

After recording return to:

**DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS**
Township of West Windsor, New Jersey

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (this “**Declaration**”) is made and entered into this ____ day of _____, 2021, **ER/UDC WEST WINDSOR, LLC**, a Delaware limited liability company (“**Declarant**”), and **QUICKCHEK CORP.**, a New Jersey corporation (“**Tenant**”).

RECITALS

A. Declarant and Tenant are parties to that certain Ground Lease Agreement dated as of July 19, 2021 (the “**Lease**”). The Lease provides, among other things, for execution of this Declaration by Declarant and Tenant.

B. Declarant and Tenant are also parties to that certain Memorandum of Lease dated as of _____ (the “**MOL**”) and recorded on _____ in the Official Public Records of the Mercer County Clerk’s Office.

C. Declarant plans to subdivide the real property currently known and designated as Block 47, Lots 2, 3, 4, 5 and 6 in the Township of West Windsor described in the Lease and in the MOL, as described on **Exhibit A-1** attached hereto and incorporated by reference herein (the “**Center**”) into two parcels, identified as Proposed Lot 1 and Proposed Lot 2, more particularly shown on **Exhibit A-2** attached hereto and incorporated herein by this reference.

D. Proposed Lot 1 is hereinafter the “**QC Parcel**” and Proposed Lot 2 is hereinafter the “**Outlot**”.

E. Declarant desires to impose certain easements upon the Parcels (as hereinafter defined), and to establish certain covenants, conditions and restrictions with respect to said Parcels, for the mutual and reciprocal benefit and complement of all Parcels and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth. Tenant consents thereto on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the Declarant does hereby declare that the Parcels and all present and future owners and

occupants of the Parcels shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions hereinafter set forth in this Declaration, so that said Parcels shall be maintained, kept, sold and used in full compliance with and subject to this Declaration and, in connection therewith, Declarant agrees as follows:

AGREEMENTS

1. **Definitions.** For purposes hereof:

(a) The term “**Owner**” or “**Owners**” shall mean Declarant and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the real property covered hereby, whether by sale, assignment, inheritance, operation of law, trustee’s sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property. The term “**Outlot Owner**” shall mean the owner in fee simple of the Outlot.

(b) The term “**Parcel**” or “**Parcels**” shall mean each separately identified parcel of real property now constituting a portion of the Center subjected to this Declaration as shown on **Exhibit A-2** attached hereto and incorporated herein by this reference, and any future subdivisions thereof. Proposed Lot 1 and Proposed Lot 2 are as of the date hereof the two (2) Parcels comprising the Center.

(c) The term “**Permittees**” shall mean the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel, and/or (ii) such tenant(s) or occupant(s).

(d) The term “**Occupant**” shall mean any person or entity which shall from time to time be entitled to the use and occupancy of any portion of a Parcel under this Declaration under any lease, license or concession agreement or other instrument or arrangement under which the occupant acquires its right to such use and occupancy during the term of such lease, license or concession agreement.

(e) The term “**Site Plan**” shall mean that site plan of the Center and any Parcels within the Center and is attached hereto as **Exhibit A-2** and incorporated herein by this reference. Except as may be otherwise provided in this Declaration, the Site Plan is for identification purposes only.

2. **Easements.**

2.1 Grant of Reciprocal Access and Utility Easements; Parking.

Subject to any express conditions, limitations or reservations contained herein, Declarant, as the Owner of the Center and all Parcels therein and the Tenant, hereby declare that all Owners, Occupants and Permittees of the Center from time to time, shall be benefited and burdened by the following nonexclusive, perpetual and reciprocal easements appurtenant to the Parcels which are hereby granted, reserved and imposed upon the Parcels and all present and future Owners, Occupants and Permittees of the Parcels:

(a) A non-exclusive, perpetual, easement, right and privilege for the benefit of Owners, Occupants and Permittees of both Parcels for access, ingress and egress over all paved driveways, roadways, and walkways as presently or hereafter constructed so as to provide for the passage of motor vehicles and pedestrians between the Parcels, to and from all abutting private and public streets or rights of way furnishing access to such Parcels;

(b) A non-exclusive, perpetual, easement, right and privilege for the benefit of Owners Occupants and Permittees of both Parcels for access, ingress and egress, in, under and across all driveways,

roadways, parking areas and walkways as presently or hereafter constructed over and across the Parcels, for the purpose of installing, maintaining, repairing, modifying, upgrading, connecting to, and, if necessary, removing, and replacing utility lines to serve the Parcels (including water, sewer, communication, telephone, electric and gas) to serve the Parcels at locations approved by the Owner of the Parcel burdened by such utility lines (or in the case of the QC Parcel, for so long as the Lease remains in effect and Tenant is operating thereunder, Tenant), such approval not to be unreasonably withheld and subject to governmental approval. Any Owner or Occupant undertaking such work shall use its best efforts to cause the installation of such utility and services lines to occur prior to the paving of any easement and shall restore the easement to the same or a better condition as had previously existed prior to installation of the improvement at the cost of the party undertaking such work;

(c) A non-exclusive, perpetual easement right and privilege for the benefit of the Owners and Occupants of both Parcels for storm water management, including drainage and run off, over and across each of the Parcels, both on the surface and through any now existing or hereafter constructed underground or above-ground storm water management facilities, including detention basins located on the Parcels and intended to serve Parcels; and

(d) The foregoing easements shall exclude any parking areas on the Parcels and shall not apply to reciprocal parking. Both Occupants shall agree to encourage employees, invitees, Permittees and customers to only park on their respective Parcels. All Occupants and Owners shall agree to make reasonable effort to enforce this policy, but shall not tow, sticker or boot invitees, Permittees or customers without prior written notice to the respective Occupant and Owner.

2.2 **Reasonable Use of Easements.** The easements herein above granted shall be used and enjoyed by each Owner, Occupant, and its Permittees in compliance with law and in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Owner, Occupant, or its Permittees at any time conducted on its Parcel. No gate, barrier, or other obstruction shall be erected or permitted to remain over any portion of the Parcels and no use (including parking, standing or stacking of vehicles) shall be made of the Parcels which is inconsistent with or detrimental to the use for the benefit of the Occupants. The easements granted herein shall be used and enjoyed in such a manner so as not to unreasonably interfere with, obstruct, delay, suspend or close the conduct and operations of the Occupants or either Parcel, including without limitation, public access to and from said business, and the receipt or delivery of merchandise in connection therewith. Each Owner, Occupant, its Permittees, guests, customers, invitees and employees shall not park or allow vehicles to stand on any portion of the Parcel of the other Parcel Owner. Tractor-trailer trucks and fleet vehicles including but not limited to delivery service vehicles or other similar groups of vehicles entering or exiting the Parcels shall not be permitted to utilize the primary access points and driveways as a primary means of access or exit to or from the Parcels if such use would adversely impact the business on a Parcel. Garbage trucks shall be permitted on the easement areas for the purpose of servicing the Parcels.

3. **Maintenance.**

3.1 **General.** The Occupant of each Parcel shall maintain the same in a clean and neat condition and shall take such measures as are necessary to control litter or debris.

3.2 **Buildings and Appurtenances Thereto.** Each Owner and Occupant covenants to keep and maintain the building(s) and other improvements located from time to time on its respective Parcel in good order, condition and repair (including painting thereof) and pay all costs associated with the operation (including utility costs), maintenance and repair of such building(s). Once constructed, in the event of any damage to or destruction of a building on any Parcel, the Owner or Occupant of

such Parcel shall, at its sole cost and expense, with due diligence either (a) repair, restore and rebuild such building to its condition prior to such damage or destruction (or with such changes as shall not conflict with this Declaration), or (b) demolish and remove all portions of such damaged or destroyed building then remaining, including the debris resulting therefrom, footings and foundations, and otherwise clean and restore the area affected by such casualty to a level, graded condition. Nothing contained in **Section 3.2** shall be deemed to allow an Owner or Occupant to avoid a more stringent obligation for repair, restoration and rebuilding contained in a lease or other written agreement by which such Owner or Occupant is bound, or as may be required by law.

3.3 **Property Maintenance.** Except as otherwise set forth herein below, each Occupant covenants at all times during the Term hereof to operate and maintain or cause to be operated and maintained its respective Parcel in good order, condition and repair, including (without limitation) parking areas, drainage facilities, landscaped areas, driveways, roadways, walkways, light standards, curbing, paving, entrances and exits. Maintenance shall include, without limitation, repair and replacement of the sidewalks and the surface of the parking and roadway areas, removal of all snow/ice, salting as needed; removal of paper, debris and other refuse and sweeping all parking and road areas to the extent necessary to maintain the same in a clean, safe and orderly condition; electric to and repair and maintenance of light fixtures for the parking and drive areas; striping, lines, markings, directional signs, etc.; landscaping, mulch, etc.; electric to and maintenance of all illuminated pylon and directional signs; maintenance and repair of the storm water management facilities and performance of any and all such other duties as are necessary to maintain each Parcel in a clean, safe and orderly condition. Each Owner reserves the right to alter, modify, reconfigure, relocate and/or remove the building areas and other improvements on its Parcel, subject to the following conditions: (i) the reciprocal easements between the Parcels pursuant to **Section 2.1** shall not be closed or materially impaired without the prior written consent of all Owners and Tenant, which consent shall not be unreasonably withheld; (ii) any driveways, roadways, access ways and the number and location of curb cuts and the ingress and egress thereto, and to and from the Parcels and adjacent streets and roads as shown on the Site Plan, shall not be materially altered, modified, relocated, blocked and/or removed without the express written consent of all Owners and Tenant, which consent shall not be unreasonably withheld; and (iii) the same shall not violate any of the provisions and easements granted in **Section 2.**

3.4 **Lighting.** Parking lot lighting, pylon signage and directional lighting on each Parcel shall be separately metered to the building of the Occupant's respective Parcel and each Owner or Occupant shall be responsible for paying the cost of electricity and maintenance of its respective equipment on its respective Parcel. To the extent allowed by local code, each Owner or Occupant shall, at its sole cost and expense, adequately light its Parcel during its normal hours of operation (and in all events from dusk until 11:00 p.m., Eastern Time). Other than during its normal hours of operation, to the extent allowed by local codes, each of the Owners or Occupants shall provide adequate security lighting of the buildings located on its Parcel from dusk until dawn seven (7) days a week. If any Owner or Occupant requests that another Owner or Occupant keep its Parcel (or any portion thereof) illuminated at times other than as required above, then such other Owner or Occupant shall, to the extent permitted by Law, provide such additional lighting at the sole cost and expense of the requesting Owner or Occupant. The requesting Owner or Occupant shall reimburse the other Owner or Occupant for the cost and expense of such additional lighting within ten (10) days after submission of an invoice therefor. Invoices, if any, shall be submitted quarterly. Prior to commencement of construction of any building on the Outlot, Declarant shall cause the wiring of any existing lighting on the Outlot to be re-configured (if necessary) so that usage of electricity by such lighting is measured by an electrical meter on the Outlot, separately from any usage of electricity on the QC Parcel.

3.5 **Utility Lines.** The Owner of the Outlot shall be solely responsible for installing any utility lines serving the Outlot and shall install such lines at locations (including as necessary locations on the QC Parcel) that do not materially interfere with the use of the QC Parcel. Each Owner shall service, maintain, repair and replace, and pay the cost of any fees or charges in connection with the utility lines serving the improvements on its Parcel. If any utility line exclusively servicing any Parcel crosses another Owner's Parcel, such utility line shall be maintained by the party served by the utility line. During construction of any building on the Outlot, Declarant shall cause separate utility meters to be installed on the Outlot for all utilities for which utility meters are customarily used to measure usage, so that usage of such utilities on the Outlot is thereafter measured separately from any usage on the QC Parcel.

3.6 **Storm Water Management Facility Maintenance Contributions.** The Owner of each Parcel, including any successors and/or assigns, shall be responsible for maintenance and repair of the storm water management facilities located on its respective Parcel. In the event a storm water management facility must be shared between the two Parcels, the Occupant of the QC Parcel shall be responsible for maintenance and repair of the storm water management facilities it utilizes and the Owner of the Outlot shall share in these costs which shall be based on the proportionate square footage of its respective Parcel, compared to the sum of the total square footage of both Parcels. Shared maintenance costs shall include, without limitation, any fees and expenses relating to any inspections, testing or reporting required to comply with any applicable current or future state, federal or local laws, statutes, rules or regulations. Proposed Lot 1 is estimated to contain 60% of the total square footage and Proposed Lot 2 is estimated to contain 40% of the total square footage of both parcels. In the event the square footage of a Parcel is modified (increased or decreased), its respective percentage share of the costs associated with the maintenance of the storm water facilities shall be recalculated. Any modification of the square footage of the Parcels shall be approved in writing by Tenant. Such approval not to be unreasonably withheld. The Occupant of the QC Parcel shall invoice the Owner of Proposed Lot 2 for Proposed Lot 2's of the maintenance costs as incurred quarterly. Such invoice shall include evidence of the requesting Occupant's payment of the costs as well as a reasonable explanation of and documentation for each cost. Any such invoice shall be due and payable ten (10) days after receipt thereof. If any invoice is not paid when due, the amount due shall thereafter bear interest until paid at the rate of ten percent (10%) per annum or at the maximum rate permitted by law, whichever is less.

3.7 **Warranty.** Declarant shall warrant all site work construction against workmanship or design defects for a period of one (1) year from the completion of such work and warrant all landscaping for a period of one (1) year from instillation.

3.8 **Pylon Sign.** Each Owner of a Parcel (or its Occupant) shall have its own pylon sign(s) at the locations shown on the Site Plan attached hereto as Exhibit B. Each Owner (or its Occupant) shall be responsible for all costs and expenses relating to its respective pylon sign(s).

4. **Construction of Improvements.** Every building and the improvements now or in the future constructed on the Parcels, shall be constructed, operated and maintained in a manner consistent with other first class shopping centers located in Mercer County, New Jersey so that the same is in compliance with all applicable governmental requirements. In connection with any construction, reconstruction, repair or maintenance, each Owner and/or Occupant shall stage and/or store its materials on its own Parcel unless otherwise agreed.

5. Restrictions.

5.1 **Prohibited Uses.** It is expressly agreed that neither all nor any portion of the Center shall be used, directly or indirectly, for any of the uses, activities, businesses or operations as set forth on **Exhibit C** attached hereto and made a part hereof.

5.2 **Exclusive Uses.** The Owners and Occupants of the Parcels hereby covenant and agree that each Owner of and/or Occupants of a Parcel shall honor any exclusive use restriction applicable to the Owner and/or Occupants of the Parcels, provided such exclusive use restriction does not conflict with the use of an Owner or Occupant then being conducted on such Owner's Parcel.

5.3 **Outlot Development.** If the Outlot Owner elects to develop the Outlot, the following provisions of this Section 5.3 shall apply: the Outlot Owner shall procure all building permits and other permits and approvals required for the development of the Outlot ("**Outlot Development**"). Outlot Owner shall pay for all costs and expenses associated with the Outlot Development, including costs of restoration and repair of any portions of the QC Parcel including without limitation the parking and driveway areas, as may be necessary or appropriate. Prior to commencing construction on the Outlot, Outlot Owner shall provide to Tenant no less than thirty (30) days' written notice of the expected commencement of construction. Outlot Owner shall not suffer or allow any parking of vehicles, staging of construction materials or other use of the QC Parcel at any time prior to or during construction except with the prior written consent of Tenant which Tenant may withhold in its sole and absolute discretion if such parking, staging or use would adversely affect Tenant's business or operations. In connection with the Outlot Development, Outlot Owner will comply with the following construction criteria:

(i) Outlot Owner shall perform, or cause to be performed, the Outlot Development in a good and workmanlike manner and in compliance with all applicable laws, ordinances, rules and regulations of all governmental agencies and authorities having jurisdiction over such construction.

(ii) Outlot Owner shall take all actions necessary to avoid any disruption of Tenant's business. Outlot Owner agrees to clean, as needed, any debris which is caused by the construction of the Outlot Development and to repair, as needed, any damage to the QC Parcel caused by the construction of the Outlot Development, and maintain continuous unobstructed access to McGetrick Lane, Southfield Road, and Princeton-Hightstown Road.

(iii) Outlot Owner shall take all actions so that any planned utility interruptions are scheduled in advance with Tenant's local and corporate management, that such planned interruptions will take place so as to minimize interruption with Tenant's business.

(iv) Outlot Owner covenants to indemnify, defend and hold harmless Tenant from and against all claims and all costs, expenses, and liabilities incurred in connection with any action or proceeding brought thereon, arising from or as a result of any accident, injury, loss, or damage whatsoever caused to any natural person, or to the property of any person alleged to have occurred in connection with the performance of the work for the Outlot Development, except to the extent the same arises out of the negligence or willful misconduct of the Tenant or any one claiming by, through or under Tenant.

5.4 **Outlot Use.** No buildings constructed on the Outlot may be used for any purpose that is a prohibited use as set forth on **Exhibit C** or would violate the restrictive covenant set forth in Section 17 of Tenant's Lease.

6. **Insurance.** Throughout the Term of this Declaration, each Owner and Occupant shall maintain or cause to be maintained commercial general liability insurance with coverage for premises/operations, products/completed operations, contractual liability (including contractual liability arising under the indemnity contained in **Section 2.2** above) and personal/advertising injury, against all claims, demands, or actions for injury, death and property damage. Said insurance shall be carried by a reputable insurance company or companies qualified to do business in the State of New Jersey and having an A.M. Best rating of A-VII or better, in an amount equal to not less than the greater of (i) **\$1,000,000.00** each occurrence and **\$2,000,000.00** general aggregate or (ii) the amounts required under each Occupant's lease. Each Owner and/or Occupant of a Parcel shall at all times maintain or cause to be maintained all-risk fire and casualty insurance, issued by a reputable insurance company or companies qualified to do business in the State of New Jersey, having an A.M. Best rating of A-VII or better, and naming such parties as additional insureds or loss payees, and containing such standard mortgagee clauses, as the other Owners shall reasonably require from time to time. The all-risk fire and casualty insurance to be carried by each Owner and/or Occupant shall have limits no less than the full replacement value of the buildings and other improvements and personal property on the applicable Parcel. All such insurance shall name each Parcel Owner and Declarant (if Declarant is a Parcel Owner) and each Occupant of a Parcel as additional insureds and include provisions denying to the insurer subrogation rights against the other parties to the extent such rights have been waived by the insured prior to the occurrence of damage or loss. Each Owner and Occupant hereby waives any rights of recovery against the Parcel Owner and/or Occupant, its directors, officers, employees, agents and tenants and occupants for any damage or consequential loss covered by said policies (or that would have been covered by such policies had the same been procured and maintained as required in this subsection (a)), against which such Owner and/or Occupant is protected by insurance, to the extent of the proceeds payable under such policies (or that would have been payable under such policies had the same been procured and maintained as required in this subsection (a)), whether or not such damage or loss shall have been caused by any acts or omissions of the other Owner and/or Occupant or its directors, officers, employees, agents, tenants or occupants. The Owner agrees from time to time to negotiate in good faith to adjust the policy limits and benefits for the foregoing described insurance to reflect changes in the cost of living and commercial insurance standards.

7. **Taxes and Assessments.** Each Owner shall pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency with respect to its Parcel. All Occupants of such Parcel shall pay their pro rata share of such taxes, assessment, or charges, as determined by such Parcel Owner.

8. **No Rights in Public; No Implied Easements.** Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Parcels or the Center. No easements, except (i) those expressly set forth in **Section 2**, and (ii) easements for the exercise of the self-help remedy expressly provided for hereinbelow, shall be implied by this Declaration.

9. **Remedies and Enforcement.**

9.1 **All Legal and Equitable Remedies Available.** In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

9.2 **Self-Help.** In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Declaration within thirty (30) days following written notice thereof by an Owner (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such

30-day period and thereafter diligently prosecutes such cure to completion), any Owner shall have the right to perform such obligation contained in this Declaration on behalf of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by JP Morgan Chase Bank, N.A. (its successors or assigns), plus five percent (5%), not to exceed the maximum rate of interest allowed by law (the “**Interest Rate**”). Notwithstanding the foregoing, in the event of (i) an emergency (which shall include, without limitation, the failure to remove snow and ice from a driveway in a manner that impairs the operation of the businesses located on the Parcels), (ii) blockage or material impairment of the easement rights, an Owner may immediately cure the same and be reimbursed by the other Owner upon demand for the reasonable cost thereof together with interest at the Interest Rate.

9.3 **Lien Rights.** Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorneys’ fees awarded to any Owner (in connection with the exercise of its rights set forth in **Sections 9.1 and/or 9.2** above) in enforcing any payment in any suit or proceeding under this Declaration shall be assessed against the defaulting Owner in favor of the prevailing party and shall constitute a lien (the “**Assessment Lien**”) against the Parcel of the defaulting Owner until paid, effective upon the recording of a notice of lien with respect thereto in Mercer County, New Jersey; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens recorded in Mercer County, New Jersey, prior to the date of recordation of said notice of lien, and (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien. All liens recorded subsequent to the recordation of the notice of lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of lien was recorded, the party recording same shall record an appropriate release of such notice of lien and Assessment Lien.

9.4 **Remedies Cumulative.** The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

9.5 **No Termination For Breach.** Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee’s sale, or otherwise.

9.6 **Irreparable Harm.** In the event of a violation or threat thereof of any of the provisions of **Sections 2 and/or 5** of this Declaration, each Owner agrees that such violation or threat thereof shall cause the non-defaulting Owner and/or its Permittees to suffer irreparable harm and such non-defaulting Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of **Sections 2 and/or 5** of this Declaration, the non-defaulting Owner, in addition to all remedies available at law or otherwise under this Declaration, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of **Sections 2 and/or 5** of this Declaration.

10. **Term.** The easements, covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in Mercer County, New Jersey, shall remain in full force and effect for a period of seventy-five (75) years and shall automatically be renewed for successive fifteen (15) year periods (“**Term**”), unless this Declaration is modified, amended, canceled or terminated by the written consent of all then record Owners in accordance with **Section 11.2** hereof.

11. **Miscellaneous.**

11.1 **Attorneys' Fees.** In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

11.2 **Amendment.** Subject to the restrictions set forth in Section 11 above, the Owners agree that the provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners and Tenant (for the term of Tenant's Lease), evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in Mercer County, New Jersey.

11.3 **Consents.** Wherever in this Declaration the consent or approval of an Owner or Tenant is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon.

11.4 **No Waiver.** No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

11.5 **No Agency.** Nothing in this Declaration shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

11.6 **Covenants to Run with Land.** It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

11.7 **Grantee's Acceptance.** The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

11.8 **Severability.** Each provision of this Declaration and the application thereof to the Parcels are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration. In the event the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership the Parcels by the same person or entity shall not terminate this Declaration nor in any manner affect or impair the validity or enforceability of this Declaration.

11.9 **Time of Essence.** Time is of the essence of this Declaration.

11.10 **Entire Agreement.** This Declaration contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

11.11 **Notices.** Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other party. The notice addresses of the Owners are as follows:

Declarant: ER/UDC West Windsor, LLC
250 Miron Drive
Southlake, TX 76092
Attn: William W. McGuire

With Copy to: Jeffrey B. Berg, Esq.
470 Valley Road
Atlanta, GA 30305

Tenant: QuickChek Corp.

3 Old Highway 28

Whitehouse Station, NJ 08889

Attn: Real Estate Dept.

11.12 **Governing Law.** The laws of the State in which the Parcels are located shall govern the interpretation, validity, performance, and enforcement of this Declaration.

11.13 **Estoppel Certificates.** Each Owner, within twenty (20) day of its receipt of a written request from the other Owner(s), shall from time to time provide the requesting Owner, a certificate binding upon such Owner stating: (a) to the best of such Owner's knowledge, whether any party to this Declaration is in default or violation of this Declaration and if so identifying such default or violation; and (b) that this Declaration is in full force and effect and identifying any amendments to the Declaration as of the date of such certificate.

11.14 **Bankruptcy.** In the event of any bankruptcy affecting any Owner or occupant of any Parcel, the parties agree that this Declaration shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

11.15 **Amendments.** This Declaration may be amended by, and only by, a written agreement signed by the Owners of all of the Parcels comprising the Center and shall be effective only when recorded in the real estate records of the County in which the Center is located.

11.16 **Mortgages.** The parties to this instrument agree it is to be superior to any existing or future mortgage on any and all Parcels comprising the Center. To that end, the Owner of a Parcel to this Declaration encumbered by a mortgage at the time of recording this Declaration shall obtain a subordination of such mortgage.

11.17 **Non-Merger.** The easements, rights and obligations granted and created by this Declaration are for the mutual benefit and protection of the present and future owners of the Parcels, and, if there should be at any time common ownership of the Parcels, then it is the intention of the parties hereto that there shall be no merger of such easements, rights and benefits and such obligations, restrictions and burdens into the respective fee estate, but rather such easements, rights, benefits, and such obligations, restrictions and burdens shall be separately preserved for the benefit of all future Owners of the Parcels, unless a written termination by a benefitted Owner is recorded.

11.18 **Compliance with Law.** Each Parcel shall be owned and operated in compliance with law and in compliance with all regulations issued by any governmental authority having jurisdiction over the Property.

11.19 **Counterparts.** This Declaration may be executed in one or more counterparts which when taken together shall constitute a single instrument. This Declaration shall not be effective until executed and delivered by the parties hereto, and the Declaration recorded in the real property records.

11.20 **Indemnification.** Each Owner and Occupant of a parcel hereunder (“Indemnitor”) shall indemnify and hold the Owners and/or Occupants of the Center (“Indemnitee”) harmless from and against all claims, liabilities and expenses (including reasonable attorneys’ fees) relating to accidents, injuries, loss, or damage of or to any person or property arising from the negligent, intentional or willful acts or omissions of the Indemnitor, its contractors, employees, agents, or others acting on behalf of such Indemnitor.

[Signatures on following page]

EXHIBIT A-1

**LEGAL DESCRIPTION
FOR THE CENTER**

DRAFT

EXHIBIT B
PYLON SIGN LOCATIONS

EXHIBIT C
PROHIBITED USES

1. Funeral establishment or mortuary.
2. Automobile sale, leasing, repair or display establishment or used car lot, including body repair facilities.
3. Auction or fire or bankruptcy sale.
4. Pawn shop.
5. Off-track betting (provided that state sponsored lottery tickets shall not be prohibited);
6. Refinery, any assembly or manufacturing operation which would be permitted only in a manufacturing or industrial zone, or any distillation, smelting, industrial, or any agricultural, drilling or mining operation.
7. Adult bookstore or facility selling or displaying pornographic books, literature, or videotapes (materials shall be considered "adult" or "pornographic" for such purpose if the same are not available for sale or rental to children under 15 years old because they explicitly deal with or depict human sexuality), massage parlor.
8. Any residential use, including, but not limited to living quarters, sleeping apartments or lodging rooms.
9. Unemployment agency, service or commission.
10. Bingo or similar games of chance, but lottery tickets and other items commonly sold in retail establishments may be sold as an incidental part of business.
11. So called "head shop" which sells drug paraphernalia.
12. Car wash, car repair or car rental agency.
13. Second hand store, auction house, or flea market.
14. Trailer court, mobile home park, junk yard, stock yard or auto storage yard (except that this provision shall not prohibit the temporary use of construction trailers during any periods of construction, reconstruction or maintenance).
15. Animal raising operation and/or kennel or dog pound (other than pet shops and veterinarians).
16. Truck terminals; commercial excavation of building or construction materials; distillation of bones; dumping, disposal, incineration or reduction of garbage, sewage, offal, dead animals or refuse; fat rendering; stockyard or slaughter of animals; refining of petroleum or its products; smelting of iron, tin, zinc or other ores.
17. Any use that emits or results in an obnoxious odor, noise or sound which may constitute a public or private nuisance; provided that this provision shall not prohibit the reasonable emanation of cooking odors from any permitted restaurants.
18. Dumping, disposing, incineration or reduction of garbage (exclusive of dumpsters located in the rear of any building).
20. Central laundry or laundromat; provided, however, that this prohibition shall not be applicable to on-site service oriented to pickup and delivery by the ultimate customer, including normal supporting facilities, as the same may be found in retail shopping districts in the metropolitan area where the Center is located.

