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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE RIVER WALK AT CENTRAL PARK

FLOWER MOUND, TEXAS

After recording return to:

Flower Mound CBD, Ltd.
800 Parker Square, Suite 260
Flower Mound, Texas 75028

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE RIVER WALK AT CENTRAL PARK**

This **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE RIVER WALK AT CENTRAL PARK** (as amended, modified, restated and supplemented, the "*Declaration*") is made this 16 day of September, 2008, by Flower Mound CBD, Ltd., a Texas limited partnership (the "*Declarant*").

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property in Flower Mound, Texas (Denton County), containing approximately 158.608 acres of land, and commonly known as The River Walk at Central Park and being more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "*Property*"); and

WHEREAS, Declarant desires to subject the Property to certain covenants, conditions, restrictions, easements, charges and liens as hereinafter set forth in order to create, maintain and protect a common plan for the development of the Property; and

WHEREAS, Declarant desires to create a mechanism for the imposition of additional covenants, conditions, restrictions, easements, charges and/or liens affecting certain portions of the Property from time to time in connection with the sale and/or development of such portions of the Property; and

WHEREAS, Declarant desires to create an entity that will have the powers and duties of maintaining certain common areas, common facilities and common equipment and furnishings, enforcing the obligations hereunder, reviewing and approving plats and plans for improvements to be built within the Project, collecting and disbursing the assessments hereinafter provided for and performing certain other functions as set forth herein; and

WHEREAS, Declarant has heretofore caused River Walk Association, Inc. to be incorporated as a nonprofit corporation according to the laws of the State of Texas for the purposes of exercising the functions set forth in this Declaration; and

WHEREAS, these recitals are incorporated into and made a part of this Declaration for all purposes;

NOW, THEREFORE, Declarant declares that the Property is and shall be held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I

GENERAL

1.1. Purpose of Declaration. The purpose of this Declaration is to promote the proper development and use of the Property and portions thereof in a manner that is consistent with the quality and integrity of the Project as a whole, and to establish the consistent development and use of the Project in particular, for a variety of office, retail and residential uses within pedestrian-oriented, vertical and horizontal mixed use environments; to maintain and support a quality-designed community; to prohibit the erection on the Property of structures built of improper design or materials; to restrict certain uses of the Property; to encourage the construction of attractive improvements at appropriate locations in accordance with the Design Principles and the Design Guidelines based thereon; to provide for the administration and enforcement of this Declaration; and, generally to preserve the aesthetic appearance of the Property and improvements constructed thereon.

1.2. Definitions. The following words or phrases, when used in this Declaration, unless the context shall otherwise clearly indicate or prohibit, shall have the following meanings:

"Architect's Certificate" has the meaning given such term in Section 5.4(b)(i) hereof.

"Assessment(s)" has the meaning given such term in Section 3.1 hereof.

"Association" means the River Walk Association, Inc., a Texas non-profit corporation.

"Association Rules" means the rules regulating the operation, management and appearance of the Project, as such rules are issued, re-issued, amended, modified, supplemented or restated from time to time by the Board, including, without limitation, rules regulating the use, occupancy, leasing or sale, maintenance, repair, modification and appearance of Parcels and improvements thereon.

"Board" means the duly constituted board of directors of the Association.

"Budget" means the annual budget of the Association, prepared in accordance with Section 3.2(a) of this Declaration.

"Buffer(s)" means those areas of the Property identified in the Zoning as buffers or landscape buffers and depicted on the Concept Plan for Buffers attached to the Zoning Ordinance.

"Bylaws" means the bylaws of the Association, which shall govern the administration and operation of the Association, as they may be amended, modified or restated from time to time.

"Certificate" means the Certificate of Formation of the Association filed in the records of the Secretary of State of the State of Texas.

"Class A Members" has the meaning given such term in Section 2.4 hereof.

"Class B Member" has the meaning given such term in Section 2.4 hereof.

"Common Area Agreements" means the easements, leases, licenses, contracts or other agreements entered into by the Board, on behalf of the Association, with respect to use of the Common Areas and the Common Facilities, as existing from time to time.

"Common Areas" means those portions of the Project lying within (i) the Buffers; (ii) the Open Space Common Areas; (iii) the Streets until dedicated to the public use and accepted by a Governmental

Authority for operation, maintenance and repair; (iv) all sidewalks and medians in Streets notwithstanding the dedication of the Streets and their acceptance by a Governmental Authority; (v) the ground sign easements reserved by Declarant pursuant to Section 7.4 hereof; (vi) the other areas in the Project, which may be designated by Declarant, from time to time, as Open Space Common Areas; and (vii) the portion of the Project, on which the Common Facilities are located.

"Common Equipment and Furnishings" means streetlights and lamps, traffic signage and control devices, signs identifying the Project, street sign posts, benches, sidewalk trash receptacles, bicycle racks and other streetscape furnishings, fixtures and equipment located along Streets, in sidewalks or medians or in the Commonly Maintained Areas or Common Facilities located therein.

"Common Facilities" means (i) all Landscaping planted or installed within the Common Areas or in or around the Common Facilities, including, without limitation, plantings, hardscape areas and accessory elements, such as lighting, seating and water elements, and structures such as gazebos and bandstands, and screening and screen walls; (ii) Common Equipment and Furnishings; (iii) the Common Irrigation Systems; (iv) lines and other infrastructure for utilities serving the Commonly Maintained Areas and Common Facilities located therein; (v) any other improvements installed in the Commonly Maintained Areas, including, without limitation, bridges, sidewalks, paths, trails, driveways, street signs, trash cans and benches; and, (vi) the River Walk Facilities.

"Common Irrigation Systems" means the pumps, lines, pipes, storage, sprinklers and other related facilities and equipment and the water well(s) and related equipment for any irrigation systems that may be operated within the Project by the Association with the approval of Declarant for the purpose of providing non-potable water for use in the Project and/or for providing a source of water available for irrigating the Common Areas and/or the Owners' Parcels that is less expensive than water acquired from the Town.

"Commonly Maintained Areas" means those portions of the Common Areas and the Common Facilities, including, without limitation, the Landscaping therein, on a Parcel that have been inspected and approved by the DRB and accepted for maintenance by the Association.

"County Records" means the Real Property Records of Denton County Texas, including, as applicable, the Map and Plat Records of Denton County, Texas.

"Declarant" means the Flower Mound CBD, Ltd., a Texas limited partnership, and shall, following an assignment, include any person or entity to which Declarant may expressly assign its rights, privileges, duties and obligations hereunder, all of which are and shall be assignable.

"Declaration" means this Declaration of Covenants, Conditions and Restrictions for The River Walk At Central Park, as same may be modified, amended, restated and supplemented from time to time.

"Deed of Trust" has the meaning given such term in Section 3.8 hereof.

"Design Guidelines" means the specific standards and requirements for the development of the Property and each Parcel thereof promulgated and amended, from time to time, by the DRB, as contemplated by Article X hereof. The Design Guidelines shall serve as a guide for (i) each Owner in preparing its Submissions and (ii) the DRB in reviewing and approving or disapproving Submissions.

"Design Principles" means the overarching principles intended to guide the development of the Property and each Parcel thereof and form the basis for the Design Guidelines, which principles are set forth in Article IV of the Development Standards in the Zoning Ordinance. The Design Principles shall serve as a guide for (i) each Owner in preparing its Submissions and (ii) the DRB in

reviewing and approving or disapproving Submissions.

"Design Standards" means, collectively, the Design Principles and the Design Guidelines.

"Development Period" means the period between the date of this Declaration and the earlier of (i) one hundred twenty (120) days after the date, on which Declarant and all affiliates of Declarant will have sold and conveyed to unrelated third parties, in the aggregate, ninety-five percent (95%) or more of the Property within the Project (exclusive of easements, Streets or Common Areas), (ii) the year 2038 or (iii) the effective date of a writing executed by Declarant, and recorded in the County Records, and terminating the Development Period, which effective date shall be not less than thirty (30) days after the date of such recordation. For purposes of this definition, any person or entity owned or controlled by Declarant, by any constituent partner of Declarant or by any person or entity owning or controlling any constituent partner of Declarant shall be considered an affiliate of Declarant.

"DRB" means the Design Review Board created and maintained by the Association as provided for in Section 5.1.

"Governmental Authority," and collectively **"Governmental Authorities,"** means all federal, state and local governmental authorities (including, without limitation, the Town) having jurisdiction over and Laws applicable to a person or matter.

"Hospital" has the meaning given such term in Section 11.2 hereof.

"Hospital Tract" has the meaning given such term in Section 11.2 hereof.

"Landscaped Area" means any area within the Project which is required to be maintained with Landscaping pursuant to this Declaration or the Zoning.

"Landscaping" means any of the following: plants, including, but not limited to, grass, vines, ground cover, trees, shrubs, flowers, mulch and bulbs; rocks; landscape edging; hardscape; water features; berms, irrigation systems and related improvements and related materials.

"Law," "Laws," or "law" or "laws" means all federal, state or local, as applicable, laws, regulations, ordinances, codes, statutes and rules.

"Majority Vote of the Members" has the meaning given such term in Section 2.5(a) hereof.

"Majority Vote of the Class A Members" has the meaning given such term in Section 2.5(a) hereof.

"Medical Owner" means any Owner whose principal use that it conducts on its Parcel is health care activities and/or the operation of health care related facilities.

"Medical Use Restricted Area" has the meaning given such term in Section 11.2 hereof.

"Medical Use Restrictions" has the meaning given such term in Section 11.2 hereof.

"Member" means each member of the Association as provided for in Article II hereof. The terms, **"Member"** and **"Members,"** include both Class A Members and the Class B Member.

"Member in Good Standing" has the meaning given such term in Section 2.3(a) hereof.

"Non-Member Owner" has the meaning given such term in Section 2.2(a) hereof.

"Notice of Violation" has the meaning given such term in Section 2.3(b) hereof.

"Open Space Common Areas" means (a) those areas of the Property identified in the Zoning as open space common areas and depicted on the Concept Plan for Open Space Common Areas and Trails Plan attached to the Zoning Ordinance and (b) such other areas of the Project as Declarant may designate, from time to time.

"Owner" means each and every person or entity who is a record owner of a fee simple interest or an undivided fee simple interest in a Parcel, including, without limitation, owners of units in condominium, townhome or other multi-owner regimes. Each person or entity owning all or any part of the Common Areas shall be an Owner for purposes of this Declaration, unless such person or entity is a Non-Member Owner.

"Parcel" means a portion of the Property owned by a particular Owner.

"Project" means the Property and any additions thereto made as provided for in this Declaration.

"Property" has the meaning given such term in the first recital hereof.

"Property Manager" means the person or entity engaged by the Association, as set forth in Section 4.3 below, and any successor to such Person.

"Regular Assessment" has the meaning given such term in Section 3.2 hereof.

"River Walk Facilities" means the hydrological system of connected wetlands, ponds, weirs, waterfalls, water courses and streams, fountains, aeration systems, water purification and cleaning systems, lines and other infrastructure, pumps, wells and storage areas, located in and encompassing the flood plain or flood prone area on the Property, as designated from time to time by Governmental Authorities, and such other common drainage and common detention areas designated by Declarant from time to time.

"Shared Parking Area" has the meaning given such term in Section 1.6(b) hereof.

"Site Improvements" means any and all changes to any Parcel, from initial construction through later construction or maintenance, which are intended to be temporary or permanent in nature (other than changes made during a period of construction which will be removed when the construction period is complete), including, without limitation, changes to all building exteriors and roof structures, parking areas, loading areas, vehicle circulation lanes and approaches, utility and drainage systems, surface parking areas and parking structures, exterior lighting, sculptures, sidewalks, fences, walls, landscaping, poles, antennas, towers for communications or other purposes, ponds, lakes, fountains, swimming pools, tennis courts, signs, exterior windows, glazing or re-glazing of exterior windows, any exterior color or shape and any new exterior construction or exterior improvement which may not be included in any of the foregoing, but expressly excluding (i) all construction, alteration, improvement, and maintenance of any and all building interiors and (ii) each buildings interior design, furnishings, and appointments. **"Site Improvements"** include both original improvements and all later changes and improvements.

"Special Group Assessment" has the meaning given such term in Section 3.3 hereof.

"Special Member Assessment" has the meaning given such term in Section 3.4 hereof.

"*Street*" mean each and any type of street as defined in the Zoning Ordinance.

"*Sub-association*" means any property-owners' association created by part of the Owners or encumbering a condominium, townhome or other multi-owner regime encompassing a part of the Property and approved or authorized by the Association pursuant to this Declaration.

"*Sub-association Representative*" has the meaning given such term in Section 2.5(b) hereof.

"*Submission*" has the meaning given such term in Section 5.3(a) hereof.

"*Supplement*" means any supplement to this Declaration filed by Declarant or the Association, as applicable, from time to time for imposing additional covenants, conditions, restrictions, easements, charges and/or liens upon the Property or one or more Parcels owned by the Declarant or the Association or for any other purposes as provided in this Declaration.

"*Texas Residential Property Owners Protection Act*" has the meaning given such term in Section 3.9 hereof.

"*Timber Trails Park*" means that certain park and open space area located at the northern boundary of the Property, and being depicted on Exhibit B attached hereto, which is owned by the Town, and to which certain improvements may be made by Declarant pursuant to the Zoning and which improvements will be maintained in connection with the maintenance of the Commonly Maintained Areas by the Association at its expense as required by the Zoning.

"*Trustee*" has the meaning give such term in Section 3.8 hereof.

"*Town*" means the Town of Flower Mound, Denton County, Texas.

"*Violation*" has the meaning given such term in Section 2.3(b) hereof.

"*Zoning*" means, collectively, the Town's Laws pertaining to the use and development of the Project, including, without limitation, the Zoning Ordinance and that certain Development Agreement, dated effective August 4, 2004, between the Town and Declarant, as same may be amended from time to time.

"*Zoning Ordinance*" means, collectively, the Town's Ordinance No. 46-08 pertaining specifically to the Property, as same may be amended from time to time.

Other terms used in this Declaration are defined in various provisions contained herein.

1.3. Property Subject to Declaration.

a. Property. The Property covered by this Declaration is described in Exhibit A attached hereto. Any right, title and interest therein owned or held shall be subject to this Declaration and the covenants, conditions, restrictions, easements, charges and liens set forth herein, as the same may be added to, modified or deleted in accordance with the provisions of this Declaration.

b. Annexing. Only property that is contiguous to the Property, or separated only by a public right-of-way or real property owned by the Town or dedicated to public use, may be added to the Property. Without the joinder of any other person or entity, Declarant shall have the right to annex into the Property any or all additional property owned by Declarant. Declarant shall have the right to annex into the Property any or all additional property not owned by Declarant so long as the owner of such

additional property consents in writing to such annexation. Notwithstanding anything to the contrary contained herein, no more than the aggregate amount of twenty (20) acres may be annexed into the Property, and, except as otherwise required by the Town, no portion of such annexed property shall be Common Areas. Such annexation shall be accomplished by the execution and filing for record in the County Records of an instrument setting forth the land being annexed and signed by Declarant and the owner, if not Declarant. Said instrument may take the form of an addendum or amendment to this Declaration, which may add or waive restrictions applicable to the property being annexed. Upon recordation of such instrument such additional property shall become part of the Property and shall be subject to and encumbered by the covenants, conditions and restrictions and easements hereof, as may be modified by such instrument. Upon termination of the Development Period, such actions shall require prior approval in writing by the Board and from all owners of property to be added to the Property.

1.4. Certain Matters Pertaining to the Common Areas and Common Facilities.

a. Ownership of Common Areas and Common Facilities. Declarant may, in its discretion, retain ownership of all or any part of the Common Areas and/or the Common Facilities or convey ownership of all or any part of the Common Areas and/or the Common Facilities to a person or entity affiliated with Declarant or to the Association. No Owner has any title or interest in or to the Common Areas or the Common Facilities that are not located on its Parcel. Each Owner acknowledges and agrees that certain Common Areas and certain Common Facilities may be located on such Owner's Parcel and that the Owner may be obligated to install and construct certain improvements in those Common Areas, including, without limitation, certain Common Facilities, as required by the Zoning. Notwithstanding the location of certain Common Areas and Common Facilities on the Owners' Parcels, subject to the terms of this Declaration, all Owners shall have the right to non-exclusive use of the Common Areas. Declarant, Declarant's affiliate or the Association may dedicate all or part of the Common Areas and the Common Facilities located on portions of the Project owned by Declarant, Declarant's affiliate or the Association, as the case may be, to any Governmental Authority for public use, subject to applicable Laws, but nothing contained herein shall require Declarant, Declarant's affiliate or the Association to make any public dedication of same. The Concept Plan for the location of the Open Space Common Areas in the Project is attached to the Zoning Ordinance; however, Declarant may, from time to time, modify the Concept Plan and/or the actual Open Space Common Areas and the Common Facilities therein, including, without limitation, increasing or decreasing the size of the areas and reconfiguring or re-locating same, subject to the Zoning Ordinance, by executing a Supplement hereto; provided, however, any modification of the Common Areas located on an Owner's parcel requires the written consent of that Owner. Nothing contained in this Declaration shall obligate Declarant, Declarant's affiliate or the Association to construct all or any part of the Common Areas or the Common Facilities or, having commenced construction, to complete construction by any date; provided, however, if the Open Space Common Areas and the River Walk Facilities are constructed, Declarant shall bear the costs for the initial construction of same. Except as otherwise provided in the preceding sentence, Owners shall be obligated to construct and install the Common Areas and the Common Facilities located on their Parcels in connection with the development of same.

b. Open to the Public. Pursuant to the Zoning, all portions of the Open Space Common Areas that are identified in the Zoning as open space common areas and depicted on the Concept Plan for Open Space Common Areas and Trails Plan attached to the Zoning Ordinance shall remain open to the general public or shall be open space, and all Owners acknowledge and agree that, notwithstanding the terms, provisions and conditions of this Declaration, including, without limitation, the obligation of the Owners to bear the costs and expenses of owning, operating and maintaining the Commonly Maintained Areas and Timber Trails Park and owning, operating, maintaining, repairing and replacing the Common Facilities, all portions of the Open Space Common Areas that are identified in the Zoning as open space common areas and depicted on the Concept Plan for Open Space Common Areas and Trails Plan attached to the Zoning Ordinance are, and will be, open for the common use and enjoyment of the general public.

or as open space. No Owner, other than Declarant, may set off, block, mark or otherwise restrict all or any part of the Common Areas or the Common Facilities to its exclusive use or to the exclusive use of its Parcel. The Association may, from time to time, limit or restrict access to or close certain parts of the Common Areas. Further, all Owners acknowledge and agree that parts of the Common Areas may be used, from time to time, for special events such as festivals, concerts and movies and Town-wide activities and that, during such events and activities, access to, and ingress and egress on, through and over, parts of the Common Areas may be limited, restricted or prohibited and/or a fee or charge for admission to or participation in the event or activity may be imposed and collected by the sponsor of the activity or event, the Association or Declarant. Further, all Owners acknowledge and agree that the use and enjoyment of the Common Areas are subject to interruption and temporary obstruction or closure for purposes of constructing, repairing and maintaining the Common Areas and the Common Facilities and for public safety.

c. No Assignment or Abandonment. No purported assignment, disclaimer, waiver, cancellation, suspension, termination or abandonment of its right to the use and enjoyment of the Common Areas or the Common Facilities shall relieve any Owner or its successors or assigns of their obligations under this Declaration in regard to the costs and expenses for ownership, operation, maintenance, repairs and replacement of the Common Areas, the Common Facilities and the maintenance of Timber Trails Park.

d. Declarant's Rights affecting the Common Areas. In addition to all other rights of Declarant set out in this Declaration with regard to the Common Areas and the Common Facilities, during the Development Period, Declarant may, in its discretion, take any of the following actions:

- (i) subject to the terms of Section 7.1 hereof in regard to the Hospital Tract establish and/or grant easements, reservations, exceptions and exclusions over, through, under, onto and in the Common Areas for the benefit of or to serve all or any part of the Property, including, without limitation, easements for sanitary sewer, water, drainage, access, parking, electricity, gas, telephone, cable or other utilities, landscaping, light and air and lanes for fire trucks, ambulances, police and other emergency vehicles;
- (ii) establish and/or grant easements over, through, under and onto the Common Areas for purposes of drainage, ingress and egress, parking and storage and for the purposes of construction or installation of improvements and of maintenance and repair; and
- (iii) establish and/or grant easements over, through, under, onto and in the Common Areas as may be necessary for discharging the obligations, or exercising the rights of Declarant or the Association under this Declaration, under the Zoning or otherwise under applicable Laws.

Declarant may effect any of these actions by preparing a Supplement to this Declaration, signed by Declarant, and recording same in the County Records.

e. Taking of Common Areas. If all or any part of the Common Areas or the Common Facilities is acquired by condemnation, the award with respect to the real property shall be paid to the owner of the Parcel on which the Common Areas so taken are located and the award with respect to the Common Facilities shall be paid to the Association (and the Owner hereby assigns to the Association all claims in regard thereto), and no other Owner shall be entitled to or receive any part of said award. The Owner and the Association shall each be entitled to participate in all proceedings pertaining to said condemnation in regard to their respective interests.

f. Common Area Agreements. The Board shall have the authority, exercisable on behalf of the Association, to enter into Common Area Agreements and to charge and collect funds on behalf of the Association with respect to such Common Area Agreements. Such funds may be allocated and expended as shall be determined by the Board for any purposes set forth in Articles III or IV, or as otherwise permitted under the Certificate and Bylaws of the Association and resolutions adopted by the Association.

1.5. Common Areas Subject to Assessments. Common Areas, such as sidewalks, located on Parcels are subject to Assessments. Notwithstanding anything to the contrary contained herein, these portions of the Common Areas are not subject to Assessments: (i) the Open Space Common Areas; (ii) the Streets and medians in Streets; and (iii) portions of the Property, including, without limitation, Common Areas, owned by the Association.

1.6. Common Parking Facilities.

a. Common Parking. Owners acknowledge and agree that parking in the Project is based on and shall facilitate mixed use parking as contemplated by the Zoning Ordinance. In this regard but subject to Section 7.2 hereof, all parking lots and parking structures on any Parcels shall be subject to the easements for parking created herein and thereby open to the use of all Owners and their employees, tenants, guests, invitees and customers.

b. Shared Parking Area. Except on the Hospital Tract, Declarant or the Association may, from time to time, designate one or more areas of the Project as a "Shared Parking Area." Parking lots and structures in a Shared Parking Area may be constructed by the Declarant, an affiliate of the Declarant or one or more Owners, and the Owners of the Parcels in the Shared Parking Area shall bear, proportionately, the costs of construction and the costs of operation, maintenance and repair of such parking lots and structures.

1.7. Notice regarding Minerals. Each Owner is hereby notified that the Property consists of the surface estate only and that neither the Declarant nor the Association is the owner or lessee of the Mineral Estate.

ARTICLE II
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION;
SUB-ASSOCIATIONS

2.1. The Association. The Association has been established to provide for the administration and enforcement of this Declaration. There is only one Association in the Project, in which all Owners will be members, except as provided below.

2.2. Membership; Sub-associations.

a. Subject to the terms of Section 2.2(b) hereof, each Owner automatically is and must remain a member of the Association, except for the following (each a "Non-Member Owner"): (i) no Governmental Authority shall be considered a Member with respect to a Parcel during such time that it uses such Parcel for public purposes, unless such entity agrees in writing to become a Member of the Association with the consent of Declarant; (ii) no Governmental Authority shall be a Member notwithstanding the dedication to, and acceptance by, such Governmental Authority of any Street, all or any part of the Common Areas, any Common Facilities or any other Parcel for public use; (iii) no public or franchise utility shall be considered a Member with respect to a Parcel of the Project during such time

that it uses such Parcel directly for the purpose of providing utility services to one or more Parcels (as opposed to use of a Parcel by a public utility for general office or other corporate uses) or as grantee of any easement or the dedication to public use of any easement area, unless such utility agrees in writing to become a Member of the Association with respect to such Parcel with the consent of Declarant; or (iv) no person or entity who holds a lien or interest in any portion of the Project as security for the performance of any obligation shall be considered a Member. Membership in the Association is appurtenant to, and cannot be separate from, ownership of a Parcel by an Owner. Any transfer of title to a Parcel or any portion thereof, including, without limitation, through a public sale in foreclosure of liens or deed-in-lieu thereof, shall operate automatically to transfer (or, in cases of a transfer thereof by a Non-Member Owner, to vest) membership in the Association appurtenant to such Parcel to the new Owner, unless such new Owner is a Non-Member Owner described in clauses (i), (ii) or (iii) hereof. All Owners shall notify the Association of any transfer of any Parcel located within the Project. Non-Member Owners, in such capacity, shall not be obligated to pay Assessments.

b. Each condominium, townhome or other multi-owner regime encompassing a part of the Property shall establish and operate a Sub-association, which Sub-association shall operate, manage and maintain the multi-owner regime in compliance with this Declaration. Such Sub-association cannot be wound up and terminated except simultaneously with a termination of the Association. The Sub-association for such multi-owner regime shall represent the Owners of the units or Parcels comprising such multi-owner regime as set forth in this Declaration, including, without limitation, in regard to voting. A Sub-association is not a management committee of the Board and has no authority in the management of the Association.

c. It shall be the responsibility of the Sub-association representing a condominium, townhome or other multi-owner regime in the Project to determine satisfactory proof of:

- (i) the qualification of a person or entity claiming membership in the Association through ownership of property subject to such multi-owner regime as a Member;
- (ii) the status of a Member as a Member in Good Standing and, therefore, the eligibility of the Members represented by the Sub-association to vote; provided, however, each Member represented by the Sub-association shall be liable for any misrepresentation of the eligibility of a Member to vote; and
- (iii) the legitimacy of a proxy proffered on behalf of any Member represented by the Sub-association.

The Board shall be entitled to rely on the Sub-association's determinations made under this Section 2.2(c) without the necessity of inquiry or investigation and without liability to any person. On or before January 31 of each year and within ten (10) days after the Association's request, each Sub-association shall deliver a certified list of the Members represented by the Sub-association including the name of the Member, the address of the Member's Parcel and the Member's mailing address and the number of votes that such Member is entitled to cast, and the Board shall be entitled to rely on said list for all purposes.

d. It shall be the duty, responsibility and liability of each Member that is represented by a Sub-association to, and each such Member shall, cause the Sub-association to perform the obligations of the Sub-association hereunder.

2.3. Member in Good Standing.

a. A Member shall be considered to be a "*Member in Good Standing*" and eligible to vote if such Member:

- (i) has, within ten (10) days prior to the taking of any vote by the Association, fully paid all Assessments or other charges levied by the Association, as such Assessments or charges are provided for in Article III;
- (ii) has not failed to remedy or remove any Violation within the period of time prescribed therefor in a Notice of Violation sent to the Member; and
- (iii) does not have a lien filed by the Association against the Parcel owned by it.

The Board shall reasonably determine the good standing status of any Member at any time and shall make such determination with respect to all Members prior to a vote being taken by the Association on any matter. The Board shall have the right and authority, at its sole discretion, to waive the ten-day prior payment requirement and require only that such payment be made at any time before such vote is taken if the Board shall determine, in its own judgment, that extenuating circumstances exist which have prevented prior payment. Any Member not conforming with the foregoing requirements shall be declared by the Board not to be a Member in Good Standing and shall be disqualified from voting on matters before the Association until such time as Member in Good Standing status is attained and so declared by the Board.

b. Before the Association may charge an Owner for property damage or levy a fine against an Owner for a breach or violation of this Declaration, the Bylaws or the Association Rules or levy a Special Member Assessment, the Association will give to the Owner a written notice (a "*Notice of Violation*") that:

- (i) describes the breach or violation or property damage (a "*Violation*") and states the amount of the proposed damage charge or fine;
- (ii) states that not later than the thirtieth (30th) day after the date of the notice, the Owner may request a hearing before the Board to contest the damage charge or fine; and
- (iii) allows the Owner a reasonable time, by a specified date, to cure the Violation and avoid the fine, except that, if such Owner has been given notice and a reasonable opportunity to cure a similar Violation occurring within the six (6) months preceding the current Violation, then the Association shall have no obligation to afford the Owner any opportunity to cure the Violation before imposing the fine.

The Association shall give notice of a levied fine or damage charge to the Owner not later than the thirtieth (30th) day after the date of levy.

2.4. Classes of Voting Members. The Association shall have two classes of voting membership, as follows:

- (i) Class A. "*Class A Members*" shall be all Members. Subject to the terms of Section 2.4(iii) hereof, Class A Members shall be entitled to one vote for each acre (rounded to the nearest acre) of property within the Project owned by such Member as of the date of the notice of the meeting at which the vote is to be cast. If any Parcel of the Project is owned by more than one Member, the number of votes attributable to such Parcel shall be the same number of votes as if there were only one Owner of such Parcel (that is, the total number of votes is based upon the acreage of each Parcel and not upon the number of Owners of such

Parcel), and the votes attributable to such Parcel may be cast only if all of such Members, prior to the time of the vote in question, have delivered to the Association a written agreement as to how such votes are to be cast or a written designation of one of such Members to cast the votes attributable to such Parcel. Any Member who is not an individual must designate a representative to act for such Member in Association matters and to cast votes for such Member, such designation to be made in writing to the Board. A Member may delegate its right to vote to any tenant occupying its Parcel provided such delegation is made in writing delivered to the Board.

- (ii) Class B. The "**Class B Member**" shall be the Declarant. In addition to its votes as a Class A Member, the Class B Member shall be entitled to ten (10) votes for each acre (rounded to the nearest acre) of Property within the Project that is (1) Common Areas or (2) owned by Declarant or an affiliate of Declarant as of the date of the notice of the meeting at which the vote is to be cast. Notwithstanding anything contained herein to the contrary, the Class B membership shall cease, and Declarant's voting rights shall be those of a Class A Member only (such Class A membership votes also to be determined based upon the acreage within the Project owned by Declarant), upon expiration of the Development Period.

The following rights and privileges shall also pertain to the Class B membership:

Notwithstanding anything to the contrary contained herein, during the Development Period, Declarant shall be entitled to direct the members of the Board to (1) designate, specifically, one or more persons to serve as officers of the Association in the offices selected by Declarant and (2) to remove any officers, with or without cause; and Declarant shall be entitled to direct the members of the Board to designate, specifically, their successors. Declarant may voluntarily surrender the right to appoint and remove members of the Board and officers by written instrument, but in that event Declarant may require, for the duration of the period that Declarant would otherwise control, that specified actions of the Board or the Association require the prior written approval of Declarant before such actions become effective or binding on Declarant, the Association or the Project.

Notwithstanding anything to the contrary contained herein, during the Development Period, Declarant shall have a veto power over all actions of the Board, any committee of the Association and the DRB. This veto power shall be exercisable only by Declarant and by Declarant's successors and assigns who specifically take this power in a recorded instrument. No action authorized by the Board, any committee of the Association or the DRB shall become effective, nor shall any action, policy or program be implemented until and unless:

- (1) Declarant shall have been given written notice of all meetings and proposed actions approved at meetings of the Board, the committee or the DRB by mailing or personally delivering a copy of such notice to Declarant, addressed to Declarant's address last appearing on the books of the Association; and
- (2) Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy or program to be

implemented by the Board, the committee or the DRB. Declarant and its representatives or agents shall make its concerns, thoughts and suggestions known to the members of the Board, the committee or the DRB, as the case may be. Declarant shall have and is hereby granted a veto power over any such action, policy or program authorized by the Board, any committee or the DRB and to be taken by the Board, such committee or the DRB or any Member of the Association, if approval by the Board, the committee or the DRB is necessary or prerequisite for such action. This veto may be exercised by Declarant, its representatives or agents at any time within ten (10) days after the later of (a) receipt of the notice described in clause (1) or (ii) the date of the subject meeting. Any veto power shall not extend to the requiring of any action or counteraction on behalf of the Board, any committee of the Association or the DRB.

- (iii) Multi-owner Regime represented by a Sub-association. For purposes of calculating the number of votes to which Class A Members represented by a Sub-association are entitled, the acreage of all Parcels subject to such Sub-association shall be considered in the aggregate and then rounded to the nearest acre, and the Class A Members, acting through their Sub-association Representative, shall be entitled to cast, collectively, those number of votes. The Class A Members acknowledge and agree that the requirements of this clause (iii) may result in their having fractional votes. No Sub-association shall be entitled to membership in the Association separate and apart from its representation of the Class A Members represented by the Sub-association.
- (iv) Tenants. Tenants of all or any part of a Parcel shall not be entitled to membership in the Association.

2.5. Voting, Quorum and Notice Requirements.

a. Members holding twenty-five percent (25%) of the aggregate votes entitled to be cast by Members in Good Standing, represented at a meeting of the Members in person or by a legitimate proxy in a form approved by the Board, shall constitute a quorum for voting on matters brought before the Members at meetings called by the Board. If any meeting cannot be held because a quorum is not present, the Members present, either in person or any proxy of any such Member, may adjourn the meeting to a time not less than forty-eight (48) hours nor more than thirty (30) days from the time set for the original meeting, at which adjourned meeting the quorum requirement shall be waived. The vote of the majority of those votes entitled to be cast by the Members present or voting by legitimate proxy at a called meeting at which a quorum of Members in Good Standing is present (the "*Majority Vote of the Members*") shall be the act of the Association. The term "*Majority Vote of the Class A Members*" as used in this Declaration shall mean the same as Majority Vote of the Members but will be applicable only to Class A Members. Notice requirements for all action to be taken by the Members of the Association shall be as set forth herein or in its Bylaws, as the same may be amended from time to time.

b. The Owners represented by a Sub-association, through procedures established for that Sub-association, shall appoint one (1) person to represent all of them in matters pertaining to the Association, including, without limitation, casting their votes, which person shall be that association's "*Sub-association Representative.*" On or before January 31 of each year and within ten (10) days after

the Association's request, each Sub-association shall notify the Association in writing of the identity of that association's Sub-association Representative and his mailing address, telephone number and address for electronic correspondence. If such Sub-association does not so notify the Association or if the Association receives conflicting instructions or information about that association's Sub-association Representative, the Board, in its discretion, shall be entitled to cast all votes of the Owners represented by that Sub-association until the Board receives satisfactory instructions or information.

ARTICLE III ASSESSMENTS

3.1. Covenants for Assessment. Each Owner of a Parcel, by acceptance of a deed or other conveyance therefor whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree (and such covenant shall be deemed to constitute a portion of the purchase money consideration for acquisition of such Owner's interest) to pay the Association or to an independent entity or agency which may be designated by the Association to receive such monies, the following assessments (the "*Assessments*"):

- (i) regular annual assessments as provided in Section 3.2;
- (ii) special group assessments as provided for in Section 3.3; and
- (iii) special member assessments as provided in Section 3.4.

3.2. Regular Assessment.

a. "*Regular Assessment*" shall be determined, assessed and expended on a fiscal year basis beginning on January 1 and ending on December 31 of each year, which shall be the fiscal year of the Association. Regular Assessment shall be used for:

- (i) the payment of costs incurred in connection with the operation, maintenance, repair and replacement of the Commonly Maintained Areas and the Common Facilities that are commonly maintained and the maintenance of Timber Trails Park, and the payment of costs incurred in connection with the ownership of the Open Space Common Areas and of any portions of the Project owned by the Association;
- (ii) capital improvements (but not initial construction) to the Commonly Maintained Areas or the Common Facilities that are commonly maintained;
- (iii) the payment of costs incurred in connection with the performance by the Association of its obligations and by the Board of the functions described in Article IV of this Declaration and for the carrying out of the purposes of this Declaration; and
- (iv) the establishment of the reserve fund as provided for in Section 3.5.

Each year while this Declaration is in force, the Board shall set the amount of the Regular Assessment to be levied for the next calendar year, taking into consideration the costs of the above listed items for the then current year, expected normal increases in such costs over the next year and additional future needs, including, but not limited to, the establishment and maintenance of a reserve fund as provided for herein and a contingency amount not exceeding ten percent (10%) of the anticipated costs for the next year, and

shall set out same in a Budget. The Regular Assessment for each fiscal year shall be set by the Board by December 1 of the year preceding. Regular Assessments for each fiscal year shall be allocated among all Owners, including Declarant, in the same ratio that the number of acres of land in the Project owned by such Owner (exclusive of Commonly Maintained Areas) bears to the total number of acres of land owned by all Owners (exclusive of Commonly Maintained Areas). Should any surplus exist at the end of any year, the next Regular Assessment shall be reduced by such surplus.

b. Owners acknowledge and agree that the Zoning requires that maintenance of Timber Trails Park include mowing, trimming, tree care, landscape irrigation, equipment repairs due to failure or vandalism or routine repairs and related maintenance issues.

3.3. Special Group Assessments. In addition to the Regular Assessments, the Association, by the Majority Vote of the Members, may levy at any time a "*Special Group Assessment*" for the purpose of:

- (i) defraying, in whole or in part, the cost of any reconstruction or unexpected repair or replacement of any of the Commonly Maintained Areas or the Common Facilities, including, without limitation, the Common Equipment and Furnishings;
- (ii) responding to unusual or emergency needs of the Common Areas or Common Facilities or of the Association as may occur from time to time;
- (iii) maintaining the reserve fund as provided for in Section 3.5; or
- (iv) paying the cost of any unanticipated expenses intended to be paid by Regular Assessments.

Such Special Group Assessment shall be allocated among Owners in the same manner as Regular Assessments are allocated among Owners.

3.4. Special Member Assessments. In addition to the Regular and Special Group Assessments, the Board may levy a "*Special Member Assessment*" on any Owner for the purpose of:

- (i) defraying, in whole or in part, the cost of any unexpected damage or loss requiring maintenance, repairs or replacement of items under the supervision or control of the Association which damage or loss has been determined by the Board to have been caused, either directly or indirectly, by the willful or negligent acts of the Owner to be levied against, or by such Owner's employees, agents or other persons acting or failing to act with such Owner's authorization, approval or acquiescence; provided, however, that the Board must first conclude, in its sole exercise of reasonable discretion, that sufficient evidence exists to support a determination that said damage or loss was caused, directly or indirectly, by the willful or negligent act of such Owner or such Owner's employees, agents or persons whose actions were authorized or approved by such Owner;
- (ii) reimbursing the Association for any and all costs incurred by the Association in remedying an Owner's failure to perform its obligations hereunder, or with regard to the maintenance, repair or replacement of Site Improvements on such Owner's Parcel including the removal of trash, litter or abandoned items, and painting or general repair of items visible from any Common Area that the

Owner thereof fails to maintain as required by the provisions of this Declaration or the Association Rules; or

- (iii) recovering amounts owed by the Owner to the Association, any member of the Board or an officer of the Association or the Declarant under Section 9.3 hereof.

3.5. Reserve Fund; Tree Mitigation Bank.

a. A reserve fund may be established under control of the Board to be used for unexpected maintenance, repair or replacement relating to the Common Areas or the Common Facilities or for the performance of other duties of the Association. Such reserve funds shall be maintained and accounted for separately from other Association funds.

b. The Board shall establish and maintain a separate bank account, styled "Tree Mitigation Bank," as required by the Zoning, into which and from which funds shall be deposited and paid solely for the purpose of tree mitigation in the Project or as otherwise required by the Zoning. Such funds shall be maintained and accounted for separately from other Association funds.

3.6. Due Date of Assessments. Regular Assessments shall become due and payable on January 1 of each year and shall be delinquent if not paid by January 31 of such year; provided, however, the Board shall have the right to require payment of installments of Regular Assessments semi-annually or quarterly if it deems such is appropriate as set forth in the statement for the Regular Assessments. The due date of any Special Group Assessments or Special Member Assessments under Section 3.3 or Section 3.4, respectively, shall be fixed in the notice to Owner(s) providing notification of such Assessment but shall not be sooner than thirty (30) days after the date of said notice.

3.7. Owner's Personal Obligation for Payment of Assessments. The Assessments provided for in this Article III shall be the personal and individual debt of the Owner(s) of the property covered by such Assessments. No Owner may exempt itself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner(s) of such property shall be obligated to pay interest at the lesser of (i) the then prime rate of interest plus three percent (3%) or (ii) at the maximum lawful rate on the amount of such Assessment from the delinquent date thereof, together with all costs and expenses, including, but not limited to, reasonable attorneys' fees incurred by the Association in connection with such delinquency. The prime rate for any calendar month shall be the "prime rate" of interest, as published in the "Money Rates" table in The Wall Street Journal Southwestern Edition (or if The Wall Street Journal is not available, then any nationally recognized financial publication selected by the Association) on the first business day of such calendar month.

3.8. Assessment Lien and Foreclosure. All sums assessed in the manner provided for in this Article III but unpaid, together with interest as provided herein and the costs of collection, including, but not limited to, reasonable attorneys' fees and court costs, as hereinafter provided, are secured by a continuing contractual lien and charge on the property covered by such Assessment, which shall bind such property in the hands of the Owner(s) and its heirs, successors, devisees, personal representatives and assignees. The aforesaid continuing contractual lien shall be superior to all liens other than the following described liens, to which the aforesaid continuing contractual lien shall be subordinate (each, a "Superior Lien"): (i) a deed of trust or mortgage constituting a lien on the land of an Owner, and (ii) the lien of real estate taxes. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Association. In furtherance of such lien, each Owner, by his acceptance of a deed or other conveyance of a Parcel and regardless of whether or not such deed or other conveyance expressly contains such a provision, does hereby grant and convey unto the

Board, in trust as Trustee (the "Trustee"), for the benefit of the Association, the Parcel owned by such Owner, subject to all easements and other encumbrances affecting such Parcel; provided, that each such grant shall be subordinate to the liens aforementioned by this Section 3.8 or those designated by the Association; and for these purposes the provisions of this Section 3.8 shall be deemed to have created a deed of trust (the "Deed of Trust") covering all of the Parcels with a power of sale granted to the Trustee in accordance with the provisions of Chapter 51 of the Texas Property Code as it may be amended from time to time. The Association, acting through its designated agent, shall have the right in its sole discretion at any time, and from time to time, to appoint in writing a substitute or successor trustee who shall succeed to all rights and responsibilities of the then acting Trustee. To evidence the aforesaid Assessment lien, the Association shall prepare a written notice of the Assessment lien setting forth the amount of the unpaid indebtedness, name of the Owner(s) of the property covered by such lien and a description of the property. Such notice shall be signed by one of the officers of the Association and shall be recorded in the office of the County Clerk of the county or counties in which such property lies. Such lien for payment of Assessments shall attach with the priority above set forth on the date that such payment becomes delinquent as set forth in Section 3.6 and may be enforced by foreclosure of the lien upon the defaulting Owner's property by the Association subsequent to the recording of the notice of Assessment lien as provided above either by judicial foreclosure or by nonjudicial foreclosure through a public sale in accordance with Section 51.002, Texas Property Code (as such may be revised, amended, supplemented or replaced from time to time). In addition, the Association may institute suit against the Owner(s) personally to obtain a judgment for unpaid assessments. In any foreclosure proceeding, whether judicial or nonjudicial, or in any other suit against the Owner(s), the Owner(s) shall be required to pay the costs, expenses and reasonable attorneys' fees incurred by the Association. The Association shall have the power to buy the property at foreclosure or other legal sale and to acquire, hold lease, mortgage, convey or otherwise deal with the same. Except as otherwise prohibited or restricted by Laws, upon the written request of any holder of a Superior Lien on any part of the Property, the Association shall report to said holder any Violations by the Owner of such part of the Property at the time of the report, including, without limitation, any Assessments which are delinquent and unpaid.

3.9. Texas Residential Property Owners Protection Act. The Association and the Board shall comply with the requirements of Chapter 209 of the Texas Property Code, as the same may be amended from time to time, (the "Texas Residential Property Owners Protection Act") as to those portions of the Project that are residential and which are, in accordance with the Texas Residential Property Owners Protection Act, subject to such provisions. If this Declaration, the Design Standards or any amendment thereto is in conflict with the Texas Residential Property Owners Protection Act, the Texas Residential Property Owners Protection Act shall control as to those portions of the Project that are residential and which are subject to such provisions.

3.10. Remittance by Sub-associations. Upon written instructions by the Association, a Sub-association shall collect the Assessments from the Owners of Parcels in such condominium, townhome or other multi-owner regime and shall timely deliver same to the Association in accordance with this Article III, together with a list of the Owners and the amount of their payments with reference to the specific Assessment paid thereby. Such list shall include a list of Owners who failed to pay their Assessments with reference to the specific, delinquent Assessment. The failure of any Sub-association, so instructed, to collect or deliver any Owner's Assessments timely and in accordance with this Declaration shall not waive, release or abate the Owner's obligations to pay his Assessments, and the Association shall have no liability therefor, and each Member represented by such Sub-association shall be not be a Member in Good Standing during any breach by the Sub-association of the obligations of this Section 3.10. Further, the Association shall have no liability to the Owners for any errors or omissions in the information provided to the Association hereunder.

3.11. Foreclosure of a Superior Lien. Judicial or non-judicial foreclosure of a Superior Lien, or deed in lieu thereof, in regard to property shall extinguish the Assessment lien against that property but only to the extent of any Assessments due prior to the date of the foreclosure; provided, however, the personal and individual debt of the Owner(s) of the property covered by such Assessments shall not be extinguished, and the Association shall have all rights and remedies at Law to enforce said debt and recover same.

3.12. No Election of Remedies; No Waiver. For an Owner's default, the Association shall have and may exercise, in its discretion, any and all of its rights and remedies hereunder and under applicable Laws, including, without limitation, filing suit to recover a monetary judgment against the Owner or for a judicial foreclosure. The Association may bring and maintain a suit to recover a monetary judgment for Assessments and all other amounts due the Association without foreclosing or waiving the lien securing same. The exercise of any right or remedy herein or under Laws shall not be considered as a waiver of the right to exercise any other right or remedy, and the filing of a suit to foreclose the Association's lien shall never be considered an election so as to preclude foreclosure under power of sale; nor shall the filing of the necessary notices for foreclosure preclude the prosecution of a later suit thereon.

ARTICLE IV **BOARD OF DIRECTORS AND THE ASSOCIATION**

THE BOARD'S POWER AND AUTHORITY ARE SUBJECT TO THE TERMS OF SECTION 2.4(ii).

4.1. Creation of Board. The Association shall be governed by the Board, the size and composition of which shall be as follows:

- (i) From the inception of the Association until twenty-five percent (25%) of the Property, by acreage, is owned by Owners other than Declarant, Declarant's affiliates or the Association, the Board shall consist of three (3) members, all of whom Declarant shall be entitled to appoint and remove, with or without cause, and to appoint their successors.
- (ii) Upon the conveyance of twenty-five percent (25%) of the Property, by acreage, to Owners other than Declarant, Declarant's affiliates or the Association, within thirty (30) days thereafter, Declarant shall remove one (1) member of the Board, and the other Owners, by the Majority Vote of the Members (other than Declarant), shall be entitled to elect one (1) member of the Board, and the Declarant shall no longer have the authority to remove said member, such authority remaining with the other Owners. Without limitation, and for clarification, said Board will be composed of two (2) members appointed by Declarant and one (1) member elected by the Majority Vote of the Members (other than Declarant).
- (iii) Upon conveyance of fifty percent (50%) of the Property by acreage, to Owners other than Declarant, Declarant's affiliates or the Association, the size of the Board shall be increased to five (5) members. Declarant shall be entitled to appoint and remove, with or without cause, and to appoint the successor of, one (1) additional member, and the other Owners, by the Majority Vote of the Members (other than Declarant) shall be entitled to elect one (1) additional member of the Board, and the Declarant shall have no authority to remove said member, such authority remaining with the other Owners. Without limitation, and for clarification, said Board will be composed of three (3) members

appointed by Declarant and two (2) members elected by the Majority Vote of the Members (other than Declarant).

- (iv) Upon expiration of the Development Period, the size of the Board shall be five (5) members, elected by a Majority Vote of the Members, such election to be held within thirty (30) days thereafter.

Regardless of the size of the Board, all members thereof appointed by Declarant may be removed, and their successors appointed, only by Declarant. The Board shall exist and function solely for the benefit of the Association and for the benefit of individual Members. A director may vote in person or by proxy executed in writing by the director. No director proxy shall be valid after three (3) months from the date of its execution. Each director proxy shall be revocable unless expressly provided therein to be irrevocable and unless otherwise made irrevocable by law.

4.2. Control of Assessment Funds. The Board shall be responsible for the setting, collection and disbursement of Assessments, subject to any prior approval of the Majority Vote of the Members with respect to Special Group Assessments. In general, the Board shall be empowered to take the following actions and to expend funds from Regular Assessments and Special Group Assessments for the uses described in Article III hereof. Without limitation of the foregoing, such uses may include:

- (i) the engagement of a Property Manager, and/or the employment of personnel, independent consultants or contractors, to perform day-to-day operations of the Association and the duties of the Board or the Association, and the employment of other personnel as the Board shall determine to be necessary or desirable for effective operation of the Association (provided that property management fees and salaries and other compensation to personnel shall be in an amount that is usual and customary for comparable projects);
- (ii) reimbursement of reasonable expenses incurred by directors or officers of the Association in connection with performing their duties in such capacities, including, without limitation, reimbursement for mileage in travelling to meetings;
- (iii) the employment of legal, accounting, engineering, architectural or other independent professional or consulting services;
- (iv) the purchase of a policy or policies of insurance insuring the Association, the Board, officers of the Association and the DRB against any liability to the public or to the Owners (and/or visitors or occupants) incident to operation of the Association, the Common Areas or the Common Facilities;
- (v) the purchase of fidelity bonds as provided hereunder; and
- (vi) the payment for office and leasing costs and for any other materials, supplies, furniture, labor, services, maintenance, repairs, alterations, insurance, taxes or assessment, which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which, in its reasonable opinion, shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration, including, but not limited to, reasonable expenses of the DRB.

In addition to the expending of Regular Assessment funds for the aforementioned purposes, the Board

shall be empowered to expend funds collected through Special Group Assessments, Special Member Assessments and the reserve funds for those purposes set forth in Article III of this Declaration and to make disbursements from the account styled "Tree Mitigation Bank".

4.3. Additional Authorities and Duties of the Board. The Board shall have the following additional authorities and duties, exercisable on behalf of the Association with respect to performance of the obligations of the Association hereunder and the right to expend Assessment funds to pay the costs thereof:

- (i) to enter into agreements or contracts with respect to: (i) insurance coverage; (ii) utility installation, consumption and service matters necessary for the operation of any of the Common Areas or the Common Facilities; (iii) construction and maintenance contracts; (iv) leases; and (v) design, engineering, architectural and other consultant and professional services contracts; and (vi) use of the Common Areas and Common Facilities for special events such as festivals and concerts and the imposition of fees and charges for such use;
- (ii) to adopt and amend the Budget and set, levy and collect Assessments;
- (iii) in the event the revenues of the Association from the Assessments are insufficient, to borrow funds to pay any costs of operation, secured by assignment or pledge of Assessments, as the Board may determine to be necessary and appropriate in accordance with this Declaration, including, without limitation, borrowing money from the Declarant or an affiliate of Declarant subject to the terms of Section 4.4 hereof;
- (iv) to enter into contracts for goods and services or other purposes, to maintain one or more bank accounts, including, without limitation, the separate account for the Tree Mitigation Bank, and to have all the powers necessary or incidental as may be required for prudent operation and management of the Association;
- (v) to sue or to defend in any court of law on behalf of the Association;
- (vi) to provide for and accumulate reasonable reserve funds to be used for repairs, replacement and/or maintenance, in such amounts and for such purposes as may be determined by the Board to be necessary and appropriate, subject to the provisions of Section 3.5;
- (vii) to make, or cause to be made, any tax returns, reports or other filings required by Governmental Authorities;
- (viii) to adjust the amount, collect and use any insurance proceeds to repair or replace any damaged or lost property or to reimburse persons or entities entitled to receive reimbursement for injury, damage or losses, and, if said insurance proceeds are insufficient to provide full reimbursement as may be required, the Board may act to create funds through Special Group Assessments or Special Member Assessments, whichever is applicable;
- (ix) to enforce the provisions of this Declaration and the Association Rules and to enjoin action or seek damages and/or remedial action from any Owner for violation of this Declaration;

- (x) to appoint the members of the DRB as described in Article V below;
- (xi) to maintain books and records with respect to all aspects of the business of the Association and to the levy, collection, receipt, administration, expenditure and disposition of all Assessments and other funds of the Association in accordance with sound accounting practices, and to permit any Owner who is a Member (or a person designated by such Owner in writing) to inspect and copy the same upon reasonable notice during normal business hours at an office of the Association located in Denton County;
- (xii) to contract for the purchase of water for irrigation purposes if the cost thereof is less expensive than water acquired from the Town, which cost may include a share of the drilling and equipment costs for the Common Irrigation Systems;
- (xiii) to review and approve the Design Guidelines as promulgated and/or amended from time to time by the DRB;
- (xiv) to regulate the use, maintenance, repair, replacement, modification and appearance of the Common Areas and the Common Facilities;
- (xv) to adopt the Association Rules and amend same;
- (xvi) to keep and maintain the Commonly Maintained Areas and the Common Facilities in a good, clean and orderly condition, including, without limitation, keeping, maintaining, irrigating and, as necessary, replacing all Landscaping in the Common Areas and in or around the Common Facilities, and to cause repairs, replacements and improvements and capital improvements to be made to the Commonly Maintained Areas and to the Common Facilities;
- (xvii) to keep the Commonly Maintained Areas, to the extent reasonably practical, free of debris;
- (xviii) to maintain, repair and replace the Project's signs and to regulate the placement and removal of signs in the Common Areas;
- (xix) to acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, provided that the Association shall not acquire any of the Property for any purposes other than performance of the Association's obligations in regard to the Project or for ownership of all or any part of the Common Areas;
- (xx) to impose and receive payments, fees or charges provided for in this Declaration or for special services performed on behalf of an Owner by the Association that are outside the scope of the Regular Assessments;
- (xxi) to impose late fees and interest for delinquent payments of Assessments, returned check charges, and, if notice and an opportunity to be heard are given as set forth in Section 2.3(b) hereof and subject to Section 3.9 hereof, reasonable fines for Violations of this Declaration, the Design Guidelines, the Bylaws or the Association Rules;
- (xxii) to enter a Parcel for bona fide emergency purposes when conditions present an

imminent risk of harm or damage to persons or to the Common Areas or the Common Facilities;

- (xxiii) to engage a Property Manager and delegate to the Property Manager the day-to-day operation, management and maintenance of the Common Areas and Common Facilities and the day-to-day operation and management of the Association and the performance of the Association's administrative and other duties and obligations under this Declaration, the Bylaws or the Association Rules;
- (xxiv) to establish, maintain and make disbursements from the separate account styled "Tree Mitigation Bank";
- (xxv) to exercise any other powers that may be exercised in the State of Texas by a corporation of the same type as the Association; and
- (xxvi) to exercise any other powers necessary and proper for the government and operation of the Association.

4.4. Affiliated Contracts. The Board, acting on behalf of the Association, shall have the full power and authority to contract with any Owner(s), including, without limitation, Declarant or any affiliate of Declarant, for the performance of services which the Association is obligated or authorized to perform, such contracts to be at competitive rates then prevailing for such services and upon such other terms and conditions, and for such consideration as the Board may deem advisable and in the best interest of the Association provided that the level of service received is consistent with that available from third parties. Without limitation of the foregoing, the Board, acting on behalf of the Association, shall have the full power and authority to borrow money, from time to time, from the Declarant or any affiliate of Declarant and pledge the Association's assets and Assessments as security for the payment and performance of such indebtedness, provided that such loans are on terms consistent with that available from third party financial institutions.

4.5. Liability Limitations. No Member, director, officer or representative of the Association shall be personally liable for debts or liabilities of the Association. The directors and officers of the Association shall not be liable for any mistake of judgment, whether negligent or otherwise, except for their own individual willful misfeasance or malfeasance or misconduct. Such directors and officers shall have no personal liability with respect to any contract or other commitment made by them on behalf of the Association, and the Association shall indemnify and hold such directors and officers free and harmless from any and all expense, loss or liability to others on account of any such contract or commitment (to the extent not covered by insurance proceeds). In addition, each director and each officer of the Association shall be indemnified and held harmless by the Association from any expense, loss or liability to others (to the extent not covered by insurance proceeds) by reason of having served as such director or as such officer and against all expenses, losses and liabilities, including, but not limited to, court costs and reasonable attorneys' fees, incurred by or imposed upon such director or officer in connection with any proceeding to which he may be a party or have become involved by reason of being such director or officer at the time such expenses are incurred, except in cases wherein the expenses, losses and liabilities arise from a proceeding in which such director or such officer is adjudicated guilty of willful misfeasance or malfeasance or misconduct in the performance of his duties. In the event of a settlement of any such proceeding, the indemnification provided hereby shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association. Any right to indemnification provided for herein shall not be exclusive of any other rights to which a director or officer, or former director or officer, may be entitled. The Association shall purchase and maintain directors' and officers' insurance on behalf of any person who is or was a director or officer of the

Association against any liability asserted against him and incurred by him in such capacity or arising out of his status as such.

4.6. Insurance. The Association, acting through the Board, shall purchase, carry and maintain in force, to the extent available, liability insurance covering any employees and any and all portions of the Common Areas and the Common Facilities, and any improvements thereon or appurtenant thereto, for the interest of the Association, the Board, the Association's agents and employees and of all Members, in such coverage amounts and with such endorsements as shall be considered by the Board, at its sole discretion, to be necessary and reasonable, but not less than combined single limits for bodily injury and property damage in an amount of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate. In addition, the Association shall have the right to carry errors and omissions insurance for the Board and officers of the Association, and fidelity bonds for Board members, officers or employees of the Association, as determined to be appropriate by the Board. Subject to the first sentence of this Section 4.6, the Board shall carry such insurance at such limits of coverage and with financially sound companies licensed to do business in Texas as the Board deems appropriate. The Association shall use any net insurance proceeds for the purpose the insurance was intended, including the repair and/or replacement of any damaged or lost property, whether real or personal. Any unused balance from the proceeds of insurance paid to the Association shall be retained by the Association and deposited in its reserve fund as provided for in Section 3.5. Should insurance proceeds be insufficient to fully reimburse any loss or damage, the Association may levy a Special Group Assessment or a Special Member Assessment, whichever is applicable, to cover such deficiency.

ARTICLE V

DESIGN REVIEW BOARD

THE DRB'S POWER AND AUTHORITY ARE SUBJECT TO THE TERMS OF SECTION 2.4(ii).

5.1. Creation. The Association shall establish and maintain a Design Review Board (the "**DRB**") consisting of not fewer than three (3) members. While Declarant is a Class B Member, Declarant shall be entitled to designate the number of and appoint the members of the DRB, and any and all members of such DRB may be removed by the Declarant, at any time, without cause, and Declarant shall be entitled to designate their successors. After Declarant ceases to be a Class B Member as provided in Section 2.4(ii), the Board then shall have the exclusive right and authority at any time, and from time to time thereafter, to create and fill vacancies on the DRB and to remove members of the DRB at any time with or without cause. Subject to the terms of Section 5.3(e) of this Declaration, all plats or re-plats of all or any part of the Project, all development plans and sites plans and all plans and specification for and construction and external modification of Site Improvements in the Project must be approved in advance by the DRB as provided in this Declaration.

5.2. Function of Design Review Board.

a. A function of the DRB is to review and approve or disapprove the following:

- (i) a proposed plat or re-plat of all or any part of the Project to determine compliance with this Declaration and the Design Standards and integration of access, ingress and egress easements, private drives, utility easements, drainage and other development matters into the Project as a whole and to determine compliance with this Declaration and the Design Standards;
- (ii) development plans and site plans for development of sites within the Project to determine compliance with this Declaration and the Design Standards; and

- (iii) plans and specifications, including, without limitation, all architectural plans, for Site Improvements.

b. In connection with its review and approval of proposed plats, re-plats, development plans, site plans and/or plans and specifications, the DRB shall determine the Common Areas and the Landscaping therein, if any, located on the subject Parcel that will be eligible for acceptance as Commonly Maintained Areas and shall so notify the Owner in writing.

c. Unless otherwise agreed to in writing by the DRB:

- (i) no plat or re-plat of all or any part of the Property shall be submitted to any Governmental Authority or filed in the County Records until such plat or re-plat, in such form and detail as the DRB may deem necessary, shall have been submitted to the DRB and approved by it in writing;
- (ii) no development plan for all or any part of the Property shall be submitted to any Governmental Authority until such development plan, in such form and detail as the DRB may deem necessary, shall have been submitted to the DRB and approved by it in writing; and
- (iii) no Site Improvements shall be erected, constructed, placed, altered, modified, demolished, remodeled, maintained or permitted to remain on a Parcel until the site plan and plans and specifications therefor, in such form and detail as the DRB may deem necessary, shall have been submitted to the DRB and approved by it in writing.

d. The DRB shall have the authority to select and employ professional consultants to assist it in discharging its duties, the cost of such consultants to be paid by the Owner of the Parcel in question unless Declarant otherwise agrees in writing. The applicable Owner shall also be responsible for paying direct costs of each review whether or not the submitted plat, re-plat, development plan, site plan or plans and specifications are approved.

e. The process of reviewing and approving plats, re-plats, development plans, site plans and plans and specifications is one which of necessity requires that the DRB be called upon from time to time to make subjective judgments. The DRB is given full power and authority to make any such subjective judgments and to interpret the intent and provisions of the Zoning, this Declaration and the Design Standards in such manner and with such results as the DRB, at its sole discretion, may deem appropriate, and in total absence of an adjudication by a court of competent jurisdiction to the contrary such action by the DRB shall be final and conclusive. The DRB shall have the sole discretion to determine whether plats, re-plats, development plans, site plans or plans and specifications submitted to it for approval comply with this Declaration and the Design Standards, and the DRB shall be entitled and empowered to enjoin or remove any construction undertaken pursuant to such materials that have not been approved in writing by the DRB. Site Improvements are to be constructed in accordance with this Declaration and the Design Standards in existence as of the date the Submission is submitted to the DRB as required hereunder. Subsequent changes to this Declaration or the Design Standards shall not require changes in existing construction previously approved by the DRB.

f. The DRB is not, and shall not be deemed, an executive committee or other committee of the Board as contemplated by the Bylaws.

5.3. Review Generally.

a. For purposes of this Section 5.3, the term, "Submission," shall mean and refer to the plat, re-plat, development plan, site plan or plans and specifications that are submitted to the DRB pursuant to this Article V. It shall be the Owner's sole responsibility to ensure that its Submission reflects compliance with the Zoning. Each Submission that is a development plan or site plan must include the Tree Mitigation Worksheet, in the form attached hereto as Schedule 5.3(a), showing the effect of the Owner's proposed development on its Parcel on tree replacement and mitigation in the Project. The Tree Mitigation Worksheet as submitted must show the cumulative effect of development in the Project, or proposed development therein, in accordance with all prior approved development plans and site plans.

b. With the Submission, the Owner shall simultaneously pay to the Association a review fee in a reasonable amount to cover actual out-of-pocket expenses established by the Board from time to time and set out in the Association Rules.

c. The DRB shall have the right to disapprove any Submission if it is not in compliance with this Declaration and the Design Standards, if the Submission is incomplete or if the DRB reasonably determines that such Submission is deficient in regard to the overall aesthetics of the Project, the harmony of the work with respect to other improvements in the Project and the Project overall and the development's location relative to surrounding improvements, topography, landscaping and finished elevations, the value and quality of materials or the quality of workmanship. The DRB may base its approval or disapproval on the following, without limitation:

- (i) architectural character and design of all proposed Site Improvements, taking into consideration the aesthetic quality of any structures with respect to height, form, proportion, volume, siting, exterior materials (with regard to type, scale, texture, color and durability) and proposed quality of workmanship;
- (ii) adequacy of a Parcel's dimensions for proposed Site Improvements;
- (iii) conformity and harmony of external design with neighboring sites within the Project and types of operations and uses thereof;
- (iv) relation to topography, grade and finish ground elevations to that of neighboring sites within the Project;
- (v) functional appropriateness;
- (vi) consistency of the proposed development and use in a pedestrian-oriented, vertical and horizontal mixed use environment;
- (vii) extent and quality of Landscaped Areas;
- (viii) compliance with the purpose and general plan, intent and provisions of this Declaration and the Design Standards;
- (ix) compliance with the Zoning, including, without limitation, the Concept Plans for the Project; or
- (x) integration of the proposed development into the Project as a whole.

The DRB shall be available on a reasonable basis, upon reasonable request of an Owner, to meet with an Owner to discuss and answer questions concerning the Submission.

d. Each Owner acknowledges that approval of a plat, re-plat and/or development plan or site plan or plans and specifications for improvement by the Town or other Governmental Authority may be required for development of its Parcel and that the approval of same by the Town or any other Governmental Authority is solely within the discretion of that Governmental Authority. Each Owner further acknowledges and agrees that approval of a Submission by the DRB does not constitute any covenant, statement, representation or warranty that the Submission will be accepted or approved by any Governmental Authority.

e. Notwithstanding anything to the contrary contained in this Declaration, while Declarant is a Class B Member, Declarant shall have the right and authority, in lieu of the DRB, to review and approve or disapprove, in its sole discretion and upon such criteria as Declarant deems in the best interest of the Project, any plat, re-plat, development plan, site plan and/or plans and specifications for Site Improvements on, for or in regard to the Hospital Tract.

5.4. Review Process and Procedures.

a. Consistent with the following general procedures, and subject to the approval of the Declarant during the Development Period and the approval of the Board, the DRB shall have the authority to promulgate and amend, from time to time, procedures for the review and approval or disapproval of Submissions.

b. A Submission shall include:

- (i) in regard to a proposed plat or re-plat, all information and things required to be submitted to the Town in an application for a plat or replat and such other information and things as may be required by the Design Guidelines, together with the written certification of the Owner's architect that the Submission complies with the requirements of the Zoning, this Declaration and the Design Standards and, as applicable, an explanation of any non-compliance (the "*Architect's Certificate*");
- (ii) in regard to a proposed development plan or site plan, all information and things required to be submitted to the Town in an application for a development plan or site plan and for a building permit, the Tree Mitigation Worksheet and such other information and things as may be required by the Design Standards, together with the Architect's Certificate; and
- (iii) in regard to plans and specifications for Site Improvements, such information and things as may be required by the Design Standards, together with the Architect's Certificate.

c. The Owner shall make a preliminary Submission early in the design process, preferably at the conceptual or initial schematic design phase, at which time the Owner shall submit two (2) sets of all information and things required to be included in the Submission. Within thirty (30) days of the receipt of the preliminary Submission in a form and fully complete as required by the DRB, the DRB and the Owner shall meet, and the DRB shall provide to the Owner written comments (or a marked set of drawings showing comments) to said preliminary Submission for guidance in preparation of the final Submission.

d. By no later than thirty (30) days prior to the projected date for delivery of the application for the plat, re-plat, development plan or site plan or building permit to the Town, there shall be a final

Submission to the DRB, at which time the Owner shall submit five (5) sets of all information and things required to be included in the Submission, and a copy thereof in electronic format (PDF) on CD, revised in response to the DRB's comments to the preliminary Submission, together with a written explanation of the revisions made, the Architect's Certificate and payment to the Association, in good funds, of the amount of the payment to the Tree Mitigation Bank as set forth on the Tree Mitigation Worksheet (unless such payment has been waived by the Declarant).

e. Approval of a final Submission shall be based upon a determination by the DRB as to whether or not in its judgment such Submission is sufficient in regard to the overall aesthetics of the Project, the harmony of the work with respect to other improvements in the Project and the Project overall and the development's location relative to surrounding improvements, topography and adequate compliance with this Declaration and the Design Standards. The DRB shall notify the applicable Owner in writing of the DRB's disapproval of any portion of the Submission and shall give the reasons for such disapproval. Approval of any Submission, or the grant of any variance from the requirements of this Declaration or the Design Standards, shall not be deemed a waiver of the DRB's right or any rights held by Declarant or the Association, at their discretion, to disapprove similar Submissions, or any of the features or elements included therein, or to refrain from granting similar variances.

f. Should the DRB fail to either approve or disapprove the final Submission within thirty (30) days after submittal thereof to the DRB in a form and fully complete as required by the DRB, it shall be conclusively presumed that the DRB has approved such Submission.

g. After commencement of the work pursuant to an approved final Submission, the Owner shall diligently proceed with same to completion. In any event, all work covered by such approval shall be completed, as applicable, within a reasonable period of time in light of the nature of the work after the commencement thereof, except for such period of time as such completion is rendered impossible or would result in great hardship due to strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the reasonable control of the Owner of the Parcel in question, unless the DRB extends in writing the time for completion.

5.5. Inspections; Acceptance of Certain Improvements for Maintenance.

a. The DRB, or its designates, shall have the right during reasonable business hours to enter upon and inspect any Parcel and any Site Improvements then under construction to determine whether or not the plans thereof have been approved by the DRB and the improvements are being constructed in accordance with the approved Submission. The Owner of an applicable Parcel or Site Improvement shall not be responsible for, and the Association shall indemnify such Owner from and against, any damages or injuries to any party making such inspection unless such damages or injuries result from the negligence or willful misconduct of such Owner. If the DRB shall reasonably determine that such plans have not been approved or that plans which have been so approved are not being complied with or that the improvements are not being constructed in accordance with the approved Submission, the DRB may, at its discretion, give the applicable Owner written notice to such effect, and thereafter, the Board and the DRB shall be entitled to enjoin further construction and to require the removal or correction of any work in place that does not comply with approved plans. No Owner may use or occupy any buildings, structures or other Site Improvements on any Parcel prior to the DRB's inspection and determination that same have been constructed in compliance, in all material regards, with the approved Submission. If any Site Improvements shall be constructed, altered or replaced or maintained on any Parcel otherwise than in conformity with the approved Submission thereof, such action shall be deemed to have been undertaken without requisite approval of the DRB and to be in violation of this Declaration and the Design Standards, and the Association and the DRB shall be entitled to take action as permitted under this Declaration.

b. Without limitation of the terms of clause (a) of this Section, the DRB, or its designates,

shall inspect all portions of the Common Areas, such as Buffers and sidewalks, that may be located on an Owner's Parcel to determine that such Owner has properly installed, constructed and maintained improvements to such Common Areas and the Common Facilities therein, including, without limitation, the obligation to properly plant, maintain and irrigate Landscaping in these Common Areas, prior to the Association's approval and acceptance of such areas and facilities for purposes of Sections 4.3(xvi) and (xvii) hereof. An Owner may request that the Association inspect and take over maintenance of a Common Area and the Common Facilities (including Landscaping) therein that are located on the Owner's Parcel, if the DRB has previously determined such area to be eligible for acceptance as a Commonly Maintained Area, by written notice to the Association given after (i) the Owner completes all installation and construction of improvements, irrigation and plantings and (ii) the lapse of a reasonable period of time for such plantings to become established. Within thirty (30) days of such request, subject to reasonable extensions for inclement weather, the Association, or its designees, shall make such inspection, and the Association shall notify the Owner, in writing, of the Association's approval and acceptance of same or disapproval together with the reasons for same. If disapproved, the Owner may make such corrections and changes to the Common Areas and the Common Facilities as are required and again request inspection and acceptance of same for maintenance. If the Association fails so to notify the Owner within the 30-day period as same may be reasonably extended for inclement weather, the portions of the Common Areas and the Common Facilities therein that are eligible to be Commonly Maintained Areas shall be deemed accepted for maintenance. After such inspection, approval and acceptance, the Association shall maintain the Commonly Maintained Areas pursuant to Sections 4.3(xvi) and (xvii) hereof. For purposes of this paragraph, the term, "maintenance," shall not include irrigation, and the Association shall have no obligation to undertake irrigation of Landscaping in the Common Areas until construction, installation and operation of the Common Irrigation System.

5.6. Interior Alterations. The Owner may construct, make improvements to and otherwise alter the interior of any building on the Property without first obtaining DRB approval therefore; provided, however, that no Owner shall make any such improvements or alterations or remove any portion thereof or make any additions thereto or do anything else that would materially change the exterior appearance of such Site Improvements without first submitting plans therefor to and obtaining the written approval thereof from the DRB.

5.7. Changes. No construction that is inconsistent with, in addition to or materially different from any previously approved Submission shall be commenced or permitted until the plat, re-plat, development plan, site plan or plans and specifications reflecting such change or addition have been submitted to and approved by the DRB in accordance with this Article V.

5.8. Limitation of Liability. Declarant, the Association, the Board or any of its members and the DRB or any of its members shall not, individually or in combination, be liable in damages or otherwise to person or entity making a Submission for approval, or to any Owner, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any Submission. Declarant, the Association, the Board or any of its members and the DRB or any of its members shall not, individually or in combination, be liable in damages or otherwise in connection with any construction, design, engineering or defect associated with any Site Improvement constructed on the Property. APPROVAL OF ANY SUBMISSION BY THE DRB, THE ASSOCIATION OR DECLARANT DOES NOT CONSTITUTE ANY STATEMENT, OPINION, APPROVAL, WARRANTY OR REPRESENTATION THAT SUCH SUBMISSION, OR THE INFORMATION OR THINGS COMPRISING SUCH SUBMISSION, COMPLY WITH LAWS OR PRUDENT CONSTRUCTION PRACTICES. WITHOUT LIMITATION OF THE FOREGOING, ANY ACTIONS TAKEN OR APPROVALS SET FORTH ABOVE DO NOT CONSTITUTE AND SHALL NOT BE A STATEMENT, OPINION, APPROVAL, WARRANTY OR REPRESENTATION BY THE DECLARANT, THE ASSOCIATION, THE BOARD OR THE

DRB, OR ANY OFFICER, DIRECTOR, CONSTITUENT PARTNER OR MEMBER THEREOF, OR OF ANY CONSULTANT, ARCHITECT, ATTORNEY OR OTHER PERSON OR ENTITY ENGAGED BY ANY OF THEM, AS TO WHETHER THE IMPROVEMENTS CONTEMPLATED IN THE SUBMISSION ARE OR WILL (1) BE STRUCTURALLY SOUND; (2) COMPLY WITH APPLICABLE LAWS; (3) BE FREE FROM DAMAGE BY WIND, RAIN OR FLOOD; (4) NOT ENCROACH INTO ANY EASEMENT OR SETBACKS OR ONTO OTHER PARCELS; (5) NOT DIVERT SURFACE WATER IN A MANNER NOT ALLOWED BY LAWS OR THIS DECLARATION; OR (6) BE HABITABLE OR FIT FOR A PARTICULAR PURPOSE.

5.9. Certificate of Compliance. Upon request by an Owner who has complied with the provisions of this Article V, the DRB shall deliver to such Owner a written certification of such compliance, and such certificate shall be conclusive evidence of such compliance.

5.10. Documentation. Upon approval of the development plan or site plan by the Town, the Owner of the subject Parcel shall deliver to the Association a copy of the approved Tree Mitigation Worksheet. Within sixty (60) days after completion of any Site Improvements, the Owner of such Parcel shall provide to the Association as-built site, utility and landscape plans and such other as-built information, including, but not limited to, the location, size and configuration of all above-ground improvements, paved areas and underground utilities, tract size, permeable surface area, ground floor square footage (footprint) of the primary use buildings, total square footage of the primary use building(s), ground floor square footage (footprint) of other buildings, and total square footage of the other buildings, which may reasonably be requested by the Board or the DRB, together with a copy of all such information in electronic format (PDF) on CD.

ARTICLE VI GENERAL PROTECTIVE COVENANTS

6.1. General. No use shall be permitted on any portion of the Property which is not allowed under the Zoning. Each Owner or other user of any portion of the Property shall comply at all times in every respect with this Declaration and any and all Laws. IN SOME INSTANCES THE REQUIREMENTS OF LAWS AND GOVERNMENTAL AUTHORITIES MAY BE MORE OR LESS RESTRICTIVE THAN THE PROVISIONS OF THIS DECLARATION AND THE DESIGN STANDARDS. IN THE EVENT A CONFLICT EXISTS BETWEEN ANY SUCH LAWS OR REQUIREMENTS AND ANY REQUIREMENT OF THIS DECLARATION OR THE DESIGN STANDARDS, THE MOST RESTRICTIVE LAW OR REQUIREMENT SHALL PREVAIL, EXCEPT IN CIRCUMSTANCES WHERE COMPLIANCE WITH A MORE RESTRICTIVE PROVISION OF THE DECLARATION OR THE DESIGN STANDARDS WOULD RESULT IN A VIOLATION OF MANDATORY APPLICABLE LAW OR GOVERNMENTAL REQUIREMENTS, IN WHICH EVENT THOSE LAWS OR GOVERNMENTAL REQUIREMENTS SHALL APPLY. COMPLIANCE WITH LAWS OR MANDATORY GOVERNMENTAL REQUIREMENTS WILL NOT RESULT IN THE BREACH OF THIS DECLARATION OR THE DESIGN STANDARDS EVEN THOUGH SUCH COMPLIANCE MAY RESULT IN NON-COMPLIANCE OF PROVISIONS OF THIS DECLARATION OR THE DESIGN STANDARDS. WHERE A LAW OR GOVERNMENTAL REQUIREMENT DOES NOT CLEARLY CONFLICT WITH THE PROVISIONS OF THIS DECLARATION OR THE DESIGN STANDARDS BUT PERMITS ACTION THAT IS DIFFERENT FROM THAT REQUIRED BY THIS DECLARATION OR THE DESIGN STANDARDS, THE PROVISIONS OF THIS DECLARATION AND THE DESIGN STANDARDS SHALL PREVAIL. All portions of the Property shall be developed in accordance with this Declaration as adopted and amended as herein provided.

6.2. Supplements.

a. General. The provisions of this Article set forth certain requirements which, in addition to the other provisions of this Declaration shall apply with respect to the development and use of each Parcel of the Property.

b. Additional Restrictions and Standards. Notwithstanding the fact that a use may be permitted by the Zoning and by this Declaration, Declarant may impose more restrictive uses on any particular Parcel owned by Declarant (or an affiliate thereof) in the form of a Supplement applicable to such Parcel. A Supplement may set forth additional development standards, protective covenants or other provisions as deemed necessary by Declarant to reflect the character and/or contemplated use of the Parcel to which such Supplement applies. Except as provided in Section 9.2(c), no Supplement may amend or delete any provision of this Declaration with respect to the Parcel covered by such Supplement, it being acknowledged that an amendment of this Declaration, whether as to the Property as a whole or as to any one or more Parcels thereof, may be effected only by an amendment to this Declaration in accordance with the amendment provisions of this Declaration.

c. Other Purposes. Declarant may execute and file in the County Records a Supplement for any of the other purposes provided in this Declaration.

d. Effect. Any provisions of a Supplement shall, with respect to the Parcel(s) to which such Supplement relates, be fully effective and binding upon the affected Parcel(s) to the same extent as if the provisions of such Supplement were included in this Declaration.

6.3. Surface Water Flow and Drainage. Without limitation of the terms of Article V hereof, plans and specifications for all dams, lakes, ponds and other "water features" of any kind to be located or constructed on a Parcel must be submitted in advance for DRB approval as part of the Owner's Submission. Each Owner shall control water runoff from its Parcel to prevent damage to adjacent property and to comply with the overall drainage plan for the Property.

6.4. Hazardous Waste; Indemnity; Medical Waste.

a. General. Each Owner shall contain and store all rubbish, trash, garbage and wastes generated from its Parcel or its use of the Common Areas, including, without limitation, from its construction or alteration of improvements in, on or about its Parcel, in compliance with all Laws and the Association Rules.

b. Prohibition. Except as permitted under Section 6.4(c) hereof, no Owner shall use, contain, store, dispose, remove or transport on, over, from, under or through the Property or any Parcel thereof any hazardous materials, except for those hazardous materials that are necessary per prudent industry standards for the Owner's permitted use of its Parcel or that are usual and ordinary in connection with the ownership of its Parcel (such as cleaning products), provided that the Owner shall use, contain, store, dispose, remove and transport all such hazardous materials strictly in compliance with all applicable Laws. For purposes of this Declaration, the term "hazardous materials" shall include:

- (i) any substance the presence of which requires special handling, investigation, notification or remediation under any Laws;
- (ii) any substance which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any Laws;

- (iii) any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and is or becomes regulated by any Governmental Authority or any agency, department, commission, board, agency or instrumentality of the United States, the State of Texas or any political subdivision thereof;
- (iv) any substance the presence of which causes or threatens to cause a contamination of the Property, the Project, any Parcels, the Common Areas, the Common Facilities or adjacent properties (including, without limitation, nearby public roads and rights-of-way) or poses or threatens to pose a hazard to the health or safety of persons on or about the Property, the Project, any Parcels, the Common Areas, the Common Facilities or adjacent properties;
- (v) any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons; and
- (vi) any substance which contains polychlorinated biphenyls, asbestos, or urea formaldehyde foam insulation.

No Owner shall contain, store or dispose of any hazardous materials in the rubbish, trash, garbage or waste that is removed or transported from the Project by the Association, if any. Each Owner shall indemnify and hold the Association, the Property Manager and all other Owners, and their respective employees, agents, officers, directors, shareholders, partners and legal representatives harmless from and against all claims, demands, causes of action, losses, damages, liabilities, penalties, fines, costs and expenses (including, without limitation, attorneys' fees, courts costs and costs of collection) asserted against, or incurred by any of the indemnified persons or entities and arising out of the Owner's use, generation, containment, storage, disposal, removal and transportation of any hazardous materials or a breach of the Owner's obligations in this Section 6.4.

c. Treatment of Medical Waste. The determination that an Owner is a Medical Owner shall be made by the Association, upon request by said Owner. Each Medical Owner shall be responsible and liable for the use, containment, storage, disposal, removal and transportation of all medical waste from its Parcel. For purposes of this Declaration, the term, "medical waste," shall mean waste generated by health care related facilities and associated with health care activities, but excluding garbage or rubbish generated from offices, kitchens or other non-health-care activities, including, without limitation, special waste from health care-related facilities which is comprised of bulk blood and blood products, microbiological waste, pathological waste and sharps as those terms are defined in 25 TAC §1.132 (relating to Definitions), but excluding artificial, nonhuman materials removed from a patient and requested by the patient, including, but not limited to, orthopedic devices and breast implants. Each Medical Owner shall use, generate, contain, store and permit to exist any medical waste in or upon its Parcel in compliance with all applicable Laws. Each Medical Owner shall dispose of, remove and transport all medical waste from its Parcel strictly in compliance with all applicable Laws. No Medical Owner shall contain, store or dispose of any medical waste in the rubbish, trash, garbage or waste that is removed or transported from the Project by the Association, if any. In the event of a breach of the foregoing, the Medical Owner shall immediately notify the Association in writing and immediately undertake remediation or removal in accordance with all applicable Laws. In addition, each Medical Owner shall indemnify and hold the Association, the Property Manager and all other Owners, and their respective employees, agents, officers, directors, shareholders, partners and legal representatives harmless from and against all claims, demands, causes of action, losses, damages, liabilities, penalties, fines, costs and expenses (including, without limitation, attorneys' fees, courts costs and costs of collection) asserted against, or incurred by any of the indemnified persons or entities and arising out of the Medical Owner's use, generation, containment, storage, disposal, removal and transportation of any medical waste or a

breach of the Owner's obligations in this Section 6.4.

6.5. Construction Standards.

a. Any builder employed to construct improvements on any portion of the Property may conduct its construction operations and activities and do all things reasonably necessary as required to expeditiously commence, continue and diligently complete construction of any such improvements, including the provision of temporary buildings or trailers for administration of work and for the storage of materials and equipment, and the construction of temporary security fences and lighting, subject to the requirements of the Zoning and this Declaration, except that (unless approved by Declarant or DRB) all construction activities, temporary structure, storage of materials and equipment, all construction-related parking and temporary security fences shall be confined entirely to the relevant Parcel. Each Owner is responsible for, and shall cause, through appropriate contractual provisions, all contractors employed by such Owner to be held responsible for the costs of cleaning up any debris or waste improperly disposed of anywhere in the Project. Each Owner and its contractors must maintain an attractive, clean nuisance-free environment on such Owner's Parcel during the period of construction. The Association and/or the DRB shall have the right to designate reasonable points of ingress and egress on each Parcel and within the Project for construction vehicles. Once commenced, all construction shall be continued with due diligence and good faith until completion, subject to force majeure.

b. Each Owner expressly covenants that it will use reasonable efforts to prevent all adverse impacts (such as, but not limited to, air pollution, soil erosion or increased runoff rates) to areas outside such Owner's Parcel in any way (negligent or otherwise) resulting from construction, alteration, maintenance, repair, replacement or removal of improvements on such Owner's Parcel and that it will indemnify and hold harmless the Association, the DRB and Declarant from any and all damages resulting therefrom. Without limitation of the foregoing, each Owner acknowledges and agrees to comply, in all regards, with the requirements in the Zoning for tree preservation.

c. Prior to any excavation on a Parcel the Owner thereof will determine and mark the location of and will protect all existing utilities. Utility lines are to be located before earth moving or drilling equipment operations are allowed to start near underground utilities. All backfill will be adequately compacted to prevent future settlement, especially under pavement and other structures. Compaction by jetting is not allowed.

6.6. Zoning: No Owner other than Declarant shall apply for, or concur in any application for, or directly or indirectly aid or support any change to the Zoning, or any amendment to any applicable zoning classification, or any variance from the requirements of the Zoning, that would affect in any way the Zoning or applicability of the Zoning to the Project or any portion thereof without the express prior written approval of Declarant, which Declarant may give or withhold in its sole discretion. Declarant reserves the right to modify and supplement the desired change, amendment or variance as a condition of Declarant's approval of same.

ARTICLE VII
EASEMENTS

7.1. Utility Easements. Declarant hereby reserves for itself and its successors and assigns for the benefit of the Project and hereby grants, sells and conveys to the Association and its successors and assigns, an easement for installation, maintenance, repair and removal of utilities, or other services (including, but not limited to, mass transit, electric power, water, storm drainage, sewer, natural gas, telephone, security and other telecommunications systems such as closed-circuit or cable television) on, over, under and across all portions of the Property; provided, however, the location of said easement areas

on the Hospital Tract, in which lines and other utility facilities may be installed, shall be limited to those areas depicted on the plat for such property as approved by the Town and filed in the County Records or by separate instrument approved by Hospital and filed of record. Further, the location of the easement areas on any other Parcel, in which lines and other utility facilities may be installed, may be similarly limited to those areas depicted on a plat for such Parcel (or such Parcel and other portions of the Property) approved by the Town and filed in the County Records or by a Supplement executed by Declarant. Subject to the terms of Section 7.6 hereof, full right of ingress and egress shall be had by Declarant, the Association and utility companies at all times over the Property for the installation, operation, maintenance, repair or removal of any such utility together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility; provided, however, that any damage to the Parcel shall be repaired to its original conditions and any obstruction that is permitted to be placed and maintained in a Landscaped Area (which excludes; for example, any buildings) shall be restored upon completion of the work that made the removal necessary. Subject to the Zoning, driveways are permitted to cross these easements for access to Parcels. Declarant or the Association shall have the right to assign and convey, in whole or in part, the easements so reserved to one or more public utility companies or to the Town. Declarant or the Association, as applicable, shall give the Owner of a Parcel not less than seven (7) days prior written notice before Declarant or the Association, respectively, commences installation or maintenance, repair or removal of utilities on that Owner's Parcel (except in case of an emergency, in which event no such notice shall be required). Each Owner shall reasonably cooperate in the granting of easements for utilities, storm drainage and otherwise for the benefit of adjoining Parcels, and Declarant may execute one or more Supplements depicting same.

7.2. Access, Ingress and Egress and Parking Easements. Declarant hereby reserves for itself and its successors and assigns for the benefit of the Project and hereby grants, sells and conveys to the Association and its successors and assigns, an easement for vehicular and pedestrian access, ingress and egress and parking on, over, under and across all portions of the Property within parking lots, parking structures, private drives, sidewalks, courtyards, squares and comparable public spaces in the Project. The location of said easements on the Hospital Tract is depicted on Schedule 7.2 attached hereto and incorporated herein for all purposes. Nothing contained herein shall prohibit an Owner from identifying and reserving a reasonable portion of the parking spaces (other than parking spaces located on Streets) in parking lots or structures on its Parcel for certain staff or employees. Further, parking spaces (other than parking spaces located on Streets) in parking lots or structures located on Parcels used exclusively for residential purposes may be limited or reserved to the exclusive use of the residents and their guests.

7.3. Other Easements. Declarant and the Association shall have, and Declarant hereby reserves unto itself and its successors and assigns for the benefit of the Project and hereby grants, sells and conveys to the Association and its successors and assigns, an easement for full right of ingress and egress at all times over and upon the Project for the purpose of maintenance, repair or replacement of utilities subject to the terms of Section 7.6 hereof and the limitations as to the Hospital Tract set forth in Section 7.1 and for the performance of the rights under Article VIII of this Declaration, and for the carrying out by the Association of its other rights, functions, duties and obligations set out in this Declaration.

7.4. Ground Sign Easements. Declarant and the Association shall have, and Declarant hereby reserves unto itself and its successors and assigns for the benefit of the Project and hereby grants, sells and conveys to the Association and its successors and assigns, an easement for the ground signs at the locations identified in the Zoning as ground sign locations and depicted on the Concept Plan for Ground Sign Locations attached to the Zoning Ordinance as Exhibit C and incorporated herein for all purposes. Declarant or the Association may specifically identify and describe the sign easement areas, from time to time, by an instrument filed in the County Records.

7.5. Maintenance of Easement Area on a Parcel. The Owner of a Parcel burdened by an

easement created under this Declaration shall, at its own expense, maintain the private drives and other facilities that it constructs in the easement area, in good and satisfactory condition and repair and in compliance with this Declaration and all applicable Laws. During any period of construction or development in his Parcel, each Owner shall require its employees, agents, contractors, subcontractors and invitees using heavy equipment, machinery or vehicles such as dump trucks, lorries, tractors, cranes or earth removal equipment to access such party's property primarily from streets and easement areas other than the private drives burdening other Parcels so as to minimize damage to the easement areas and drives, and each Owner shall repair and make good any damage to a private drive or its pavement, curbs or median or adjacent sidewalks or landscaping caused by its respective employees, agents, contractors, subcontractors and invitees during any period of construction or development. If any Owner fails to repair any such damage, the Association shall be entitled, but shall have no obligation, to enter onto the Parcel and make such repairs, and Owner shall, immediately upon demand, pay to the Association its costs and expenses incurred in so acting.

7.6. Minimal Interference. All use of the easements described in this Article VII shall be made so as to minimize interference with the use and enjoyment of the Parcel burdened by the easement. The use of these easements shall not extend to permitting entry into the buildings or structures on any Parcel. Any entry by Declarant or the Association upon the Property or any portion thereof pursuant to the terms of this Article VII shall be made with as little interruption of use to the affected Owner(s) as is reasonably practicable, and, to the extent as is practicable, Declarant or the Association shall enter upon the Property or portion thereof accordingly.

7.7. Easements for Maintenance, Emergency and Enforcement. Declarant hereby reserves for itself and the Association easements on, over, under and across all portions of the Property as necessary to enable the Association to fulfill its obligations to operate, repair and maintain the Commonly Maintained Areas and to enforce its rights and the duties and obligations of the Owners under this Declaration.

7.8. Temporary Closings. Subject to the terms of Section 7.6 hereof, the use and enjoyment of the easement areas are subject to interruption and temporary obstruction or closure for purposes of constructing, repairing and maintaining the easement areas and for public safety.

7.9. Benefitted and Burdened Parcels; No Severance. The Parcels benefitted by each easement created in this Article VII constitute the dominant estate, and the Parcels burdened by each easement created in this Article VII constitute the servient estate. Each granted easement is appurtenant to and for the benefit of each Parcel owned by each grantee of the easement. No easement may be transferred, assigned or encumbered except as appurtenant to the benefitted Parcels.

7.10. Further Assurances. Upon request by the Association or the Declarant, the Owner shall file in the County Records, or include in the plat or re-plat for its Parcel, access, ingress and egress easements and utility easements acceptable to Declarant and the Town for any private drives, sidewalks, courtyards, squares and comparable public spaces constructed on, and for any utility easements located on, over, across or through the Owner's Parcel.

ARTICLE VIII

CONSTRUCTION; MAINTENANCE BY OWNER

8.1 Construction of Certain Infrastructure. To the extent located on a Parcel, the Owner thereof shall have the duty and responsibility, at its sole cost and expense, to install utilities and parking lots, parking structures, private drives, sidewalks, courtyards, squares and comparable public spaces, if any, on over, under and across all portions of its Parcel in accordance with the approved Submission(s).

8.2. Duty of Maintenance. Each Owner shall have the duty and responsibility, at its sole cost and expense, to keep such Owner's Parcel and all buildings and improvements thereon in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following: prompt removal of all litter, trash, refuse and wastes; lawn mowing; tree and shrub care; watering; other Landscaping maintenance; keeping exterior lighting and mechanical facilities in working order; keeping lawn and garden areas, sidewalks, driveways and private drives in good repair; keeping all signs in good repair; complying with all government, health and police requirements; repairing exterior damage to improvements; striping of parking areas and repainting of improvements. The Association shall have the right to perform any maintenance, repair or replacement of Landscaping or Site Improvements on any portion of a Parcel upon the failure of the Owner thereof to do so with such failure continuing for thirty (30) days after written notice thereof, stating with reasonable specificity the deficiency in maintenance, repair or replacement, is given by the Association to the applicable Owner.

8.3. Installation, Construction and Maintenance of Certain Common Areas. Each Owner acknowledges and agrees that certain portions of the Common Areas and Common Facilities, such as Buffers and sidewalks, may be located on such Owner's Parcel and that it shall be the obligation of such Owner, at its expense, to properly install, construct and maintain improvements to such Common Areas and the Common Facilities therein as required by the Zoning Ordinance, including, without limitation, the obligation to properly plant, maintain and irrigate Landscaping in these Common Areas as required by the Zoning Ordinance, until the Association approves and accepts such areas and facilities as Commonly Maintained Areas pursuant to Section 5.5(b) hereof for purposes of Sections 4.3(xvi) and (xvii) hereof and, with respect to irrigation, until construction, installation and operation of the Common Irrigation Systems pursuant to which the Association will provide the irrigation for the Commonly Maintained Areas.

8.4. Responsibility. Each Owner shall cause their employees, tenants, guests, invitees and customers to comply with this Declaration, the Design Guidelines, the Bylaws and the Association Rules in all regards and shall be liable for any Violations arising out of the acts or omissions of such persons.

ARTICLE IX

MISCELLANEOUS PROVISIONS

9.1. Binding Effect and Duration. The provisions of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by Declarant, the Association and the Owners of portions of the Property and their respective legal representatives, heirs, successors and assigns, for a term commencing on the date that this Declaration is recorded in the County Records, and ending fifty (50) years after the date that this Declaration is first recorded in the County Records, after which time this Declaration shall automatically be extended for successive periods of ten (10) years each unless an instrument executed and duly acknowledged by a two-thirds (2/3rds) vote of the Class A Members then owning land in the Project and concurred in by Declarant without the necessity of the joinder of any other party, has been recorded in the County Records, agreeing to abolish this Declaration.

9.2. Amendment.

a. Except as otherwise provided in this Declaration, this Declaration may be amended only by a written amendment approved by a Majority Vote of the Members as evidenced by a certification of the Secretary of the Association on the amendment document and signed by Declarant (if Declarant is still a Class B Member) or the President of the Association (if Declarant is not still a Class B Member), with such amendment recorded in the County Records. The joinder of any other party is not required in order for any such amendment to be effective. Notwithstanding the above, no amendments shall be made to the

following provisions of this Declaration unless such have been first approved by a Majority of the Class A Members (in addition to approval by Declarant) as evidenced by a certification of the Secretary of the Association on any such amendment document:

- (i) changing the definition of Common Areas, Common Facilities or Development Period;
- (ii) changing the Owner's rights to inspect and copy the Association's books and records as provided in Section 4.3(xi);
- (iii) changing the provisions regarding contracts with affiliates as provided in Section 4.4;
- (iv) changing the type of or basis for allocation of Assessments;
- (v) changing the provisions regarding the priority of the lien for Assessments as provided in Section 3.8;
- (vi) changing of prohibited uses as provided in Article XI; or
- (vii) changing this Section 9.2(a).

b. Notwithstanding anything to the contrary herein, for so long as the Medical Use Restrictions are in effect, Section 11.2(a) and (b) may be amended only by the written agreement of Hospital and Declarant and may not be amended by means of Section 9.2(a).

c. Declarant or the Association may, from time to time, execute and file in the County Records one or more amendments to this Declaration for the purposes of correcting any clerical or administrative errors herein or clarifying or implementing the intentions and purposes of this Declaration, without the necessity of obtaining the approval of any Owners.

9.3. Enforcement. Except as otherwise set forth in this Section or in Section 11.2 in regard to the Medical Use Restrictions, the Association shall enforce the covenants, conditions and restrictions set forth in this Declaration. Declarant or the Owners of portions of the Property shall have the right (but not the duty) to enforce the covenants, conditions and restrictions set forth in this Declaration. Enforcement shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any part of this Declaration, either to restrain violation or to recover damages, and against the land, to enforce any lien created by the provisions of this Declaration, and failure by Declarant, the Association or any Owner to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs from the non-prevailing party.

Notwithstanding the foregoing, the Board may, from time to time, determine that the Association will not enforce a covenant, condition or restriction, if the Board also determines that it is in the best interest of the Project, the Association and the Owners as a whole so to act. In such event, any Owner seeking enforcement of same shall indemnify, defend and hold harmless the Association, any member of the Board or an officer of the Association and the Declarant and Declarant's successors and assigns from all liabilities, claims, demands and expenses, including, without limitation, attorneys' fees and court costs, suffered or incurred by the Association, any member of the Board or an officer of the Association or the Declarant or Declarant's successors and assigns and arising out of any lawsuit or other proceeding or any other action for enforcement of the covenant, condition or restriction (except, in regard to the enforcement of the Medical Use Restrictions by Hospital, only to the extent that any such liabilities, claims, demands

and expenses exceed \$1,500.00).

9.4. Validity and Severability. Violation of or failure to comply with these covenants, conditions and restrictions shall not affect the validity of any mortgage, bona fide lien or other declaration similar security instrument which may then be existing as an encumbrance on any part of the Property. Invalidation of any one or more of these covenants, conditions and restrictions, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect.

9.5. Interpretation. The Board shall have the right, power and authority to determine all questions arising under or in connection with this Declaration, as well as the Design Standards, the Certificate and the Bylaws of the Association, and to construe and interpret their provisions. Any such determination, construction or interpretation made by the Board, in the absence of an adjudication by a court of competent jurisdiction to the contrary, shall be binding on the Owners. In all cases, the provisions set forth or provided for in this Declaration shall be construed together, in light of any applicable Supplement(s), and given that interpretation or construction which, in the opinion of the Board, will best effect the intent of Declarant's general plan of development as reflected herein. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The effective date of this Declaration shall be the date of its filing for record in the County Records. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer. Section and Article references set forth herein shall refer to the Sections and Articles of this Declaration unless otherwise specified. The singular wherever used herein shall be construed to mean the plural when applicable and vice-versa, and the use herein of any gender shall mean any other gender when applicable. This Declaration shall be construed under and in accordance with the laws of the State of Texas. The exhibits attached hereto are made a part hereof by reference.

9.6. Notices. Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery; or (b) expedited delivery service with proof of delivery; or (c) United States mail, postage prepaid, registered or certified mail; or (d) prepaid telegram or telex (provided that such telegram or telex is confirmed by expedited delivery service or by mail in the manner previously described), to the Association at 800 Parker Square, Suite 260, Flower Mound, Texas 75028, Attention: Mr. Roy Morris (or such other address stated in a notice to the Owners) with a copy to Wright Ginsberg Brusilow P.C. at 14755 Preston Road, Suite 600, L.B. 64, Dallas, Texas 75254, Attention: Ms. T. Douglas, and to each Owner at the last known address of such Owner as shown on the records of the Association and shall be deemed delivered when actually received when given in accordance with (a), (b) or (d) above, or three days following deposit in the mail in accordance with (c) above. Declarant may record a notice of its address change in the County Records.

9.7. Approvals. No approval by Declarant, the Board, the DRB or the Association, pursuant to the provisions of this Declaration, shall be effective unless in writing, except as otherwise specifically provided herein.

9.8. Condition to Conveyance to the Association. Declarant may, in its discretion, convey real or personal property to the Association subject to the condition that, upon any winding up or termination of the Association, such property is returned, transferred and conveyed to Declarant, to Declarant's affiliate or designee or otherwise in accordance with the Declarant's instructions. Any such condition shall continue and remain in full force and effect, notwithstanding Declarant ceasing to be a Member or Owner or the expiration of the Development Period.

9.9. Controlling Agreement. The provisions of this Declaration are hereby limited so that in

no event shall the interest contracted for, charged, received, paid or agreed to be paid hereunder exceed interest computed at the maximum legal rate.

ARTICLE X

DESIGN CRITERIA

10.1. Design Criteria – General. All portions of the Property shall be developed, and all buildings, structures and other improvements shall be designed and constructed, in accordance with the Zoning, this Declaration and the Design Standards, as same may be amended from time to time in accordance with Laws and this Declaration. **The Design Principles and conceptual elevations set forth in Article IV of the Development Standards in the Zoning Ordinance constitute and are the minimum design standards in the Project.** The Zoning, this Declaration and the Design Standards contemplate, and development shall reflect, a variety of office, retail and residential uses within pedestrian-oriented, vertical and horizontal mixed use environments. The provisions of this Article set forth certain requirements which, in addition to the Zoning and to the applicable provisions of this Declaration and the Design Standards, shall apply with respect to the development of the Property.

10.2. Design Guidelines. Subject to the approval of the Declarant during the Development Period and the approval of the Board, the DRB shall have the authority to promulgate and amend, from time to time, Design Guidelines for the development of the Property and each Parcel thereof. Such Design Guidelines shall be consistent with and implement the Zoning, the Design Principles and this Declaration. The Design Guidelines may impose additional standards and requirements for development and establish submittal and review standards and requirements. Also, Declarant may further define and supplement the standards and requirements for development set forth in this Declaration and/or in the Design Guidelines.

10.3. Architect/Engineer. Site Improvements must be designed by a licensed architect, engineer, and/or landscape architect.

ARTICLE XI

PROHIBITED USES; RESTRICTION

11.1. Prohibited Uses. The Association shall enforce the Prohibited Uses, and the Prohibited Uses may not be amended, supplemented, modified or waived by Declarant, the Association or the DRB with respect to any Parcel of the Property. The following uses are prohibited on the Property:

- (i) Cemetery;
- (ii) Contractor shop and storage yard (unless incidental to ongoing construction, located on a Parcel, and in compliance with the Zoning, this Declaration and the Design Guidelines);
- (iii) Mortuary or funeral parlor;
- (iv) Pawn shop;
- (v) Portable building sales or storage;
- (vi) Tattoo or "skin art" parlor;

- (vii) Drive-in theater;
- (viii) Tire retreading or capping;
- (ix) Mini-warehouses or similar storage facilities;
- (x) Overnight parking of campers, mobile homes, boats, trailers or motor homes; and
- (xi) Any use which, in the opinion of the DRB, produces excessive smoke, noise, light, gas, fumes, dust, odor, vibration or danger of fire, explosion or radiation that is objectionable or constitutes a nuisance.

Any use prohibited on a Parcel by the Zoning that is more restrictive than the preceding list of prohibitive uses shall be prohibited on such Parcel.

11.2. Medical Use Restrictions.

a. The area of the Property described on Exhibit D-1 attached hereto and incorporated herein and any real property annexed to the Project pursuant to Section 1.3 (b) (the "*Medical Use Restricted Area*"), and the improvements thereon shall not be utilized for any of the following services or purposes: (i) a service which requires licensing by the State of Texas as an ambulatory surgery center or acute care hospital, excluding facilities providing exclusively ophthalmic, cosmetic, dental or oral surgery services; (ii) magnetic resonance or computer assisted tomography services; (iii) reference diagnostic radiology services; (iv) reference imaging services; or (v) cardiac catheterization (collectively the "*Medical Use Restrictions*"). The term "reference" with respect to the described services means providing the service for use by persons other than the provider of the service. The Medical Use Restrictions are for the benefit of the Owner (the "*Hospital*") of that certain tract of land out of the Project described on Exhibit D-2 attached hereto and incorporated herein (the "*Hospital Tract*") and the Hospital's assigns and shall be enforceable by the Hospital and its assigns, at their sole expense and discretion, for a period of one (1) year after the date on which this Declaration is recorded in the County Records and for so long thereafter as the Hospital Tract is under construction for or utilized as a licensed acute care hospital (except that these Medical Use Restrictions shall automatically expire upon Declarant's acquisition of the Hospital Tract pursuant to its rights of repurchase set forth in the Special Warranty Deed by Declarant as grantor and Hospital as grantee and conveying the Hospital Tract to Hospital or otherwise) and provided that the Hospital and its assigns shall fully and completely hold Declarant and Declarant's successors and assigns harmless from any and all liabilities, claims, demands and expenses, of any kind or nature arising out of the enforcement of such Medical Use Restrictions and all expenses related thereto, including, without limitation, court costs and attorneys' fees but in each case only to the extent that any such liabilities, claims, demands and expenses exceed \$1,500.00.

b. Hospital may, in its discretion from time to time, waive the Medical Use Restrictions as to all or any part of the Project, by written notice to the Association, which notice shall state or describe specifically the area of the Project for which the waiver is made. The Declarant, Declarant's affiliates, the Association and any other Owner shall have no right to waive the Medical Use Restrictions. Neither Declarant, Declarant's affiliates nor the Association shall have any obligation to enter into or execute any such waiver or to determine, investigate or otherwise inquire as to the satisfaction or performance of any terms, conditions or obligations relative to such waiver.

c. Neither Declarant, Declarant's affiliates nor the Association, nor their respective successor and assigns shall have any obligation (i) to enforce the Medical Use Restrictions or (ii) to seek a waiver of same for the benefit of any person or entity.

ARTICLE XII
EXISTING MORTGAGES

12.1 Existing Mortgages. Reference is made to that certain Deed of Trust executed by Declarant securing Formosa Plastics Development Corporation and recorded at Clerk's File No. 2007-145339 of the Real Property Records of Denton County, Texas, and to that certain Deed of Trust executed by Declarant securing Baptist Foundation of Texas and recorded at Clerk's File No. 2007-145340 (collectively, the "Existing Mortgages"). Pursuant to their terms, the Existing Mortgages are subordinate to this Declaration.

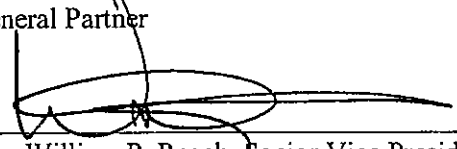
EXECUTED as of the date first set forth above.

DECLARANT:

FLOWER MOUND CBD, LTD.,

a Texas limited partnership

By: Flower Mound CBD Management, L.L.C.,
a Texas limited liability company,
its General Partner

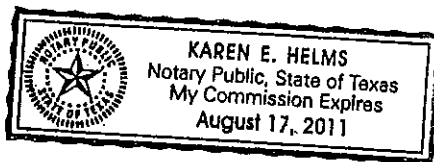
By: 
William P. Resch, Senior Vice President

ACKNOWLEDGMENT

STATE OF TEXAS)

COUNTY OF DALLAS)

This instrument was acknowledged before me on September 16, 2008 by William P. Resch, Senior Vice President of Flower Mound CBD Management, L.L.C., a Texas limited liability company and the constituent general partner of Flower Mound CBD, Ltd., a Texas limited partnership, on behalf of said limited partnership



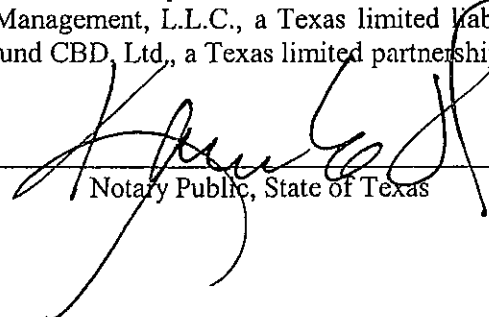

Notary Public, State of Texas

EXHIBIT A

Legal Description of the Property

EXHIBIT "A"
LEGAL DESCRIPTION
158.608 ACRES

Tract 1

134.329 ACRES

Being all that certain lot, tract or parcel of land situated in the Carlos Chacon Survey, Abstract Number 299 and the J. T. Stewart Survey, Abstract Number 1161, Town of Flower Mound, Denton County, Texas, and being part of that certain called 80 acre tract of land described in deed to Manco Investments, Incorporated recorded in Volume 439, Page 352 of the Deed Records of Denton County, Texas, and being part of that certain called 252.86 acre tract described as Part Two in deed to Edward S. Marcus recorded in Volume 470, Page 131 of the Deed Records of Denton County, Texas, and being part of that certain called 28.061 acre tract of land described in deed to Edward S. Marcus recorded in Volume 614, Page 150 of the Deed Records of Denton County, Texas, and being part of that certain called 229.56 acre tract of land described in deed to Flower Mound Development Venture recorded in Volume 1361, Pages 874 and 879 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a 5/8" rebar found on the south line of said 80 acre tract and the north line of said 252.86 acre tract described as Part Two, being the southwest corner of said 28.061 acre tract, and being the southeast corner of that certain called 6.314 acre tract of land described in deed to Prairie Road Partners, Ltd. Recorded in Document Number 2005-123316 of the Real Property Records of Denton County, Texas, and being an inner ell corner in the west line of said 229.56 acre tract;

THENCE N 00°47'30" W, 350.04 feet along the west line of said 28.061 acre tract and the northerly west line of said 229.56 acre tract and the east line of said 6.314 acre tract to a 1/2" rebar found at the northeast corner thereof, and being the southeast corner of that certain called 2.631 acre tract of land described as Tract III in deed to Hawks Ramsey LLC recorded in Document Number 2006-35586 of the Real Property Records of Denton County, Texas, from which a 1/2" capped rebar found stamped D. L. Neagle #5289 bears S 26°48' W, 5.6 feet;

THENCE N 00°49'50" W, 487.07 feet continuing along the west line of said 28.061 acre tract and the northerly west line of said 229.56 acre tract and the east line of said 2.631 acre tract to a 1/2" G&A capped rebar set at the most northerly northwest corner of said 229.56 acre tract, and being the southwest corner of that certain called 13.948 acre tract of land described in deed to the Town of Flower Mound recorded in Volume 723, Page 858 of the Deed Records of Denton County, Texas, from which a 1/2" capped rebar found stamped Arthur Surveying at the northwest corner of said 28.061 acre tract and the northwest corner of said 13.948 acre tract and the southwest corner of Tract 1 of Timber Creek Trail Subdivision, an addition to the Town of Flower Mound, Denton County,

Texas, according to the plat thereof recorded in Volume 3, Page 58 of the Plat Records of Denton County, Texas, bears N 00°49'50" W, 210.00 feet;

THENCE the common line between said 229.56 acre tract and said 13.948 acre tract the following:

N 89°30'00" E, 280.00 feet to a ½" G&A capped rebar set;

S 00°39'00" E, 400.00 feet to a ½" G&A capped rebar set;

N 89°30'00" E, 170.00 feet to a ½" G&A capped rebar set;

S 00°39'00" E, 230.00 feet to a ½" G&A capped rebar set;

N 89°30'00" E, 460.00 feet to a ½" G&A capped rebar set;

N 00°39'00" W, 230.00 feet to a ½" G&A capped rebar set;

N 89°30'00" E, passing the southwest corner of that certain called 0.414 acre tract of land described in deed to the Town of Flower Mound, Texas, recorded in Volume 2035, Page 791 of the Real Property Records of Denton County, Texas, a distance of 495.26 feet to an "X" set in concrete rip-rap at the northwest corner of that certain called 5.598 acre tract of land described in deed to the Town of Flower Mound, Texas, recorded in Volume 2091, Page 418 of the Real Property Records of Denton County, Texas, and being on the west line of Morriss Road, a public roadway having a variable width right-of-way north of this point and a called 110 foot right-of-way south of this point;

THENCE S 00°14'40" E, 2755.57 feet along the west line of said 5.598 acre tract and the west line of Morriss Road to ½" G&A capped rebar found on the north line of Buckeye Drive, a public roadway having a variable width right-of-way, as shown on the Record Plat of The Forums Phase III, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet O, Page 19 of the Plat Records of Denton County, Texas;

THENCE along the north line of Buckeye Drive the following:

S 44°58'45" W, 21.24 feet to a ½" G&A capped rebar found;

S 89°30'10" W, 65.00 feet to a ½" G&A capped rebar found;

S 82°17'25" W, 112.84 feet to a ½" G&A capped rebar found at the beginning of a curve to the left;

THENCE along the arc of said curve having a radius of 530.00 feet, a central angle of 19°23'37", whose chord bears S 72°35'37" W, 178.54 feet, an arc length of 179.40 feet to

a ½" G&A capped rebar found on the west line of Olympia Drive, a public roadway having a right-of-way of 60 feet;

THENCE S 00°17'15" E, 490.97 feet along the west line of Olympia Drive to a ½" rebar found at the northeast corner of Lot 1, Block A of The Forums Phase III;

THENCE S 89°42'45" W, 233.98 feet along the north line of said Lot 1 to a ½" rebar found at an angle point;

THENCE N 83°05'40" W, along the north line of said Lot 1, passing at 10 feet the northwest corner thereof and the northeast corner of Forums Drive, a public roadway having a right-of-way of 60 feet at this point, continuing along the north line of Forums Drive a total distance of 70.00 feet to a ½" rebar found at the northwest corner of Forums Drive;

THENCE in a southwesterly direction along the west line of Forums Drive with the arc of a curve to the right having a radius of 520.00 feet, a central angle of 11°39'42", whose chord bears S 12°44'11" W, 105.66 feet, an arc length of 105.84 feet to a ½" rebar found at a point of compound curvature;

THENCE in a southwesterly direction along the west line of Forums Drive with the arc of a curve to the right having a radius of 400.00 feet, a central angle of 23°33'43", whose chord bears S 30°28'28" W, 163.34 feet, an arc length of 164.49 feet to a ½" rebar found at a point of tangency;

THENCE S 42°15'20" W, 182.38 feet along the west line of Forums Drive to a ½" rebar found at a point of curvature of a curve to the left, being the southwesterly corner of Forums Drive as shown on the aforementioned plat of The Forums Phase III and being the northwesterly corner of Forums Drive, having a right-of-way of 80 feet at this point, as shown on the revised final plat of The Forums Residential, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet F, Page 136 of the Plat Records of Denton County, Texas;

THENCE along the west line of Forums Drive with the arc of said curve to the left having a radius of 690.00 feet, a central angle of 05°00'26", whose chord bears S 39°45'08" W, 60.28 feet, an arc length of 60.30 feet to a ½" rebar found on the north line of Euclid Avenue, a public roadway having a right-of-way of 60 feet, at its intersection with the west line of Forums Drive;

THENCE N 57°47'20" W, 29.46 feet along the north line of Euclid Avenue to a ½" rebar found at point of curvature of a curve to the left;

THENCE along the north line of Euclid Avenue with the arc of said curve to the left having a radius of 1030.00 feet, a central angle of 12°36'55", whose chord bears N 64°06'30" W, 226.33 feet, an arc length of 226.78 feet to a ½" rebar found at the southeast corner of Lot 40, Block 1 of The Forums Residential;

THENCE N 05°10'05" E, 279.16 feet along the east line of Lots 40, 39, 38 and 37, Block 1 of The Forums Residential to a point on a non-tangent curve to the left (this point falls in a pond);

THENCE continuing along the east line of Lots 37, 36, 35, 34, 33, 32, 31 and 30, Block 1 with the arc of said non-tangent curve having a radius of 1180.00 feet, a central angle of 23°11'00", whose chord bears N 66°39'36" W, 474.21 feet, an arc length of 477.46 to the end of said non-tangent curve (this point falls in a pond);

THENCE N 23°32'15" W, 162.40 feet continuing along the east line of Lots 30, 29 and 28, Block 1 to a ½" rebar found at the northeast corner Lot 28, Block 1, and being on the south line of Lot 27, Block 1;

THENCE N 62°37'50" E, 132.45 feet along the south line of said Lot 27, Block 1 to a ½" rebar found at the southeast corner thereof;

THENCE N 61°46'50" W, 191.93 feet along the east line of Lot 27, Block 1 to a ½" rebar found at a point of curvature of a curve to the right;

THENCE continuing along the east line of said Lots 27, 26, 25, 24, 23 and 22, Block 1 with the arc of said curve to the right having a radius of 600.00 feet, a central angle of 42°30'10", whose chord bears N 40°31'58" W, 434.95 feet, an arc length of 445.09 feet to a ½" rebar found at a point of tangency;

THENCE N 19°16'40" W, 94.67 feet continuing along the east line of said Lot 22, Block 1 to a ½" rebar found at the northeast corner thereof;

THENCE S 89°29'00" W, 516.90 feet along the north line of Lots 22, 21, 20, 19 and 18, Block 1, passing the northwest corner of said Lot 18 and the northeast corner of a 150 foot right-of-way dedication shown on the plat of The Forums Residential, continuing along the north line thereof to a Texas Department of Transportation aluminum disc found (TXDOT monument found) on the east line of F.M. 2499 (Long Prairie Road), a public roadway having a variable width right-of-way, and being the southeast corner of that certain called 4.0797 acre tract of land described in deed to the Town of Flower Mound, Texas, recorded in Document Number 96-53454 of the Real Property Records of Denton County, Texas;

THENCE along the east line of said F. M. 2499 and the east line of said 4.0797 acre tract the following:

N 00°05'00" E, 337.78 feet to a TXDOT monument found;

N 85°00'00" E, 4.80 feet to a TXDOT monument found;

N 00°29'00" W, 599.59 feet to a TXDOT monument found;

N 73°20'00" W, 4.00 feet to a TXDOT monument found;

N 00°31'50" W, 761.60 feet to a TXDOT monument found at the northeast corner of said 4.0797 acre tract, and being the southeast corner of that certain called 0.7604 acre tract of land described in deed to the Town of Flower Mound, Texas, recorded in Document Number 96-013605 of the Real Property Records of Denton County, Texas, and being the southwest corner of the aforementioned 6.314 acre tract described in deed to Prairie Road Partners, Ltd., and being on the south line of the aforementioned 80 acre tract and being on the north line of the aforementioned 252.86 acre tract and being on the most westerly north line of the aforementioned 229.56 acre tract;

THENCE N 88°04'50" E, 780.15 feet along the south line of said 6.314 acre tract and the south line of said 80 acre tract and the north line of said 252.86 acre tract and the westerly north line of said 229.56 acre tract to the POINT OF BEGINNING and containing approximately 134.329 acres of land.

Tract II

4.860 Acres

Being all that certain lot, tract or parcel of land situated in the J. T. Stewart Survey, Abstract Number 1161, Town of Flower Mound, Denton County, Texas, being part of that certain called 252.86 acre tract of land described as Part Two in deed to Edward S. Marcus recorded in Volume 470, Page 131 of the Deed Records of Denton County, Texas, and being part of that certain called 229.56 acre tract of land described in deed to Flower Mound Development Venture recorded in Volume 1361, Pages 874 and 879 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a ½" capped rebar found stamped DC&A at the southeast corner of Lot 1, Block A, Primrose School at The Forums, an addition to the Town of Flower Mound according to the plat thereof recorded in Cabinet P, Page 258 of the Plat Records of Denton County, Texas, and being on the west right-of-way line of Morriss Road, having a called 110 foot right-of-way at this point, according to deed to the Town of Flower Mound recorded in Volume 2091, Page 418 of the Real Property Records of Denton County, Texas;

THENCE S 00°06'30" E, 703.50 feet, along the west right-of-way line of Morriss Road, to an "X" in concrete found at the northeast corner of Lot 1, Block A, Kids R Kids Addition, an addition to the Town of Flower Mound according to the plat thereof recorded in Cabinet M, Page 47 of the Plat Records of Denton County, Texas;

THENCE S 89°45'15" W, 299.93 feet, along the north line of said Kids R Kids Addition, to a ½" capped rebar found stamped Arthur Surveying at the northwest corner thereof, being on the east right-of-way line of Olympia Drive;

THENCE N 00°17'15" W, 703.12 feet, along the east line of Olympia Drive, to a ½" capped rebar found stamped DC&A at the southwest corner of said Lot 1, Block A, Primrose School at The Forums;

THENCE N 89°41'00" E, 302.13 feet, along the south line of said Lot 1, Block A, Primrose School at The Forums, to the POINT OF BEGINNING and containing approximately 4.860 acres of land.

Tract III

2.095 Acres

Being all that certain lot, tract or parcel of land situated in the J. T. Stewart Survey, Abstract Number 1161, Town of Flower Mound, Denton County, Texas, being part of that certain called 252.86 acre tract of land described as Part Two in deed to Edward S. Marcus recorded in Volume 470, Page 131 of the Deed Records of Denton County, Texas, and being part of that certain called 229.56 acre tract of land described in deed to Flower Mound Development Venture recorded in Volume 1361, Pages 874 and 879 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a ½" rebar found at the southwest corner of Lot 1, Block A, Flower Mound Post Office Addition, an addition to the Town of Flower Mound according to the plat thereof recorded in Cabinet L, Page 285 of the Plat Records of Denton County, Texas, and being on the north right-of-way line of Olympia Drive;

THENCE S. 89°44'40" W, 291.16 feet, along the north right-of-way line of Olympia Drive, to a ½" rebar found on the east right-of-way line of Forums Drive, being in a curve to the right;

THENCE Northeasterly, along the east right-of-way line of Forums Drive and with the arc of said curve having a radius of 1160.00 feet, a central angle of 00°47'01", whose chord bears N 06°52'20" E, 15.86 feet, an arc length of 15.86 feet, to ½" rebar found at a point of compound curvature;

THENCE Northeasterly, continuing along the east right-of-way line of Forums Drive and with the arc of said curve having a radius of 610.00 feet, a central angle of 34°59'30", whose chord bears N 24°45'36" E, 366.78 feet, an arc length of 372.54 feet, to a ½" rebar found;

THENCE N 42°15'20" E, 86.55 feet, continuing along the east right-of-way line of Forums Drive, to a ½" rebar found at the point of curvature of a curve to the left;

THENCE Northeasterly, continuing along said right-of-way line and with the arc of said curve having a radius of 698.38 feet, a central angle of 06°17'17", whose chord bears N 39°06'42" E, 76.61 feet, an arc length of 76.65 feet, to ½" rebar found at the westerly southwest corner of Lot 1, Block A, The Forums, Phase III, an addition to the Town of Flower Mound according to the plat thereof recorded in Cabinet O, Page 19 of the Plat Records of Denton County, Texas;

THENCE S 53°58'50" E, 33.52 feet, along the southwesterly line of said Lot 1, to a ½" rebar found at the most south southwest corner thereof and the northwest corner of Lot 1, Block A, Flower Mound Post Office Addition;

THENCE S 00°15'20" E, 451.31 feet, along the west line of same, to the POINT OF BEGINNING and containing approximately 2.095 acres of land.

Tract IV

17.324 ACRES

Being all that certain lot, tract or parcel of land situated in the J. T. Stewart Survey, Abstract Number 1161, Town of Flower Mound, Denton County, Texas, being part of that certain called 252.86 acre tract of land described as Part Two in deed to Edward S. Marcus recorded in Volume 470, Page 131 of the Deed Records of Denton County, Texas, and being part of that certain called 229.56 acre tract of land described in deed to Flower Mound Development Venture recorded in Volume 1361, Pages 874 and 879 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at the remnants of a concrete TXDOT monument found at the intersection of the north line of F.M. 1171 (Cross Timbers Road), a public road having a variable width right-of-way, with the common line between said 229.56 acre tract and that certain called 2.4241 acre tract of land described as Parcel II in deed to Unified Commercial Realty, Ltd., recorded in Volume 2819, Page 172 of the Real Property Records of Denton County, Texas, being the southeast corner of Lot 1, Block A, Timber Prairie Plaza Addition, an addition to the Town of Flower Mound according to the plat thereof recorded in Cabinet V, Page 427 of the Plat Records of Denton County, Texas, said point being the northwest corner of that certain called 0.054 acre tract of land described in deed to the State of Texas, recorded in Volume 2989, Page 16 of the Real Property Records of Denton County, Texas, said point also being the northeast corner of that certain called 0.056 acre tract of land described in deed to the State of Texas, recorded in Volume 2999, Page 261 of the Real Property Records of Denton County, Texas;

THENCE N 00°04'50" E, 214.47 feet along said common line to a ½" G&A capped rebar set at the northeast corner of said 2.4241 acre tract, being the northeast corner of said Timber Prairie Plaza Addition;

THENCE N 79°40'25" W, continuing along said common line, passing at 344.0 feet a ½" capped rebar found stamped #4489 at the northwest corner of said Timber Prairie Plaza Addition, being the northeast corner of that certain called 1.1478 acre tract of land described in Exhibit A-1 in deed to Chevron Products Company, recorded in Volume 4148, Page 30 of the Real Property Records of Denton County, Texas, said tract being Lot 1, Block A, Chevron Addition to the Town of Flower Mound according to the plat thereof recorded in Cabinet R, Page 236 of the Plat Records of Denton County, Texas, continuing along the north line thereof a total distance of 547.69 feet to an "X" set in concrete at the westerly southwest corner of said 229.56 acre tract, said point being the southeast corner of the Twelfth Tract of the John G. Young Subdivision as shown on the plat thereof recorded in Volume 4, Page 1 of the Plat Records of Denton County, Texas;

THENCE N 00°31'40" W, 104.42 feet along west line of said 229.56 acre tract and the east line of said Twelfth Tract to a ½" G&A capped rebar found at the south corner of that certain called 0.3424 acre tract of land described in deed to the Town of Flower Mound, Texas, recorded in Clerk's File Number 96-R053456 of the Real Property Records of Denton County, Texas, being on the east right-of-way line of F.M. 2499;

THENCE N 19°45'30" E, 128.76 feet along the east line of said 0.3424 acre tract and the east right-of-way line of F.M. 2499, to a TXDOT monument found;

THENCE N 11°51'40" E, 106.95 feet continuing along the east line of said 0.3424 acre tract and the east right-of-way line of F.M. 2499, to a TXDOT monument found;

THENCE N 12°46'20" E, 85.56 feet along the east line of said 0.3424 acre tract and the east right-of-way line of F.M. 2499, to a TXDOT monument found at the northeast corner thereof, said point being on the south line of the Revised Final Plat of The Forums Residential, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet F, Page 136 of the Plat Records of Denton County, Texas, from which a TXDOT monument found bears S 74° W, 1.9 feet;

THENCE N 89°25'30" E, 63.10 feet along the south line of said Forums Residential to a ½" G&A capped rebar set;

THENCE N 44°25'30" E, 41.09 feet along the south line of said Forums Residential to a ½" G&A capped rebar set on the south line of Euclid Avenue, a public roadway having a right of way of 60 feet at this point;

THENCE N 89°25'30" E, 573.30 feet along the south line of said Forums Residential and the south line of said Euclid Avenue to a ½" rebar found at a point of curvature;

THENCE along the south line of said Forums Residential and the south line of said Euclid Avenue with the arc of a curve to the right having a central angle of $32^{\circ}49'00''$, a radius of 970.00 feet and an arc length of 555.58 feet whose chord bears $S\ 74^{\circ}09'44''\ E$, 548.02 feet to a $\frac{1}{2}''$ rebar found;

THENCE $S\ 57^{\circ}47'20''\ E$, 26.80 feet along the south line of said Forums Residential and the south line of said Euclid Avenue to a $\frac{1}{2}''$ rebar found at the intersection of said south line with the west line of Forums Drive, a public roadway having a right-of-way of 80 feet at this point;

THENCE along the west line of said Forums Drive with the arc of a curve to the left having a central angle of $24^{\circ}59'45''$ a radius of 690.00 feet and an arc length of 301.02 feet whose chord bears $S\ 19^{\circ}45'43''\ W$, 298.64 feet to a $\frac{1}{2}''$ rebar found at the most southerly southwest corner of said Forums Residential, same being the northwest corner of Phase I of The Forums, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet F, Page 146 of the Plat Records of Denton County, Texas;

THENCE along the west line of said Forums Drive and the west line of said Phase I of The Forums with the arc of a curve to the left having a central angle of $07^{\circ}31'31''$, a radius of 1240.00 feet and an arc length of 162.86 feet whose chord bears $S\ 03^{\circ}20'43''\ W$, 162.74 feet to a $\frac{1}{2}''$ G&A capped rebar found;

THENCE $S\ 00^{\circ}17'00''\ E$, 53.69 feet along the west line of said Forums Drive and the west line of said Phase I of The Forums to a $\frac{1}{2}''$ G&A capped rebar found;

THENCE along the west line of said Forums Drive and the west line of said Phase I of The Forums with the arc of a curve to the right having a central angle of $02^{\circ}36'53''$, a radius of 1000.00 feet and an arc length of 45.63 feet whose chord bears $S\ 01^{\circ}01'26''\ W$, 45.63 feet to a $\frac{1}{2}''$ G&A capped rebar found at the northeast corner of Lot 1, Block 5, The Forums, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet H, Page 38 of the Plat Records of Denton County, Texas;

THENCE $N\ 77^{\circ}22'40''\ W$, 174.66 feet along the north line of said Lot 1, Block 5 to a $\frac{1}{2}''$ rebar found at the northwest corner thereof;

THENCE $S\ 12^{\circ}41'50''\ W$, 122.08 feet along the west line of said Lot 1, Block 5 to a $\frac{1}{2}''$ capped rebar found stamped Pate 5647 at an angle point therein, from which a $\frac{3}{8}''$ rebar found bears $S\ 72^{\circ}\ W$, 1.9 feet;

THENCE $S\ 00^{\circ}48'55''\ E$, along the west line of said Lot 1, Block 5, passing at 67.4 feet the southwest corner thereof, continuing a total distance of 75.88 feet to a TXDOT monument found at the northeast corner of the aforementioned 0.054 acre tract of land to the State of Texas, said point being on the north line of said F.M. 1171;

THENCE N 77°22'40" W, 463.96 feet along the north line of said 0.054 acre tract and the north line of said F.M. 1171 to the POINT OF BEGINNING and containing approximately 17.324 acres of land.

EXHIBIT B

Depiction of Timber Trails Park

EXHIBIT "B"
TIMBER TRAILS PARK

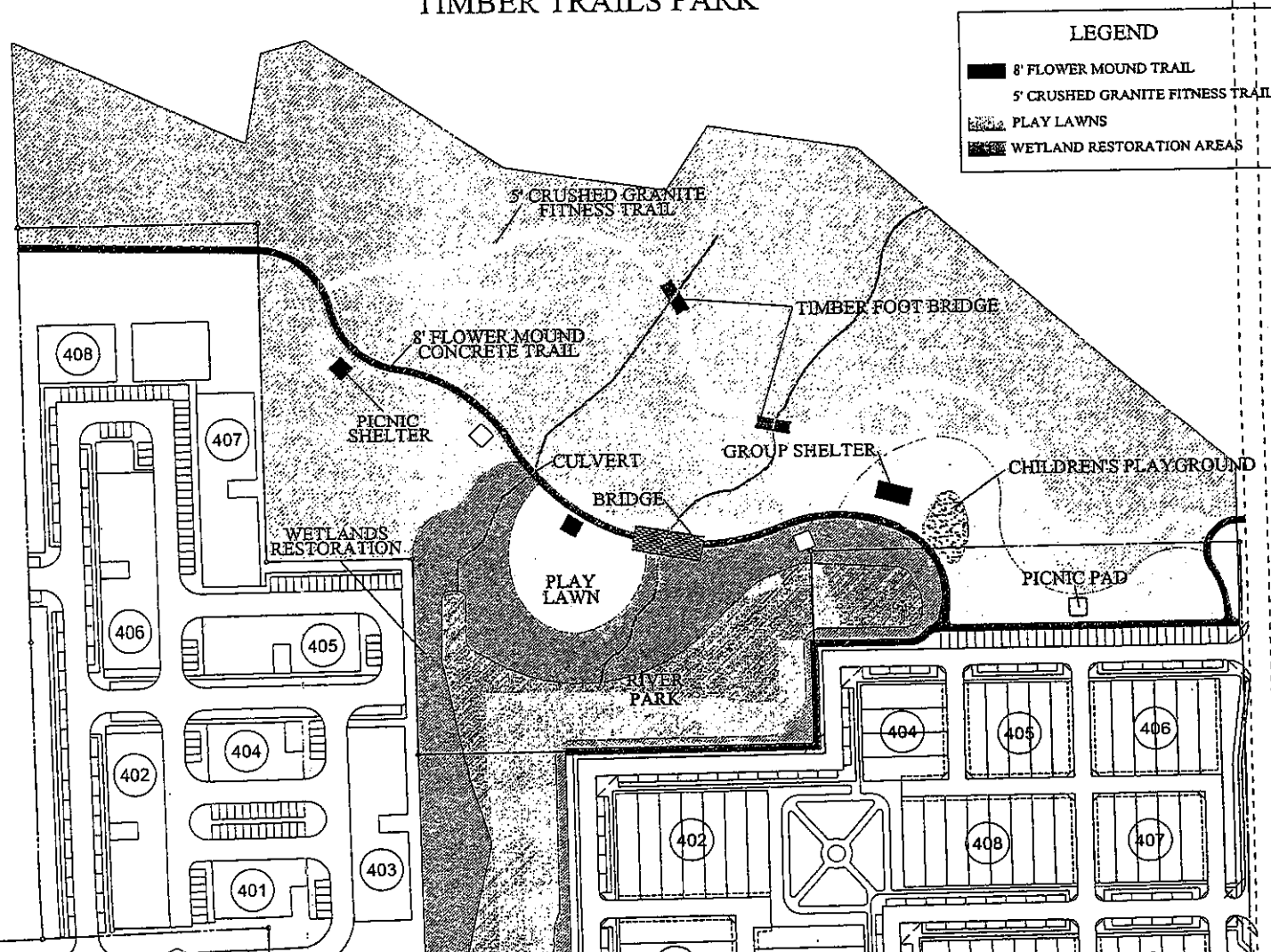
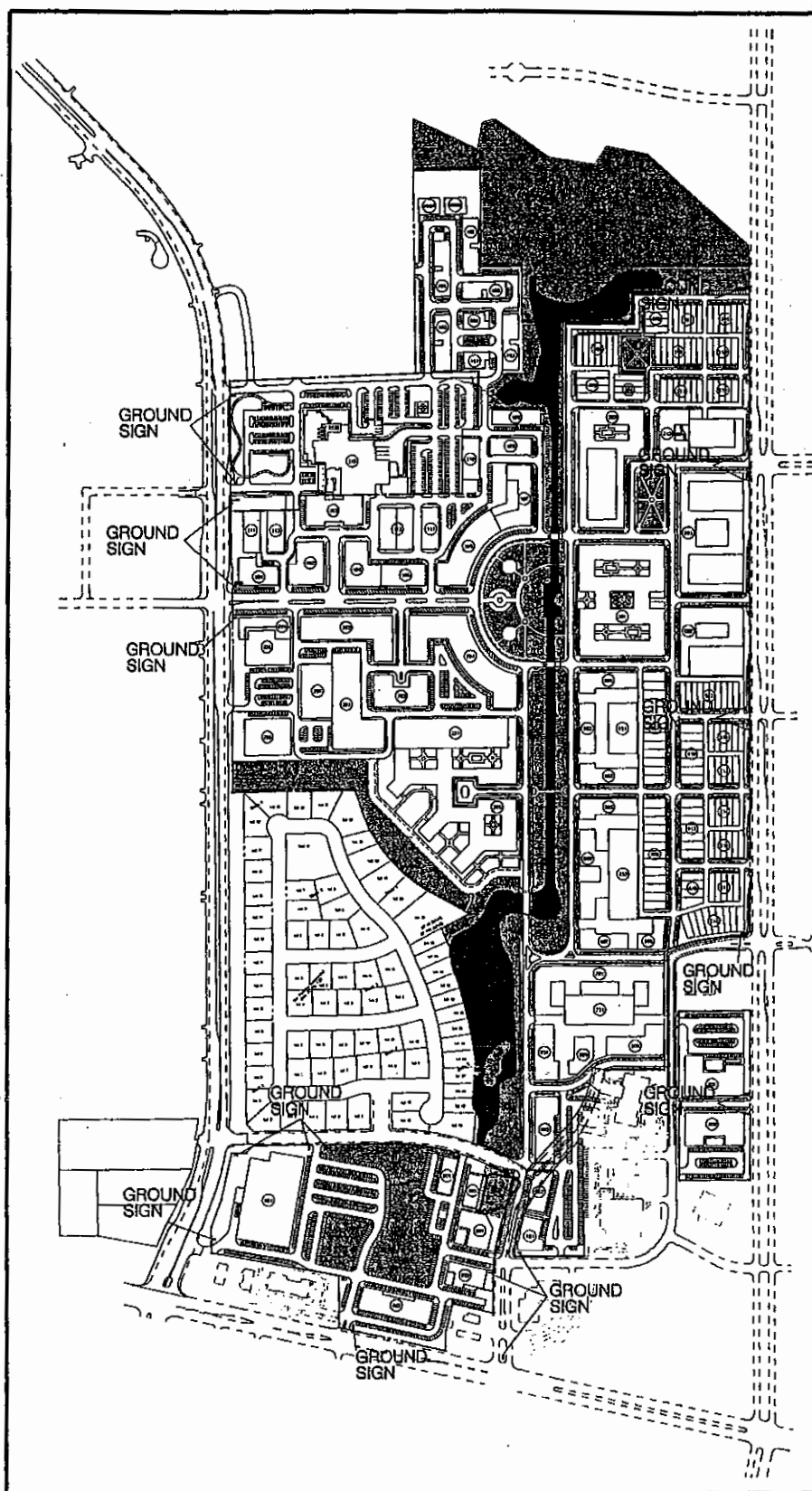


EXHIBIT C

Concept Plan for Ground Sign Locations

CONCEPT PLAN GROUND SIGN LOCATIONS



DAVID M. SCHWARTZ /
ARCHITECTURAL SERVICES, INC.



G & A Consultants, Inc.
CIVIL, LANDSCAPE & LIFE PLANNING
LANDSCAPE ARCHITECTURE



EXHIBIT "C"
THE RIVER WALK AT CENTRAL PARK
FLOWER MOUND, TEXAS

Rev: July 7, 2008

EXHIBIT D-1

Restricted Area

All the Property as described on Exhibit A hereto,
save and except the Hospital Tract as described on Exhibit D-2 hereto.

EXHIBIT D-2

Hospital Tract

EXHIBIT "D-2"
LEGAL DESCRIPTION

12.000 ACRES

Being all that certain lot, tract or parcel of land situated in the Carlos Chacon Survey, Abstract Number 299, Town of Flower Mound, Denton County, Texas, and being part of that certain called 134.329 acre tract of land described in deed to Flower Mound CBD., LTD. Recorded in Document Number 2007-145337 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a Texas Department of Transportation aluminum disc (hereinafter called TXDOT monument) found on the east line of F.M. 2499 (Long Prairie Road), a public roadway having a variable width right-of-way, and being the northeast corner of that certain called 4.0797 acre tract of land described in deed to the Town of Flower Mound, Texas, recorded in Document Number 96-53454 of the Real Property Records of Denton County, Texas, and being the southeast corner of that certain called 0.7604 acre tract of land described in deed to the Town of Flower Mound, Texas, recorded in Document Number 96-013605 of the Real Property Records of Denton County, Texas, and being the southwest corner of that certain called 6.314 acre tract described in deed to Prairie Road Partners, Ltd., recorded in Document Number 2005-123316 of the Real Property Records of Denton County, Texas, and being the most westerly northwest corner of said 134.329 acre tract;

THENCE N 88°04'50" E, along the south line of said 6.314 acre tract and the north line of said 134.329 acre tract, pass at 780.15 feet 5/8" rebar found at the southeast corner of said 6.314 acre tract, continuing a total distance of 1044.53 feet to a ½" G&A capped rebar set;

THENCE S 00°18'40" E, 239.82 feet to a ½" G&A capped rebar set;

THENCE S 89°41'20" W, 68.00 feet to a ½" G&A capped rebar set;

THENCE S 00°18'40" E, 290.78 feet to a ½" G&A capped rebar set;

THENCE S 89°41'20" W, 385.64 feet to a ½" G&A capped rebar set;

THENCE N 00°18'40" W, 22.16 feet, to a ½" G&A capped rebar set;

THENCE S 89°41'20" W, 298.36 feet, to a ½" G&A capped rebar set;

THENCE S 00°18'40" E, 59.67 feet to a ½" G&A capped rebar set;

THENCE S 89°41'20" W, 290.05 feet to a ½" G&A capped rebar set on the east line of said F.M. 2499 and the east line of said 4.0797 acre tract and the west line of said 134.329 acre tract;

THENCE N 00°31'50" W, 538.80 feet along the east line of said F.M. 2499 and the east line of said 4.0797 acre tract and the west line of said 134.329 acre tract to the POINT OF BEGINNING and containing approximately 12.000 acres of land.

SCHEDULE 5.3(a)

Tree Mitigation Worksheet

[See page following.]

Tree Mitigation Worksheet

The River Walk at Central Park
Central Business District

Name of plan submittal: Presbyterian Hospital of Flower Mound
Type of submittal: Site Plan
Owner Contact: Rusty Herron, Texas Health Resources
Phone Number: (214) 345-6730 e-mail: RustyHerron@texashealth.org
Legal Description of property: Lot 2 of the River Walk at Central Park Addition

Applicability: Each plan submitted within the Central Business District shall submit this form at the time of first submittal.

1. Previous Central Business District Tree Mitigation Running Totals:

- a. Total non-specimen protected trees: _____
- b. Total specimen trees: _____
- c. Total non-specimen protected tree credits: _____
- d. Total specimen tree credits: _____
- e. Total non-specimen protected trees removed: _____
- f. Total specimen trees removed: _____
- g. Total Tree Mitigation Bank: \$ _____

2. Current submitted Site Plan Tree Mitigation Totals:

- a. Total non-specimen protected trees: 273
- b. Total specimen trees: 4
- c. Total non-specimen protected tree credits: 98 trees saved = 98 tree credits
- d. Total specimen tree credits: 77 caliper inches saved (\div) by 3" = 26 tree credits
- e. Total non-specimen protected trees removed: 175 trees removed = 175 trees to mitigate
- f. Total specimen trees removed: 18 caliper inches removed (\times) 2 (\div) 3" = 12 trees to mitigate
- g. Total newly planted tree credits per the CBD landscape ordinance: 88 tree credits
- h. Total Tree Mitigation Bank: $(2e+2f) - (2c+2d+2g) = (-)25$ (\times) \$125.00 = \$ 0.00

3. Current Central Business District Tree Mitigation Running Totals:

- a. Total non-specimen protected trees: $1a + 2a =$ _____
- b. Total specimen trees: $1b + 2b =$ _____
- c. Total non-specimen protected tree credits: $1c + 2c =$ _____
- d. Total specimen tree credits: $1d + 2d =$ _____
- e. Total non-specimen protected tree removed: $1e + 2e =$ _____
- f. Total specimen tree removed: $1f + 2f =$ _____
- g. Total Tree Mitigation Bank: $1g + 2h =$ \$ _____

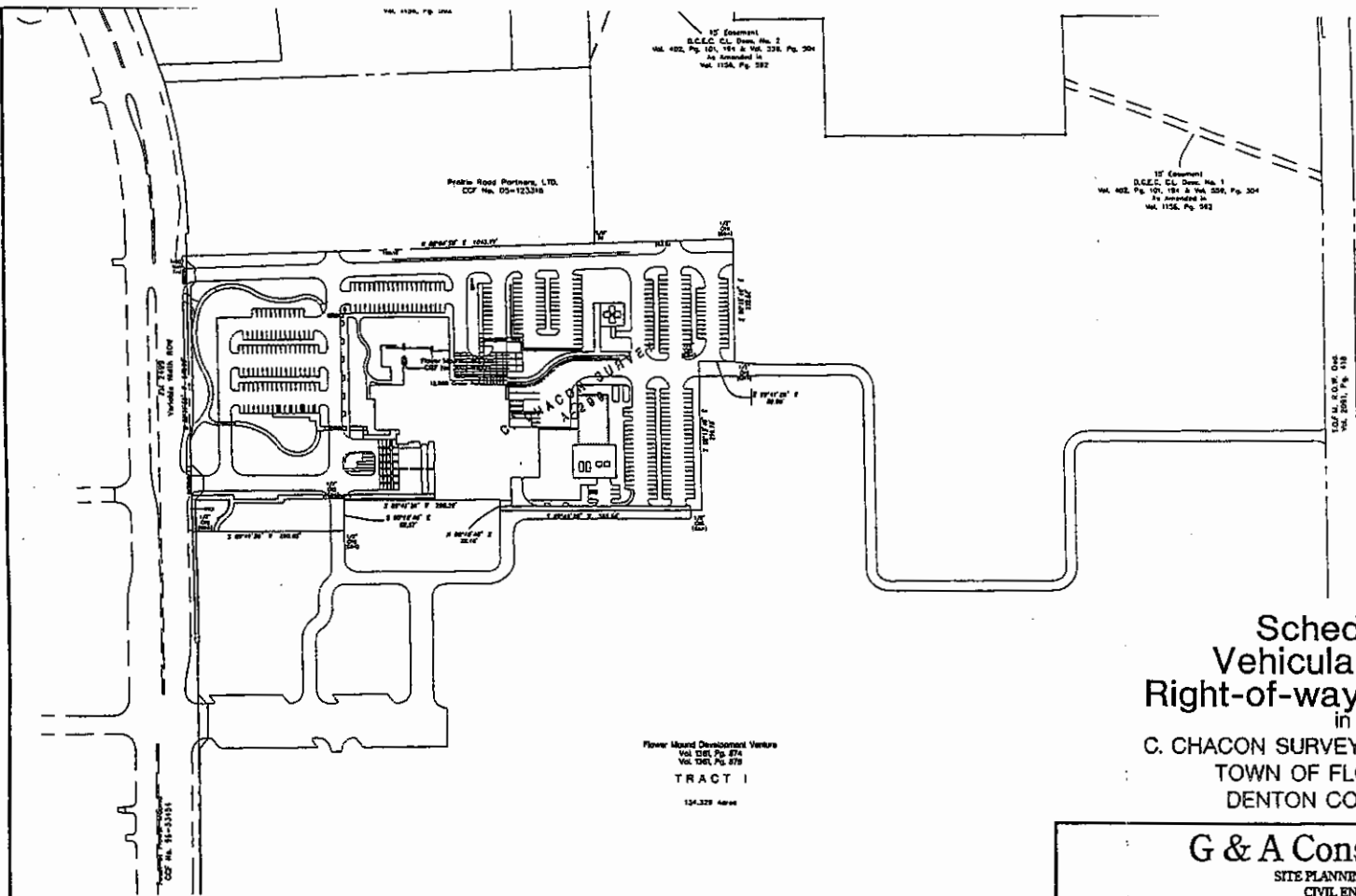
Total to be paid into Tree Mitigation Bank with this submittal: (2h) \$ 0.00

This plan has 35 tree credits for the River Walk at Central Park

Date: 8/26/08, By Ron Stewart

SCHEDULE 7.2

**Access, Ingress and Egress and Parking Easements
on Hospital Tract**



Proline Road Partners, LTD.
CCF No. 05-123318

15' Easement
D.C.E.C. CL. Dem. No. 2
Vol. 420, Pg. 120, 181 & Vol. 338, Pg. 304
As Amended in
Vol. 1156, Pg. 582

15' Easement
D.C.E.C. CL. Dem. No. 1
Vol. 420, Pg. 120, 181 & Vol. 338, Pg. 304
As Amended in
Vol. 1156, Pg. 582

Flower Mound Development Ventures
Vol. DBL Pg. 874
Vol. DBL Pg. 875
TRACT I
134,328 Acres

NOTES:

1.) Bearings based on Texas Coordinate System North Central
Zone No. 4202, NAD '83.

Schedule 7.2
Vehicular Access,
Right-of-way and Parking
in the
C. CHACON SURVEY, ABSTRACT NO. 299
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

G & A Consultants, Inc.
SITE PLANNING * PLATTING
CIVIL ENGINEERING
LAND SURVEYING
LANDSCAPE ARCHITECTURE
P.O. Box 1398 * Lewisville, Texas 75067
Phone (972) 436-9712 * Fax (972) 436-9715

DRAWN BY: SM DATE: 08/27/08 SCALE: 1"=120' JOB. NO. **07049**

Denton County
Cynthia Mitchell
County Clerk
Denton, Tx 76202



70 2008 00102188

Instrument Number: 2008-102188

Recorded On: September 17, 2008

As
Restrictions

Parties: FLOWER MOUND CBD LTD

Billable Pages: 65

To

Number of Pages: 65

Comment:

(Parties listed above are for Clerks reference only)

**** Examined and Charged as Follows: ****

Restrictions	267.00
Total Recording:	267.00

***** DO NOT REMOVE. THIS PAGE IT IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2008-102188

Receipt Number: 522259

Recorded Date/Time: September 17, 2008 01:06:49P

User / Station: K Dean - Cash Station 2

Record and Return To:

CHICAGO TITLE INSURANCE COMPANY
2001 BRYAN ST STE 1700
DALLAS TX 75201



THE STATE OF TEXAS }
COUNTY OF DENTON }

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

Cynthia Mitchell

County Clerk