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Rutherford County Tennessee
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**DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS
FOR STONETRACE CENTER**

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (the "Declaration") is made this 16th day of June, 2021 by **VESTER WALDRON FAMILY LIMITED PARTNERSHIP**, a Tennessee limited partnership ("**VWFLP**") (hereinafter referred to as "**Declarant**").

WITNESSETH

WHEREAS, Declarant is the fee simple owner of that certain real property situate in the Town of Smyrna, Rutherford County, Tennessee, as more particularly described as follows:

See **Exhibit "A"** attached hereto (hereinafter referred to as the "**Subject Property**"); and

WHEREAS, Declarant intends that the Subject Property be developed, improved, occupied, used and enjoyed as a development to be known as Stonetrace Center (the "**Center**"), as conceptually depicted on the site plan attached as **Exhibit "B"** (the "**Site Plan**"), which shall be suitable for commercial development and other related purposes; and

WHEREAS, Declarant desires that the Subject Property shall be encumbered by these covenants, conditions, restrictions, easements and reservations;

NOW, THEREFORE, in consideration of the premises and provisions hereof, Declarant hereby declares that the Subject Property shall be and is hereby encumbered by and made subject to the covenants, conditions, restrictions, easements and reservations hereinafter set forth, to wit:

**ARTICLE I
DEFINITIONS**

For purposes of this Declaration, the following terms shall have the definitions and meanings as hereinafter set forth:

1.1 ACCESS DRIVES shall mean generally those driveways and curb-cuts (including related off-site improvements, if any) to be constructed within the Subject Property as depicted on the Site Plan. An Access Drive shall not be deemed to include drive aisles within parking areas on a Parcel, unless such drive aisles directly connect with another Parcel or a public right-of-way. For the avoidance of doubt, Access Drives shall be limited to those driveways identified as such on **Exhibit "B"**.

1.2 DECLARANT shall initially mean and refer to Vester Waldron Family Limited Partnership, as same may be revised pursuant to Article 12 hereof.

1.3 DECLARATION shall mean and refer to this Declaration of Easements, Covenants and Restrictions and all amendments and modifications hereto as are from time to time recorded in the Public Records of Rutherford County, Tennessee.

1.4 IMPROVEMENTS shall mean and refer to any man-made changes to the natural condition of the Subject Property including, and without limitation, structures of any kind (whether above or below the land surface), fences, walls, signs, sewers, lighting, drains, lakes waterways, roads, utilities, grading and landscaping.

1.5 OCCUPANT shall mean and refer to any person or organization which has occupied, purchased, leased, rented or is otherwise licensed or legally entitled to occupy and/or use any Parcel of land on the Subject Property (whether or not such right is exercised), as well as their respective successors and/or assigns.

1.6 OWNER shall mean and refer to one or more persons or entities who or which are alone or collectively the record owner of fee simple title to any Parcel of land within the Subject Property, including, without limitation, the Declarant, and all of their respective Occupants, tenants, lessees, and their successors and/or assigns.

1.7 PARCEL OR LOT shall mean and refer to any area within the Subject Property designated as a Parcel or Lot on the Site Plan attached as **Exhibit "B"**, together with any and all improvements thereon or that shall be subdivided by an Owner in accordance with and approved by the Smyrna Municipal Planning Commission. The terms "Parcel" and "Lot" may be used interchangeably.

1.8 PERMITTED and PROHIBITED USES shall mean those uses identified on **Exhibit "C"** hereto.

1.9 SUBJECT PROPERTY shall mean and refer to that certain real property located in the City of Smyrna, Rutherford County, Tennessee initially owned by the Declarant and more particularly described on **Exhibit "A"** attached hereto.

1.10 DISTRICT shall mean the Town of Smyrna and any other government authority or agency having or asserting jurisdiction, either concurrently or as a successor, with respect to matters concerning water usage, storage, conveyance or other surface water or storm water management issues.

1.11 STORM WATER MANAGEMENT SYSTEM shall mean the system described in Article 4 infra which is designed, constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity or quality of discharges.

1.14 COMMON AREA shall mean all Improvements (excluding buildings) located outside of buildings located within the Center such as drives, sidewalks, shared parking areas and

utility facilities, but only to the extent such Improvements are intended to benefit Owners or Occupants of other Parcels and are not intended for the sole use and enjoyment of the Owner upon whose Parcel such Improvements are located.

ARTICLE 2

OBJECTIVES AND PURPOSES

The covenants, conditions, restrictions, easements and reservations set forth in this Declaration are hereby imposed upon the Subject Property for the following objectives and purposes, to wit:

- (a) to ensure that the development of the Center will proceed pursuant to a common plan of development with consistent Access Drives and an interconnected Storm Water Management System;
- (b) to provide for the future management, administration, care, maintenance, regulation and preservation of the Storm Water Management System and the Access Drives within the Center; and
- (c) to impose certain restrictions on the use of Parcels within the Center.

ARTICLE 3

EFFECT OF DECLARATION

3.1 COVENANTS RUNNING WITH LAND. This Declaration and each and every one of the easements, covenants, conditions, restrictions and reservations contained herein are hereby declared to be, and shall hereafter continue as, covenants running with the title to those portions of the Subject Property upon which the same are hereby imposed as an encumbrance.

3.2 PROPERTY AFFECTED. This Declaration and the easements, covenants, conditions, restrictions and reservations set forth herein shall be binding upon, inure to the benefit of and constitute a burden upon all of the Subject Property in accordance with the terms set forth herein. Accordingly, as more particularly specified in this Declaration all Parcels of land within the Subject Property shall hereafter be owned, held, transferred, sold, conveyed, demised, devised, assigned, leased, mortgaged, occupied, used and enjoyed subject to and benefited and burdened by the terms and provisions of this Declaration and each of the easements, covenants, conditions, restrictions and reservations contained herein.

3.3 PARTIES AFFECTED. Except as hereinafter specifically provided, this Declaration shall be binding upon and inure to the benefit of all Owners of the Subject Property, including, without limitation, the Declarant, and all other persons having or claiming any right, title or interest in such property. Accordingly, each and every person or party who or which shall hereafter acquire, have or claim any right, title or interest in any Parcel of land within the Subject Property, whether by, through or under the Declarant or any subsequent Owner, shall, by virtue of the acceptance of any such right, title, interest or claim, whether by deed or other instrument, or by operation of law or otherwise, and whether voluntarily or involuntarily, be deemed to have acquired and accepted such right, title, interest or claim in or to any Parcel of the Subject Property subject to

and benefited and burdened by the easements, covenants, conditions, restrictions and reservations set forth in this Declaration.

ARTICLE 4

STORM WATER MANAGEMENT SYSTEM

4.1 INTENT; EASEMENT. Declarant has completed the construction of a common storm water retention pond, the "Common Storm Water Retention Pond", meeting the required quantity standards set by the Town of Smyrna in the designated area as shown on Exhibit "B". Each Parcel shall be burdened and benefitted with an easement, to the extent reasonably necessary, from the water quality structure or pond located on a Parcel and connecting to the Common Storm Water Retention Pond described on Exhibit "B" by means of storm water drainage lines or pipes to permit common storage of storm water. The easements shall include the right to install and to maintain all underground piping and drainage lines reasonably necessary to connect each water quality structure or pond to be located upon the Parcels to the Common Storm Water Retention Pond described on Exhibit "B", in locations reasonably approved by the Owner of the Parcel on which such underground piping or drainage lines are located, and the Owner of Lot 4 upon which that portion of the Common Storm Water Retention Pond is located and the Owners of Lot 4a and Lot 4b, do hereby grant to the Declarant a permanent, non-exclusive easement across said Lot 4a, Lot 4b and Lot 4 for purposes of Declarant's ongoing maintenance and replacement of the Common Storm Water Retention Pond. Each Owner shall construct or cause to be constructed, at its own cost and expense, a storm water quality structure or pond meeting the required quantity standards set by the Town of Smyrna on its own Parcel that ties into the Common Storm Water Retention Pond.

4.2 MAINTENANCE OF WATER QUALITY PONDS. Each Parcel Owner shall be obligated to maintain the storm water quality structure or pond on their Parcel in a first-class condition and state of repair, free of overgrowth and algae, and otherwise in strict compliance with all applicable regulations of the District. The enforcement of any breach of a Parcel Owner's obligations set forth in this Section 4.2 shall be governed by the provisions of Section 9.1 infra.

4.3 MAINTENANCE OF COMMON STORM WATER RETENTION POND. Following the initial construction of the Common Storm Water Retention Pond, the Declarant shall be obligated to maintain or cause to be maintained, subject to the maintenance reimbursement contribution described below, the Common Storm Water Retention Pond in a first-class condition and state of repair, free of overgrowth and algae, and otherwise in strict compliance with all applicable regulations of the District.

4.4. PARCEL COMMON STORM WATER RETENTION POND CONTRIBUTION. The Owner of each Parcel shall perpetually contribute towards the Declarant's reasonable costs and expenses for the maintenance costs attributable for the maintenance and repair of the Common Storm Water Retention Pond by way of paying the Declarant on or before January 31 of each year a fixed sum of \$0.02 per square foot of the total size of the Lot that comprises its Parcel ("Annual Parcel Contribution") subject to adjustment as hereinafter provided, in advance, commencing (payment for such partial first year calendar year) on the date that construction of vertical improvements commences upon such Parcel. The Annual Parcel Contribution shall be increased annually thereafter to an amount equal to 102% of the

Annual Parcel Contribution for the prior full calendar year. The net square foot area used to calculate the Annual Parcel Contribution for the Lot upon which the Common Storm Water Retention Pond is located upon, shall be calculated by subtracting the area that comprises the Common Storm Water Retention Pond (approximately 41,820), as shown on Exhibit B, from such Lot's square feet. Declarant may select and engage a professional management company to manage the expenses and collection of the contributions for the maintenance and repair of the Storm Water Management System. Notwithstanding the foregoing, the replacement of the Common Storm Water Retention Pond (and the costs thereof) shall be subject to the prior approval of the Owners using the same approval requirements of the Owners and Declarant as is required for an amendment under Section 10.2.

Provided further, the enforcement of any breach of a Parcel Owner's obligations set forth in this Section 4.4 shall be governed by the provisions of Section 9.1 *infra*.

ARTICLE 5

ACCESS; PARKING

5.1 ACCESS EASEMENTS. Declarant hereby declares and creates, for the benefit of the Owners and their tenants, occupants, customers and/or invitees, of all or any portion of the Subject Property, a non-exclusive and perpetual easement for pedestrian and vehicular (including without limitation tractor trailer delivery trucks) ingress, egress and access in common with others, over, upon and across the Access Drives and walkways located within the Subject Property. The Access Drive located on the front portion of Lot 2 and Lot 3, going from Needham Drive up to Lot 1, and running parallel to Sam Ridley Parkway; and depicted on Exhibit A as a "Private Road" being a "30' Wide Private Roadway & Public Utility Easement" shall not be used for parking purposes and no Owner or Occupant may construct or install parking spaces immediately adjacent to this Access Drive unless such spaces are separated from such Access Drive by curbing or some other barrier, it being the intent hereof that this Access Drive not be obstructed or congested with motor vehicles pulling into or out of parking spaces.

5.2 MAINTENANCE OF ACCESS DRIVES. Each Parcel Owner shall be obligated to maintain the Access Drives on their respective Parcel in first-class, good, clean condition and state of repair, and in strict compliance with all applicable regulations of the Town of Smyrna.

5.3 USE AND MODIFICATION OF ACCESS DRIVES. Notwithstanding the rights granted in this Article 5, no user of such rights shall interfere with, block, impede or otherwise impair the business operations on any Parcel or any access or traffic flow to or on any Parcel, unless agreed to in a separate written agreement between the Owners owning the Parcels sharing such access areas between such Parcels which are not shown as main Access Drives on Exhibit B. Provided, however, no Owner shall alter, relocate or obstruct access on any portion of the Access Drives without the prior written consent of the other Owners, except (i) in the event of an emergency, (ii) in the event that such Owner, upon the advice of its legal counsel, needs to temporarily close such Access Drives to prevent the public from acquiring any rights to same (and then only for such minimum period as shall be reasonably necessary), (iii) for repairs to such Access Drives, provided a reasonable alternative means of access is provided during such period of repair, or (iv) if required by any governmental authority.

5.4 NO CROSS PARKING EASEMENTS. There shall specifically be no cross parking rights or easements between the Parcels. All Parcels located within the Subject Property shall independently meet any governmental requirements with respect to minimum parking space requirements without utilizing or including any parking spaces or areas located on any other Parcel, unless agreed to in a separate written agreement between the Owners owning the Parcels sharing such parking spaces or areas. Each Owner shall have the right to use any means available to it, including the right to lawfully tow unauthorized vehicles and post signs regarding parking restrictions, to enforce its right to control the use of parking spaces upon its Parcel.

ARTICLE 6

UTILITY EASEMENTS

6.1 GENERALLY. Subject to the terms set forth herein, the Declarant hereby declares and creates for the benefit of each Owner and its tenants, occupants, customers and/or invitees of a portion of the Subject Property a non-exclusive, perpetual easement for the purposes of installing, using, maintaining, repairing and replacing required underground storm sewer lines, sanitary sewer pipes, irrigation pipes, water and gas mains, electric power lines, telephone lines, cable television and other communication lines and all other utility lines, wires, pipes, and conduits (collectively, “**Utility Lines**” and each individually, a “**Utility Line**”) which may from time to time be necessary or convenient to serve development of each Parcel, but only (a) within those portions of the Subject Property depicted as “Utility Easements” on Exhibit A attached hereto, and (b) to the extent that it is reasonably necessary for a Parcel Owner to construct such lines outside the boundaries of its Parcel; the location and manner of installation of such Utility Lines shall be subject to approval by the Owner of the burdened Parcel and provided further that all work in connection with the foregoing (i) shall not materially interfere with or diminish the utility service to the burdened Lot; (ii) shall be performed without cost or expense to the burdened Owner; (iii) shall have been approved by the provider of such service and the appropriate governmental or quasi-governmental agencies having jurisdiction; and (iv) shall be diligently pursued to prompt completion and not materially adversely impact the burdened Owner’s Lot or the use or operation thereof. It shall be reasonable for the Owner of a burdened Parcel to object to such Utility Line if the location of which is not located within ten (10) feet of the boundary line of such burdened Owner’s Parcel. Further, the Owner of the burdened Parcel shall have the right, at any time, to relocate any of the benefited Owners’ Utility Lines located on its Parcel upon thirty (30) days prior written notice to the benefited Owner; provided, however, that such relocation (A) shall not materially interfere with or diminish the utility service to the benefitted Parcel; (B) shall not reduce or unreasonably impair the usefulness or function of such Utility Line(s); (C) shall be performed without cost or expense to the benefitted Owner; (D) shall be completed using materials and design standards which equal or exceed those originally used; (E) shall have been approved by the provider of such service and the appropriate governmental or quasi-governmental agencies having jurisdiction; and (F) shall be diligently pursued to prompt completion and not materially adversely impact the burdened Owner’s Parcel or the use or operation thereof. Upon an Owner’s installation of any such Utility Line(s) and related facilities over another Owner’s Parcel, the benefited Owner shall, at its sole cost and expense, restore such area of the affected property to the condition that existed immediately prior to the date in which such work was performed.

ARTICLE 7

TEMPORARY CONSTRUCTION ACCESS

7.1 GENERALLY. The Declarant hereby declares and creates for the benefit of each Owner and its tenants, occupants, customers and/or invitees of a portion of the Subject Property a non-exclusive temporary construction easement over the property adjacent to such Owner's Parcel to the extent needed in accordance with good construction practices, but only during a period of construction on the Parcel, for the purpose of providing a temporary means of access for construction vehicles to and from the Parcel. All construction activities undertaken by Parcel Owner shall not interfere with, interrupt or affect the business activities conducted on another Parcel within the Subject Property. The Parcel Owner entering another Parcel shall be responsible, at its sole cost and expense, for restoring such area of the affected property to the condition that existed immediately prior to the date in which such work was performed. Notwithstanding the foregoing, an Owner utilizing the foregoing temporary construction easement shall do so on undeveloped Parcels to the greatest extent reasonably practicable to minimize any interference with the operations on a developed Parcel.

ARTICLE 8 **PARCEL MAINTENANCE**

8.1 OWNER MAINTENANCE RESPONSIBILITIES. The Owner of any Parcel within the Subject Property shall have the duty and responsibility, at its sole cost and expense, to keep its Parcel, its Improvements, including, without limitation, all buildings, improvements, driveways, roadways, parking areas, signs and landscaping located thereon and used in connection therewith, in a well-maintained, safe, clean and attractive condition at all times, consistent with other first-class developments within the generally vicinity of the Subject Property. Prior to construction on any Parcel, the Owner shall keep the Parcel seeded and mowed in an aesthetically pleasing condition (except during active construction) and strictly comply with requirements of the Town of Smyrna. With respect to any Parcel owned by more than one Owner, the foregoing obligations shall be joint and several as among such Owners.

8.2 RECONSTRUCTION.

(a) Casualty. In the event any of the Improvements in the Development are damaged by fire or other casualty (whether insured or not), the Owner upon whose Parcel such Improvements are located shall, subject to governmental requirements and/or insurance adjustment delays, immediately remove the debris resulting from such casualty and provide a sightly barrier, and within a reasonable time thereafter shall either (i) repair or restore the Improvements so damaged to a complete unit, such repair or restoration to be performed in accordance with all provisions of this Declaration, or (ii) erect other Improvements, such construction to be performed in accordance with all provisions of this Declaration, or (iii) demolish the damaged portion and/or the balance of such Improvements and restore the cleared area to either a hard surface condition or a landscaped condition. Such Owner shall have the option to choose which of the foregoing alternatives to perform, but such Owner shall be obligated to perform one (1) of such alternatives, provided, however, if any one or any portion of the Access Drives are damaged, option (iii) shall not be available to such Owner with respect to such Access Drives, and such Owner shall be obligated to restore the effected Access Drives. Such Owner shall commence the alternative elected within a reasonable time period and diligently pursue the same to completion.

(b) Eminent Domain. In the event the whole or any part of the Subject Property shall be taken by right of eminent domain or any similar authority of law (a "**Taking**"), the entire award for the value of the land and improvements so taken shall belong to the Owner of the property so taken or to such Owner's mortgagees or tenants, as their interest may appear, and no other Owner shall have a right to claim any portion of such award by virtue of any interest created by this Declaration. Any Owner of a Parcel, and its occupants, which is not the subject of a taking may, however, file a collateral claim with the condemning authority over and above the value of the land and any Improvements being so taken to the extent of any damage suffered by such Owner/occupant resulting from the severance of the land or improvements so taken if such claim shall not operate to reduce the award allocable to the Parcel taken. In the event of a partial Taking, the Owner of the portion of the Parcel so taken shall restore the Common Areas of the Parcel as nearly as possible to the condition existing prior to the Taking to the extent necessary to avoid interference with the remaining Common Areas and the operations of occupants within the Subject Property without contribution from any other Owner, and repair or raze any affected buildings.

ARTICLE 9

BREACH

9.1 In the event of a breach or threatened breach of this Declaration, Declarants, the Owners, their Occupants, lessees, of the Subject Property, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. The unsuccessful Party in any action shall pay the prevailing Party's reasonable costs and expenses, including reasonable, actually incurred attorneys' fees. In addition to all other remedies available at law or in equity, upon the failure of an Owner to observe and perform the covenants, obligations and conditions of this Declaration including, without limitation, the payment of the Annual Parcel Contribution set forth in Section 4.4 supra, imposed upon its Parcel as described herein, or to maintain and/or repair its portion of its Parcel or any other maintenance and repair obligation as required herein, within ten (10) days (unless such matter cannot be fully completed with such ten (10) day period, provided that the defaulting Party shall have commenced to cure within ten (10) business days of receipt of such notice, and diligently pursues completion thereof) following written notice thereof, the non-defaulting Party shall have the right to perform such maintenance and/or repair of items, as applicable, on behalf of such defaulting Party and be reimbursed by such defaulting Party upon demand for the reasonable, out of pocket costs actually incurred in connection therewith. Such non-defaulting Party will have the additional right to pursue all remedies available at law or in equity, including pursuit of an order issued by a court of competent jurisdiction compelling and requiring the defaulting Party to observe and perform the covenants, obligations and conditions of this Declaration. Such non defaulting Party may employ attorneys to pursue its legal rights hereunder, and, if it prevails before any court or agency of competent jurisdiction, the defaulting Party will be obligated to pay all expenses incurred by such non defaulting Party in enforcing this Declaration, including reasonable attorney's fees. Any unpaid amounts due hereunder and not paid within ten (10) days of receipt of the written invoice from the non-defaulting Party and the costs of collection (if any), shall be charged as a continuing lien against the defaulting Party's Parcel and such unpaid amounts shall accrue interest at the Agreed Rate until paid. As used herein, the term "**Agreed Rate**" shall mean the lesser of (i) the maximum rate allowed by law and (ii) four percent (4%) above the prime interest rate then published in the *Wall Street Journal*. The lien provided in this Declaration shall be subordinated to the lien of any bona fide security interest or device (including, but not limited to, any mortgage, deed of trust or sale and leaseback

arrangement) obtained by any defaulting Party upon such Owner's Parcel (or a refinancing thereof); provided, however, that such subordination shall apply only to amounts which have become due and payable prior to a sale or transfer of such land pursuant to or in lieu of foreclosure by the holder of such security interest. Such sale or transfer shall not relieve any portion of the defaulting Party's Parcel from the lien for any amounts thereafter becoming due. In addition, the defaulting Party shall defend, protect, indemnify and hold harmless the other Owner(s) and each of their lessees/occupants from and against all claims or demands, including any action or proceedings brought thereon, and all costs, losses, expenses and liability of any kind relating thereto, including reasonable attorney's fees and cost of suit, arising out of or resulting from its failure to maintain and/or repair all or a portion of its Parcel or any other maintenance and repair obligations as required herein. Additionally, the ground lessee(s) occupying any Parcel under any ground lease(s) shall be third party beneficiaries of this Declaration.

ARTICLE 10 **AMENDMENT**

10.1 AMENDMENT BY DECLARANT. Until the Declarant no longer owns any Parcel (the "Turnover Date"), the terms, provisions, covenants, conditions, restrictions and reservations set forth in this Declaration may be changed, amended or modified from time to time by the Declarant in its sole discretion and without requiring the joinder or consent of any person or party whatsoever, provided any such change, amendment or modification does not adversely affect any Owner's use of its Parcel, its financial obligations hereunder, or its rights, obligations and protections with respect to its Parcel or its rights (including, without limitation, easement rights) under this Declaration. Notwithstanding the foregoing, Declarant shall not have the right to modify the restrictions set forth on Exhibit "C" attached hereto without the unanimous consent of all Owners.

10.2 AMENDMENTS. The terms, provisions, covenants, conditions, restrictions and reservations as set forth in this Declaration may also be changed, amended or modified at any time and from time to time in writing by the Declarant (during (and only during) the time in which it owns any Parcel within the Subject Property) and the affirmative written consent or vote of Owners owning not less than seventy-five percent (75%) of the total square footage of all Parcels within the Subject Property; provided, however, (1) that any amendment to the Declaration prior to the Turnover Date, as set forth under Section 10.2, shall only be effective with the Declarant's express written joinder and consent and (2) that any amendment or modification increasing obligations or adversely impacting or affecting an Owner, including without limitation the rights, protections and easements granted hereunder, shall only be effective with such affected Owner's express written joinder and consent.

ARTICLE 11 **RESTRICTIVE COVENANTS**

The Subject Property shall be subject to the following restrictions, reservations and conditions which shall be binding upon each and every Owner, including the Declarant and its heirs, personal representatives, Occupants, tenants, invitees, successors and assigns, as follows:

11.1 LANDSCAPING. Landscaping on each Parcel, including, without limitation, the storm water drainage and retention features located on and serving only that Parcel shall be continuously maintained in a first-class, good, aesthetically pleasing condition by the Owner thereof. Owners shall maintain their landscaping by mowing and edging to prevent overgrowth and trees and shrubbery shall be maintained to prevent obstruction of roads and walkways. To the extent required by applicable Town of Smyrna requirements, all landscaped and grassed areas on each Parcel shall be watered by means of an automatic underground sprinkler system which is tied to the Town of Smyrna's claimed water system and which shall be employed so as to keep all vegetation in such condition as is consistent with the balance of the Center. Landscaping shall be installed prior to occupancy or completion of any buildings (as evidenced by a certificate of occupancy or its equivalent), whichever occurs first.

11.2 OBNOXIOUS OR OFFENSIVE ACTIVITY. No activity which is considered obnoxious or offensive by local ordinances shall be allowed upon the Subject Property, nor shall any use or practice be allowed which interferes with the peaceful possession and proper use and enjoyment of the Subject Property, nor shall any improper, unsightly, offensive or unlawful use be made of any Parcel or any Improvements thereon or of the Common Area, nor any part thereof, and all laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be observed. The use, enjoyment and occupancy of the Subject Property shall be in such a manner so as not to cause or produce any of the following effects discernible outside buildings located thereon or affect the adjoining property or any portion or portions thereof: noise or sound that is objectionable because of its unusual (i.e., above the applicable Town of Smyrna's noise ordinance levels) volume, duration, intermittent beat, frequency or shrillness in the context of businesses operating in a commercial retail center; smoke; noxious, toxic or corrosive fumes or gases; obnoxious odors; dust, dirt or fly ash; unusual fire or explosive hazards; or vibration. The normal activities surrounding construction of a commercial structure and the construction activities within the Center by the Declarant or the other Owners and the normal operation of any restaurants, fitness and other uses typically found in similar commercial retail centers (including, without limitation, retail outlets for motor fuels (to the extent permitted hereunder)) shall not be deemed to violate the prohibition contemplated herein.

11.3 GARBAGE AND TRASH. No trash, garbage or other waste material or refuse shall be placed or stored on any part of the Subject Property except in covered or sealed sanitary containers. All such sanitary containers must be stored within each building, buried underground, or placed within an enclosure or concealed by means of a screening wall of material similar to and compatible with that of the building. These elements shall be integrated with the concept of the building plan, shall be designed so as not to attract attention, and shall be located in the most inconspicuous manner possible.

11.4 STORAGE RECEPTACLES. No fuel tanks or similar storage receptacles may be exposed to view, and same may be installed only within an approved accessory building, within a screened area, or buried underground. Provided, this prohibition shall not apply to the temporary storage (and not for sale) of motor fuel for the purposes of fueling construction equipment during construction in the Center.

11.5 VEHICLES AND REPAIR. No inoperative cars, motorcycles, trucks or other types of inoperative vehicles shall be allowed to remain either on or adjacent to any Parcel for a

continuous period in excess of three (3) days; provided, however this provision shall not apply to any such vehicle being kept in an enclosure and not visible from the street or any neighboring Parcel.

11.6 TEMPORARY STRUCTURES. Other than professionally made items used for temporary promotional or sales events in connection with the otherwise permitted use and business being operated on such Parcel, no building or structure of a temporary character, including-trailers, tents and shacks shall be permitted in the Subject Property; provided, however, temporary improvements used solely in connection with the construction of permanent improvements shall be permitted so long as located as inconspicuously as possible and removed immediately upon completion of such construction.

11.7 COMPLETION OF CONSTRUCTION. After commencement of construction of any Improvements in the Subject Property, the Owner shall diligently prosecute the work thereon, to the end that the Improvements shall be completed no later than eighteen (18) months after commencement of construction thereof, subject to force majeure. The Owner of the Parcel on which Improvements are being constructed shall, to the extent reasonably possible, at all times keep public and private streets contiguous to the Parcel free from any dirt, mud, garbage, trash or other debris which might be occasioned by construction of its Improvements and shall, to the extent reasonably practicable, keep the Common Area free from obstruction for at least one-way vehicular traffic for the purposes of access, ingress and egress to and from the Center and to and from each Parcel.

11.8 EXCAVATION. No clearing or excavation shall be made except in connection with the construction, maintenance or repair of an Improvement; and upon completion thereof, exposed openings shall be backfilled, and disturbed ground shall be leveled, graded and seeded, as provided on the approved plans by the Town of Smyrna or other applicable governing authority having jurisdiction for landscaping.

11.9 STORAGE AND LOADING AREAS. Unless specifically approved in writing by Declarant, no materials, supplies or equipment (except during the construction of Improvements or during delivery and unloading) shall be stored in any area of any Parcel except inside a building, or behind a visual barrier screening such areas from the view of the adjoining Parcels and any street.

11.10 PERMITTED AND PROHIBITED USES. Each Parcel in the Center may be used for all uses permitted in the zoning district as governed by The Zoning Ordinance of Smyrna, Tennessee, unless expressly restricted by Exhibit "C", attached hereto and made a part hereof by this reference. Furthermore, the use and operation of the Center shall be subject to the restrictions set forth in Exhibit C.

11.11 COMPLIANCE WITH LAWS. Each Owner shall keep and maintain (or cause to be maintained) its Parcel and all parts thereof in full compliance with all applicable laws, ordinances and regulations of all federal, state, county and municipal authorities, including Title III of the Americans With Disabilities Act of 1990, as amended, any regulations promulgated thereunder and any similar state or local laws or regulations. Additionally, each Owner shall comply with (or cause to be complied with) any environmental law then in effect and the environmental state, condition and quality of its Parcel.

ARTICLE 12
MISCELLANEOUS PROVISIONS

12.1 CONSTRUCTIVE NOTICE AND ACCEPTANCE. Every person, corporation, partnership, limited partnership, trust, association, or other legal entity, who or which shall hereafter have, claim, own or acquire any right, title, interest or estate in or to any portion of the Subject Property, whether or not such interest is reflected upon the Public Records of Rutherford County, Tennessee, shall be conclusively deemed to have consented and agreed to each and every term, provision, covenant, condition, restriction and reservation contained or by reference incorporated in this Declaration, whether or not any reference to this Declaration is contained in the document or instrument pursuant to which such person, corporation, partnership, limited partnership, trust, association or other legal entity shall have acquired such right, title, interest or estate in the Subject Property or any portion thereof.

12.2 GOVERNING LAW. This Declaration and the interpretation and enforcement of the same shall be governed by and construed in accordance with the laws of the State of Tennessee.

12.3 CONSTRUCTION. The provisions of this Declaration shall be liberally construed so as to effectuate and carry out the objects and purposes specified in Article 2 of this Declaration.

12.4 ATTORNEYS' FEES. In the event that legal proceedings are instituted to enforce any of the provisions set forth in this Declaration, as amended or modified from time to time, or to enjoin any violation or attempted violation or default or attempted default of the same, the prevailing party in such proceeding shall be entitled to recover, from the losing party such reasonable, actually incurred attorneys' fees and court costs as may be awarded by the Court rendering judgment in such proceedings.

12.5 NO WAIVER. Failure by the Declarant or any Owner to enforce any term, provision, covenant, condition, restriction or reservation herein contained in any particular instance or on any particular occasion shall not be deemed a waiver of the right to do so upon any subsequent violation or attempted violation or default or attempted default of the same or any other term, provision, covenant, condition, restriction, easement or reservation contained herein.

12.6 CUMULATIVE RIGHTS AND REMEDIES. In connection with the enforcement of this Declaration, all rights and remedies of the Declarant and the Owners, to the extent provided herein, shall be cumulative, and no single right or remedy shall be exclusive of any other, and Declarant and the Owners, to the extent specifically provided in this Declaration, shall have the right to pursue anyone or all of such rights or remedies or any other remedy or relief which may be provided by law, whether or not expressly stated in this Declaration or otherwise.

12.7 EFFECT OF INVALIDATION. If in the course of an attempt to enforce this Declaration, any particular provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

12.8 NOTICE. Any notice required or permitted to be given pursuant to the provisions of this Declaration shall be in writing and shall be deemed to have been properly and timely delivered if such notice shall have been delivered by overnight express mail (which shall include Federal Express or United Parcel Service or any other nationally recognized overnight Courier

Service) or certified mail, return receipt requested and notices shall be effective upon receipt (as evidenced by return receipt if sent via mail). Rejection or refusal to accept will have the effect of receipt. The notices shall be delivered to the interested parties as follows:

(a) Notice to an Owner shall be delivered to the address of the applicable Owner as reflected in the tax records of Rutherford County, Tennessee.

(b) Notice to the Declarant shall be to its principal place of business which initially is: 125 A River Rock Boulevard, Murfreesboro, Tennessee 37128. Any change of Declarant's address documents as amendment to this Declaration and recorded in the public records of Rutherford County, Tennessee.

12.9 DURATION. The terms, provisions, covenants, conditions, restrictions or reservations set forth in this Declaration shall run with the land and shall continue and be binding upon the Declarant and the Declarant and upon each Owner from time to time of any Parcel or portion thereof and the respective successors and assigns and all other persons, parties or legal entities having or claiming any right, title or interest in the Parcels, by, through or under any of them, for a period of seventy-five (75) years from the date this Declaration is recorded among the Public Records of Rutherford County, Tennessee, after which time this Declaration and the easements, covenants, conditions, restrictions or reservations set forth herein, as the same shall have been changed, amended or modified from time to time, shall be automatically extended for successive periods of ten (10) years unless an instrument of termination executed by all Owners of Parcels located within the Subject Property is recorded among the Public Records of Rutherford County, Tennessee prior to the end of the initial term or any subsequent extension term of this Declaration.

12.10 ASSIGNMENT OF DECLARANT'S RIGHTS AND INTERESTS. The rights, obligations and interests of the Declarant under this Declaration may be transferred and assigned by the Declarant to any successor or successors, to all or part of the Declarant's interest in the Subject Property only by an express transfer, conveyance or assignment incorporated into a recorded deed or other instrument, as the case may be, with written notice thereof delivered to each Owner, transferring, conveying or assigning such rights, obligations interests to such successor. Notwithstanding the foregoing or anything contained herein to the contrary, in the event Declarant fails to assign its rights, obligations and interests as provided above, then immediately upon the Turnover Date, the Owner of the then largest Parcel in the Subject Project (other than the Owner of Lot 4, shown on Exhibit "B", unless expressly agreed to by such Owner of Lot 4 and written notice of such election is sent to the Owner of the then largest Parcel), shall automatically be deemed to have assumed such rights, obligations and interests of Declarant under this Declaration. Such assignment and assumption shall be deemed to automatically occur without any further action required by any party hereto.

12.11 INDEMNIFICATION. Any party who performs work on another's property shall promptly restore any portion of the property damaged or disturbed as a result of such work, and shall indemnify the Owner of the Parcel on which such work is performed against any loss, damage, claim, suit, cost and expense (including reasonable attorneys' fees) arising out of the work performed.

12.12 NO WARRANTIES. This Declaration is made for the purposes set forth in **Article 2** of this Declaration and the Declarant makes no warranties or representations, express or implied as to the binding effect or enforceability of all or any portion of the terms and provisions of or the easements, covenants, conditions, restrictions and reservations set forth in this Declaration, or as to the compliance of any of the same with public laws, ordinances and regulations applicable thereto.

12.13 NO DEFAULT. No default or violation of any of the terms of this Declaration, shall constitute the basis for cancellation or termination of this Declaration.

12.14 FUTURE UTILITY EASEMENTS. Notwithstanding anything in this Declaration to the contrary, but subject to the express terms and conditions set forth in Section 6.1 above as it relates to each individual Lot, Declarant shall have the right to enter into any utility easements for the benefit of the Center. In the event that any such utility easement is entered into subsequent to the initial conveyance of any Lot, then no such utility easement shall be created over such Lot without the consent of the Owner of such Lot. Without limiting the foregoing, no such utility easement shall: (a) increase the obligations of the owner of a Lot beyond any obligations of such Owner prior to such initial conveyance of a Lot; or (b) locate any such utility easement on a Lot in a manner that interferes with an Owner's development or its Lot, including without limitation any proposed placement of and construction of the building and related improvements on a Lot, nor prohibit in the easement area such other improvements, by way of example, but not in limitation thereof, such as landscaping, curbs, asphalt parking areas, irrigation and traffic control devices.

12.15 PLATTING. Notwithstanding anything in this Declaration to the contrary, but subject to any written lease or occupancy agreement with any occupant, Declarant shall have the right to plat the Subject Property or any portions thereof then owned by Declarant pursuant to and in accordance with applicable laws, statutes, codes, ordinances, rules, regulations, or orders of any governmental authority having jurisdiction over the Subject Property or any improvements constructed or located therein then owned by Declarant. In the event that any such platting shall take place subsequent to the initial conveyance of a particular Lot so conveyed, then any such subsequent platting shall be subject to the approval of the Owner of such Lot (and such Owner's successors and assigns, including mortgagees and all persons claiming an interest in such Lot by, through or under such Owner). Such platting shall be done at Declarant's sole cost and expense and at no additional cost to any subsequent Owner of a Lot. Further, no such platting shall: (a) increase the obligations of the Owner of a Lot beyond any obligations of such Owner prior to such platting; or (b) reconfigure the Lot or easements established herein in a manner that would adversely affect any Owner's use and enjoyment of their Lot. Furthermore, the Owner of each Lot may further subdivide its Lot as permitted and in accordance with Smyrna Municipal Planning Commission.

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IN WITNESS WHEREOF the Declarant has caused this Declaration to be made and executed as of the day and year first above written.

Signed, Sealed and Delivered in the presence of:

David V. Waldron

Signature

DAVID V. WALDRON

Printed Name

Jessica Tidwell

Signature

Jessica Tidwell

Printed Name

VESTER WALDRON FAMILY LIMITED PARTNERSHIP, a Tennessee limited partnership

By:

Gregory E. Waldron, President BVW, Inc., General Partner of Vester Waldron Family Limited Partnership

STATE OF TENNESSEE)

COUNTY OF RUTHERFORD)

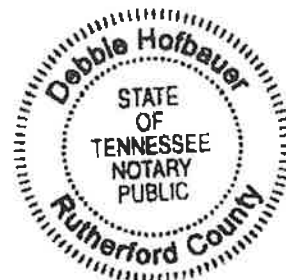
ss.

Before me, the undersigned authority, of the state and county aforesaid, personally appeared Gregory E. Waldron, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath, acknowledged himself to be the President of BVW, INC., the within named bargainor, ~~or a Corporation~~, and that he as such President executed the foregoing instrument () for the purposes therein contained, by signing the name of the name of the Corporation by himself as Such President.

WITNESS MY HAND and official seal at office in Murfreesboro, Tennessee, on this 16 day of June, 2021

My commission expires: 8-19-2024

Debbie Hofbauer
Notary Public



**JOINDER AND CONSENT OF MORTGAGEE TO
DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS**

KNOW ALL MEN BY THESE PRESENTS:

That Wilson Bank & Trust (the "Mortgagee"), whose address is PO Box 768 Lebanon, TN 37088, being the holder of that certain Mortgage and Security Agreement dated October 30, 2018, from Vester Waldron Family Limited Partnership, a Tennessee Limited partnership, recorded on 10/31/2018 in Record Book 1723, Page 407, Register's Office of Rutherford County, Tennessee (the "Mortgage"), hereby joins in and consents to the filing of the Declaration of Easements, Covenants and Restrictions, dated June 16, 2021 (the "Declaration").

Mortgagee

Wilson Bank & Trust

By: Andy Jakes

STATE OF TENNESSEE)

ss.

COUNTY OF RUTHERFORD)

Before me, the undersigned authority, of the state and county aforesaid, personally appeared Andy Jakes, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath, acknowledged himself to be Senior Vice President Wilson Bank the within name bargainer, or Lender, and that he as such Senior Vice President executed the foregoing instrument () for the purposes therein contained, by signing the name of the Lender by Andy Jakes as Senior Vice President.

WITNESS MY HAND and official seal at office in Murfreesboro, Tennessee, on this 17 day of ~~November, 2020~~ June, 2021

My commission expires: January 30, 2024 Leslie M. Pionke Notary Public

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EXHIBIT "A"
LEGAL DESCRIPTION OF SUBJECT PROPERTY
SEE ATTACHED

EXHIBIT "B"
STONETRACE CENTER
SITE PLAN
SEE ATTACHED

STONETRACE CENTER SITE PLAN, EXHIBIT B

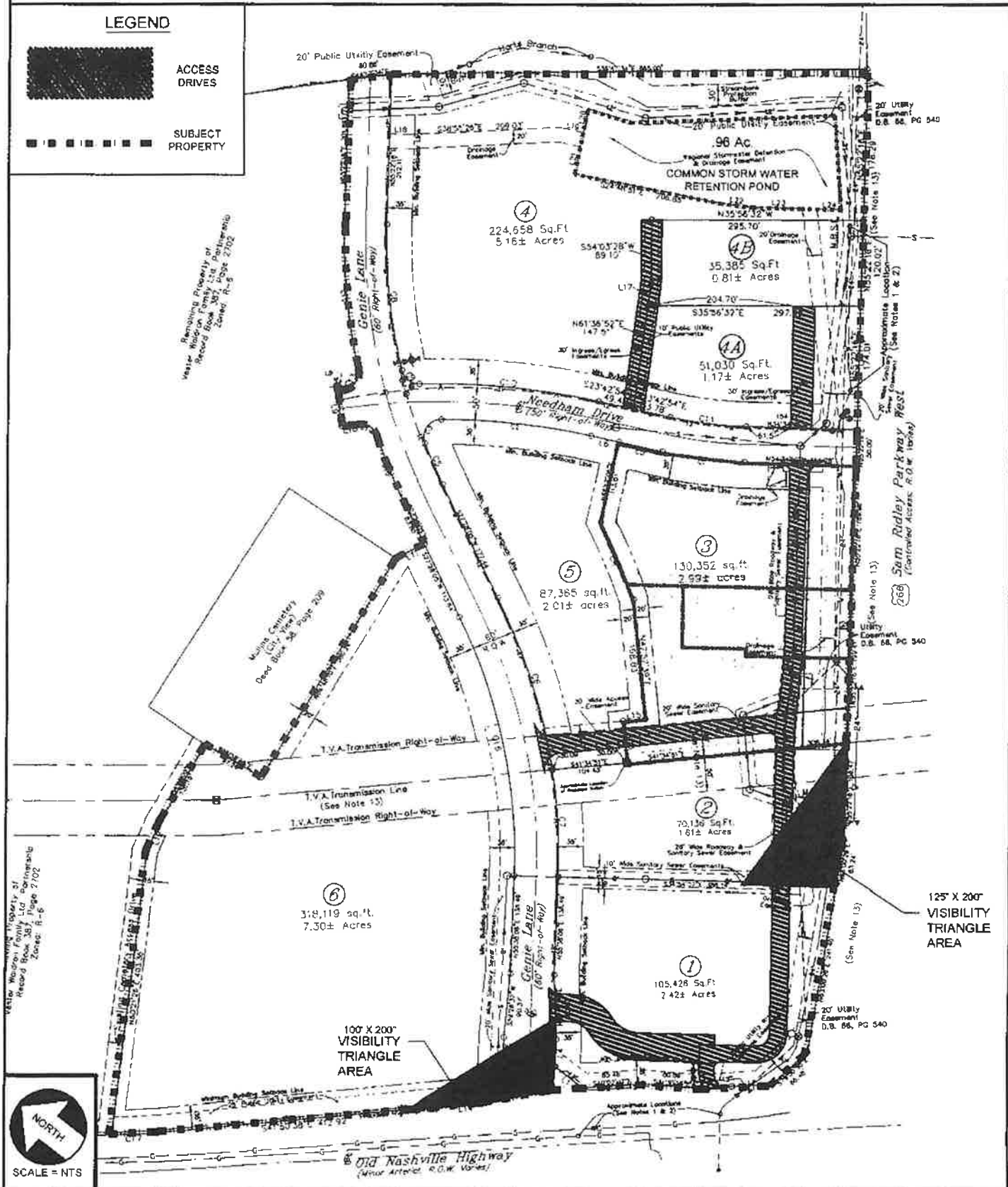


EXHIBIT "C"

PERMITTED, RESTRICTED AND PROHIBITED USES

1. Each Parcel in the Center may be used for any lawful use permitted by the applicable zoning code or ordinances of the governmental authority having jurisdiction over the Subject Property.

2. **PROHIBITED USES.** The following uses, as defined or listed in the Zoning Ordinance of the Town of Smyrna, are prohibited in the Stonetrace Center:

Other Housing

- Fraternity/Sorority
- Mobile Homes

Commercial

- Adult Cabaret
- Adult Entertainment Center
- Adult Motel
- Adults-only bookstore
- Adults-only motion picture theatre
- Amusements, commercial outdoor motorized
- Carnivals
- Convenience Store (other than on Lot 1)
- Drive-in theatre
- Gas Station or other retail outlet for motor fuel products (other than on Lot 1)
- Lumber and Building materials
- Mini Self Storage
- Mobile Home Sales
- Salvage and surplus merchandise

Industrial

- Manufacturing
- Mobile Home Manufacturing
- Warehousing
- Distribution
- Animal or poultry slaughter, stockyards, or rendering
- Automobile Dismantlers and recyclers
- Mobile home construction
- Paper mills
- Petroleum and coal products refining
- Primary metals distribution and storage
- Printer, Commercial
- Saw mills
- Scrap processing yard

- Scrap metal processors
- Scrap metal distribution and storage
- Secondary materials dealers
- Stone, Clay, Glass and Concrete Products

Transportation and other utilities

- Garbage or refuse collection service, except as part of the trash collection of the businesses being operated within the Subject Property.
- Refuse processing treatment and storage
- Landfill
- Taxicab dispatching station, except for rideshare services, such as Uber, servicing the patrons, employees, owners of otherwise permitted businesses being operated within the Subject Property.

Other

- Metal, sand, stone, gravel, clay, mining and related processing
- Temporary mobile recycling center

3. **SPECIFICALLY PROHIBITED USES.** Without the advance written consent of the Declarant, the following uses are prohibited in the Center without regard to existing definitions in the Smyrna Zoning Ordinance:

- A. Other than on Lot 1, establishments selling only or primarily alcohol, wine and beer for off premises consumption; establishments selling alcohol, wine and beer for on premises consumption, unless such sales are incidental to the sale of food, i.e., alcohol, wine and/ beer sales are 50% or less of the sales being conducted at such establishment.
- B. Establishments providing sexually oriented adult entertainment which may include offering massage or sauna services, but specifically excluding a Massage Envy operation or similar health spa, nail salon, or tanning operation or massage or sauna services used inside of a fitness or gym facility;

4. **ADDITIONAL USE RESTRICTION AND VISIBILITY AREA.** (A) Except for on Lot 1, no retail outlet for motor fuels products or convenience store and no advertising thereof, shall be constructed, maintained or operated on all or any portion of the Subject Property. As used herein, "retail outlet for motor fuels" construction shall include, by way of illustration but not by way of limitation, a mobile dispensary or delivery service, even if only temporarily located at the Subject Property. In avoidance of doubt the foregoing restriction prohibiting a retail outlet for motor fuels shall not apply to temporary storage (and not sale) of motor fuel for purposes of fueling construction equipment during construction of Center. (B) No sign or structures shall be erected on any part of the "Visibility Triangle Area" as shown on Exhibit B. The restrictions and limitations in this Paragraph 4 are for the express benefit of Lot 1 and may be enforced by, and may not be modified without the prior written consent of the Owner of Lot 1.