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ALISON MAGUIRE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01MA6318144
Qualified in New York County
My Commission Expires January 20, 2019

# SPECIAL WARRANTY DEED

Bill Garrett Davidson County
Batch# 32488 DEEDWARRSP
12/01/2017 04:32:28 PM 9 pgs
Fees: $48.00 Taxes: $282,495.00

20171201-0123054

STATE OF New York
COUNTY OF New York

THE ACTUAL CONSIDERATION OR VALUE, WHICHEVER IS GREATER, FOR THIS TRANSFER IS $76,350,000.00

Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, THIS THE 28 day of November, 2017.

Notary Public
MY COMMISSION EXPIRES: 1/20/2019
(AFFIX SEAL)

**THIS INSTRUMENT WAS PREPARED BY**
Barton, East & Caldwell, P.L.L.C.
700 N. St. Mary's, Suite 1825, San Antonio, Texas 78205

| ADDRESS NEW OWNER(S) AS FOLLOWS: | SEND TAX BILLS TO: | MAP PARCEL NUMBERS |
|---|---|---|
| CARILLON TN APARTMENTS LLC | CARILLON TN APARTMENTS LLC | 082-13-0-403.00 |
| c/o David Kusy, Managing Director, Acquisitions | c/o David Kusy, Managing Director, Acquisitions | |
| 152 West 57th Street, 17th Floor | 152 West 57th Street, 17th Floor | |
| New York, New York 10019 | New York, New York 10019 | |

For and in Consideration of the sum of $10.00 cash in hand paid by the hereinafter named grantee, and other good and valuable consideration, the receipt of which are hereby acknowledged, the undersigned **THE CARILLON APARTMENTS, LLC, a Delaware limited liability company** (hereinafter called the "Grantor") has bargained and sold, and by these presents does transfer and convey unto **CARILLON TN APARTMENTS LLC, a Delaware limited liability company** (hereinafter called the "Grantee"), its successors and assigns, that certain tract or parcel of land (the "*Land*") located in the City of Nashville, Davidson County, Tennessee, and more particularly described on Exhibit "A", which is attached hereto and incorporated herein by reference for all purposes, together with all of Grantor's right, title and interest in and to (i) all improvements located thereon and (ii) any easements, interests, benefits, privileges, rights and appurtenances pertaining to the Property, including any right, title and interest of Grantor in and to any adjacent roads, streets, alleys or rights-of-way to the extent (but only to the extent) that the same relate to the Land and all interest of Grantor, if any, in (1) strips and gores, if any, between the Land and any abutting properties, whether owned or claimed by deed, limitations or otherwise and whether located inside or outside the Land, (2) any land lying in or under the bed of any creek, stream or waterway or any highway, avenue, street, road, alley, easement or right-of-way, open or proposed, in, on, across, abutting or adjacent to the Land, (3) all mineral, oil, gas and other hydrocarbon substances on and under and that may be produced

from the Land, as well as all of Grantor's right, title and interest in development rights, land use entitlements, air rights, water, water rights, riparian rights, and water stock relating to the Land, and (4) any real property claimed or fenced by Grantor which adjoins the Land (all of the Land, easements, interests, benefits, privileges, rights and appurtenances being herein collectively referred to as the "*Property*").

**Reservations from and Exceptions to Conveyance and Warranty:** This conveyance and the warranties of title herein are expressly made subject to the matters listed on Exhibit "B" attached hereto and incorporated herein for all purposes (the "*Permitted Exceptions*").

This conveyance is also made subject to the following restriction (the "*Condominium Restriction*"): no portion of the Property may be made subject to a condominium declaration prior to the expiration of the Restriction Period (as defined below), except as expressly hereinafter set forth. Such Condominium Restriction shall be solely for the benefit of the Grantor Parties (as hereinafter defined) and shall be binding upon Grantee and Grantee's successors and assigns and shall run with the Property.

"*Restriction Period*" shall mean the period beginning on the date this Deed is recorded and ending on the **earliest** to occur of any of the Restriction Termination Conditions (as defined below).

The "*Restriction Termination Conditions*" shall mean: (i) the expiration of the applicable statute of-repose under T.C.A. § 28-3-201 – T.C.A. § 28-3-205 and any successor statutes, as they may be amended, for any cause of action against Grantor, Nashville Carillon, LLC, a Texas limited liability company, NW-Jefferson, LLC, an Ohio limited liability company, Embrey Partners, Ltd., a Texas limited partnership, EPL-GP, L.L.C., a Texas limited liability company, and Embrey Builders, LLC, a Texas limited liability company, and their respective constituent companies, partners, members, managers, employees, agents, representatives, parents, subsidiaries and affiliates (collectively, with Grantor, the "*Grantor Parties*") for construction defects in respect to the construction of the Property; (ii) Grantee or its successors or assigns shall have provided the Grantor Parties with (A) an indemnity agreement from an entity reasonably acceptable to the Grantor Parties (as applicable, the "*Indemnitor*") containing terms and conditions reasonably acceptable to the Grantor Parties under which the Indemnitor agrees to indemnify, defend and hold the Grantor Parties harmless from and against any and all claims by any buyers of such condominium units and (B) an Approved Insurance Policy (as defined below) insuring the Grantor Parties against any and all such claims arising during the term beginning on the date thereof and ending on the date described in clause (i) above; (iii) the written consent of the Grantor or its assign, which consent Grantor or its assign shall have no obligation to grant and which consent, if granted, may be conditioned in such manner as Grantor or its assign may, in its sole and unfettered discretion, deem to be appropriate; or (iv) February 17, 2021.

The "*Approved Insurance Policy*" shall be a policy that is reasonably approved by the Grantor or its assign and which includes irrevocable "tail" coverage that removes the "Condominium

Conversion Exclusion" and covers the Grantor Parties in respect to the construction completed and satisfies or exceeds the following requirements:

a. Liability Limit: Not less than $15,000,000 per Occurrence and Aggregate for on-going operations if any are still continuing, and for Products-Completed Operations Hazard.
b. Term: until the expiration of the applicable statute of repose.
c. Carrier rating: Not less than "A-X".
d. Coverage must be 'stand-alone' and dedicated to the Property only, and written on an "Occurrence Form" basis providing without limitation, defense and indemnity for property damage arising out of alleged defects in construction and faulty workmanship.
e. General Liability and any umbrella/excess policies issued hereunder shall be Primary, and any other general and umbrella/excess liability insurance of any Grantor Party shall be excess and non-contributory.
f. Deductibles or SIR's shall not exceed $50,000 per Occurrence without prior written approval of Grantor or its assign. All deductibles and SIR's shall be subject to the Indemnitor's indemnity agreement.
g. It shall be a condition precedent that the entire Policy premium for entire Term be prepaid by Grantee or its successors.
h. Defense outside the limits shall be required.
i. Policy shall be silent or shall not exclude Subsidence.
j. Policy must include work prior to this conveyance and under Grantor's construction contract, including any Warranty and Repair work undertaken by the Grantor Parties.
k. Policy may not include Real Estate Agents/Brokers of Owner, nor its other Professionals', Errors or Omissions.
l. Permitted exclusions shall include Nuclear, War, Asbestos, Pollution, Silica, Lead, EIFS, and Employment Practices.
m. The policy must not permit the issuer to deny or limit coverage by reason of any act or omission of Grantee (or its successors).

Upon request by any owner of the Property that Grantor approve any proposed Approved Insurance Policy, Grantor shall approve (which approval shall not be unreasonably withheld) such proposed Approved Insurance Policy, if the Policy shall satisfy all requirements listed in clauses (a) through (m) above, other than clause (g). If the policy would satisfy all of the above requirements but the requirement in clause (g), then upon determination of such fact by arbitration or by agreement of the parties, then for all purposes of this Section the "effective date" of such coverage shall be such date the payment of the applicable premium for the entire Restriction Period is made as required by clause (g) above, and written confirmation to Grantor from the insurance carrier that such payment has been made and the insurance coverage is in effect and will be in effect for the entire Restriction Period. If there is a disagreement by Grantor that the requirements of the Approved Insurance Policy have been satisfied, the Grantor and the Grantee (or its successors) shall each have the right, but not the obligation, to have an insurance professional familiar with completed operations risks prepare a written assessment of the insurance proposals from the owner of the Property. Grantee (or its successors) and Grantor

shall submit to the other party such assessments setting forth the case that the proposed Approved Insurance Policy does or, as the case may be, does not satisfy the requirements for an Approved Insurance Policy. If no agreement is obtained between Grantor and Grantee (or its successors) within ten (10) business days of the request by Grantee (or its successors), then whether the requirements for the Approved Insurance Policy would be satisfied by Grantee's (or its successor's) proposed Approved Insurance Policy shall be resolved by binding arbitration. Unless the parties agree in writing otherwise, the arbitration shall be administered by the American Arbitration Association subject to the AAA Construction Industry Arbitration Rules then in effect, except that the arbitration shall be conducted by a single arbitrator without regard to the amount in controversy.

**Mortgagee Protection**. If any "Lender" (as defined herein) succeeds to the interest of Grantee or any subsequent owner during the Restriction Period, (1) Lender's liability under this Condominium Restriction shall be limited solely to the period during which Lender (or its affiliates, which includes any special servicer or receiver acting for or on behalf of Lender or its affiliates) has ownership of, or exercises management or control over the leasing, use and/or operation of, the Property; (2) Lender shall not have any liability for any condominium conversion or cooperative conversion that occurs (a) during the period that any owner (or any of its affiliates) other than Lender or its affiliates owns and has the right to continue to exercise exclusive management and control over the Property, unless the conversion is accomplished with the consent of Lender or its affiliates, or (b) after Lender sells the Property; and (3) Lender's liability for any breach of this Condominium Restriction Declaration shall be limited solely to Lender's interest, if any, as a Lender or owner in the Property. In no event shall Lender be liable for any act or omission of any prior owner of the Property (including Grantee) or any subsequent owner of the Property. For the purposes hereof, "Lender" shall be defined to mean any mortgagee holding a mortgage, deed of trust or deed to secure debt on the Property and any special servicer or receiver acting for or on behalf of Lender or its affiliates (as applicable).

**Conveyance:** Grantor, for the consideration and subject to the Permitted Exceptions and the Condominium Restriction, grants, bargains, sells and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, TO HAVE AND TO HOLD it to Grantee, Grantee's successors and assigns forever. Grantor binds Grantor and Grantor's successors and assigns to WARRANT and FOREVER DEFEND all and singular the Property to Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or might claim the same or any part thereof, by, through or under Grantor, but not otherwise, and subject to the Permitted Exceptions and the Condominium Restriction.

**SPECIAL PROVISIONS**

THE SALE OF THE PROPERTY IS BEING MADE ON AN "AS IS, WHERE IS AND WITH ALL FAULTS" BASIS, AND GRANTEE EXPRESSLY ACKNOWLEDGES THAT, OTHER THAN THE SPECIAL WARRANTY OF TITLE SET FORTH HEREIN AND THE WARRANTIES SET FORTH IN THAT CERTAIN PURCHASE AND SALE AGREEMENT

BETWEEN GRANTOR, AS SELLER, AND GRANTEE'S PREDECESSOR IN INTEREST, GAIA ACQUISITIONS LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS PURCHASER, DATED EFFECTIVE AS OF SEPTEMBER 14, 2017, AS AMENED BY THAT CERTAIN FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT DATED EFFECTIVE AS OF SEPTEMBER 27, 2017, WHICH ARE SOLELY FOR THE BENEFIT OF GRANTEE, GRANTOR HAS NOT MADE, AND IS NOT MAKING, AND GRANTEE IS NOT RELYING UPON, ANY WARRANTY OR REPRESENTATION OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, WITH RESPECT TO THE PROPERTY OR ANY PORTION THEREOF, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, TITLE, HABITABILITY, GOOD AND WORKMANLIKE PERFORMANCE OR CONDITION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ABSENCE OF ENVIRONMENTAL VIOLATION OR OTHER DEFECT. THE PARTIES AGREE THAT THE PURCHASE PRICE BEING PAID BY GRANTEE FOR THE PROPERTY HAS BEEN DETERMINED BY NEGOTIATIONS WHICH REFLECTED THE FOREGOING DISCLAIMER AND THAT GRANTOR WOULD NOT HAVE BEEN WILLING TO SELL THE PROPERTY FOR SUCH PURCHASE PRICE ABSENT SUCH DISCLAIMER.

By accepting delivery of this deed, Grantee acknowledges having accepted and agreed to each and every term hereof, including without limitation the Condominium Restriction and the disclaimer of warranties set forth above and, if not previously paid, the obligation to pay all ad valorem taxes on the Property for the year 2017, which have been prorated between the parties.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

M:\5000\5200\5277 - Nashville, TN\5277.014 Sale to Gaia\Closing Documents\Special Warranty Deed\Special Warranty Deed.20171025-1.BEC.Exec.doc

Witness our/my hand(s) this 30th day of November, 2017.

**GRANTOR**:

**THE CARILLON APARTMENTS, LLC**
a Delaware limited liability company

By: Nashville Carillon, LLC,
a Texas limited liability company,
its Managing Member

By: _____
Brent Goodwin,
Vice President - Accounting

ACKNOWLEDGMENT

State of Texas §
§
County of Bexar §

Personally appeared before me Brent Goodwin, Vice President – Accounting of Nashville Carillon, LLC, a Texas limited liability company, as the managing member of The Carillon Apartments, LLC, a Delaware limited liability company, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the foregoing instrument for the purposes therein contained in the capacity therein stated on behalf of said limited liability companies.

WITNESS my hand and seal this 21st day of November, 2017.

KIMBERLY MAGNON
Notary Public, State of Texas
Comm. Expires 10-17-2021
Notary ID 128149145

_____
Notary Public, State of Texas

My Commission Expires: 10-17-2021

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Executed by Grantee to evidence Grantee's acknowledgment of and agreement to comply with the Condominium Restriction and acceptance of the Special Provisions set forth in the foregoing Special Warranty Deed.

**GRANTEE**:

**CARILLON TN APARTMENTS LLC,**
a Delaware limited liability company

By: _____
Name: Daniel Fishman
Title: Authorized Signatory

ACKNOWLEDGMENT

STATE OF New York §
§
COUNTY OF New York §

Personally appeared before me Alison Maguire, Daniel Fishman of Carillon TN Apartments with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the foregoing instrument for the purposes therein contained in the capacity therein stated on behalf of said Carillon TN Apartments LLC

WITNESS my hand and seal this 20th day of November, 2017.

ALISON MAGUIRE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01MA6318144
Qualified in New York County
My Commission Expires January 20, 2019

_____
Notary Public

My Commission Expires: 1/20/2019

PREPARED IN THE LAW OFFICE OF:

Barton, East & Caldwell, P.L.L.C.
Attention: J. Cary Barton, Esq.
700 N. St. Mary's St., Suite 1825
San Antonio, Texas 78205

AFTER RECORDING RETURN TO:

Bryan Cave LLP
Attention: Sandor A. Green, Esq.
1290 Avenue of the Americas
New York, NY 10104-3300

EXHIBIT "A"
TO
SPECIAL WARRANTY DEED

DESCRIPTION OF PROPERTY

Land in Davidson County, Tennessee, being Lot 1 of 5th and Jefferson Final Plat as recorded in Instrument Number 20140829-0079322, Register's Office of Davidson County, Tennessee, to which plat reference is hereby made for a more complete and accurate legal description.

Being the same property conveyed to The Carillon Apartments, LLC, A Delaware limited liability company by Special Warranty Deed of record in Instrument No. 20140922-0086883, in the Register's Office of Davidson County, Tennessee.

EXHIBIT "B"
TO
SPECIAL WARRANTY DEED

PERMITTED EXCEPTIONS

1. Subject to all matters shown on the Plan of record as Instrument Number 20140829-0079322, Register's Office of Davidson County, Tennessee.

2. Declaration of Restrictions and Covenants for Stormwater Facilities and Systems of record in Instrument No. 20140825-0076994, in the Register's Office for Davidson County, Tennessee.

3. Grant of Easement of record in Instrument No. 20150413-0032557, in the Register's Office for Davidson County, Tennessee.

4. Notice of Land Use Restrictions of record in Instrument No. 20141205-0111630, in the Register's Office for Davidson County, Tennessee.

5. Restrictive Covenants Running with the Land of the Metropolitan Development and Housing Agency in the Phillips-Jackson Street Redevelopment District of record in Book 9183, Page 130, Register's Office for Davidson County, Tennessee.

6. Rights of tenants under residential leases as tenants only.

7. Taxes for the year 2017, a lien due or payable, but not delinquent.

8. Survey No. 20141268 prepared by Robert M. Searson, TN RLS #1666 of Littlejohn Surveying and dated December 21, 2016, indicates underground electric lines and water lines on property without the benefit of any easement.