

**DECLARATION OF
EASEMENTS, COVENANTS
AND CONDITIONS**

Westgate Commercial Center

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DECLARATION OF EASEMENT, COVENANTS
AND CONDITIONS

Westgate Commercial Center Subdivision

This Declaration of Easements, Covenants and Conditions (hereinafter the "Declaration") is made this ___ day of April, 1998 by Trails Down, LLC, a Colorado limited liability company, and Schrader Properties, LLC, a Colorado limited liability company (the "Declarant").

ARTICLE 1 - DEFINITIONS

1.1 Declarant is the owner of real property known as Westgate Commercial Center Subdivision, a subdivision in the Town of Windsor, County of Larimer, State of Colorado, according to the plat thereof (hereinafter the "Plat") recorded in the office of the Clerk and Recorder of Larimer County, Colorado on September 19, 1997 at Reception No. 97062048. The property which is initially subjected to these covenants is that portion of the Westgate Commercial Center Subdivision except Lot 5 and Tract A, but including Lots 1 through 4 and Tracts B, C and D (the "Property").

1.2 Declarant plans to develop the Westgate Commercial Center as an integrated mixed commercial use project substantially in accordance with the preliminary site plan approved by the Town of Windsor as the site plan may subsequently be changed by amendments approved by the Town of Windsor during the course of the development of Westgate Commercial Center (hereinafter the "Site Plan"). It is Declarant's intent that all of the improvements constructed on the Property shall be compatible with each other as to design and use so as to create an architecturally and aesthetically pleasing and attractive, well planned and maintained, high quality commercial project.

1.3 Declarant is adopting this Declaration in order to facilitate the development of Westgate Commercial Center in accordance with Declarant's plans. This Declaration provides a framework for establishing and maintaining the Common Areas, ensuring the implementation of quality architectural standards and establishing a mechanism for the administration of the Westgate Commercial Center Project and allocation of the costs incurred in connection therewith.

1.4 This Declaration prohibits use of the Property for residential purposes. Therefore, pursuant to the terms of § 38-33.3-121, Colorado Revised Statutes, the Colorado Common Interest Ownership Act shall not apply to the Property or to the Westgate Commercial Center project established thereon.

1.5 The terms and provisions set forth or recited in this preamble are intended to be a substantive part of this Declaration and may be enforced as such.

ARTICLE 2 - DEFINITIONS

The sections in this Article define words and phrases which, as used in this Declaration, have the meaning set forth below. Other terms in this Declaration may be defined in specific provisions herein and shall have the meaning assigned by such definitions. Defined words and phrases are indicated herein by capitalizing the first letter of a defined word or the first letter of each word in a defined phrase.

2.1 Annual Assessment means the Assessment levied by the Association pursuant to an Annual Budget as provided in Section 8.3.

2.2 Annual Budget shall mean the Annual Budget to be developed by the Board, as provided in Section 8.2.

2.3 Architectural Standards Committee or Committee shall refer to the Architectural Standards Committee established in Article 4 of this Declaration.

2.4 Articles shall mean the Articles of Incorporation for the Association as filed with the Colorado Secretary of State and any amendments that may hereafter be made to those Articles from time to time.

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2.5 Assessments shall mean all assessments made by the Association against Lots in Westgate Commercial Center as provided in Article 8 below. Assessments shall include Annual Assessments, Special Assessments and Remedial Assessments.

2.6 Association shall mean the Westgate Commercial Center Association, a Colorado non-profit corporation.

2.7 Board of Directors or Board shall mean the Board of Directors of the Association.

2.8 Clerk and Recorder shall mean the Clerk and Recorder of Larimer County, Colorado.

2.9 Common Area Improvements shall mean all improvements made on the Common Areas which are intended to be used by, and for the benefit of, all Owners, Tenants and Users. Common Area Improvements shall include all utility lines and other utility facilities; curb cuts and access ways connecting to the Common Area for ingress, egress and internal circulation; curb, gutter and sidewalks; flatwork, asphalt pavement, striping and other parking improvements.

2.10 Common Areas shall mean those tracts or other portions of the Property, which are owned by the Association or otherwise may be designated as Common Areas for the benefit of all Owners, Tenants and Users of the Westgate Commercial Center Project. Common Areas shall specifically include Roads, Streets and Detention Facilities and Landscape Areas.

2.11 Common Expenses shall mean all expenditures made and liabilities incurred by the Association in performing its duties under this Declaration, including but not limited to (i) all expenses declared to be Common Expenses by this Declaration; (ii) all other expense of administering, servicing, conserving, managing, maintaining, repairing and replacing the Common Area Improvements; (iii) the cost to maintain and repair the Roads and Streets, Detention Facilities and Landscape Areas; (iv) the cost of all insurance maintained by the Association pursuant to the Declaration; (v) the cost of maintaining, repairing and operating street lighting which lights the Roads and Streets and is located on any tract upon which a Road or Street is located; and (v) any other expenditures which the Board of Directors deems to be a Common Expense.

2.12 Declarant shall mean Schrader Properties, LLP, a Colorado limited liability partnership, and Trails Down, LLC, a Colorado limited liability company.

2.13 Declaration shall mean this Declaration of Easements, Covenants and Conditions, Westgate Commercial Center.

2.14 Detention Facilities shall mean that detention pond located on Tract D, as well as any storm drainage improvements servicing the detention pond or otherwise serving any portion of the Property.

2.15 Expansion Property shall mean the property identified as Lot 5, Tract A and the March Property.

2.16 First Mortgage shall mean a real estate mortgage, deed of trust or other encumbrance of a Lot to secure the performance of an obligation that has first and paramount priority under applicable law, subject only to real property ad valorem taxes and other governmental assessments and liens.

2.17 Landscape Area shall mean those areas which are maintained by the Association, including all landscaped areas within Tract D (together with any landscaped portion of the right-of-way of Highway 392 located north of Tract D), as well as other Common Area landscaping which is accepted for maintenance by the Association in the future. Landscape Area shall not include Lot Landscape Area, except to the extent that any Lot Landscape Area is not maintained by any adjoining owner.

2.18 Longview Drive or Royal Vista Drive shall mean the road area located on Tract B, together with any extension of that road which may be subjected to this Declaration in the future.

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2.19 Lot shall mean a lot or Tract as platted and designated on the Plat (including any future subdivision or resubdivision approved by the Town of Windsor, Colorado) (excluding tracts owned by the Association); provided that if any platted lot is divided so that a portion of the lot is owned by an Owner in conjunction with all or a portion of an adjoining lot and the other portion of the lot is owned by another Owner separately, or in conjunction with all or part of the other adjoining lot, than an entire property so held under one ownership shall be a Lot for the purpose of this Declaration. If a platted Lot is divided as described above, the Owners of the Lot shall provide in the deed that divides the Lot how voting rights attributable to the platted Lot shall be divided. If such provision is not made in the deed, it shall be made in another Supplemental Document executed by all Owners of the subdivided platted Lot.

2.20 Lot Area shall mean the gross area of any Lot and shall be determined from the plat creating such Lot.

2.21 Lot Landscape Area shall mean landscaped areas within dedicated Road rights-of-way or located within tracts on the Property which are intended primarily for Road purposes, such as Tracts B and C. In accordance with Article 9, it shall be the obligation of each Lot Owner to maintain and care for landscaping between that Owner's Lot and the nearest edge of any Road adjoining that Owner's Property. Any center or median landscaping shall be treated as Landscape Area maintained by the Association. Maintenance of any sidewalks within the Lot Landscape Area shall be the obligation of the adjoining Owner. Maintenance of curbs and gutters in the Lot Landscape Area shall be the obligation of the Association.

2.22 Lot 5 shall mean the property defined as Lot 5 of the Westgate Commercial Center Subdivision, as shown on the Plat, which lot has not been included as a portion of the Property subject to this Declaration, but which property may be included as a portion of the Property in accordance with Article 11.

2.23 March Property shall mean the property south of Tract A, which is currently owned by Edna G. March as Trustee of the Edna G. March Revocable Trust, and is described in that deed recorded at Reception No. 91003440. The March Property is not subject to this Declaration, but may be included as a portion of the Property in accordance with Article 11.

2.24 Member shall mean a Person who holds a membership in the Association.

2.25 Owner shall mean the Person or Persons who are the owners of record of the individual portions of the Property in separate ownership.

2.26 Person shall mean a natural person, corporation, limited liability company, partnership trust or any other entity recognized as a person under the laws of the State of Colorado.

2.27 Plat shall mean the subdivision plat of Westgate Commercial Center Subdivision, a subdivision in the Town of Windsor, County of Larimer, State of Colorado, recorded on September 19, 1997 at Reception No. 97062048 of the records of the Clerk and Recorder of Larimer County, Colorado, and any amendments thereto or plats of any other portions of the Property.

2.28 Property shall include the Property as defined in Section 1.1, together with any other property which may be subjected to this Declaration in accordance with Article 11.

2.29 Remedial Assessment shall mean an Assessment made by the Board against specific Owners as provided in Section 8.4.

2.30 Roads or Streets shall mean those portions of the Property which are roads and streets and for which the Association has a maintenance and repair obligation (together with obligations to provide street lighting and snow removal), regardless of whether such roads or streets have been dedicated for public use. Streets and Roads shall initially mean those portions of Westgate Drive (Tract C) and Longview Drive (also known as Royal Vista Drive) (Tract B) when conveyed by Declarant to the Association as shown on the Plat. Roads or Streets shall not include any portions of the roads or streets which have been accepted for maintenance by any public entity, including the Town of Windsor or the State of Colorado. The Association will use its best efforts