

Kaufman County  
Laura Hughes  
County Clerk

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FILED AND RECORDED – REAL RECORDS	CLERKS COMMENTS
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STATE OF TEXAS  
COUNTY OF KAUFMAN

I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded in the Official Public Records of Kaufman County, Texas.

*Laura A. Hughes*

Laura Hughes, County Clerk

Recorded By: Maribel Vazquez, Deputy

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

Record and Return To:



**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**AFTER RECORDING, RETURN TO:**

Windmill Farms Association, Inc.  
c/o Essex Association Management, L.P.  
Attention: Ron Corcoran  
1512 Crescent Drive, Suite 112  
Carrollton, Texas 75006

**STATE OF TEXAS** §  
§  
**COUNTY OF KAUFMAN** §

**FIFTH AMENDMENT AND SUPPLEMENT TO THE AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
WINDMILL FARMS**

*(Windmill Farms – 2.0404± Acre Commercial Tract)*

THIS FIFTH AMENDMENT AND SUPPLEMENT TO THE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WINDMILL FARMS (this "Amendment") is made and entered into as of March 26, 2020 (the "Effective Date"), by EQK BRIDGEVIEW PLAZA, LLC, a Delaware limited liability company (formerly known as EQK Bridgeview Plaza, Inc., a Nevada corporation) (the "Declarant").

**PRELIMINARY STATEMENTS**

A. On April 10, 2014 the Declarant executed that certain **Amended and Restated Declaration of Covenants, Conditions and Restrictions for Windmill Farms** recorded on April 16, 2014 as Document No. 2014-0006193, in Volume 4547, Page 266 of the Official Public Records of Kaufman County, Texas, as modified and amended by that certain **First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Windmill Farms** dated July 1, 2018, and recorded on August 10, 2018 under Document No. 2018-0019882, and in Volume 5768, Page 1 of the Official Public Records of Kaufman County, Texas, and as further modified and amended by that certain **Second Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Windmill Farms** dated February 11, 2019, and recorded on February 21, 2019 under Document No. 2019-0003897, and in Volume 5937, Page 562 of the Official Public Records of Kaufman County, Texas, and as further modified and amended by that certain [Third] **Amendment and Supplement to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Windmill Farms (Windmill Farms Phase 3B)** dated May 9, 2019, and recorded on May 15, 2019 under Document No. 2019-0010638, and in Volume 6008, Page 256 of the Official Public Records of Kaufman County, Texas (the "Third Amendment"), and as further modified and amended by that certain [Fourth] **Amendment and Supplement to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Windmill Farms (Windmill Farms Phase 4A)** dated September 3, 2019, and recorded on September 6, 2019 under Document No. 2019-0021826, and in Volume 6130, Page 165 of the Official Public Records of Kaufman County, Texas (the

“Fourth Amendment”), and as may be further modified, amended and supplemented now and hereafter from time to time (as so modified, amended and/or supplemented, the “Declaration”) which amended, restated and superseded the Master Declaration (as defined in the Declaration) and the Phase 1 Declaration (as defined in the Declaration);

B. In accordance with Section 8.2 of the Declaration, for as long as Declarant owns property subject to the terms of the Declaration, the Declarant has the right at any time, in its sole discretion to amend the Declaration by any instrument in writing duly signed, acknowledged, and filed for record in the Real Property Records of Kaufman County, Texas.

C. As of the date of this Amendment, the Declarant owns property subject to the terms of the Declaration, Declarant holds all Declarant rights reserved under the Declaration, and the Development Period (as defined in the Declaration) has not yet expired.

D. Pursuant to its rights as Declarant under the Declaration, Declarant desires to amend and modify certain covenants, conditions and restrictions set forth in the Declaration, as more specifically provided in this Amendment.

E. Pursuant to its rights under Section 1.3a, of the Declaration, the Declarant desires to (i) designate the approximately 2.0404± acres of real property described on Exhibit A attached hereto (the “Subject Property”) as part of the Retail/Commercial Land and as part of the Commercial/Retail Development Area for all purposes of the Declaration, and withdraw such Subject Property from any prior designation as a Residential Lot, Multi-Family Lot or as part of the any Development Area other than the Commercial/Retail Development Area, and (ii) establish certain restrictions applicable to the Subject Property, as more specifically set forth in this Amendment.

F. The Subject Property is owned by Declarant and Declarant intends that the Subject Property be considered Property and part of the Commercial/Retail Development Area for purposes of this Declaration, and that all of the terms, covenants, conditions, restrictions and obligations of the Declaration that apply to the Property as part of Commercial/Retail Development Area will apply to the Subject Property, and Declarant desires to amend the Declaration to include such Subject Property within the Property and Commercial/Retail Development Area, subject to the terms of this Amendment.

G. Declarant desires to modify and amend the Declaration in accordance with its rights under the Declaration, including, without limitation, Section B.3.4 of Appendix 1 of the Declaration.

NOW, THEREFORE, Declarant does hereby amend the Declaration and adopt this Amendment as follows:

1. Definitions. Unless otherwise defined in this Amendment, all capitalized words or terms used herein shall be defined and have the meaning set forth in the Declaration as modified and amended hereby.

2. Subject Property Designation as Commercial/Retail Development Area. (a) In accordance with the provisions of the Declaration, including, without limitation, Section 1.3.a and Section B.3.4 of Appendix 1 of the Declaration, the Declarant does hereby affirm that the Subject Property is included as part of the Property under the Declaration and is designated by this Amendment to be part of the Commercial/Retail Development Area and Retail/Commercial Land thereunder. The Subject Property is hereby withdrawn from any prior designation as a Residential Lot, Multi-Family Lot or as part of the any Development Area other than the Commercial/Retail Development Area under the Declaration. No other approvals are required under the Declaration for Declarant to make the change in designation of the Subject Property to Commercial/Retail Development Area and Retail/Commercial Land.

(b) The Declarant hereby adopts, establishes and imposes the covenants, conditions, restrictions, assessments, easements, liens and charges of the Declaration as they apply to Retail/Commercial Land and Common Areas upon the Subject Property as part of the Commercial/Retail Development Area, and declares that Subject Property and all portions thereof are and shall be developed, held, used, sold, and conveyed subject to the provisions of the Declaration, as may be modified or amended from time to time, and all such covenants, conditions, restrictions, assessments, easements, liens and charges as set forth in the Declaration with respect to Subject Property as set forth in this Amendment. All of the provisions of the Declaration, as amended hereby, shall apply to the Subject Property with the same force and effect as if such Subject Property was originally included in the Commercial/Retail Development Area under the Declaration.

(c) Each portion of the Retail/Commercial Land or Lot within the Subject Property shall be subject to the use restrictions and architectural controls as provided in the Declaration applicable to Retail/Commercial Land and the Commercial/Retail Development Area and which apply to Lots and any improvement or structure constructed thereon.

(d) The Declaration is hereby modified and amended to provide that any and all Commercial/Retail Land now or hereafter included in the Property, including the Subject Property, shall be subject to additional terms, covenants, conditions and use restrictions as set forth on Schedule 1 attached hereto (the "Commercial/Retail Protective Covenants"). The Declaration is hereby modified and amended to add Schedule 1 attached to this Amendment as a new Schedule 1 of the Declaration.

3. Commercial/Retail Land – Commercial/Retail Development Area. Exhibit "C" of the Declaration is hereby deleted in its entirety and replaced with Exhibit "C" attached hereto.

4. Commercial/Retail Development Area – Protective Covenants. Declarant hereby acknowledges and confirms that the Declaration of Covenants, Conditions and Restrictions for the Commercial Real Property in Windmill Farms recorded under Instrument no. 2008-00003684 of the Real Property Records of Kaufman County, Texas (the "Commercial Declaration") has expired by its own terms as the original ten (10) year term of such commercial Declaration expiring on February 25, 2018 was not extended by majority vote of the Board of the Association in accordance with the terms of Article V, Section 1 of such Commercial Declaration. In this regard, Section 5.3 of Article 5 the Declaration is hereby modified and amended to read in its entirety as follows:

“5.3 Exemption of Commercial/Retail Land from Certain Protective Covenants. The Retail/Commercial Land described on Exhibit “C” shall be exempt from all protective covenants in this Article 5. However, such Retail/Commercial Land shall be subject to the Commercial/Retail Protective Covenants established under that certain Fifth Amendment and Supplement to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Windmill Farms and which are attached hereto as Schedule 1.”

5. Membership and Voting Rights. Each Owner of a Lot within the Subject Property shall automatically be, and must remain, a Member of the Association so long as such person or entity is an Owner, as provided in the Declaration.

6. Assessments. An Assessment Lien is hereby created and reserved in favor of the Association to secure the collection of Assessments as provided in the Declaration, and as provided for, authorized, or contemplated herein. Each Owner of any portion of the Subject Property, by acceptance of a deed or other conveyance or transfer of legal title to any portion of the Subject Property, whether or not it shall be so expressed in any such deed or other conveyance or transfer, shall be deemed to have covenanted and agreed to pay to the Association, or to an independent entity or agency which may be designated by the Association to receive such monies, Assessments as provided in the Declaration. Until and unless otherwise determined by the Board of Directors of the Association, the annual assessment for Lots in the Subject Property shall be the same as that charged to all other Lots within the Property that are part of the Commercial/Retail Development Area or part of the Retail/ Commercial Land.

7. No Other Effect. Except as expressly amended by this Amendment, the terms and provisions of the Declaration and Design Guidelines are not amended, modified or supplemented, and the Declaration and Design Guidelines, as amended hereby, are hereby supplemented and amended by the Declarant and the Subject Property is hereby affected by and included in the Property affected by such Declaration as set forth herein.

8. Severability. Invalidation of anyone provision of this Amendment by judgment or court order shall in no way affect any other provision of this Amendment or the remainder of this Amendment which shall remain in full force and effect. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Amendment a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

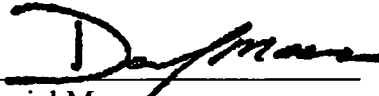
9. Headings. The headings contained in this Amendment are for reference purposes only and shall not in any way affect the meaning or interpretation of this Amendment.

REMAINDER OF PAGE LEFT BLANK - SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed to be effective as of the Effective Date.

**DECLARANT:**

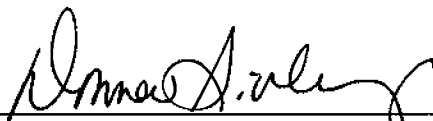
EQK BRIDGEVIEW PLAZA, LLC,  
a Delaware limited liability company

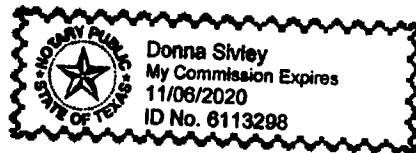
By:   
Name: Daniel Moos  
Title: President

STATE OF TEXAS           §  
                                          §  
COUNTY OF Dallas       §

BEFORE ME, the undersigned authority, a Notary Public, on this day personally appeared Daniel Moos, as President of **EQK BRIDGEVIEW PLAZA, LLC**, a Delaware limited liability company, known to me to be the person and duly authorized officer whose name is subscribed to the foregoing instrument, and who acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated on behalf of said limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 8<sup>th</sup> day of April, 2020.

  
Notary Public in and for the State of Texas  
My Commission Expires: 11/06/2020



**EXHIBIT A**

**LEGAL DESCRIPTION OF THE SUBJECT PROPERTY**

That approximately 2.0404± acres (88,878 square feet) of land and being all of Lot 1, Block T, located within Windmill Farms Phase 4A, as described on the Final Plat of Windmill Farms Phase 4A recorded on July 30, 2019, under Instrument No. 2019-0018037, and in Cabinet 3, Slide 513, of the map or plat records of Kaufman County, Texas.

**EXHIBIT "C"**

**LEGAL DESCRIPTION OF THE COMMERCIAL/RETAIL LAND –  
COMMERCIAL/RETAIL DEVELOPMENT AREA**

That approximately 2.0404± acres (88,878 square feet) of land and being all of Lot 1, Block T, located within Windmill Farms Phase 4A, as described on the Final Plat of Windmill Farms Phase 4A recorded on July 30, 2019, under Instrument No. 2019-0018037, and in Cabinet 3, Slide 513, of the map or plat records of Kaufman County, Texas

**Exhibit "C"**  
*(Solo Page)*



## SCHEDULE 1

### COMMERCIAL/RETAIL PROTECTIVE COVENANTS

In order to preserve the natural setting and beauty of the Property, to establish and preserve a harmonious and aesthetically pleasing design for the Windmill Farms project and to protect and promote the value of the Property, the Commercial/Retail Land shall be subject to the restrictions set forth in this **Schedule 1**. Every grantee of any interest in a the Commercial/Retail Land, or any portion thereof, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this **Schedule 1**.

#### ARTICLE I

##### ARCHITECTURAL STANDARDS AND RESTRICTIONS

Section 1 **ARCHITECTURAL REVIEW COMMITTEE**. The Architectural Control Committee shall have exclusive jurisdiction over all original construction of Improvements within the Commercial/Retail Land and over modifications, additions, or alterations made on or to the Improvements on the Commercial/Retail Land. The Architectural Control Committee may (i) adopt the Design Guidelines (which may include Landscaping Guidelines) specifically applicable to the Commercial/Retail Land and Improvements thereon and/or (ii) establish application and review procedures for plans and specifications. The Architectural Control Committee shall make the Design Guidelines (if any) available to Owners who seek to engage in development of or construction upon the Commercial/Retail Land and who shall conduct their operations strictly in accordance therewith. The Architectural Control Committee is authorized, but not obligated, to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Architectural Control Committee in performing its functions set forth herein.

Section 2 **ARCHITECTURAL APPROVAL**. To preserve the architectural and aesthetic appearance of Improvements within the Commercial/Retail Land and the Windmill Farms project, no construction of improvements, including landscaping, or modifications, additions, or alterations to existing improvements, shall be commenced or maintained by any Owner with respect to any portion of the Commercial/Retail Land, including, without limitation, the construction or installation of sidewalks, driveways, parking areas, signage, landscaping, awnings, walls, fences, exterior lights, or accessory buildings, nor shall any exterior addition to or change or alteration be made to any improvements (including, without limitation, painting or staining of any exterior surface, including fences), unless and until two (2) copies of the plans and specifications and related data (including, if required by the Architectural Control Committee, a survey showing the location of trees of three (3) inches or more in diameter at a height of twelve (12) inches above the ground and other significant vegetation on such portion of the Commercial/Retail Land) showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee including, without limitation, approval as to the compliance of such plans and specifications with this **Schedule 1** and the Design Guidelines (if any) established for the Commercial/Retail Land, and the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Architectural Control Committee, and the other copy shall be returned to the Owner marked "approved," "approved with conditions as noted," or "disapproved." The Architectural Control Committee may establish a reasonable fee sufficient to

cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, urban designers, inspectors, or attorneys retained in accordance with the terms hereof. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Improvements, or to paint the interior of the Improvements on his property any color desired. The Architectural Control Committee shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association and shall use reasonable efforts to give its approval or disapproval of plans and specifications within **thirty (30) days** after submission of all items required. The failure of such committee to respond within such period shall be **deemed to be disapproval** unless written approval is thereafter given.

Upon approval of plans and specifications, no further approval under this **Article I** shall be required with respect thereto, unless construction has not substantially commenced within one (1) year of the approval of such plans and specifications (e.g. clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. The Architectural Control Committee may disapprove plans and specifications for any reason which is consistent with the objects and purposes of this Declaration as determined by the Architectural Control Committee from time to time, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

Section 3 **LANDSCAPING APPROVAL.** To preserve the aesthetic appearance of the Windmill Farms project, no landscaping, grading or excavation shall be implemented and installed on a portion of the Commercial/Retail Land unless and until the plans therefor have been submitted to and approved in writing by the Architectural Control Committee. In the installation of landscaping and maintenance of its portion of the Commercial/Retail Land, each Owner shall comply with the Landscaping Guidelines (if any) and any other applicable governmental requirements.

Section 4 **APPROVAL NOT A GUARANTEE OR VARIANCE.** The review and approval of plans pursuant to this Article is made on the basis of aesthetic considerations only and no approval of plans and specifications and no publication of the Design Guidelines shall be construed as representing or implying that such plans, specifications, or guidelines will, if followed, result in properly designed improvements. Such approvals and Design Guidelines shall in no event be construed as representing or guaranteeing that any improvements built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association, the Architectural Control Committee, nor any of their respective officers, partners, directors or members, shall be responsible or liable in damages or otherwise to any person or entity who submits plans for approval by reason of mistake of judgment, negligence or nonfeasance arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations, nor any defects in construction undertaken pursuant to such plans and specifications. The purpose of such reviews primarily seeks to conform the aesthetic appearances of development within the Property. In addition, the approval of plans pursuant to this Article shall not be deemed to be a variance from the specific restrictions of this Declaration or the Design Guidelines. All variances must be issued in accordance with the provisions of **Section 7** of this Article.

Section 5 **RIGHT TO INSPECT.** Any member of the Board of Directors or the Architectural Control Committee and their representatives shall have the right, but not the obligation during reasonable hours to enter upon and inspect any portion of the Commercial/Retail Land with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. Such person(s) or entity(ies) shall not be deemed guilty of trespass by reason of such entry. In the event the

Architectural Control Committee shall determine that such plans and specifications have not been approved or are not being complied with, the Architectural Control Committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In addition to any other remedies available to the Association, the Board may record in the appropriate land records a notice of violation naming the violating Owner.

Section 6 **NO WAIVER OF FUTURE APPROVALS.** The approval by the Architectural Control Committee of any plans and specifications for any work done or proposed, or in connection with any other matter requiring the approval and consent of such committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Section 7 **VARIANCES.** The Architectural Control Committee may grant variances from compliance with the restrictions of this Declaration and from any of the Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted Rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, or (b) estop the Architectural Control Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing, shall not be considered a hardship warranting a variance.

## **ARTICLE II SPECIFIC USE RESTRICTIONS**

Section 1 **PERMITTED USE.** Each and every Lot within the Commercial/Retail Land is hereby restricted to one (1) primary commercial or retail structure and approved outbuildings and improvements, and for uses permitted under any applicable laws or ordinances. Additional structures and buildings may be located on a Lot within the Commercial/Retail Land only with the express written approval of the Board or Architectural Control Committee. No Owner shall be permitted to modify, amend or otherwise alter any applicable zoning or other ordinances for any portion of the Commercial/Retail Land without the prior written consent of each Owner, and during the Development Period, the prior written consent of Declarant. Each Owner, occupant or other user of any portion of the Commercial/Retail Land at all times shall comply in every respect with this **Schedule 1** and with any and all laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdictional control over the Commercial/Retail Land. **IN SOME INSTANCES GOVERNMENTAL REQUIREMENTS MAY BE MORE OR LESS RESTRICTIVE THAN THE PROVISIONS OF THIS SCHEDULE 1. IN THE EVENT A CONFLICT EXISTS BETWEEN ANY SUCH PUBLIC REQUIREMENT AND ANY REQUIREMENT OF THIS SCHEDULE 1, THE MOST RESTRICTIVE REQUIREMENT SHALL PREVAIL. WHERE A GOVERNMENTAL REQUIREMENT DOES NOT CLEARLY CONFLICT WITH THE PROVISIONS OF THIS SCHEDULE 1 BUT PERMITS ACTION THAT IS DIFFERENT FROM THAT REQUIRED BY THIS SCHEDULE 1, THE PROVISIONS OF THIS SCHEDULE 1 SHALL PREVAIL.** All portions of the Properties shall be developed in accordance with this **Schedule 1** as such may be amended as herein provided. The provisions of this **Article II** set forth certain requirements which in addition to the other provisions of this **Schedule 1** and the Declaration, shall apply with respect to the development and use of the Commercial/Retail Land.

Section 3 **PARKING SPACES, ACCESS DRIVES AND SIDEWALKS.** Each Lot within the Commercial/Retail Land must include the minimum number of parking spaces required under applicable governmental rules, regulations and ordinances for the intended use of the Improvements within such Owner's Lot that is part of the Commercial/Retail Land, or the Owner of such Lot may enter into easement or similar agreements for the use of parking spaces within adjacent land, to the extent permitted by the city, county, or other applicable governmental entity, to meet the minimum parking space requirement for such Owner's Improvements on it Lot. Each Owner shall construct and maintain at its sole cost and expense surface parking and access drives within such Owner' Lot, and the Owner shall repair at its sole cost and expense any damage to the Street or Street curb occasioned by connecting the access drives within its Lot thereto. Each Owner shall also construct and maintain at its sole cost and expense a sidewalk along the perimeter of its Lot as may be required under applicable laws or ordinances or otherwise in accordance with the Design Guidelines.

Section 4 **ANTENNAE AND TOWERS.** Towers, tower antennae and satellite receiving and transmitting equipment shall be permitted on a Lot within the Commercial/Retail Land only with advance written approval of Declarant during the Development Period, and thereafter by the Board of Directors.

Section 5 **RENTING OR LEASING.** Improvements may be rented or leased only by written leases and subject to the restriction that all tenants shall be subject to the terms and conditions of this **Schedule 1**, the Declaration and any rules and regulations promulgated by the Association as though such tenant were an Owner. Each Owner of an Improvement agrees to cause his tenants to comply with this **Schedule 1**, the Declaration and the rules and regulations promulgated pursuant hereto, and is responsible and liable for all violations and losses caused by such tenants, notwithstanding the fact that such tenants are fully liable for any such violation. All provisions of this Schedule 1 and the Declaration and of any rules and regulations promulgated pursuant hereto which govern the conduct of Owners of Improvements and which provide for sanctions against Owners shall also apply to all Occupants of any Improvement even though such Occupants are not specifically mentioned. Each Owner who leases its Improvements shall provide the Association with the name of his tenant and a mailing address where such Owner can be contacted at all times.

Section 6 **DISPOSAL OF TRASH.** No trash, rubbish, garbage, manure, debris, or offensive material of any kind shall be kept or allowed to remain on any Lot within the Commercial/Retail Land, nor shall any Lot within the Commercial/Retail Land be used or maintained as a dumping ground for such materials. All such matter shall be placed in sanitary refuse containers constructed of metal, plastic or masonry materials with tight fitting sanitary covers or lids and placed in an area adequately screened from public view by planting or fencing. All rubbish, trash, and garbage shall be regularly removed and not allowed to accumulate. Equipment used for the temporary storage and/or disposal of such material prior to removal shall be kept in a clean and sanitary condition and shall comply with all current laws and regulations and those which may be promulgated in the future by any federal, state, county, municipal or other governmental body with regard to environmental quality and waste disposal. In a manner consistent with good housekeeping, the Owner of each Lot within the Commercial/Retail Land shall remove such prohibited matter from his Lot at regular intervals at his expense.

Section 7 **DRAINAGE.** Catch-basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or occupant of a Lot within the Commercial/Retail Land may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers or storm drains.

Section 8 **TEMPORARY BUILDINGS.** Temporary buildings or structures shall not be permitted on any Lot within the Commercial/Retail Land; provided, however, Declarant may permit temporary toilet facilities, sales, leasing and construction offices and storage buildings to be used by builders in connection with the construction and sale of Improvements and by contractors performing land development activities within the Commercial/Retail Land for Declarant.

Section 9 **GRASS AND SHRUBBERY.** The Owner of each Lot within the Commercial/Retail Land shall landscape the areas of his Lot in accordance with the Declaration, any Landscaping Guidelines and/or any applicable laws or ordinances. Grass and weeds shall be kept mowed to prevent unsightly appearance, and all curbs, roadways, drives, and walkways shall be kept edged. Dead or damaged trees and shrubbery shall be promptly removed or replaced, and if not removed by the Owner upon request, then the Association may remove or cause to be removed such trees or shrubbery at the Owner's expense and shall not be liable for damage caused by such removal. The Association may, at its option, plant and install shrubbery and other screening devices around boxes, transformers and other aboveground utility equipment located on the Lots, and mow and maintain the grass, shrubbery or other screening devices around such utility equipment. The Association shall have the right to enter upon the Lots for such purposes.

Section 10 **TRAFFIC SIGHT AREAS.** All Lots within the Commercial/Retail Land located at Street intersections shall be landscaped so as to permit safe sight across the Street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where this would create a traffic or sight problem.

Section 11 **PRIVATE UTILITY LINES.** All electrical, telephone, and other utility lines and facilities which are located on a Lot within the Commercial/Retail Land and are not owned by a governmental entity or a public utility company shall be installed underground unless otherwise approved in writing by the Architectural Control Committee.

Section 12 **ROOFTOP ELEMENTS.** All equipment mounted on the roof of any Improvements that are located on any Lot within the Commercial/Retail Land shall be completely screened on all sides with materials compatible with the exterior surface of said Improvements.

Section 13 **SIGNAGE.** All signage, including temporary signage and monument signage, shall conform to the signage reflected on plans submitted to and approved by the Architectural Control Committee pursuant to **ARTICLE I** above or shall otherwise be approved by the Architectural Control Committee, such approval regarding signage not to be unreasonably withheld or delayed. Unless otherwise approved by the Architectural Control Committee, no sign of a flashing or moving character shall be permitted and no sign shall be painted on the wall(s) of any Improvements.

In addition to any other remedies provided for herein, the Board of Directors or its duly authorized agent shall have the power to enter upon a Lot within the Commercial/Retail Land to remove any sign which violates this Section provided the violating Owner has been given forty-eight (48) hours written notice by the Board of Directors of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of Assessments under the Declaration.

Section 14 **PROHIBITED ACTIVITIES.** No unreasonably dangerous, noxious, offensive or nuisance activities, as reasonably determined by the Declarant, or any activities which violate any applicable laws shall be conducted or permitted to occur by any Owner or its agents,

employees, contractors, occupants or invitees on any portion of the Property. No operation or use of any portion of the Property shall be permitted or maintained by any Owner or its agents, employees, contractors, occupants or invitees that causes or produces noise or sound that is unreasonable because of its volume, duration, frequency or shrillness, smoke, noxious, toxic or corrosive fumes or gases, obnoxious odors, dust or dirt or unusual fire or explosion hazards. The above prohibitions are in addition to those set forth in **Section 1** above and **Section 15** below.

Section 15 **PROHIBITED USES.** Without limiting the generality of **Section 14** above, the following uses are prohibited on the Commercial/Retail Land:

- (a) a junk yard, salvage yard or abandoned vehicle operation;
- (b) dumping, disposal, incineration or reduction of garbage or refuse of any nature, other than garbage or refuse produced on a Lot;
- (c) smelting of iron, tin, zinc or other ore;
- (d) landfill;
- (e) pawn shop;
- (f) used automobile dealership;
- (g) massage parlor;
- (h) sexually oriented business such as, but not limited to, x-rated movie or video sales, theater or rental facility, nude modeling studio, lounge or club featuring nude or semi-nude entertainers or escort service;
- (i) slaughterhouse or plant for the rendering of animal substances;
- (j) overnight parking or storage of campers, mobile homes, boats or motor homes except in covered or enclosed areas, other than when such parking or storage is an integral part of the regular business conducted at a Lot;
- (k) dance hall;
- (l) bar, tavern, nightclub or cocktail lounge, except a bar or cocktail lounge shall be permitted in a restaurant which provides seating for substantially all of its customers and the gross revenues from the sale of alcoholic beverages from any such restaurant do not exceed thirty percent (30%) of the gross revenue from all sources of such restaurant. The occupant of such restaurant shall provide Declarant during the Development Period and thereafter the Board within thirty (30) days after the written request of Declarant or the Board an annual written statement of gross revenues with the annual revenues attributable to the sale of alcoholic beverages segregated;
- (m) tattoo parlor;
- (n) dry-cleaning establishment with on-site processing except if the on-site processing uses methods and chemicals approved by the Environmental Protection Agency;
- (o) pool or billiard parlor;

(p) crematorium;

(q) cemetery;

(r) arcade or game room (provided, however, a restaurant or other facility not prohibited hereunder which contains no more than four (4) electronic games shall not be deemed to violate this prohibition). Furthermore, a pizza parlor or like establishment which is comparable to a "Peter Piper Pizza" establishment or a "Chuckie Cheese Pizza" establishment in which electronic games are incidental to the providing of food service shall not be deemed to violate this prohibition;

(s) warehouse or storage facility except as approved in writing by Declarant;

(t) refining or storage of petroleum or of its products; drilling for and/or removal of oil, gas or other hydrocarbon substances (Declarant hereby agreeing and stipulating that a retail gasoline station or retail automotive service and oil change facility shall not be deemed a prohibited use under this item (t));

(u) any trailer court, mobile home park, lot for sale of new or used motor vehicles, labor camp, stock yard or animal raising (other than pet shops and veterinarian clinics or veterinarian hospitals, provided such facilities have no provision for keeping animals overnight and otherwise comply with the provisions hereof);

(v) industrial use; the treatment of raw products in factories; the processing and converting of raw, unfinished or finished materials or products, or any of these into an article or substance of different character, or for use for a different character; or for use for a different purpose; industries furnishing labor in the case of manufacturing or the refinishing of manufactured articles; any use for which a trucking operation (requiring or resulting in the parking or maintenance of trucks is conducted);

(w) manufacturing use; use of the Property as the site of a building or group of buildings designed and/or operated for the primary purpose of manufacturing;

(x) any carnival or other form of outdoor sports, outdoor recreation, or outdoor entertainment use (provided, however, in no event shall this prohibition extend to an indoor sports indoor recreation or indoor entertainment use in permanently constructed buildings on the Property);

(y) any use which involves any unusual firing, explosives, or other dangerous or damaging hazards (including the storage, display, or sale of explosives or fireworks);

(z) any fire sale, bankruptcy sale (unless pursuant to a court order), or auction house operation;

(aa) any type of "flea market" or "tent" sale; and

(bb) any "second hand" store or Army, Navy, or governmental type "surplus store", except resale shops which merchandise and sell used products in a first class fashion; provided, however, that no goods or products may be sold or stored outside the Building;

(cc) any lumber yard or building supply business utilizing outside storage unless all sales are retain and all equipment and materials are covered by a roof and enclosed on at least one (1) side; provided this subparagraph (cc) shall not be applied to Home Depot Lowe's, Southerlands or other type of business approved by Declarant.

Written approval by Declarant of a particular use shall be conclusive evidence of compliance with this **Schedule 1** to the extent that such use is not a violation of any applicable federal, state and local laws, statutes, ordinances, rules and regulations, and by granting any such approval Declarant shall not be construed as making any representation, warranty or statement regarding whether such use complies or would comply in any respect with applicable laws or ordinances, or other legal requirements.

Section 16 **OWNER'S MAINTENANCE.** Each Owner and occupant of a Lot within the Commercial/Retail Land shall at all times be obligated to maintain his property and all Improvements thereupon as well as the area between the boundary lines of his Lot and the curb or edge of the pavement of the adjacent Streets, so as to keep same in a clean, sightly and safe condition and to conform with the requirements under applicable laws or ordinances, any Design Guidelines, any Landscaping Guidelines and any specific standards which the Board of Directors may adopt by resolution for the Commercial/Retail Land. Unless expressly assumed by the Association, an Owner's maintenance obligation shall include, but not be limited to, the maintenance of all visible exterior surfaces of all buildings and other Improvements, including fences; the prompt removal of all paper, debris, and refuse, the removal and replacement of dead and diseased trees and plantings; the repair, replacement, cleaning and relamping of all signs and lighting fixtures, the mowing, watering, fertilizing, weeding, replanting and replacing of all approved landscaping; and, during construction, the cleaning of dirt, construction debris and other construction-related refuse from Streets and storm drains and inlets. The responsibilities of the Owner of each Lot within the Commercial/Retail Land hereunder shall also include the obligation to maintain, repair and replace when necessary any public sidewalk along the front of the Lot and along the side on corner Lots, which is constructed either within the right-of-way of the adjacent Street or within an easement across the Lot, and the Street curb. In the event an Owner fails to maintain his Lot and such adjacent property as specified above, the Association shall have the right, but not the obligation, to enter upon the applicable Lot to perform the necessary work as more specifically set forth in **Section 8.4** of the Declaration.

Section 17 **DAMAGE AND DESTRUCTION OF IMPROVEMENTS.** Each Owner shall maintain, at their expense, casualty insurance on their Improvement within the Commercial/Retail Land in an amount not less than the replacement cost. In the event an Improvement shall be partially or entirely destroyed by fire or other casualty, such Improvement shall either be repaired and restored within a reasonable period of time or demolished and the Lot within the Commercial/Retail Land landscaped so that no damaged portion of the former structure remains visible. Subject only to the rights of the holder of a first Mortgage lien on a damaged or destroyed Improvements, the insurance proceeds from any insurance policy covering a damaged or destroyed Improvement shall be first applied to such repair, restoration or replacement of such Improvements, or to the demolition of such Improvements (including, without limitation, landscaping) of such Lot within the Commercial/Retail Land. Each Owner shall be responsible for the repair, restoration, replacement or demolition of the Improvement owned by such Owner pursuant to the terms of this Declaration. Any such repair, restoration or replacement shall (subject to advances and changes in construction techniques and materials generally used in such construction and then current generally accepted design criteria) be in accordance with the plans and specifications for the original construction of the Improvement unless otherwise approved by the Architectural Control Committee. If the proceeds of the insurance available to the Owner of a damaged Improvement are insufficient to pay for the cost of repair, restoration or replacement



following a casualty (or demolition and landscaping if the Improvements are to be demolished), the Owner of such Improvement shall be responsible for the payment of any such deficiency necessary to complete the repair, restoration, replacement or demolition.

Section 18 **NO MINERAL OPERATIONS.** No derrick or other structures designed for the use in boring for oil or natural gas or other minerals shall be erected, maintained, or permitted upon any Lot within the Commercial/Retail Land, nor shall any tanks be permitted upon any Lot within the Commercial/Retail Land. No portion of any Lot within the Commercial/Retail Land shall be used for the purpose of blasting, mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, sand, gravel or earth.

Section 19 **OUTSIDE STORAGE BUILDINGS.** Temporary structures may be used as building offices and other related purposes by Declarant or a builder within the Commercial/Retail Land. The Architectural Control Committee shall be entitled to review and approve or disapprove, without limitation, all outbuildings and storage structures located within a Lot. Any such outbuilding will be required to be constructed with material and design that is determined by the Architectural Control Committee to be architecturally and aesthetically compatible with the design of the Improvements located on the applicable Lot and other structures within nearby property.

*[END OF SCHEDULE 1]*