three (3) nor more than five (5).

5.3 Election and Removal of Directors; Quorum.

(a) Directors shall be elected at each annual meeting of Members to succeed those Directors whose terms have expired and to fill any vacancies then existing.

(b) Directors shall hold their offices for terms of one (1) year and until their successors are elected. Any Director may be removed from office at a meeting called expressly for that purpose by the voting of Members holding not less than a majority of the shares entitled to vote at an election of Directors.

(c) Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of the majority of the remaining Directors though less than a quorum of the Board, and the term of office of any Director so elected shall expire on the date fixed for the expiration of the term of office of the Director to which such Director was so elected.

(d) A majority of the number of Directors elected and serving at the time of any meeting shall constitute a quorum for the transaction of business. The act of a majority of Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. Less than a quorum may adjourn any meeting.

5.4 Meetings of Directors. An annual meeting of the Board of Directors shall be held as soon as practicable after the adjournment of the annual meeting of Members at such place as the Board may designate. Other meetings of the Board of Directors shall be held at places within or without the Commonwealth of Virginia and at times fixed by resolution of the Board, or upon call of the President or any two of the Directors. The Secretary or officer performing the Secretary's duties shall give not less than ten (10) days notice by letter, telephone, e-mail, or facsimile (or in person) to the Board Member at his last known address (post office, e-mail, or facsimile) of all meetings of the Board of Directors, provided that notice need not be given of annual meetings or of regular meetings held at times and places fixed by resolution of the Board. The Board of Directors may participate in a meeting by means of a conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other. A written record shall be made of the action taken at any such meeting. Directors may act without a meeting if a consent in writing setting forth the action so taken shall be signed by all the Directors either before or after such action. At any meeting at which every member of the Board of Directors shall be present, although held without notice, any business may be transacted which might have been transacted if the meeting had been duly called. Meetings may be held at any time without notice if all of the Directors are present, or if those not present waive notice in writing either before or after the meeting.

ARTICLE VI  
Officers

6.1 Election of Officers; Terms. The officers of the Association shall consist of a President, Treasurer, and a Secretary. Other officers, including a Chairman of the Board, one or more Vice-Presidents (whose seniority and titles, including Executive Vice-Presidents and Senior Vice-Presidents, may be specified by the Board of Directors), and assistant and subordinate officers, may from time to time be elected by the Board of Directors. All officers shall hold office until the next annual meeting of the Board of Directors and until their successors are elected. The President shall be chosen from among the Directors. Any two offices may be combined in the same person as the Board of Directors may determine.

6.2 Removal of Officers; Vacancies. Any officer of the Association may be removed summarily with or without cause, at any time, by the Board of Directors. Vacancies may be filled by the Board of Directors.

6.3 Duties. The officers of the Association shall have such duties as generally pertain to their offices, respectively, as well as such powers and duties as are prescribed by law or are hereinafter provided or as from time to time shall be conferred by the Board of Directors. The Board of Directors may require any officers to give such bond for the faithful performance of his duties as the Board may see fit.

ARTICLE VII  
Property

7.1 General. The Association shall have the ability to acquire and hold property, both real and personal, for the aesthetic, recreational and general civic benefit of the Subdivision and the Association.

7.2 Recreational and other facilities. The Association shall have the ability to purchase, construct, maintain and operate recreational or other facilities for the use and enjoyment of residents of the Subdivision.

7.3 Easements. The Association shall have the right to grant easements for public utility purposes to any municipality or public utility for the purpose of installation or maintenance of utilities to serve any lot located in the Subdivision including the extension of said utility to adjacent properties.

7.4 Maintenance. The Association shall maintain the Roads until the same are accepted into the City of Harrisonburg road system~~Virginia State Highway System~~.

7.5 Policing. The Association shall be charged with general public policing and control of the Subdivision and the Board of Directors of the Association shall have the power to make any reasonable regulations for the control of such and the prevention of nuisances within the Subdivision.

ARTICLE VIII  
Indemnity of Officers and Directors

8.1 Definitions. In this Article:

"Applicant" means the person seeking indemnification pursuant to this Article.

"Expenses" includes legal fees.

"Liability" means the obligation to pay a judgment, settlement, penalty, fine, including any excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

"Official Capacity" means (i) when used with respect to a director, the office of director in the Association; or (ii) when used with respect to an individual other than a director, the office in the Association held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the Association. "Official Capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise.

"Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

"Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

8.2 General. The Association shall indemnify any person who was or is a Party to any proceeding, including a proceeding by or in the right of the Association to procure a judgment in its favor, by reason of the fact that he is or was a director, officer, employee, or agent of the Association, or is or was serving at the request of the Association as a director, trustee, partner, or officer of another Association, partnership, joint venture, trust, employee benefit plan or other enterprise, against any Liability incurred by him in connection with such proceeding if (i) he believed, in the case of conduct in his Official Capacity, that his conduct was in the best interests of the Association, and in all other cases that his conduct was at least not opposed to its best interests, and, in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful, and (ii) he was not guilty of gross negligence or willful misconduct. A person is considered to be serving an employee benefit plan at the Association's request if his duties to the Association also imposes duties on, or otherwise involves services by, him to the plan or to participants in or beneficiaries of the plan. A person's conduct with respect to an employee benefit plan for a purpose he believed to be in the interests of the participants and beneficiaries of the plan is conduct that satisfies the requirement of this section.

8.3 Impact of Legal Proceeding. The determination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere is not, of itself, determinative that the Applicant did not meet the standard of conduct described in this Article.

8.4 Limit on Indemnification. Notwithstanding the provisions of Section 8.2 of this Article, provided there is a finding of gross negligence or willful misconduct, no indemnification shall be made in connection with any proceeding charging the Applicant with improper benefit to himself,

whether or not involving action in his Official Capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

8.5 Indemnification of Expenses. To the extent that the Applicant has been successful on the merits or otherwise in defense of any proceeding referred to in Section 8.2 of this Article, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses actually and reasonably incurred by him in connection therewith.

8.6 Procedure. Any indemnification under Section 8.2 of this Article (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Applicant is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 8.2 and Section 8.4.

The determination shall be made:

(a) By the Board of Directors by a majority vote of a quorum consisting of Directors not at the time parties to the proceeding;

(b) If a quorum cannot be obtained under subsection (a) of this section, by majority vote of a committee duly designated by the Board of Directors (in which designation Directors who are parties may participate), consisting solely of two (2) or more Directors not at the time parties to the proceeding;

(c) By special legal counsel;

(i) Selected by the Board of Directors or its committee in the manner prescribed in subsections (a) or (b) of this section; or

(ii) If a quorum of the Board of Directors cannot be obtained under subsection (a) of this section and a committee cannot be designated under subsection (b) of this section, selected by majority vote of the full Board of Directors, in which selection Directors who are parties may participate; or

(d) By the Members, but shares owned by or voted under the control of Directors who are at the time parties to the proceeding may not be voted on the determination.

Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (c) of this section to select counsel.

8.7 Advance Payment/Reimbursement.

(a) The Association may pay for or reimburse the reasonable expenses incurred by any Applicant who is a Party to a proceeding in advance of final disposition of the proceeding if:

(i) The Applicant furnishes the Association a written statement of his good faith belief that he has met the standard of conduct described in Section 8.2 and Section 8.4;

(ii) The Applicant furnishes the Association a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and

(iii) A determination is made that the facts then known to those making the determination would not preclude indemnification under this Article.

(b) The undertaking required by paragraph (ii) of subsection (a) of this section shall be an unlimited general obligation of the Applicant but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in Section 8.6.

8.8 Expanded Indemnity. The Board of Directors is hereby empowered, by majority vote of a quorum of disinterested Directors, to cause the Association to indemnify or contract in advance to indemnify any person not specified in Section 8.2 of this Article who was or is a Party to any proceeding, by reason of the fact that he is or was an employee or agent of the Association, or is or was serving at the request of the Association as an employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, to the same extent as if such person were specified as one to whom indemnification is granted in Section 8.2. The provisions of Section 8.3 through Section 8.7 of this Article shall be applicable to any indemnification provided hereafter pursuant to this Section 8.8.

8.9 Insurance Option. The Association may purchase and maintain insurance to indemnify it against the whole or any portion of the Liability assumed by it in accordance with this Article and may also procure insurance, in such amounts as the Board of Directors may determine, on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against any Liability asserted against or incurred by him in any such capacity or arising from his status as such, whether or not the Association would have power to indemnify him against such Liability under the provisions of this Article.

8.10 Definitions. Every reference herein to directors, officers, employees, or agents shall include former directors, officers, employees, and agents and their respective heirs, executors, and administrators. The indemnification hereby provided and provided hereafter pursuant to the power hereby conferred on the Board of Directors shall not be exclusive of any other rights to which any person may be entitled, including any right under policies of insurance that may be purchased and maintained by the Association or others, with respect to claims, issues, or matters in relation to which the Association would not have the power to indemnify such person under the provisions of this Article.

ARTICLE IX  
Restrictive Covenants

9.1 General. The Association, or any Owner, shall have the right to enforce by a proceeding at law or in equity, the restrictions, conditions and covenants imposed by the Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE X  
Amendments

10.1 By the Directors. The Board of Directors by a majority vote thereof shall have the power to make, alter, amend or repeal the By-Laws of the Association at any regular or special meetings of the Board. This power shall not be exercised by the executive committee or any other committee of directors.

10.2 By the Members. At any annual or special meeting, By-Laws may be adopted, and all By-Laws shall be subject to amendment, alteration, or repeal by a majority of all Members entitled to vote. Pursuant to resolution adopted by a majority of the Members entitled to vote, the Members may provide that certain By-Laws adopted, approved, or designated by them may not be amended, altered, or repealed, except by a certain specified vote of the Members.

10.3 Special Amendments. Notwithstanding anything herein to the contrary, the Declarant may unilaterally amend these By-Laws to make any amendment (a) it deems necessary to make a non-material, clarifying or corrective change, or (b) required by any of the federal mortgage agencies, such as the Veterans Administration, Federal Housing Administration, Fannie Mae or Freddie Mac, or by a local development of the Blue Stone Town Center (Townhomes) Subdivision or the operation of the Association, by the filing of Articles of Amendment with the Virginia State Corporation Commission, and shall give written notice to the Members of any amendments made pursuant to clause (b). This right of the Declarant to amend these By-Laws as aforesaid shall continue notwithstanding the lapse of the Declarant's Class B membership.

10.4 Conflict. In the case of any conflict between the Declaration and these By-Laws, the Declaration shall control, and in the case of any conflict between these By-Laws and the Articles, the Articles shall control.

ARTICLE XI  
Miscellaneous Provisions

11.1 Seal. The seal of the Association shall consist of a flat-faced circular die, of which there may be any number of counterparts, on which there shall be engraved the word "Seal" and the name of the Association.

11.2 Fiscal Year. The fiscal year of the Association shall end on such date and shall consist of such accounting periods as may be fixed by the Board of Directors.

11.3 Checks, Notes and Drafts. Checks, notes, drafts and other order for the payment of money shall be signed by such persons as the Board of Directors from time to time may authorize, however, the signature of any such person may be a facsimile.

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