

**SECOND AMENDED AND RESTATED
DECLARATION AND ESTABLISHMENT
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
AND GRANT OF EASEMENTS**

This SECOND AMENDED AND RESTATED DECLARATION AND ESTABLISHMENT OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS (the "Declaration") is executed to be effective as of the 15th day of January, 2013 (the "Declaration Date"), by MCKINNEY ECONOMIC DEVELOPMENT CORPORATION, a Texas non-profit corporation ("MEDC"), the Declarant, pursuant to that certain Declaration and Establishment of Protective Covenants, Conditions, and Restrictions and Grant of Easements executed by MEDC dated February 4, 2008, and recorded as Document No. 20080207000147650 (the "Original Declaration"), as an amendment and reinstatement of the Original Declaration, as amended by Amended and Restated Declaration and Establishment of Protective Covenants and Restrictions and Grant of Easements (the "First Amended Declaration") executed by MEDC dated August 15, 2012 and recorded as Document No. 201208200126570.

RECITALS

A. The Original Declaration was adopted by MEDC as the owner of certain parcels of real property located in the City of McKinney, Texas, which are more particularly described on Exhibit A, attached hereto, (the "Original Project Site") upon which Declarant desires to have developed an integrated retail, commercial, entertainment, hotel, events center, office, warehouse/distribution and/or community project (the "Project").

B. By the First Amended Declaration, Declarant subjected to the Declaration certain additional parcels of real property as described on Exhibit B, thereto (the "Annexation Property").

C. Declarant plans to have the Project developed on the Original Project Site and the Annexation Property (collectively referenced to herein as the "Project Site") as an integrated retail, commercial, entertainment, hotel, events center, office, warehouse/distribution and/or community project for the mutual benefit of all real property in the Project Site and, for such purposes, does hereby fix and establish the Restrictions (as hereinafter defined), upon and subject to which all of the Project Site, or any part thereof, shall be improved, held, leased, sold and/or conveyed. It is the intent of this Declaration that each and all of the easements, covenants, conditions and restrictions set forth in this Declaration are for the mutual benefit of the Parcels (as hereinafter defined) and every portion of each thereof (except to the extent otherwise stated herein). Each and all of the easements, covenants, conditions, restrictions, liens and charges set forth in this Declaration shall run with the land of each of the Parcels and every portion of each thereof, and shall apply to and bind the respective successors in interest to each of the Parcels and every portion of each thereof, for the benefit of each of the other Parcels and every portion of each thereof (except to the extent otherwise stated herein). Each and all of the easements, covenants, conditions, restrictions, liens and charges set forth in this Declaration are imposed on each portion of, and interest in, each of the Parcels as mutual equitable servitudes in

favor of each and all other portions of and interests in the Parcels (except to the extent otherwise stated herein) and constitute covenants running with the land pursuant to applicable law.

D. Declarant has, and hereby exercises, the right to amend and restate the Original Declaration, as amended by the First Amended Declaration, pursuant to Section 10.3 thereof without the consent of any other Owner (as hereinafter defined). This Declaration shall supersede and replace the Original Declaration, as amended by the First Amended Declaration.

ARTICLE 1 DEFINITIONS

1.1 "Adjustment Date" shall have the meaning set forth in Section 6.1.

1.2 "Assessment Lien" means that lien created by reason of the delinquency described in, and upon recordation of, a Notice of Assessment Lien.

1.3 "Building" means any enclosed structure (excluding parking structures and parking facilities) designated for the exclusive use of an occupant or limited occupant(s), as the case may be, placed, constructed or located on a Parcel, which for the purpose of this Declaration shall include any appurtenant supports, service areas and other outward extensions.

1.4 "Bureau" means the United States Department of Labor, Bureau of Labor Statistics.

1.5 "City" means The City of McKinney, Texas, a municipal corporation organized and existing pursuant to the laws of the State of Texas.

1.6 "College" means the Collin County Community College District.

1.7 "Common Area" means the internal roadways, driveways, sidewalks and walkways installed within the exterior boundaries of the Project, including any landscaped medians within such roadways, driveways, sidewalks and walkways, and all parking areas, including any surface parking spaces and any multi-level parking decks and underground parking facilities in which parking spaces are located; provided, however, no such areas shall be deemed "Common Areas" if located on the Emerson Parcel or the Hotel/Event Center Parcel.

1.8 "Common Area Assessment" shall have the meaning set forth in Section 5.5.1.

1.9 "Common Area Maintenance" shall have the meaning set forth in Section 5.5.1.

1.10 "Declarant" shall have the meaning set forth in Section 9.1.

1.11 "Declaration" shall have the meaning set forth in the Preamble.

1.12 "Default Rate" means that annual rate of interest equal to the interest rate per annum published by the Wall Street Journal as the prime rate (or in the event the Wall Street Journal no longer publishes a prime rate, then the prime rate or reference rate announced by the then largest chartered bank in Texas in terms of deposits) from time to time plus four percentage

(4%) points per annum, but in no event more than any maximum rate of interest permitted by law.

1.13 “Emerson Parcel” means that certain parcel described and/or depicted on Exhibit C attached hereto.

1.14 “Emerson Plans” mean that certain site plan dated April 3, 2012, and related plat application for the Emerson Parcel submitted by Emerson Process Management Regulator Technologies, Inc. to the City on May 29, 2012.

1.15 “Events Center Condominium” shall mean the condominium unit owned by the City. There are no Common Areas on or in the Events Center Condominium.

1.16 “Floor Area” means:

1.16.1 with respect to areas within a Building dedicated to Retail Uses, the actual number of square feet of space contained on each floor within each separately demised space in the Building dedicated to such Retail Uses (including any mezzanine or basement space if and to the extent that such mezzanine or basement space is required to be taken into account in determining the number of Parking Spaces required with respect to such Retail Uses under applicable governmental laws, codes, ordinances and requirements without benefit of variance or special exception), as measured from the exterior surfaces of exterior walls (and extensions, in the case of openings) or walls that separate independently demised premises from service corridors or other space that is not intended for the exclusive use of other occupants of the subject Building and from the center of interior demising walls which separate independently demised premises from other premises; provided, however, that the following areas shall not be included in such calculations (except to the extent the following areas are required to be taken into account in determining the number of Parking Spaces required with respect to such Building under applicable governmental laws, codes, ordinances and requirements without benefit of variance or special exception): incidental office space located on other than the main level of any particular premises used by a Permittee for administrative purposes and which is not open or accessible to the general public; mezzanine space used for projector room purposes in a permitted theatre; emergency exit areas (located outside of theatre auditoriums and waiting and concession areas), exit corridors and adjacent stairwells designated for use by a permitted theatre; and space attributable to any multi-deck, platform or structural level used for the storage of merchandise and located vertically above ground floor;

1.16.2 with respect to: (i) an Office Building, all “Rentable Area” as defined and determined in accordance with BOMA standards (Building Owners and Managers Association Method for Measuring Floor Area in Office Buildings, ANSI Z65.1-1996) contained within the Office Building; or (ii) areas within a Building dedicated to general office uses, all “Rentable Area” attributable to general office uses;

1.16.3 with respect to (i) a Hotel Building, the actual number of square feet of space contained on each floor within the Hotel Building, including lobby, restaurant and retail areas (as applicable), as measured from the exterior surfaces of exterior walls (and extensions in the case of openings) or walls that separate independently separated spaces or premises from

service corridors or other space that is not intended for the exclusive use of other occupants of the Hotel Building and from the center of interior demising walls which separate independently separated spaces or premises; and

1.16.4 with respect to all other Buildings, the actual number of square feet of space contained on each floor within each separately demised space within a Building including any mezzanine or basement space if and to the extent such mezzanine or basement space is required to be taken into account in determining the number of Parking Spaces required with respect to such Building under applicable governmental laws, codes, ordinances and requirements without benefit of variance or special exception), as measured from the exterior surfaces of exterior walls (and extensions, in the case of openings) or walls that separate independently demised premises from service corridors or other space that is not intended for the exclusive use of other occupants of the subject Building and from the center of interior demising walls which separate independently demised premises from other premises.

Notwithstanding anything to the contrary herein, in no event shall Floor Area for any Building include space used for Building utilities or mechanical equipment. Within thirty (30) days of a request, the Owner of a Parcel shall certify to Declarant the amount of Floor Area applicable to each Building on its Parcel. If any Parcel Owner causes an as-built survey to be prepared with respect to any portion of the Project, upon request, such Parcel Owner shall furnish a copy of the survey to the Declarant for informational purposes only.

During any period of rebuilding, repairing, replacement or reconstruction of a Building (or any portion thereof), the Floor Area of that Building shall be deemed to be the same as existed immediately prior to that period. Upon completion of such rebuilding, repairing, replacement or reconstruction, the Owner upon whose Parcel such Building is located, shall cause a new determination of Floor Area for such Building to be made in the manner described above, and such determination shall be sent to any Owner requesting the same.

1.17 “Governmental Restrictions” means any or all laws, statutes, ordinances, codes, decrees, rulings, regulations, writs, injunctions, orders, rules, conditions of approval or authorization of any governmental entity, agency or political subdivision, whether now in force or which may hereafter be in force.

1.18 “Hotel Building” means any Building which is used for transient lodging purposes and otherwise in accordance with the terms and provisions of this Declaration applicable to the use of Hotel Buildings.

1.19 “Hotel/Event Center Parcel” means that certain parcel described and/or depicted on Exhibit D attached hereto.

1.20 “Hotel Ground Lease” means that certain Lease Agreement between McKinney Community Development Corporation, as Landlord, and Gateway Hotel One, Ltd., as Tenant, dated December 10, 2012.

1.21 “Indemnitee” shall have the meaning set forth in Section 6.3.

1.22 “Indemnitor” shall have the meaning set forth in Section 6.3.

1.23 “Index” means the Consumer Price Index for “All Items” for All Urban Consumers, U.S. City Average (1982-84=100) published by the Bureau. Should the Bureau discontinue the publication of the Index, publish the same less frequently or alter the same in some other manner, the most nearly comparable index or procedure as determined by Declarant shall be substituted therefor.

1.24 “Land Area” means with respect to each Parcel and with respect to the Project, the gross number of square feet of land contained within such Parcel or the Project, as applicable.

1.25 “MEDC” means McKinney Economic Development Corporation, a Texas nonprofit corporation.

1.26 “Mortgage” means (i) an indenture of mortgage or deed of trust on a Parcel or (ii) a sale and leaseback transaction, whereby an Owner conveys its fee or a leasehold estate in a Parcel and such conveyance is followed immediately by a leaseback or sub-leaseback of the entire interest so conveyed or the improvements thereupon to such Owner, or to a party wholly controlled by such Owner.

1.27 “Mortgagee” means any mortgagee under a Mortgage, or trustee or beneficiary under a deed of trust constituting a lien on all or any portion of any of the Parcels or any leasehold interest in the Parcels, or on any ground lessor under any ground lease or master lessor under any master lease with respect to all or any portion of any of the Parcels. The interest held by any Mortgagee in any Parcel shall be subordinate to this Declaration.

1.28 “Notice of Assessment Lien” means a notice recorded in the Official Records, and such other place as may be required by law, by any Person to whom is owed any assessment or other sum of money payable by any Owner pursuant to any provision of this Declaration stating that said assessment or sum has not been paid and that the applicable grace period for such payment (if any) has expired.

1.29 “Office Building” means any Building which is used for the purposes particularly set forth in Section 2.2 and otherwise in accordance with the terms and provisions of this Declaration applicable to the use of Office Buildings.

1.30 “Official Records” shall mean the Official Public Records of Collin County, Texas.

1.31 “Original Declaration” shall have the meaning set forth in the Preamble.

1.32 “Owner” means each Person, who, at any given time, holds fee title to any full Parcel, or a ground lessee of any full Parcel (provided the Owner of such Parcel so designates such party), which designation must be set forth in a written statement recorded in the Official Records. Owner by its execution hereof designates the ground lessee of the Hotel as “Owner” for purposes of this Agreement, so long as the Hotel Ground Lease is in effect and no uncured event of default exists under the Hotel Ground Lease. For purposes of this Declaration, the City is an Owner by virtue of its ownership of the Events Center Condominium. An Owner shall not include tenants and sub lessees of less than an entire Parcel. In the event, at any time, that an interest in the same Parcel shall be vested in more than one Person, such Persons shall designate

one of them to act on behalf of all such Persons in the performance of the provisions of this Declaration. Any such designation shall be in writing, duly executed and acknowledged by each such Person and a copy of such designation shall be given to all other Owners in accordance with the notice provisions of this Declaration, but all such Persons shall be jointly and severally liable for the obligations of the Owner of such Parcel under this Declaration. An original of such designation shall be recorded in the Official Records. A majority of such Persons shall have the right, from time to time, to change the designation made by executing, acknowledging, delivering and recording a new notice of designation in the same manner set forth above.

1.33 "Parcel" or "Parcels" means those several parcels which together comprise the Project Site and such further subdivision of any such parcels as approved by Declarant, including without limitation, the imposition of one or more condominium regimes on such parcels. The term "Parcel" includes, without limitation, the Events Center Condominium.

1.34 "Parking Program" shall have the meaning set forth in Section 4.5.

1.35 "Parking Spaces" means spaces designed, marked and striped for the exclusive use and purpose of the parking of automobiles and motor vehicles. Unless otherwise approved by Declarant and the City, (i) all Parking Spaces shall have a minimum length of eighteen (18) feet and a minimum width of nine (9) feet, and (ii) each Parking Space shall be designed and designated for use by one (1) automobile or motor vehicle. The Parking Spaces may be surface spaces or located in a multi-level parking deck or structure or in an underground or subterranean facility.

1.36 "Permittees" means: the Owners of any and all portions of the Project and their respective heirs, successors, assigns, grantees, tenants and subtenants and all Persons who now hold, or hereafter hold, portions of real property within the Project, or any leasehold estate, or building space thereon; (ii) respective tenants or subtenants thereof; and (iii) the officers, directors, concessionaires, agents, employees, contractors, customers, visitors and licensees and invitees of any of them.

1.37 "Person" means any natural person, partnership, trust, corporation, limited liability company or other legal entity.

1.38 "Prohibited Uses" means any use or operation which is inconsistent with the development or operation of the Project as a first class retail, commercial, entertainment, hotel, events center, office, warehouse/distribution and/or community project, as so operated, as reasonably determined by Declarant. Included among the uses or operations which are objectionable are the following uses or operations, or any uses or operations which produce, are accompanied by or involve the following characteristics, which list is not intended to be all-inclusive:

1.38.1 Any use which constitutes a public or private nuisance;

1.38.2 Any use which produces noise or sound which may be heard outside of any Building and is objectionable due to intermittence, beat, frequency, shrillness or loudness; provided, however, this restriction shall not preclude public performances (including concerts)

and other public uses approved by Declarant in certain areas designated by Declarant from time to time;

1.38.3 Any use which produces any noxious odor which may be smelled outside any Building other than such odors as are typically incidental to first class retail, commercial, entertainment, hotel, events center, office, warehouse/distribution and/or community project operations, including odors typically incidental to beauty and nail salons, restaurants, fast food restaurants or other food service establishments;

1.38.4 Any use which produces any excessive quantity of dust, dirt or ash; provided, however, this prohibition shall not preclude the sale of items typically sold as an incident to the operation of a home improvement or other similar store (provided such items are sold in containers);

1.38.5 Any use involving unusual fire, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks); provided, however, this restriction shall not prohibit annual or other periodic displays of fireworks in connection with national, regional or other holidays or events of significance in the area of the Project;

1.38.6 Any assembly, manufacturing, distillation, refining, smelting, agriculture or mining operation other than Research and Development Uses;

1.38.7 Any mobile home or trailer court, mortuary, lot for the sale of new or used vehicles, labor camp, junkyard, stock yard or use involving animal raising; provided, however, first class pet stores shall be permitted within the Project;

1.38.8 Any operation for drilling for and/or removal of subsurface substances;

1.38.9 Any operation involving dumping, disposal, incineration or reduction of garbage or refuse, other than in enclosed receptacles intended for such purposes;

1.38.10 Any use involving the display or distribution of pornographic materials, adult books and magazines or X-rated videos or similar productions; provided, however, the following shall be permitted within the Project (i) the sale of such adult magazines and books as may be carried by a convenience, supermarket, drug, record or full-line book store, (ii) the sale and/or rental of X-rated videos and similar productions from full-line record and/or video stores, provided such X-rated videos are not shown on screen in any such store, but are kept behind a counter or in a reserved area and are not advertised or placed on display to minors and (iii) the use of "on demand", "pay per view" or similar systems approved by Declarant that show adult movies or videos in connection with the operation of the hotel in the Hotel Building;

1.38.11 Any automobile body and fender repair shop operation; and

1.38.12 Any off-track betting facility.

Notwithstanding anything in this Declaration to the contrary, Prohibited Uses shall not be deemed to include Research and Development Uses.

1.39 "Proportionate Share" shall have the meaning set forth in Section 5.5.1.

1.40 "Research and Development Uses" means facility uses for scientific and/or laboratory research, including, without limitation, the design, development, fabrication and/or testing of components in advance of product manufacturing, and the assembly and/or fabrication of related products from parts produced on-site or off-site, where the manufacturing activity is controlled, secondary and only in furtherance of the research and development activities, product analysis and warehouse and distribution.

1.41 "Restrictions" means those easements, covenants, restrictions, liens and charges fixed and established upon the Project pursuant to this Declaration.

1.42 "Retail Use" collectively means the following uses: (i) retail, entertainment and restaurant uses; (ii) Service Commercial Uses; and (iii) other similar uses.

1.43 "Service Commercial Uses" means banking, travel agency, real estate, escrow, insurance tax preparation and similar types of office uses.

1.44 "Sign Program" shall have the meaning set forth in Section 4.2.11.

1.45 "Term" shall have the meaning set forth in Section 10.2.

ARTICLE 2 USE IN GENERAL

2.1 Lawful Use. Except as otherwise limited pursuant to this Declaration, the Project may be used for any lawful retail, commercial, entertainment, hotel, events center, office, and/or community project purpose, not specifically prohibited herein, and for Research and Development Uses and the Emerson Parcel only may be used for warehouse/distribution uses. No portion of the Project shall be used for a Prohibited Use. Notwithstanding the foregoing or anything in this Declaration to the contrary, for purposes of the Emerson Parcel, permitted uses shall include customer training, laboratory uses, a model shop, a fitness center, and storage uses, and none of such uses shall be deemed a Prohibited Use. Without the written consent of the Owner and any lessee under the Hotel Ground Lease, the only hotel use within the Project shall be on the Hotel/Event Center Parcel.

2.2 Zoning. This Declaration shall be subject to applicable zoning laws.

ARTICLE 3 CONSTRUCTION

3.1 Initial Building Approval. In order to maintain the architectural and functional harmony of the Project, no Owner shall commence or permit the commencement of construction of any sign, Building or other structure within the Project unless the design, architecture, exterior elevations, configuration, height, dimensions, landscape design, location, exterior finishes, materials, colors and other attributes thereof is approved in writing by the Declarant prior to the commencement of construction. Declarant acknowledges and agrees that Declarant has approved in writing the Emerson Plans and Hotel/Event Center Plans. Declarant further

acknowledges and agrees that as to the Hotel constructed on the Hotel/Event Center Parcel that the review permitted or contemplated under this Article 3 shall be limited to the exterior skin and elevation of the Hotel Building only.

3.2 Alteration Approval. In order to maintain the architectural and functional harmony of the Project, no Building or structure within the Project shall be reconstructed, altered, added to or maintained in such a fashion as to alter, in any material respect, the architectural appearance, character or motif or functional purpose of such item, unless such alteration is approved in writing by the Declarant prior to the commencement of construction of the alteration.

3.3 Construction Procedures.

3.3.1 All construction activities within the Project shall be performed in a good and workmanlike manner, using first class materials, and in compliance with all laws, rules, regulations, orders, and ordinances of the city, county, state, and federal governments, or any department or agency thereof, having jurisdiction over the Project.

3.3.2 All construction activities within the Parcels shall be performed in accordance with the following provisions:

(i) so as not to unreasonably interfere with any construction work being performed on the remainder of the Parcels, or part thereof; and

(ii) so as not to unreasonably interfere with the use, occupancy or enjoyment of the remainder of the Project or part thereof or the business conducted by any other Owner or Permittees.

3.3.3 When an Owner is constructing, reconstructing, repairing, maintaining, remodeling, or enlarging any Building or improvements on its Parcel, such Owner shall establish a staging and storage area on its Parcel prior to commencing such work. Notwithstanding anything to the contrary contained herein, such staging and storage areas (i) shall not unreasonably interfere with access between the other areas of the Project, with the use of any other Parcel, or with the operation of any business or permitted activity on any other Parcel by the Permittees thereof (such Permittees to have free and unobstructed access to the loading docks, compactors, sidewalks and entrances and exits), and (ii) shall be subject to the approval of Declarant, in its reasonable discretion. If substantial work is to be performed, such Owner, at the reasonable request of Declarant or any other Owner of a Parcel which would be materially and adversely affected by such staging or storage area, shall fence off such staging and storage area. Upon completion of such work, such staging and storage area shall be restored to a condition at least equal to that existing prior to commencement of such work.

3.3.4 Except (i) in cases of emergency, (ii) for restoration or repair necessitated by casualty or condemnation, (iii) as reasonably necessary to avoid damage due to rain or other environmental conditions or (iv) as otherwise approved by Declarant, in Declarant's sole and absolute discretion, no exterior construction or material exterior maintenance and repair work shall be conducted on any Parcel for Retail Use: (a) during the period of November 15th through January 5th or (b) on Saturdays, Sundays or any legal holiday. Such limitation shall not apply to

any other Parcels within the Project, specifically including, without limitation, the Emerson Parcel or the Hotel/Event Center Parcel. Correspondingly, with respect to the Parcels for Retail Use in connection with the initial improvements to be constructed on such Parcel, no staging and storage areas shall be established and maintained within such Parcels during such restricted months, except as otherwise approved by Declarant, in Declarant's sole and absolute discretion.

3.3.5 Each Owner shall diligently complete all construction activities within its Parcel within commercially reasonable timeframes, shall regularly clean the roadways and driveways used by its construction vehicles of mud, dirt and construction debris, and upon completion of all construction activities shall promptly restore such affected roadways and driveways to a condition which is equal to or better than the condition which existed prior to the commencement of such work, ordinary wear and tear excepted.

3.3.6 Each Owner shall indemnify, defend and hold harmless each other Owner from and against any and all claims, losses, damages, liabilities, injuries, reasonable, out-of-pocket costs and expenses, including, without limitation, reasonable, out-of-pocket attorneys' fees, because of personal injury or death of persons or destruction of property arising from or as a result of construction by such Owner on its Parcel, except for claims caused by the negligence or willful act or omission of the indemnified Owner, its licensees, concessionaires, agents, servants, or employees.

3.4 Parking Spaces.

3.4.1 As an express condition to the rights of an Owner to (i) construct and develop a Hotel Building, and (ii) operate such Hotel Building, such Owner shall develop and construct a minimum of the following aggregate number of Parking Spaces (said minimum being subject to any additional Parking Spaces required by the city council of the City as a condition of its approval of a site plan prepared and submitted by the Owner) that is calculated as the product of multiplying: (a) ninety percent (90%); by (b) the sum of (i) one (1) Parking Space for each sleeping room in the Hotel Building, plus (ii) one (1) Parking Space for each two hundred (200) square feet of Floor Area in the Hotel Building utilized for retail and restaurant uses, conference rooms and convention meeting and assembly uses, plus (iii) one (1) Parking Space for each three hundred (300) square feet of Floor Area in the Hotel Building utilized for office and administrative uses. The provisions of the immediately preceding sentence: (x) shall be satisfied solely by an Owner other than the Owner of the Events Center Condominium; and (y) shall impose no obligation on the City, as the Owner of the Events Center Condominium, to develop and construct Parking Spaces. All such Parking Spaces shall be solely for the benefit of the Owner or lessee of the Hotel Building.

3.4.2 As an express condition to the rights of an Owner to construct and develop an Office Building and operate such Office Building for the uses set forth in Section 2.2, such Owner shall develop and construct a minimum aggregate number of Parking Spaces that is calculated as follows: (a) for any Parcel located south of Gateway Blvd., one (1) Parking Space for each three hundred (300) square feet of Floor Area of Office Building; and (b) for any portion of the Office Designated Area located north of Gateway Blvd., the product of multiplying (i) ninety percent (90%), by (ii) one (1) Parking Space for each three hundred (300) square feet of Floor Area in the Office Building.

3.4.3 As an express condition to the rights of an Owner to construct and develop Buildings other than Hotel Buildings or Office Buildings, such Owner shall develop and construct a minimum number of Parking Spaces calculated as follows: as the product of multiplying ninety percent (90%) of the sum of (i) one (1) parking space for every one hundred (100) square feet of Floor Area in the Building that is utilized for restaurant uses, plus (ii) one (1) Parking Space for every two hundred (200) square feet of Floor Area in the Building that is utilized for retail uses, plus (iii) one (1) parking space for every three hundred (300) square feet of Floor Area in the Building that is utilized for office and administrative uses, plus (iv) one (1) parking space for every four (4) seats in any auditoriums in any Building utilized as a movie theatre open to the public.

3.4.4 All such Parking Spaces on Parcels, other than the Emerson Parcel and the Hotel/Event Center Parcel, shall be made available and accessible, in accordance with the provisions of this Declaration to all Owners and their lessees, licensees, and invitees, during all periods during the Term of this Declaration in which Buildings or any portion thereof is open for business.

ARTICLE 4 PROJECT EASEMENTS

4.1 Grant of Easements. The Declarant hereby establishes and grants to, and each other Person who becomes an Owner shall, immediately upon becoming such an Owner and without further act, be deemed to have established and granted to, all other Owners and all tenants, occupants of the Project, their guests, employees, invitees, permittees, licensees, patrons and customers, irrevocable, non-exclusive easements over, across, upon and beneath the Common Area held or owned by such Owner for the purposes set forth in Section 4.2 (except to the extent of the Common Area, if any, located within the boundaries of the Emerson Parcel or the Hotel/Event Center Parcel, as otherwise provided in this Declaration). Declarant also hereby reserves an easement over the Project, other than the Emerson Parcel or the Hotel/Event Center Parcel, together with the right to grant and transfer the same, for the purpose of permitting Declarant to discharge its duties and exercise its rights under this Declaration, including without limitation, for purposes of maintaining, repairing and replacing landscape, waterscape, sprinkler, drainage patterns, lighting, utility and other facilities within the Common Area. Nothing in this Section or elsewhere in this Declaration shall be deemed to be or constitute a gift or dedication of any portion of the Project to the general public or for any public use or purpose whatsoever.

4.2 Permitted Common Area Uses. Common Area shall be used for the purposes set forth in this Section:

4.2.1 The parking of passenger vehicles and the pedestrian and vehicular traffic of Permittees.

4.2.2 The ingress and egress of any Permittees and the vehicles thereof to and from any portion of the Common Area and the public streets adjacent to the Common Area.

4.2.3 The installation, operation, maintenance, repair, replacement, relocation and removal of sanitary sewers, storm drains, water and gas mains, electric power lines and

conduits, telephone lines and conduits, television cables, vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls and related utility and service facilities serving any part of the Project, all of which (except hydrants and transformers and other installations as may be requested by the utility company) shall be even with or below the surface of the Common Area or within Common Area walls or as otherwise directed by Declarant. All Owners shall reasonably cooperate, at no expense or liability to such Owner, in the granting of appropriate and proper easements to each other (other than any easements burdening the Emerson Parcel or the Hotel/Event Center Parcel) or to utility companies and governmental authorities for the installation, operation, maintenance, repair, replacement, relocation and removal of the facilities set forth above. The original location of the facilities set forth above shall be subject to the approval of the Declarant. Each Owner shall have the right to enter upon any portion of the Common Area (other than the Emerson Parcel or the Hotel/Event Center Parcel) as may be necessary or appropriate in order to accomplish the installation, operation, maintenance, repair, replacement, relocation and removal of the facilities referred to above; provided, however, each Owner does not unreasonably interfere with the use of the Common Area by Permittees and that no relocation or removal of any such facilities shall be made without the prior written consent of the Declarant.

4.2.4 Pedestrian and vehicular movement by Permittees to and from adjacent streets and between businesses and occupants located or to be located within the Project.

4.2.5 The construction, replacement and reconstruction of Parking Spaces, flagpoles, sidewalks, ramps (excluding loading ramps), driveways, lanes, curbs, directional and other signs, gutters, traffic control areas, traffic islands, traffic and parking lighting facilities, perimeter walls, pedestrian walkway or landscaped areas, including planters, planting boxes, edgers, fountains, valves and customer conveniences, such as mail boxes, public telephones and benches for the comfort and convenience of Permittees; provided, however, that the Declarant shall first approve of all such facilities and that such facilities do not materially affect the access, visibility or parking of the property or Building of any Owner.

4.2.6 The maintenance and repair of any of the items referred to in Section 4.2.5.

4.2.7 Recycling centers for cans, bottles or other materials.

4.2.8 The ingress and egress of delivery and service trucks and vehicles to and from the Project Site or any portion thereof and the public streets adjacent to the Project, for the delivery of goods, wares, merchandise and the rendering of services to all persons or other entities who may lease portions of the Project. Each tenant or other occupant of the Project shall use commercially reasonable efforts to have deliveries made within the areas designated for such purposes by Declarant. In the event it is necessary that deliveries be made other than in the areas designated by Declarant, such deliveries shall be made so as to cause the least amount of interference with the use of adjacent portions of the Common Area.

4.2.9 Trash, refuse and garbage container storage areas (at locations approved by Declarant in its reasonable discretion) and areas for the parking of the automobiles of employees of an Owner or occupant of any Building and other incidental and related facilities.

4.2.10 Subject to the prior written approval of Declarant, which will not be unreasonably withheld, the temporary use (including erection of ladders, scaffolding and storefront barricades) during periods of construction, remodeling or repair, and ingress and egress for vehicles transporting construction materials and equipment and use thereof by construction equipment, upon the condition, however, that all construction, remodeling or repair of buildings, other improvements and appurtenances is diligently performed and such ladders, scaffolding and barricades are promptly removed upon completion of such work.

4.2.11 The construction, maintenance, repair, replacement and reconstruction of sign pylons and/or monument signs (with appropriate underground electrical connections in locations reasonably designated by Declarant); provided, however the location, construction, design and replacement of any such signage shall be subject to the prior written approval of Declarant (which approval may be given in Declarant's sole but good faith discretion). The costs of designing, constructing, maintaining, repairing, replacing or reconstructing sign pylons and/or monument signs which serve the Project shall be paid for pro rata by the Owners or occupants of the Buildings whose names or logos appear on such signs in the ratio of their square footage usage of such sign pylons. Participation on such signage shall be as determined by Declarant, in Declarant's sole and absolute discretion, or as set forth in the Sign Program (as hereinafter defined), if any, implemented pursuant to the following provisions of this Section. No changes shall be made to such signage, including the locations of same, without the prior written approval of the Declarant. Notwithstanding anything to the contrary contained in this Declaration or elsewhere, Declarant shall have the right, in Declarant's sole discretion (using prudent business judgment) to install, erect and/or construct signage, including tenant, directional and informational signage, at locations reasonably designated by Declarant within the Common Area. Notwithstanding anything to the contrary contained herein, Declarant shall have the right to establish a sign program for the Project (the "Sign Program"), which such Sign Program may, as determined by Declarant, include, among other things, detailed design, engineering and specification requirements relating to signage. Declarant shall have the right to change the Sign Program from time to time, in Declarant's sole and absolute but good faith discretion. Any and all signage installed at the Project shall be subject to and erected in accordance with the Sign Program.

4.3 Common Area Alteration. Other than with respect to the initial improvements to be constructed on the Emerson Parcel or the Hotel/Event Center Parcel, no Owner or other Person shall alter any parking areas or other improvements located upon the Common Area, without the prior written consent of the Declarant:

4.3.1 An Owner (or Declarant) shall have the right to excavate or conduct construction activities upon the Common Area, if necessary, in connection with the installation, operation, maintenance, repair, replacement, relocation and removal of any utility or service facilities, subject, however, to the provisions of Section 4.2.3, so long as such excavation or construction activities shall be prosecuted diligently to completion; and further provided that the consent of the Owner on whose Parcel such activity is to take place shall also be obtained, which consent shall not be unreasonably withheld. The Person causing such excavation or construction activities to be made shall forthwith, upon completion thereof, restore any portion of the Common Area affected thereby to the same condition as existed prior to the commencement of

such installation or construction activities using the same type and quality of materials as previously used.

4.3.2 Declarant may make alterations in the Common Area (other than with respect to Common Areas, if any, located on the Emerson Parcel or the Hotel/Event Center Parcel) as it shall deem appropriate or necessary. Any work performed in the Project pursuant to this Section 4.3 shall be performed so as to minimize the disruption of business operations conducted anywhere within the Project.

Notwithstanding the foregoing, however, no such activity shall occur (unless otherwise approved by Declarant) during the months of July, August, November and December, except (i) in the event of an emergency or in connection with restoration or repairs necessitated by casualty or condemnation, (ii) with respect to the Emerson Parcel or the Hotel/Event Center Parcel, in connection with the initial improvements to be constructed on such parcel, (iii) as reasonably necessary to avoid damage due to rain or other environmental conditions or (iv) to the extent necessary to prevent a breach or default under this Declaration.

4.4 Encroachment Easement. Should any Building or improvement constructed within a Parcel inadvertently encroach on any adjacent Parcel and said encroachment does not exceed twenty-four (24) inches and/or otherwise materially, adversely affect the use of the property being encroached upon, the Owner of the adjacent Parcel shall be deemed to have granted an easement effective as of the recording date hereof for such encroachment for so long as such encroachment shall exist, and shall execute such instruments as may reasonably be required by the encroaching party, or its assignees, title insurer or Mortgagees confirming such easement.

4.5 Parking. Declarant shall have the right, in Declarant's sole and absolute discretion, to establish a parking program for the Project (the "Parking Program"), which Parking Program may, as determined by Declarant, provide for, among other things, parking rules and regulations, parking charges, valet and validation programs or systems, Declarant's authority for the reservation or designation of particular parking spaces and other items as Declarant shall determine in Declarant's sole and absolute but good faith discretion. Declarant shall have the right to change the Parking Program from time to time, in Declarant's sole and absolute but good faith discretion. No Permittee shall use or permit the use of the parking area portions of the Common Area for any purpose other than parking, loading/unloading (in the areas designated for same by Declarant) and passage of pedestrians and motor vehicles unless specifically provided otherwise in this Declaration. Each Owner agrees to use reasonable efforts to enforce the provisions hereof. Each Owner shall require its Permittees to park their vehicles only in the parking areas from time to time designated for that purpose by Declarant. Without limiting the generality of the foregoing, if Declarant implements any program related to parking, parking facilities or transportation facilities including, but not limited to, any program for off-site parking, parking validation, employee shuttle transportation during peak traffic periods or other program to limit, control, enhance, regulate or assist parking by customers or Permittees of the Project, each Owner shall participate in the program and pay its proportionate share of the costs of the program (based on the proportionate share of Floor Area owned by such Owner in the Project) under reasonable and nondiscriminatory rules and regulations from time to time

established by Declarant. Notwithstanding the foregoing, this provision shall not be binding and shall have no effect on the Owner of the Emerson Parcel or the Hotel/Event Center Parcel.

4.6 Drainage Easement. The Declarant hereby establishes and grants to, and each other Person who becomes an Owner shall, immediately upon becoming such an Owner and without further act, be deemed to have established and granted to, all other Owners and all Permittees of the Project, their guests, employees, invitees, permittees, licensees, patrons and customers, irrevocable, non-exclusive easements over, access, upon and beneath the Common Area held by such Owner for cross-drainage purposes consistent with the drainage patterns established by Declarant.

4.7 Underground Supports. In order to accommodate the construction, reconstruction or repair of any Building or other improvement which may be constructed or reconstructed immediately adjacent to the common boundary lines of any of the Parcels, each Owner, as to its respective Parcel, hereby grants, establishes and creates for the benefit of, and as appurtenances to, each other Parcel and for the benefit of the Owner of each of the other Parcels from time to time and their respective Permittees, with respect to, and as a burden upon, such granting Owner's Parcel, non-exclusive easements for lateral support for improvements constructed on or near such common boundary lines, together with the right and easement to install, maintain, repair, and replace footings and underground supports for such improvements in space not theretofore occupied by any then existing structure, provided that the location of such footings shall be subject to the consent and approval of the Owner of the Parcel encumbered by such easement, such approval not to be unreasonably withheld, and provided that such footings shall in no event extend more than five (5) feet onto the servient Parcel from the applicable common boundary line. This easement shall continue in effect for the term of this Declaration and thereafter so long as the improvements utilizing the easement exists, including a reasonable period to permit reconstruction or replacement of such improvements or to permit the construction of new improvements, and shall include the reasonable right of access necessary to exercise and enjoy such grant, provided no damage is caused to the Buildings or other improvements located on the Parcel encumbered by such easement or the operation of business thereon. Each Owner of a Parcel using a common footing shall construct its wall upon its Parcel, and no load, force or pressure shall be exerted by the wall of one Owner upon the wall of the other Owner. When an Owner of a Parcel constructs its improvements along a common boundary line, it shall do so in a manner that does not result in damage or injury to the Buildings or other improvements previously placed by another Owner of a Parcel along such common boundary line. If a common footing is used by two (2) Owners, each shall assume and pay their reasonable share of the cost and expense of the initial construction and, so long as both Owners are benefiting therefrom, any subsequent maintenance, repair, and replacement thereof. In the event any Building or structure utilizing a common subterranean element is destroyed and not replaced or is removed, the common subterranean construction element shall be left in place for the benefit of any improvements utilizing the same located on the adjoining Parcel. Nothing herein shall be deemed to require any Owner to use or to consent to the use of common subterranean construction elements, but if such consent is granted then the foregoing provisions of this Section shall apply.

ARTICLE 5
OPERATION AND MAINTENANCE

5.1 Taxes and Assessments. All Owners shall pay, prior to delinquency, all taxes and assessments on the property within the Parcel owned by them. If any such Owner shall fail to pay such taxes and assessments prior to delinquency, any other Owner or the tenant of any other Owner may pay such taxes and assessments and the curing Owner or tenant may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within thirty (30) days, the curing Owner or tenant shall have a lien on the property within the Parcel of the defaulting Owner for the amount of such bill, which amount shall bear interest at a rate equal to the Default Rate until paid. Such lien may be foreclosed by such Owner or tenant as provided in Article 7 below.

5.2 Building and Improvement Maintenance. Except as may otherwise be provided pursuant to other matters of record affecting the Project (or portions thereof), each Owner shall maintain, or cause to be maintained, in a safe, clean, attractive and tenantable condition, all Buildings and other improvements located upon its Parcel, including screening from view the garbage receptacle areas.

5.3 Utilities. Each Owner shall be solely responsible for obtaining and paying for all utilities and services required and used on its Parcel.

5.4 Rules and Regulations. The Declarant may promulgate reasonable rules and regulations of general application for the supervision, control and use of the Common Area, in which event, Declarant shall make and use its reasonable efforts to enforce the same or cause the same to be enforced uniformly.

5.5 Maintenance of Common Areas.

5.5.1 Notwithstanding anything to the contrary contained in this Declaration or in any other matter of record entered into concurrently herewith, the Owners of all Parcels (excluding the Owner of the Emerson Parcel and the Owner(s) of the Hotel/Event Center Parcel), in a proportion the numerator of which is each such Owner's Floor Area and the denominator of which is the total Floor Area of the Project less the Floor Area of the Emerson Parcel and the Owner(s) of the Hotel/Event Center Parcel (the "Proportionate Share"), shall be responsible for the costs of the operation, management, equipping, lighting, repair, replacement and maintenance of the Common Areas (other than the Common Areas, if any, located on the Emerson Parcel and/or the Hotel Event Center Parcel respectively) (collectively, "Common Area Maintenance"). The Owner of the Emerson Parcel and the Owner of the Hotel/Event Center Parcel, respectively, shall pay their respective costs, as provided herein below in this Section 5.5.1. Declarant shall, in its reasonable discretion perform all Common Area Maintenance and may levy at any time an assessment (the "Common Area Assessment") against each such Owner and the Parcel(s) owned by each such Owner in the amount of such Owner's Proportionate Share or, in the case of the Emerson Parcel, the Emerson Parcel Proportionate Share of the Emerson Common Area Maintenance Items or, in the case of the Hotel/Event Center Parcel, the Hotel/Event Center Proportionate Share of the Hotel/Event Center Maintenance Items. The Owner of the Emerson Parcel, in a proportion the numerator of which is the Floor Area of the Emerson Parcel and the denominator of which is the total Floor Area of the Project (the "Emerson Parcel Proportionate Share"), shall be responsible for the Emerson Common Area Maintenance Items (as hereinafter defined). "Emerson Common Area Maintenance Items" shall mean (i) those maintenance items

described in Section 5.5.3(vi) below, (ii) placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines, monuments, and artificial lighting relating thereto which direct members of the public to the Project as a whole (as opposed to any individual Parcel), (iii) artificial lighting installed to illuminate any portion of the Marketplace Drive running adjacent to the Emerson Parcel, and (iv) maintenance of the roadway and all median installations, if any, on the portion of Marketplace Drive running adjacent to the Emerson Parcel; provided, however, Emerson Common Area Maintenance Items shall not include any maintenance or other costs incurred with respect to any Parcel owned by an Owner. The Owner of the Hotel/Event Center Parcel, in a proportion the numerator of which is the Floor Area of the Hotel/Event Center Parcel (the "Hotel/Event Center Parcel Proportionate Share") shall be responsible for the Hotel Common Area Maintenance Items (as hereinafter defined). "Hotel Common Area Maintenance Items" shall mean (i) those maintenance items described in Section 5.5.3(vi) below, and (ii) placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines, monuments, and artificial lighting relating thereto which direct members of the public to the Project as a whole (as opposed to any individual Parcel). The Hotel/Event Center Proportionate Share shall be allocable among the Hotel Unit and Event Center Unit within the Condominium Regime imposed on the Hotel Parcel in accordance with the allocation percentages for such Units.

5.5.2 Each Owner (other than the Owner of the Emerson Parcel and the Owner of the Hotel/Event Center Parcel) covenants and agrees by acceptance of a deed subject to this Declaration that it shall pay to the Declarant its Proportionate Share of the Common Area Assessments. The Owner of the Emerson Parcel covenants and agrees by acceptance of a deed subject to this Declaration that it shall pay the Declarant the Emerson Parcel Proportionate Share of the Emerson Common Area Maintenance Items. The Owner of the Hotel/Event Center Parcel covenants and agrees by acceptance of the deed subject to this Declaration that it shall pay to the Declarant the Hotel/Event Center Parcel Proportionate Share of the Hotel/Event Center Common Area Maintenance Items. The Common Area Assessments, together with interest thereon at the Default Rate running from the thirtieth (30th) day after the Owner is notified in writing of such Common Area Assessments, along with the costs of collection including attorney's fees, shall be (i) a charge and a continuing lien upon each Parcel against which such Common Area Assessment is made, (ii) an Assessment Lien upon the filing of a Notice of Assessment Lien, and (iii) shall be the continuing and personal obligation of the then-existing Owners of such Parcels at the time when the Common Area Assessment first became due.

5.5.3 Common Area Maintenance shall include (but shall not be limited to) the following:

- (i) Resurfacing of walks, drives and parking areas;
- (ii) Keeping the surface of the Common Areas within the subject Parcel in a smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall, in all respects, be equal in quality, use and durability;
- (iii) Cleaning, sweeping, snow and debris removal, painting, striping, disposal of rubbish and debris, removal of soil and stone washed into the Common Area

drainage facilities and all other tasks necessary to maintain the Common Areas of such Parcel in a clean, safe and orderly condition;

(iv) Maintenance of all curbs, parking dividers, landscape enclosures, fences and retaining walls in good condition and repair;

(v) Placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines and keeping in repair and replacing when necessary such artificial lighting facilities and lighting fixtures as shall be reasonably required;

(vi) Maintenance of all landscaped areas, making such replacements of shrubs and other landscaping as is necessary, and keeping such landscaped areas at all times adequately weeded, fertilized and watered;

(vii) Security service, to the extent Declarant (without any liability therefor) reasonably deems the same to be necessary or advisable;

(viii) Illumination of the subject Common Areas until such time as Declarant reasonably determines; and

(ix) Maintenance of all utility lines within the subject Common Areas that are not the responsibility of the utility company or the responsibility of another party pursuant to applicable matters of record.

ARTICLE 6 INSURANCE

6.1 Liability and All-Risk Insurance. The Owner of the Hotel/Event Center Parcel shall be required to maintain only those insurance coverages required by the Hotel Ground Lease, regardless of whether the Hotel Ground Lease is in effect. Otherwise, each Owner shall, during the term of this Declaration, except as otherwise expressly set forth herein, maintain, or cause to be maintained, at its sole expense, in full force and effect, with good and solvent insurance companies authorized to do business in the State of Texas and having a rating by Best's Insurance Reports of not less than A-/X, on all Parcels within the Project Site owned or leased by such Owner and all Buildings and other improvements (including Common Area improvements) owned or leased by such Owner, a policy or policies of commercial general liability, bodily injury, personal injury and property damage liability insurance with combined single limits of at least Five Million Dollars (\$5,000,000), permission granted to achieve an aggregated occurrence limit of Five Million Dollars, combining primary Commercial General Liability coverage with excess or Umbrella liability policies, as available (which such limit shall be reviewed on January 1, 2013, and on every fifth (5th) anniversary of such date (each an "Adjustment Date") throughout the duration of this Declaration, as to the adequacy of limits in relation to the then-prevailing trends in claim settlements for businesses operating in a similar capacity in the area, and if agreed upon by the parties that the limits are inadequate, an adjustment to the required limit will be calculated by multiplying the then applicable insurance limit by a fraction, the numerator of which shall be the Index for the month which is three (3) months prior to the subject Adjustment Date and the denominator of which shall be the Index for

the month which is sixty-three (63) months prior to such Adjustment Date), in which all other Owners, the Declarant, any Mortgagee of Declarant and any property manager of Declarant shall be named as additional insureds, insuring against any and all liability arising out of the maintenance, use and occupancy of the Building(s) and other improvements and the Common Areas located on the Parcels within the Project Site owned or leased by such Owner; provided, however, that if any adjusted coverage limit amount calculated as provided above is not divisible without remainder by \$1,000,000.00, the required coverage limit amount shall be rounded to the nearest \$1,000,000.00. Except as provided above, each Owner shall also maintain all-risk insurance coverage on all Buildings and improvements (including Common Area improvements) located upon the Parcels in the Project Site owned by such Owner including loss or damage by fire and such other risks as are from time to time included in the all-risk coverage insurance policies customarily issued in Texas in an amount not less than one hundred percent (100%) of the full replacement cost of such buildings and improvements. Such all-risk insurance policies shall be maintained with good and solvent insurance companies authorized to do business in the State of Texas and having a rating by Best's Insurance Reports of not less than A/X. Declarant shall be named as a loss payee as their interests may appear on all such all-risk insurance policies. Notwithstanding the foregoing, with respect to the Owner of the Emerson Parcel, the specified limits of insurance as required by this Section 6.1 may be satisfied by any combination of primary or excess/umbrella insurance policies and/or self-insurance.

6.2 Certificates. Each Owner shall, upon request thereof from the Declarant or any other Owner, furnish to the party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Article. Each Owner hereby waives any claim that it might have against any other Owner for damages which would be covered by any of the insurance required to be carried under this Article or actually carried. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of, or any damage to the said property of any Owner. Inasmuch as the said mutual waivers will preclude the assignment of any such claim by way of subrogation (or otherwise) to an insurance company (or any other person, firm or corporation) each Owner shall give to each insurance company which has issued to it policies of all-risk insurance, written notice of the terms of said mutual waivers, and shall have said insurance policies properly endorsed, if necessary, to prevent invalidation of said insurance coverages by reason of said waiver. All such insurance maintained pursuant to this Article shall provide that such insurance shall not be canceled or amended without ten (10) days prior written notice to Declarant.

If any such Owner shall fail to maintain any of the insurance required to be maintained by such Owner pursuant to this Declaration, then any other Owner or tenant of an Owner shall have the right to give the defaulting Owner written notice of such default specifying the particulars thereof. The Owner receiving such a notice shall have a period of ten (10) days after the giving of such notice in which to cure such default. If the defaulting Owner does not cure such default within said ten (10) day period, the Owner(s) and/or tenant(s) giving the notice of default may do so and the curing Owner or tenant may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within ten (10) days, then the curing Owner or tenant shall have a lien on the property of the defaulting Owner for the amount of such bill, which amount shall bear interest at the Default Rate and which lien may be foreclosed as provided in Article 7.

6.3 Indemnification. Each Owner (“Indemnitor”) covenants and agrees to defend, protect, indemnify and hold harmless each other Owner (“Indemnitee”) from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorney’s fees actually incurred and cost of suit) arising from or as a result of the injury to or death of any Person, or damage to the property of any Person located on the Parcel owned or leased by each Indemnitor, except for claims caused by the negligence or willful act or omission of such Indemnitees, its agents, servants, partners or employees.

ARTICLE 7 ASSESSMENT LIEN

7.1 Assessment Lien Procedure. In the event any assessment or other sum of money payable by any Owner pursuant to any provision of this Declaration, including but not limited to a Common Area Assessment, to any Person, including but not limited to the Declarant, is not paid when due and after expiration of any applicable grace period set forth herein, then the Person to whom such sums are owing shall have the right to record, in the Official Records, a Notice of Assessment Lien which shall set forth the then delinquent amount owed by such Owner (including default interest, if applicable) and a legal description of the property within the Project owned or leased by such defaulting Owner. Upon recordation of such Notice of Assessment Lien, the then delinquent amount owing by such Owner, together with interest thereon, shall constitute an Assessment Lien upon the property within the Project described in the Notice of Assessment Lien. In the event the amount secured by such Assessment Lien is not paid in full within thirty (30) days after such Notice of Assessment Lien has been recorded, the Person to whom such amounts are owing may enforce payment of the assessment or other amount due, or enforce the Assessment Lien against the property and interest of the delinquent Owner by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies set forth below, such Person shall not prejudice or waive its right to exercise the other remedy or such additional remedies as may be available under its lease, if applicable, or under applicable law):

7.1.1 Bringing an action at law against the Owner personally obligated to pay the assessment or other sum of money;

7.1.2 Foreclosing the Assessment Lien against the property of the Owner in accordance with the then prevailing applicable law relating to the foreclosure of Mortgages (including the right to recover any deficiency); or

7.1.3 Pursuing any other remedy at law or in equity.

7.2 Personal Obligation. Each assessment or amount due pursuant to any provision of this Declaration by an Owner, together with interest at the Default Rate, reasonable, out-of-pocket costs and attorneys’ fees, shall be the personal obligation of such defaulting Owner, but such personal obligation of such Owner shall not be deemed to discharge or limit the charge on the land of any Assessment Lien encumbering the property of such Owner within the Project, regardless of a subsequent conveyance of that property. No Owner shall escape liability for payment of any amount due hereunder which fell due while he was the Owner by nonuse of the

Common Area or by transferor abandonment of such Owner's property. In the event any property within the Project as to which a Notice of Assessment Lien has been recorded, pursuant to Section 7.1, is sold, conveyed or otherwise transferred, in whole or in part, by the Owner thereof, such property shall remain subject and subordinate to the Assessment Lien created by reason of the delinquency described in the Notice of Assessment Lien.

7.3 Priority. The Assessment Lien provided for above shall be superior to any and all other charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon any portion of the Project; provided, however, that such Assessment Lien shall be subject and subordinate to:

7.3.1 Liens for taxes and other public charges which by applicable law are expressly made superior;

7.3.2 Any Mortgages recorded in the office of the Official Records (and such other place as may be required or permitted by law), prior to the date of recordation of a Notice of Assessment Lien. All liens recorded subsequent to the recordation of a Notice of Assessment Liens shall be junior and subordinate to the Assessment Lien created by reason of the delinquency described in the recorded Notice of Assessment Lien; and

7.3.3 The rights of any and all tenants occupying any portion of the Project under written leases.

In the event an Owner shall be delinquent in paying any amounts due hereunder and, as a result thereof, a Notice of Assessment Lien shall be recorded as provided herein, the Person recording such Notice of Assessment Lien may record subsequent Notices of Assessment Lien as to any amounts owing by such Owner to such Person which become delinquent after the recordation of the first such Notice of Assessment Lien, and the priority of the Assessment Lien as to any such amounts thereafter becoming delinquent shall be fixed as of the date of recordation of the first such Notice of Assessment Lien. A Person may prosecute a single Assessment Lien foreclosure action as to amounts delinquent at the time a Notice of Assessment Lien is recorded and as to amounts thereafter becoming delinquent, up to and including the time a final judgment is rendered in such action.

Declarant hereby represents and warrants that, as of the date hereof, no portion of the Project that is owned by MEDC is encumbered by any mortgage or other security instrument.

7.4 Cure. Upon the curing of any default for which a Notice of Assessment Lien was recorded, the Person recording such Notice of Assessment Lien shall record an appropriate release of any Notice of Assessment Lien upon payment by the defaulting Owner of a reasonable fee, to be determined by such Person, to cover the reasonable, out-of-pocket costs of preparing and recording such release, together with the payment of such other costs, including, without limitation, reasonable, out-of-pocket legal fees and court costs, interest or fees, as such Person shall have incurred in connection with the default.

7.5 Contest. Any provision contained herein to the contrary notwithstanding, any Owner shall have the right to contest, in a court of competent jurisdiction, the recordation of any Notice of Assessment Lien against the property within the Project owned or leased by such

Owner on the basis that the recordation of such Notice of Assessment Lien or the amounts claimed to be delinquent therein is or are incorrect or improper under the provisions of this Declaration. The prevailing party in such action shall be entitled to recover from the other party or parties its reasonable, out-of-pocket attorneys' fees incurred in connection with such action.

ARTICLE 8 CASUALTY

8.1 Damage to Buildings and Other Improvements. In the event any Building or other improvement on a Parcel is damaged or destroyed by any casualty, the Owner upon whose Parcel such Building and/or improvement is/was located shall promptly: (a) repair and/or reconstruct such Building or improvement in accordance with the applicable provisions of this Declaration; or (b) remove the debris from the Parcel and keep the affected portions of the Parcel neat, orderly and well maintained and covered with material reasonably required by Declarant, until subsequently improved or constructed upon.

8.2 Damage to Common Areas and Parking Facilities. Upon any damage or destruction to the Common Area on a Parcel (i) from any cause insured under an all-risk insurance policy maintained by Declarant or the subject Owner, or (ii) if not so insured, the cost of repair of which (including applicable governmental fees and exactions) does not exceed twenty percent (20%) of the then full replacement cost of all of the Common Area on such Parcel, the Owner upon whose Parcel such damage or destruction occurred, at its sole cost and expense, shall promptly after the occurrence of the event of damage or destruction, restore, repair or rebuild such damaged or destroyed Common Area. If the cost of repair under clause (ii) above exceeds twenty percent (20%) of the then full replacement cost of all of the Common Area on the subject Parcel and the Owner of the affected Parcel elects (which such election shall be made, if at all, within thirty (30) days following such damage or destruction) not to restore, repair or rebuild the damaged or destroyed Common Area, and if the damaged or destroyed Common Area includes or affects any entrances to the Project, access ways within the Project, or common utilities or signs, then the Declarant and any other Owner shall have the right, by written notice to the Owner upon whose Parcel such damage or destruction occurred, to elect to effect the restoration, repair or rebuilding of all or any part of such damaged or destroyed Common Area, in which event the electing Declarant, Owner or Owners shall effect such restoration, repair or rebuilding in accordance with the applicable provisions of this Declaration, and the Owner of the Parcel upon which such damage and destruction occurred shall bear the first of the costs incurred to restore, repair and rebuild the affected Common Area to the extent not in excess of twenty percent (20%) of the then full replacement cost of all of the Common Area on the subject Parcel and the electing Declarant, Owner or Owners shall bear all such costs exceeding twenty percent (20%) of the then full replacement cost of such Common Area. If an affected Owner is not obligated to repair damaged or destroyed Common Area pursuant to clause (ii) above, and neither the Declarant nor any other Owner elects to effect such repair within thirty (30) days after the date the affected Owner determines not to proceed with such repairs, then the affected Owner shall promptly remove any debris from its Parcel and keep the affected portions of the Parcel neat, orderly, and well maintained and covered with material reasonably required by Declarant, until subsequently improved or constructed upon. Unless the work of restoration, repair, rebuilding or improvement is carried out pursuant to the original plans and specifications for the construction of the Common Area, the plans or specifications for such work shall be

subject to the prior written approval of Declarant as otherwise required pursuant to this Declaration. Each affected Owner shall use all commercially reasonable due diligence to complete such restoration and repair of the Common Area as expeditiously as possible so that the same may be available for use as part of the Project with as little delay and as little disruption as circumstances permit.

ARTICLE 9 DECLARANT

9.1 Declarant. For purposes of this Declaration, the Declarant shall be MEDC or the person to whom MEDC or its assignee assigns the role of Declarant hereunder (such Person, the “Declarant”).

ARTICLE 10 GENERAL PROVISIONS

10.1 Successors and Assigns. Each easement, restriction and covenant contained herein shall be appurtenant to and for the benefit of all portions of the Project Site and shall be a burden thereon, for the benefit of all portions of the Project Site, and shall run with the land. This Declaration and the restrictions, easements, covenants, benefits and obligations created hereby shall inure to the benefit of and be binding upon Declarant, Owners and their successors, transferees and assigns; provided, however, that, if any Owner transfers all of its interest in the Project, the transferee thereof shall automatically be deemed to have assumed and agreed to be bound by the covenants and agreements herein contained, and the transferor shall thereupon be released and discharged from any and all obligations under this Declaration accruing after the date of sale.

10.2 Run With the Land. The covenants, conditions and restrictions contained in this Declaration shall run with the land and be binding upon each and all of the Owners (and upon all Persons claiming under them) for a term (the “Term”) of ninety-nine (99) years, and shall thereafter renew automatically for successive ten (10) year periods, unless: the Owners owning at least fifty-one percent (51%) of the Floor Area within the Project Site otherwise elect in a writing recorded with the Official Records.

10.3 Modification. This Declaration may be modified with the prior written consent of the Declarant and the Owners of at least two-thirds (2/3rds) of the Land Area of the Project; provided, however, if such a modification (i) affects the use and/or value of a Parcel, including, without limitation, the access to, permitted uses of, visibility of or parking on a Parcel; (ii) modifies the provisions of this Section 10.3; and/or (iii) would result in an increase in financial obligations for an Owner; then the Owner of any such affected Parcel must also consent to such modification and provided, further, that any use other than an office or retail use on any portion of the Project south of Gateway Boulevard and to the west of the Hotel/Event Center Parcel and of a height measured from the current surface of greater than two stories shall require the consent of the Owner (or, to the extent applicable, the ground Lessee) of the Hotel/Event Center Parcel. If this Declaration is rescinded, all Owners of any portion of the Project must consent to such rescission. Such modification or rescission may only be accomplished by a written instrument

duly executed and acknowledged by the requisite parties, and duly recorded in the Official Records.

10.4 No Dedication to Public. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project to the general public or for the general public or for any public purposes whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed.

10.5 No Cancellation. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration.

10.6 Survival. If any clause, sentence or other portion of this Declaration shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions hereof shall remain in full force and effect.

10.7 No Merger. The ownership of the entire Project by the same party shall not affect the termination of this Declaration.

10.8 Mortgagee Protection. Breach of any of the covenants or restrictions contained in this Declaration shall not defeat or render invalid the lien of any Mortgage made in good faith and for value as to the Project or any part thereof, but all of the foregoing provisions, restrictions and covenants shall be binding upon and effective against any Owner whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

10.9 Remedies. Any Owner, any tenant of any portion of the Project, the Declarant may prosecute any proceedings at law or in equity against any Person or entity violating or attempting to violate any of the agreements, covenants, conditions and restrictions herein, to prevent it, him or them from so doing and/or to recover damages from or on account of such violation. All reasonable, out-of-pocket costs and expenses of any such suit or proceedings, including reasonable, out-of-pocket attorneys' fees, as well as any judgment thereof, shall be assessed against the losing party and shall constitute a lien against the real property or the interest therein in the Project belonging to such party as provided in Article 7, which the prevailing party may foreclose in the manner provided in such Article 7. All remedies set forth herein or otherwise available at law or equity shall be cumulative.

10.10 No Third Party Beneficiary. No rights, privileges or immunities set forth herein shall inure to the benefit of any customer, employee, guest, licensee or invitee of any Owner, tenant or occupant of any portion of the Project, nor shall any customer, employee, guest, licensee or invitee of such Owner, tenant or occupant be deemed to be a third party beneficiary of any of the provisions contained herein.

10.11 Condemnation. In the event of condemnation (or sale under threat of condemnation) by any duly constituted authority for a public or quasi-public use of all or any part of the Project, that portion of the award attributable to the value of the interest in the Parcel so taken shall be payable to the Owner of such Parcel and no claim thereon shall be made by any other Owner of any part of the Project; provided, however, that the other Owners may file

collateral claims with the condemning authority over and above the value of the interest to be taken, provided no such collateral claim shall reduce the award to the Owner of the condemned Parcel; provided further, however, that the Owner of any portion of the Project to be taken shall, unless otherwise directed by Declarant (in Declarant's sole and absolute discretion), properly repair and restore the remaining portion of the Parcel owned by such Owner as nearly as practicable to its condition immediately prior to the condemnation without contribution from any other Owner. Notwithstanding the foregoing, Declarant shall have the right, at Declarant's sole election (which election shall be made in writing and delivered to the subject Owner whose property was taken within sixty (60) days following the subject taking), to restore or repair affected Common Area improvements (or any portion thereof), in which event, the affected Owner shall immediately assign or pay to Declarant any award received on account of the taken Common Area improvements or on account of the subject restoration or repair.

10.12 Captions. The captions heading the various Articles and Sections of this Declaration are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

10.13 Consent. Unless otherwise set forth herein, any approval or consent required to be obtained hereunder by any Owner or the Declarant, shall not be unreasonably withheld and shall be given or withheld within thirty (30) days after delivery of the request therefor. In the event an Owner or the Declarant whose approval or consent is sought pursuant to the immediately preceding sentence fails to respond within the applicable time period, such Owner or the Declarant shall be deemed to have approved of, or consented to, the matter in question.

10.14 Assignment. Except as otherwise expressly set forth herein, no Owner shall have the right to assign all or any portion of its rights, benefits, duties or obligations under this Declaration except in connection with a transfer or conveyance by such Owner of its interest in property within the Project (and any conveyance made by deed of trust, Mortgage or other security instrument as security for any obligation or indebtedness shall not be deemed to be a transfer or conveyance within the meaning of the foregoing).

10.15 Notices. Any notice, demand, request or other communication required or permitted to be given by an Owner, occupant or tenant of the Project to another Owner, occupant or tenant hereunder shall be in writing, signed by the party giving the notice, and shall be given by delivering the same in person, by a recognized overnight courier service which maintains delivery records (such as Federal Express) or by depositing the same in the United States mail, registered or certified, return receipt requested, first class postage, and postage prepaid. All notices shall be sent to the respective mailing addresses of the MEDC and Owners hereto at the following addresses, until such addresses are changed as hereinafter provided:

If to MEDC:	McKinney Economic Development Corporation 5900 S. LAke Foresst Dr. Suite 110 McKinney, Texas 75070 Attention: Jim Wehmeier
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To any other Owner:	At such address as such Owner shall designate in writing to the Declarant, or at such Owner's address in the
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Project if such Owner shall fail to designate in writing another address to the Declarant.

The Declarant shall make all addresses furnished by any Owner pursuant to this Section 10.15 available to any Owner, occupant or tenant of the Project who shall so request such addresses. Any Owner may change its mailing address at any time by giving written notice of such change to the Declarant in the manner provided herein at least ten (10) days prior to the date such change is effective. Personal service and service by recognized overnight courier service will be deemed to be complete upon receipt and service by mail will be deemed complete on deposit of said notice in the United States mail.

10.16 Estoppel Certificates. The Declarant and each Owner shall deliver to any other Owner, without charge, but only once per calendar year to any one Owner and the Declarant, within fifteen (15) days after request therefor, a written statement setting forth that, to the Declarant and such Owner's actual knowledge and belief, the requesting Owner is not in default in the performance of any of its obligations under this Declaration (or, if in default, setting forth the nature of such default), and that, to the Declarant and such Owner's actual knowledge and belief, there are no outstanding Assessment Liens against the requesting Owner's Parcel or stating the amount of any such Assessment Lien(s). The Declarant shall, upon written request, provide an Estoppel Certificate in conformance with this Section 10.16 to any Mortgagee of any Owner.

10.17 Subdivision. Declarant shall have the right to subdivide any Parcel owned by Declarant. Upon such subdivision, each portion of such subdivided Parcel shall be a separate Parcel. No other Owner shall have the right to subdivide any Parcel.

10.18 Jurisdiction. Any matter arising between the Owners shall be governed by and determined in accordance with the laws of the State of Texas.

10.19 Other Agreements. Nothing contained in this Declaration shall be construed as a limitation on Declarant's right to enter into any supplemental agreement with the grantee or lessee of any Parcel (or portion thereof) on terms and conditions more favorable to Declarant or otherwise different than those contained herein; provided, however, in all events, any such agreement shall be subordinate to this Declaration.

10.20 Non-Discrimination. There shall be no discrimination against or segregation of any person, or group of persons on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land of the Parcels, nor shall the transferee of any interest in the Parcels or any Person claiming under or through such transferee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land of the Parcels.

10.21 Amendment and Restatement. This Declaration amends and restates in its entirety, and supersedes and replaces, the First Amendment pursuant to Section 10.3 thereof. Following the recording of this Declaration in the Official Records, the First Amendment shall

be of no further force and effect. Declarant hereby represents and warrants to each Owner that Declarant owns at least two-thirds of the Land Area of the Project as of the date hereof.

[Signature is on the Following Page]

IN WITNESS WHEREOF, original Declarant has executed this Declaration as of the Declaration Date.

MCKINNEY ECONOMIC DEVELOPMENT CORPORATION,

a Texas non-profit corporation

By: _____
Name: Jim Wehmeier
Title: President - CEO

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF COLLIN)

On _____, 2013, before me, _____, Notary Public, personally appeared _____, personally known to me OR provided to me on the basis of satisfactory evidence to be the person (s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

EXHIBIT A
Legal Description of Project Site

Tract I:

Being a tract of land situated in the William Hemphill Survey, Abstract No. 449, city of McKinney, Collin County, Texas, and being all or a portion of those tracts of land conveyed to McKinney Blue Diamond, L.P., a Texas limited partnership, as evidenced in the deed recorded as County Clerk's File No. 000076131 of the Official Public Land Records of Collin County, Texas, (OPLRCCT) and being more particularly described by metes and bounds as follows (bearings referenced to monumented East right-of-way for U. S. Highway No. 75 as per deed in Clerk's File No. 97-0017375 OPLRCCT):

BEGINNING at a 5/8 inch iron rod found for the most Southerly corner of Marketplace Drive (60' right-of-way) as recorded in Volume L, Page 796, Plat Records of Collin County, Texas (PRCCT), same being in the Westerly right-of-way line of Medical Center Drive (100' right-of-way) as recorded in Volume L, Page 803, PRCCT;

THENCE Southerly along said Westerly right-of-way as follows:

South 35 degrees 32' 50" West, a distance of 178.77 feet to a 5/8 inch iron rod found for the beginning of a curve to the left;

Along said curve to the left, through a central angle of 14 degrees 06'08", having a radius of 1200.00 feet, a chord bearing of South 28 degrees 29'46" West, a chord length of 294.61 feet and an arc distance of 295.36 feet to a 5/8 inch iron rod found for a corner;

THENCE South 89 degrees 43'04" West, a distance of 1272.88 feet to a point for corner, from which two TxDOT monuments found for witness, bear South 23 degrees 16 minutes west, 3.75 feet;

THENCE North 72 degrees 25'25" West, a distance of 61.41 feet to a 5/8 inch iron rod found for corner in the East right-of-way line of State Highway No. 75 (variable width right-of-way);

THENCE along said East right-of-way line the following:

North 17 degrees 34'56" East, a distance of 374.08 feet to a 5/8 inch iron rod found for a corner;

North 17 degrees 56'07" East, a distance of 2254.04 feet to a 5/8 inch "KHA" capped iron rod found for a corner from which a TxDOT monument found, bears North 17 degrees 56'07" East, a distance of 917.31 feet;

THENCE South 72 degrees 29'23" East, departing said East right-of-way, a distance of 836.34 feet to a 5/8 inch iron rod found for a corner;

THENCE North 17 degrees 30'37" East, a distance of 433.77 feet to a 5/8 inch iron rod found for a corner in the Southeasterly right-of-way line of said Marketplace Drive;

THENCE Southeasterly along said Southwesterly right-of-way as follows:

South 51 degrees 14'52" East, a distance of 327.21 feet to a 5/8 inch iron rod found for the beginning of a tangent curve to the left;

Along said curve to the left, through a central angle of 03 degrees 12'5", having a radius of 560.00 feet, an arc length of 31.32 feet to a 5/8 inch iron rod found for the end of said curve;

South 54 degrees 27'10" East, a distance of 212.56 feet to a 5/8 inch iron rod found for an angle point;

South 09 degrees 27'10" East, a distance of 21.21 feet to the POINT OF BEGINNING and containing 16.995 acres of land, more or less;

SAVE AND EXCEPT therefrom that 0.5415 acre portion thereof taken by the State of Texas pursuant to that Judgment, a certified copy of which was filed of record 8/17/2006, recorded as Document Number 20060817001181820, Real Property Records of Collin County, Texas.

TRACT 2:

BEING a tract of land situated in the William Hemphill Survey, Abstract No. 449, and the William Ryan Survey, Abstract No. 746 in the City of McKinney, Collin County, Texas, and being a portion of a tract of land conveyed to McKinney Blue Diamond, L.P., as evidenced by that deed recorded in Volume 4713, Page 1520 of the Official Public Land Records of Collin County, Texas, (OPLRCCT) and being more particularly described by metes and bounds as follows (bearing referenced to monumented east right of way for U.S. Highway No. 75 per deed in Clerk's File No. 97-0017375 OPLRCCT):

BEGINNING at a 1/2-inch iron rod found for the northerly Northeast corner for the intersection of State Highway 121 Business (variable width right of way) with the East right of way for U.S. Highway No. 75 (variable width right of way), same being the westerly Southwest corner for said Blue Diamond tract;

THENCE northerly along the said East right of way line as follows:

North 02 degrees 37 minutes 22 seconds East, a distance of 369.45 feet to a 5/8-inch iron rod found for the Southwesterly corner of a called "Parcel 92C Part One" as conveyed to the Texas Transportation Commission by the deed recorded in Volume 4572, Page 4253, OPLRCCT;

North 17 degrees 38 minutes 49 seconds East, passing at a distance of 60.69 feet and 756.09 feet two TxDOT monuments found, in all a total distance of 1519.06 feet to a point for a corner in the Southeasterly line of aforesaid deed filed in Clerk's File No. 97-0027122 from which a TxDOT monument found bears South 23 degrees 16 minutes West, 3.75 feet;

THENCE North 89 degrees 43 minutes 04 seconds East, departing said East right of way, a distance of 1272.88 feet to an iron rod set for a corner in the curving westerly right of way line of Medical Center Drive (100' wide ROW) according to the plat thereof recorded in Cabinet "L", Page 803, Plat Records of Collin County, Texas;

THENCE southerly along said westerly right of way line as follows:

Along said curve, to the left, through a central angle of 55 degrees 50 minutes 23 seconds, having a radius of 1200.00 feet, a chord bearing of South 06 degrees 28 minutes 30 seconds East, a chord length of 1123.76 feet and an arc distance of 1169.50 feet to a 5/8-inch iron rod found for the end of said curve;

South 34 degrees 23 minutes 41 seconds East, a distance of 185.92 feet to a 5/8-inch iron rod found for the intersection of proposed highway right of way with the northerly right of way of aforesaid State Highway 121 -Business and a called "Parcel 92C Part Two" as described in the aforementioned deed recorded in Volume 4572, Page 4253, OPLRCCT;

THENCE westerly along said northerly right of way line as follows:

South 56 degrees 03 minutes 12 seconds West, a distance of 877.64 feet to a TxDOT monument found for a corner;

South 65 degrees 39 minutes 19 seconds West, a distance of 40.43 feet to a 5/8-inch iron rod found for a corner;

South 71 degrees 54 minutes 19 seconds West, a distance of 311.40 feet to a 5/8-inch iron rod found for a corner;

South 74 degrees 17 minutes 19 seconds West, a distance of 606.97 feet to a 1/2-inch iron rod found for a corner;

North 57 degrees 29 minutes 01 seconds West, a distance of 399.48 feet to a POINT OF BEGINNING and containing 65.002 acres of land, more or less.

SAVE AND EXCEPT the following described tracts of land:

- (a) The portion of the property platted as McKinney Marketplace Addition according to the plat thereof recorded in Volume L, Page 796, Map Records of Collin County, Texas;
- (b) That 0.2952 acre portion thereof taken by the State of Texas pursuant to the Judgment, a certified copy of which was filed under County Clerk's File No. 200600279753, Real Property Records of Collin County, Texas; and
- (c) That portion of the property platted as Gateway Boulevard by plat recorded in Volume R, Page 159, Map Records, Collin County, Texas.

EXHIBIT B

BEING a tract of land out of the WILLIAM HEMPHILL SURVEY, Abstract No. 449, in the City of McKinney, Collin County, Texas, being part of the 33.67 acre tract of land described in deed to JDN Real Estate-McKinney, L.P. recorded in Volume 4369, Page 2112 of the Land Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a 5/8" iron rod found in an ell corner of a tract of land described in deed to McKinney Blue Diamond, L.P., recorded in Collin County Clerk's File No. 00-076131 of the Land Records of Collin County, Texas and being the most southerly corner of said 33.67 acre tract;

THENCE with the north line of said McKinney Blue Diamond tract, North 72°29'47" East, a distance of 800.76 feet to a TXDOT monument found in the east right-of-way line of U.S. Highway No. 75 (a variable width ROW);

THENCE with said east right-of-way line, the following courses and distances to wit:
North 17°21'51" East, a distance of 112.54 feet to a TXDOT monument found;
North 14°19'28" East, a distance of 435.18 feet to a 5/8" iron rod set in the south right-of-way line of Marketplace Drive (60' ROW);

THENCE with said south right-of-way line, the following courses and distances to wit:
North 62°56'23" East, a distance of 11.65 feet to a 5/8" iron rod set for corner;
South 72°03'53" East, a distance of 465.43 feet to a 5/8" iron rod set for corner;
South 57°00'08" East, a distance of 177.18 feet to a 5/8" iron rod set for corner;
South 51°14'56" East, a distance of 123.95 feet to a 5/8" iron rod set for northwest corner of said McKinney Blue Diamond tract;

THENCE with the northerly most west line of said McKinney Blue Diamond tract; South 17°30'37" West, a distance of 424.10 feet to the POINT OF BEGINNING and containing 9.8523 acres of land.

Bearing system based on the monuments found in the south line of the 65.002 acre tract of land described in deed to McKinney Blue Diamond, L.P., recorded in Collin County Clerk's File No. 00-076131 of the Land Records of Collin County, Texas.

EXHIBIT "B"

EXHIBIT C

BEGINNING at a TXDoT right of way monument found for the most westerly, northwest corner of said 9.8523 acre tract, same being the intersection of the easterly right of way line of U. S. Highway No. 75 (Central Expressway), a variable width right of way, with the southerly right of way line of Marketplace Drive as created in the Final Plat of McKinney Marketplace Addition, an Addition to the City of McKinney, according to the Plat thereof recorded in Cabinet L, Page 796 of the Map Records of Collin County, Texas;

THENCE in an easterly direction, departing the easterly right of way line of said U. S. Highway No. 75 (Central Expressway), along the northerly line of said 9.8523 acre tract and the southerly right of way line of said Marketplace Drive, the following:

North 62°56'07" East, a distance of 11.65 feet to a 5/8-inch "PBS & J" capped iron rod found for a corner;

South 72°03'53" East, a distance of 465.43 feet to a 5/8-inch capped iron rod found for a corner;

South 57°00'08" East, a distance of 148.53 feet to a 5/8-inch "KHA" capped iron rod set for a corner, from said corner, a found 5/8-inch capped iron rod bears South 57°00'08" East, 28.65 feet;

THENCE South 33°53'33" West, departing the northerly line of said 9.8523 acre tract, the southerly right of way line of said Marketplace Drive, and crossing said 9.8523 acre tract and said 16.942 net acre tract, a distance of 139.81 feet to a 5/8-inch "KHA" capped iron rod set for a corner;

THENCE South 17°41'04" West, continuing across said 9.8523 acre tract and crossing said 16.942 net acre tract, a distance of 772.77 feet to a 5/8-inch "KHA" capped iron rod set for a corner

THENCE North 72°21'11" West, continuing across said 16.942 net acre tract, a distance of 550.04 feet to a PK nail set for a corner on the easterly right of way line of aforesaid U. S. Highway No. 75 (Central Expressway), same being the westerly line of said 16.942 net acre tract;

THENCE North 17°25'45" East, along the westerly line of said 16.942 net acre tract and the easterly right of way line of said U. S. Highway No. 75 (Central Expressway), a distance of 393.48 feet to a TXDoT right of way monument found for the most westerly, northwest corner of said 16.942 net acre tract, same being the southwest corner of a said 9.8523 acre tract;

THENCE North 17°21'51" East, continuing along the westerly line of said 9.8523 acre tract and the easterly right of way line of said U. S. Highway No. 75 (Central Expressway), a distance of 112.54 feet to a TXDoT right of way monument found for a corner;

THENCE North 14°19'28" East, continuing along the westerly line of said 9.8523 acre tract and the easterly right of way line of said U. S. Highway No. 75 (Central Expressway), a distance of 435.18 feet to the POINT OF BEGINNING and containing 12.160 acres (529,699 square feet) of land, more or less.

EXHIBIT D
Hotel/Event Center Parcel

The land to be included as common elements pursuant to that certain Amended and Restated Condominium Declaration to be filed as an amendment and restatement of the Condominium Declaration recorded in the Official Records of Collin County, Texas, as Document No. 20080229000237480.