

## DECLARATION OF EASEMENTS AND RESTRICTIONS

6803

**Declarant:** CHAPPELL HILL RETAIL CENTER L.P., a Texas limited partnership

**Declarant's Mailing Address:** 7058 Lakeview haven Dr., Suite 113  
Houston, Harris County, Texas 77095

**Tract 1:** The real property described on Exhibit A.

**Tract 2:** The real property described on Exhibit B.

**Tract 3:** The real property described on Exhibit C.

**Easement Areas:** Any and all driveways, sidewalks and walkways, access ways, curb cuts, entrances and exits as such area shall, from time to time, be developed, altered or modified on Tract 1 or Tract 2 granting access to and from Highway 290 and FM 1155.

**Easement Purpose:** The free and uninterrupted pedestrian and vehicular access upon the Easement Areas (a) between Tract 1 and Tract 2 (b) to and from State Highway 290 to each of the Tracts; and (c) to and from FM 1155 to each of the Tracts.

This Declaration of Easements and Restrictions (the "*Declaration*") is dated to be effective as of the 30<sup>th</sup> day of December, 2013 ("*Effective Date*").

RECITALS

A. As of the Effective Date, Declarant is currently the fee simple owner of Tract 1 and Tract 2 (collectively, the "*Property*"), which are adjacent tracts of real property located in Washington County, Texas, which Declarant intends to develop (or cause to be developed) as at least two separate tracts, and in connection therewith, Declarant wishes to establish certain non-exclusive access easements over and across the Easement Areas to benefit and burden each of the Tracts.

B. Furthermore, Declarant, for itself and for its successors and assigns, intends to create certain use restrictions applying to the Property and to the other property of Owner referred to herein as Tract 3, for the benefit of the current and future owners of the Property.

NOW THEREFORE, Declarant does hereby declare that the Property shall be held, transferred, sold, conveyed, occupied and enjoyed by all present and future owners and occupants subject to the terms of the covenants, easements, restrictions and conditions hereinafter set forth:

**ARTICLE 1 - DEFINITIONS**

In addition to other capitalized terms defined elsewhere in this Declaration, the following terms, when used herein, shall have the following respective meanings, unless context clearly requires otherwise:

**"Convenience Store Use"** means the operation of a convenience store specializing in the sale of items normally associated with a convenience store (including the sale of beer and wine for off-premises consumption) as typically operated in the Washington County, Texas market as of the Effective Date, such as, by way of example and not by limitation, 7-11, Circle K, Loaf 'N Jug, Conoco, Quik Trip, Time Wise and/or amp.

**"Beer and Wine Sales Use"** means the retail sale of beer and wine for off-premises consumption

**"Car Wash Use"** means a place, business or facility equipped for washing cars and other motor vehicles.

**"Tobacco Sales Use"** means the retail sale of tobacco products such as, by way of example and not by limitation, cigarettes, cigars, and all types of smokeless tobacco."

**"Fuel Sales/Use"** means the sale of motor fuels or petroleum products or the operation of a self-service retail fueling facility (including the installation of underground petroleum storage tanks).

**"Permittees"** means, with respect to a particular Tract, any person or entity that is from time to time entitled to use and occupy any portion of that Tract under any lease, sublease, concession or other similar agreement, together with their officers, directors, employees, contractors, customers, vendors, suppliers, visitors and invitees.

**ARTICLE 2 - EASEMENTS**

2.1 **Creation of Easements.** Declarant hereby subjects the Easement Areas to a perpetual, non-exclusive easement for the Easement Purpose (collectively, the **"Easements"**). The Easements shall inure to the benefit of the owner or owners of the Tracts (or their assigns, as provided in **Section 4.7(h)**) from time to time, (collectively, the **"Owners"**, and singularly, an **"Owner"**), and will be appurtenant to and run with the respective Tracts.

2.2 **Reservation of Rights.**

a. **Reserved for Benefit of Tract 1 Owner.** Declarant reserves for, and assigns to owner of Tract 1 (**"Tract 1 Owner"**) the following rights:

i. The right to continue to use and enjoy the surface of the portion of the Easement Areas that are located on Tract 1 (**"Tract 1 Easement Area"**) for all purposes that do not interfere with or interrupt the use or enjoyment of the Easement by the owner of Tract 2 (**"Tract 2 Owner"**) for the Easement Purposes.

ii. The right to authorize the Permittees of Tract 1 to use the Easement for the Easement Purpose at any time and from time to time, in Tract 1 Owner's sole discretion.

b. *Reserved for Benefit of Tract 2 Owner.* Declarant reserves for, and assigns to Tract 2 Owner the following rights:

i. The right to continue to use and enjoy the surface of the portion of the Easement Areas that are located on Tract 2 ("*Tract 2 Easement Area*") for all purposes that do not interfere with or interrupt the use or enjoyment of the Easement by the Tract 1 Owner for the Easement Purposes.

ii. The right to authorize the Permittees of Tract 2 to use the Easement for the Easement Purpose at any time and from time to time, in Tract 2 Owner's sole discretion.

2.3 Non-Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public use or purpose whatsoever.

2.4 No Parking Rights. By creating the Easements in accordance with this Declaration the Owners do not intend, nor do they in fact grant, to the other any right or privilege to park vehicles on their respective Tracts.

2.5 Temporary Construction Easement. For the purpose of constructing improvements on Tract 1, Tract 1 Owner is hereby granted the right and easement (the "*Temporary Construction Easement*") to use up to 20 feet of the surface of Tract 2 that is immediately adjacent to Tract 1 ("*Adjacent Property*") as may be reasonably necessary for such construction. Tract 1 Owner, at its sole cost, must promptly restore the Adjacent Property to its previous physical condition if changed by use of the rights granted by this Temporary Construction Easement. The foregoing restoration obligation shall survive any termination of this instrument. At such time as improvements have been constructed upon Tract 2, the Temporary Construction Easement shall terminate.

### ARTICLE 3 - USE RESTRICTIONS

3.1 General Use Restrictions. Each of Tract 1 and Tract 2 shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of a Tract which is illegal. In addition to the foregoing, throughout the term of this Declaration, it is expressly agreed that neither all nor any portion of a Tract shall be used, directly or indirectly, for any of the following purposes (the "*General Use Restrictions*"): cocktail lounge, bar, disco, bowling alley, skating rink, roller rink, amusement arcade, adult book store, adult theatre, adult amusement facility, any facility selling or displaying pornographic materials or having such displays, second hand store, odd lot, closeout or liquidation store, auction house, flea market, blood bank (provided a doctor's office

or blood bank as an incidental part of a medical facility is expressly permitted), livestock rendering plant or feedlot, the sale, leasing or storage of automobiles, boats or other vehicles, any industrial use (but not including office/warehouse facilities), an assembly hall, off track betting establishment, bingo parlor, liquor store (provided that this restriction shall be construed to expressly allow the Convenience Store Use on Tract 1), any use which creates a nuisance, or for any purpose which would prevent or otherwise adversely affect the use and/or operation of the Tract 1 for the Intended Use, including but not limited to uses which could threaten or cause the forfeiture or termination of any and all Governmental Permits required in connection therewith.

3.2 Special Use Restrictions. No Convenience Store Use, Fuel Sales/Use, Car Wash Use, Beer and Wine Sales Use or Tobacco Sales Use shall be allowed on Tract 2 or Tract 3. The foregoing restrictions (the "Special Use Restrictions") shall benefit the Tract 1 Owner.

3.3 Waiver of Use Restrictions. The Special Use Restrictions are for the benefit of the Tract 1 Owner, and are not intended to and do not benefit any other person or the general public. Accordingly, the Tract 1 Owner has the sole and absolute right to waive or terminate any of the Use Restrictions. To be effective, a waiver, modification or termination of any Tract 2 Use Restriction or General Use Restriction (collectively, "Use Restrictions") or consent to a use in conflict with the Use Restrictions must be in writing and recorded. Because of the critical importance of the Special Use Restrictions to the Tract 1 Owner, it shall not have any obligation to act reasonably in considering a requested waiver, modification or termination, and may reject a requested waiver, modification or termination in its sole and absolute judgment, whether reasonable or arbitrary.

#### ARTICLE 4 - GENERAL PROVISIONS

4.1 Indemnification. Each Owner (the "Indemnifying Owner") shall indemnify, defend and hold the other Owners (the "Indemnitees") harmless of and from any and all loss, cost, damage, injury or expense, including, without limitation, reasonable attorneys' fees (collectively, "Losses") caused by any of the following: (a) injury to or death of any person, damage to property arising out of or in connection with the use by the Indemnifying Owner and/or its contractors, employees, agents or others acting on behalf of the Indemnifying Owner of the Easements granted to the Indemnifying Owner hereunder; (b) actual or asserted mechanics' liens with respect to the Easement Areas and/or the Tracts owned by the Indemnitees for work performed, materials or supplies furnished at the request of the Indemnifying Owner (a "Covered Mechanics' Lien"), and in connection herewith, the Indemnifying Owner, may contest a Covered Mechanics' Lien; provided, however, that the Indemnifying Party shall either (i) fully pay and discharge any Covered Mechanics' Lien within 20 days after the entry of final judgment adverse to the Indemnifying Owner in any action to foreclose the Covered Mechanics' Lien or (ii) cause bonds to be issued and recorded removing the Covered Mechanics' Lien as an encumbrance from title to the Tracts owned by the Indemnitees; (c) the Indemnifying Owner's failure to comply with all laws, rules, regulations and requirements of all public authorities applicable to the use of the Easement Areas; and/or (d) the Indemnifying Owner's failure to materially comply with the provisions of this Declaration. Each Owner who purports to be an Indemnitee with respect to any particular Loss (the "Notifying Owner") shall give prompt and timely notice to the purported Indemnifying Owner of any claim made or suit or action

commenced against the Notifying Owner that in any way could result in a claim for indemnification hereunder. The foregoing obligations under this Section 4.1 shall survive any termination of this Declaration

4.2 Default. On a failure by an Owner to perform, fulfill or observe any agreement herein to be performed, fulfilled or observed by that Owner (the "Defaulting Owner"), continuing for thirty (30) days after written notice thereof to the Defaulting Owner from any other Owner or Owners (the "Non-defaulting Owner") (but if the cure is of a nature such that it cannot reasonably be cured within thirty (30) days, then the Defaulting Owner will not be in default so long as it promptly commences the cure, thereafter diligently pursues the cure and subsequently cures the default within a reasonable period of time, not to exceed 90 days after written notice thereof), the Non-defaulting Owner shall be entitled to: (a) take reasonable actions to cure the default; and (b) recover from the Defaulting Owner the reasonable out-of-pocket costs and expenses incurred in curing the default (the "Cure Reimbursement"). It is not a waiver of or consent to default if the Non-defaulting Owner fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Declaration does not preclude pursuit of other remedies in this Declaration or provided by law or in equity. In no event will a default by a Defaulting Owner allow a Non-defaulting Owner to terminate the use of the Easement Areas in the manner set out under the terms of this Declaration.

4.3 Equitable Rights of Enforcement. This Declaration may be enforced by any Nondefaulting Owner by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by an Owner; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

4.4 Estoppel Certificates. Recognizing that any Owner may find it necessary from time to time to establish to potential assignees, buyers, tenants, lenders or the like, the current status of performance under this Declaration, each Owner, upon not less than ten (10) business days prior written request of any other Owner, shall deliver with reasonable promptness, a written statement regarding the status of any default or other performance relating to this Declaration, or, to the extent accurate, stating that there are no existing defaults.

4.5 Duration. Except for the Easements granted herein, which are perpetual, this Declaration shall remain in effect until the date that is 50 years after the Effective Date (the "Initial Term Expiration Date"), and shall be automatically extended for successive ten (10) year periods; provided, however, that this Declaration may be terminated on the Initial Term Expiration Date or upon the end of any ten (10)-year period thereafter by a written instrument executed by the Owners of every Tract that comprises the Property at the time the purported termination is made which is recorded in the real property records of Washington County, Texas.

4.6 Amendment. Except as otherwise provided by law or as otherwise expressly set forth herein, this Declaration may only be amended by a written instrument executed by the

Owners of every Tract that comprises the Property at the time the purported amendment is made which is recorded in the real property records of Washington County, Texas.

4.7 Miscellaneous.

a. Attorneys' Fees. If any Owner retains an attorney to enforce this Declaration and prevails, it will be entitled to recover reasonable attorneys' fees and court and other costs. A "prevailing party" means the party who obtains a determination of wrongful conduct by the other party, whether or not that party obtains monetary, declaratory, injunctive, equitable or nominal relief.

b. Governing Law. This Declaration is being executed and delivered, and is intended to be performed, in the State of Texas, and the laws of Texas shall govern the validity, construction, enforcement and interpretation of this Declaration, unless otherwise specified herein. This Declaration is performable, and the exclusive venue for any action brought with respect hereto shall lie, in Washington County, Texas.

c. Notices. Any notice or designation to be given hereunder shall be in writing and shall be given by placing the notice or designation in the United States mail, certified or registered, properly stamped and addressed to the address shown on the first page hereof, or such other address as is designated pursuant to this Section 4.7.c. or by personal delivery by a delivery service that provides proof of delivery; and any such notice or designation shall be deemed to be received the earlier of actual receipt or three (3) business days after being mailed, when mailed as provided above, or on actual receipt if given in any other manner allowed hereunder. Any Owner may change its address for notice hereunder to any other location by the giving at least thirty (30) days' notice to the other Owners in the manner set forth hereinabove. In addition, upon the transfer (a "Transfer") (i) resulting from the assignment by an Owner of its interest hereunder; or (ii) of fee simple ownership ("Fee Transfer") of all or any part of a Tract ("Transferred Tract") of any Owner, the party or entity to whom the Transfer is made (the "Transferee"), shall send written notice of the Transfer to each other Owner, and, in the case of a Fee Transfer, the Owner making the Transfer shall be released from all further liability under this Declaration with respect to the Transferred Tract from and after the date on which the Transfer occurs. After the date on which the other Owners receive a copy of the notice of a Transfer, the other Owners shall be required to give any notices required to the Transferee at the addresses stated in the notice, rather than the notice information stated herein, and such Transferee shall be entitled to all of the rights of the Owner under this Declaration.

d. Headings. The section or paragraph headings in this Declaration are for convenience only, shall in no way define or limit the scope or content of this Declaration, and shall not be considered in any construction or interpretation of this Declaration or any part hereof.

e. No Partnership. Nothing in this Declaration shall be construed to make the parties hereto partners or joint venturers or render any of said parties liable for the debts or obligations of any other parties.

f. Interpretation. Within this Declaration, when required by the context, each number (singular and plural) shall include all numbers and each gender shall include all genders; use of the neuter shall include the feminine or the masculine, as appropriate.

g. Successors and Assigns. This Declaration shall be binding upon and inure to the benefit of the Owners from time to time.

h. Assignment By Fee Owner to Lessee. Notwithstanding anything to the contrary contained herein, each Owner has the right assign to any lessee of a particular Tract comprising part of the Property that is owned by that Owner, the rights and obligations under this Declaration with respect to that Tract during the term of the applicable lease, and on the date on which any such lease expires or is earlier terminated (the "Lease Termination Date"), the assignment and assumption shall immediately terminate and the Owner who made the assignment (or the successor fee owner of the relevant Tract who has assumed the original Owner's obligations under the relevant lease) shall thereafter be considered to be the "Owner," and the tenant to whom the rights of the Owner have been assigned shall be released from any further obligations as "Owner" from and after the Lease Termination Date.

i. Limitation on Liability. Notwithstanding anything to the contrary herein, no Owner (including Declarant) shall, under any circumstances, be liable to the other for exemplary, punitive, special, consequential or indirect damages of any kind.

j. Lender Consent. In the event a lien is outstanding against any of the Tracts as of the date of this Declaration, the Declarant will cause each such lienholder to consent to the Declaration and subordinate the lien to this Declaration such that the provisions of the Declaration will survive a foreclosure of the liens.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the Effective Date.

**DECLARANT:**

CHAPPELL HILL RETAIL CENTER L.P.,  
a Texas limited partnership

By: Country Communities, Inc.,  
a Texas corporation, its  
general partner

By: [Signature]  
Name: Terry S. Ward  
Title: President

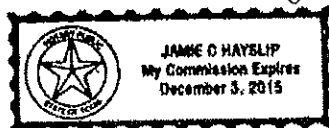
STATE OF TEXAS

COUNTY OF Waller

The foregoing instrument was acknowledged before me on December 30, 2013, by Terry S. Ward, President of Country Communities, Inc., general partner of CHAPPELL HILL RETAIL CENTER L.P., a Texas limited partnership, on behalf of said limited partnership.

[Signature]  
Notary Public, State of Texas

{Notary Stamp/Seal}





**MORTGAGOR CONSENT AND SUBORDINATION**

The Property is encumbered by the following (the "Liens"):

(a) All liens and security interests securing that certain Promissory Note dated September 12, 2007, executed by Country Communities, Inc., a Texas corporation, general partner of Chappell Hill Retail Center, L.P., a Texas limited partnership, and payable to the order of Preferred Bank, in the original principal amount of \$1,009,800.00, including, but not limited to the liens and security interests set forth or granted in that certain Deed of Trust of even date therewith, recorded in Volume 1257, Page 1015, of the Official Records of Washington County, Texas; as renewed, extended and modified by that certain Renewal, Extension and Modification Agreement recorded in Vol. 1294, Page 685, Official Records of Washington, County, Texas, and in Vol. 1454, Pg. 0674, Official Records of Washington County, Texas, and the vendor's lien retained in deed of even date therewith, executed by Julia S. Derkowski to Chappell Hill Retail Center, L.P., a Texas limited partnership, recorded in Vol. 1257, Pg. 1011, Official Records of Washington County, Texas; and

(b) Any other liens or security interests held by the undersigned covering Tract 2 or indebtedness secured by Tract 2.

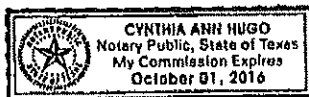
The Mortgagor joins in the execution of this Declaration solely for the purpose of evidencing its consent to the Declaration and the subordination of the Liens to the Declaration such that the provisions of the Declaration will survive a foreclosure of the Liens.

**MORTGAGOR:****PREFERRED BANK**

By: [Signature]  
 Name: Tricia Atchison  
 Title: CCO

STATE OF TEXAS §  
 COUNTY OF HARRIS §

The foregoing instrument was acknowledged before me on the 30th day of December, 2013, by Tricia Atchison, the CCO of PREFERRED BANK, a bank, on behalf of said bank.



Cynthia A. Hugo  
 Notary Public, State of Texas

{Notary Stamp/Seal}

EXHIBIT A

## Tract 1 - CST Property

5.663 acre (246,699 square foot) tract of land located in the W. Munson Survey, Abstract Number 90, Washington County, Texas, and said 5.663 acre tract of land being all of the called 5.663 acre tract described in the deed to Chappell Hill Retail Center, L.P., recorded under Vol. 1257, Pg. 1011, of the Official Records of Washington County (O.R.W.C.), said 5.663 acre tract being more particularly described by metes and bounds as follows (The bearings described herein are oriented to the Texas Coordinate System, Central Zone, NAD 1983.):

BEGINNING at a Texas Department of Transportation (TxDOT) concrete monument found marking the southerly end of a cut-back line for the northerly Right-of-Way (R.O.W.) line of U.S. Highway 290 East (based on a width of 220 feet) and the westerly R.O.W. line of F.M. 1155 South (based on a width of 60 feet), the most southerly southeast corner of said called 5.663 acre tract and the herein described tract;

THENCE, South 78 degrees 51 minutes 31 seconds West, departing the westerly R.O.W. line of said F.M. 1155 South and along the northerly R.O.W. line of said U.S. Highway 290 East, a distance of 930.40 feet, to a 5/8 inch iron rod found in the northerly R.O.W. line of said U.S. Highway 290 East marking the southeast corner of the called 21.373 acre tract described in the deed to Chappell Hill Retail Center, L.P., recorded under Vol. 1257, Pg. 1000, O.R.W.C., the southwest corner of said called 5.663 acre tract and the herein described tract;

THENCE, North 06 degrees 23 minutes 18 seconds West, departing the northerly R.O.W. line of said U.S. Highway 290 East and along the common line of said called 21.373 acre tract and said called 5.663 acre tract, a distance of 301.81 feet, to a 3/8 inch iron rod found marking an angle in said common line and the west line of the herein described tract;

THENCE, North 05 degrees 38 minutes 43 seconds West, continuing along said common line, a distance of 21.01 feet, to a 1/2 inch iron rod found in the east line of said called 21.373 acre tract marking the southwest corner of the called 13.15 acre tract described in the deed to Nathan L. Winfield, Jr., recorded under Vol. 196, Pg. 316, O.R.W.C., the northwest corner of said called 5.663 acre tract and the herein described tract;

THENCE, North 87 degrees 06 minutes 44 seconds East, departing said common line and along the common line of said called 13.15 acre tract and said called 5.663 acre tract, a distance of 998.55 feet, to a 5/8 inch iron rod with plastic cap stamped "Hodde & Hodde" found in the westerly R.O.W. line of aforesaid F.M. 1155 South marking the southeast corner of said called 13.15 acre tract, the northeast corner of said called 5.663 acre tract and the herein described tract;

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THENCE, South 02 degrees 45 minutes 43 seconds East, along the westerly R.O.W. line of said F.M. 1155 South, a distance of 96.98 feet, to a TxDOT concrete monument found marking the northerly end of aforesaid cut-back line, the most easterly southeast corner of said called 5.663 acre tract and the herein described tract;

THENCE, South 29 degrees 29 minutes 21 seconds West, along said cut-back line, a distance of 108.57 feet, to the POINT OF BEGINNING and containing a computed area of 5.663 acres (246,699 square feet) of land as depicted on the ALTA/ACSM Land Title Survey dated: November 21, 2013, prepared by West Belt Surveying, Inc., Project No. S342-0143A.

EXHIBIT B**Tract 2 -- Seller's Adjacent Property**

All that certain tract or parcel of land, lying and being situated in Washington County, Texas, part of the William Munson Survey, A-90, and the David Lawrence Survey, A-75, being a resurvey of the same land described as 9.097 acres in the deed from Johnnie Kopycinski, et ux, to Richard Collins Barnett, et ux, dated February 17, 1993, as recorded in Volume 691, Page 666, in the Official Records of Washington County, Texas, being a resurvey of the same land described as 0.895 acre in the deed from W.E. Whiddon and wife, Dorothy Pawlak Whiddon to Richard Collins Barnett and wife Carol Schatz Barnett, dated August 21, 1997, as recorded in Volume 867, Page 589, in the Official Records of Washington County, Texas, being a resurvey of the same land described as 11.319 acres (Tract I) and 0.895 acre (Tract II) (Tract II being part of the 9.097 acres tract mentioned above) in the deed from W.E. Whiddon and wife, Dorothy Pawlak Whiddon to Richard Collins Barnett A/K/A/ Richard C. Barnett and wife, Carol Schatz Barnett A/K/A/ Carol S. Barnett, dated August 21, 1997, as recorded in Volume 867, Page 600, in the Official Records of Washington County, Texas, and including a 0.012 acre conflict area, being part of the same land described as 10.08 acres in the deed from Beverly Anne Elkins and husband, Max Elkins and Edward H. Shaver and wife, Janet K. Shaver to Parker Interests, L.P., dated March 26, 2001, recorded in Volume 984, Page 19, in the Official Records of Washington County, Texas, (this conflict area being part of the 9.097 acres tract mentioned above) and including the remaining portion of the called 0.638 acre tract intended to be included in the 11.319 acres tract mentioned above, said 0.638 acre tract being the same land described as 0.638 acre in the deed from Nathan L. Winfield, Jr., et ux, to W.E. Whiddon, dated April 15, 1971, as recorded in Volume 304, Page 735, in the Deed Records of Washington County, Texas, and being more fully described by metes and bounds as follows, To-Wit:

**BEGINNING** at a ¾ inch iron rod found at the base of a railroad tie fence corner post on the South margin of Edna Mae Lane for the Northwest corner hereof and of said original tract called 9.097 acres, being the Northeast corner of the Justin Flasowski, et ux, tract called 3.181 acres as described in Volume 882, Page 699, in said Official Records;

**THENCE** along the South margin of said Edna Mae Lane for a North line hereof and of said original tract called 9.097 acres, being partly along or near an existing fence, S 89°52'42" E at 432.35 feet crossing the West line of said Parker Interests, L.P. tract, being the Northwest corner of said 0.012 acre conflict area, and at a total distance of 462.25 feet to a ¾ inch iron rod found at the base of a railroad tie fence corner post for a Northeast corner hereof and of said original tract called 9.097 acres, being on or near the division line of said Munson Survey and said Lawrence Survey, being the Northeast corner of said 0.012 acre conflict area, and being the apparent Southeast corner of said Edna Mae Lane, a ½ inch iron rod found for the Southwest corner of said Parker Interests, L.P. tract, being the Southwest corner of 0.012 acre conflict area bears S 60°36' W 34.23 feet;

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THENCE along or near the division lines of said surveys for an East line hereof, being along an East line of said original tract called 9.097 acres, S 00°52'36" E at 16.71 feet cross a South line of said Parker Interests, L.P. tract, being the Southeast corner of said 0.012 acre conflict area, and at a total distance of 60.03 feet to a ¼ inch iron rod found near the base of a railroad tie fence corner post for an interior corner hereof, being an interior corner of said original tract called 9.097 acres, also being a Southwest corner of a parcel of land of which the owner is unknown;

THENCE along a North line of said original tract called 9.097 acres for a North line hereof, being along a South line of said unknown owner, being along or near an existing fence, N 89°03'30" E 189.51 feet to a ¼ inch iron rod found 1.4 feet North of a railroad tie fence corner post on the Southwest margin of an apparent old road (not in use) for an exterior corner hereof and of said original tract called 9.097 acres;

THENCE along the Southwest margin of said apparent old road for Northeast lines hereof and of said original tract called 9.097 acres, being partly along or near an existing fence, S 46°06'43" E 129.73 feet to a ¼ inch iron rod set with plastic ld. cap near fence angle, S 30°29'43" E 193.64 feet to a ¼ inch iron rod set with plastic ld. cap and S 21°15'17" E 8.83 feet to a ¼ inch iron rod found in fence line near a 4 inch Oak Tree on the Southwest margin of said old apparent road for a Southeast corner hereof, being the Northeast corner of the Mozell A. Deary tract called 0.190 acre (Tract Two) as described in Volume 341, Page 343, in said Deed Records, being a Southeast corner of said original tract called 9.097 acres;

THENCE along the North line of said Deary tract for a South line hereof, being along a South line of said original tract called 9.097 acres, S 89°14'33" W 186.16 feet to a ¼ inch iron rod found at the base of a 4 inch by 4 inch post for an interior corner hereof and of said original tract called 9.097 acres, being the Northwest corner of said Deary tract called 0.190 acre;

THENCE along the West line of said Deary tract called 0.190 acre, along the West line of the Mozell Deary residue of original tract called 3.68 acres as described in Volume 300, Page 747, in said Deed Records and along a portion of the West line of the Leslie Robertson, et ux, tract called 28/100 acre as described in Volume 333, Page 679, in said Deed Records, for an East line hereof and of said original tract called 9.097 acres, S 00°51'02" E 222.94 feet to a ¼ inch iron rod set with plastic ld. cap to replace a ¼ inch iron rod found disturbed for a Southeast corner hereof and of said original tract called 9.097 acres, being on the West line of said Robertson tract and being the apparent Northeast corner of the Harold Williams, et al, (formerly Sam F. Francis) lot as conveyed in Volume 230, Page 171, in said Deed Records, another ¼ inch iron rod found bears N 00°51'02" W 10.27 feet;

THENCE along the apparent North line of said Williams lot for a South line hereof, being along a South line of said original 9.097 acres tract, being along or near an existing fence, S 89°09'21" W 193.78 feet to a ¼ inch iron rod found on or near the division line of said Munson Survey and said Lawrence Survey for an interior corner hereof and of said original tract called 9.097 acres, also being the apparent Northwest corner of said Williams, et al, lot, a ¼ inch iron rod found bears N 89°23'18" E 5.25 feet;

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THENCE along the apparent West line of said Williams lot and along the West line of an apparent old road not in use, for an East line hereof, being along a portion of an East line of said original tract called 9.097 acres and along a portion of the East line of said original tract called 0.895 acres which is part of said original 9.097 acres tract, being partly along or near the division line of said surveys, being West of an existing fence, S 00°54'27" E at 164.46 feet pass a ½ inch iron rod found at a railroad tie brace post for the Northeast corner of said original 0.895 acre tract, Volume 867, Page 600, and at a total distance of 260.93 feet to a ¾ inch iron rod set with plastic Id. cap for an interior corner hereof, being on an East line of said original tract called 9.097 acres and said original tract called 0.895 acres, Volume 867, Page 600, being on or near the division line of said surveys, being at an intersection of the North line of said original tract called 0.638 acre with an East line of said original tract called 9.097 acres, being an apparent Southwest corner of last said apparent old road, a ½ inch rod found for a Northwest corner of said original tract called 11.319 acres bears N 1°27'41" W 13.53 feet, another ½ inch iron rod found for the Northwest corner of said original tract called 0.638 acre bears S 89°58'28" E 6.01 feet;

THENCE along a North line hereof, S 89°58'28" E at 6.01 feet passing said ½ inch iron rod found for the Northwest corner of said original 0.638 acre tract, and at a total distance of 13.90 feet to a ½ inch iron rod found at the base of a railroad tie fence corner post for the Northeast corner hereof and of said original tract called 0.638 acre, being the Northwest corner of the Nathan L. Winfield, et ux, residue of original tract called 3.615 acres as described in Volume 303, Page 164, in said Deed Records, being on the South line of last said apparent old road, a ¾ inch iron rod found for a Northeast corner of said original tract called 11.319 acres bears N 28°02'48" W 15.50 feet;

THENCE along the West line of said Winfield residue of said original tract called 3.615 acres, being along the West line of the Nathan L. Winfield, Jr., residue of original tract called 13.15 acres as described in Volume 196, Page 316, in said Deed Records and along the West lines of a 5.663 acres tract surveyed this date for Real Estate Holdings, Inc., being a resurvey of the same land called 5.661 acres as described in the deed to Julia Derkowski as recorded in Volume 482, Page 270, in said Official Records for an East line hereof, being along the East line of said original tract called 0.638 acre, being along or near an existing fence, and East of an East deed line of said original tract called 11.319 acres, S 04°18'56" E 768.94 feet to a ½ inch iron rod found at the base of a railroad tie fence corner post for the Southwest corner of said Winfield residue of original tract called 13.15 acres, being the Northwest corner of said 5.663 acres tract, being the Northwest corner of a called ½ acre tract deeded to Washington County in Volume 289, Page 87 and included in said 5.661 acres tract, said ½ acre being vacated and the surface conveyed to Julia Derkowski by The Commissioners Court of Washington County, Texas in an order of vacating, dated July 3, 2006, as recorded in Volume 1209, Page 11, in said Official Records, S 03°32'54" E 21.01 feet to a ¾ inch iron rod found in fence line, being an angle point of said 5.663 acres tract, being the Southwest corner of said ½ acre, Volume 289, Page 87, and S 04°17'29" E 301.81 feet to a ¾ inch iron rod set with plastic Id. cap, 4.4 feet Southeast of a pipe fence corner post on the North right of way line of U.S. Highway No. 290 E for the Southeast corner hereof and of said original tract called 11.319 acres, being the Southwest corner of said 5.663 acres tract;

[Continued on Next Page]

THENCE along a portion of the North right of way line of said highway for the South line hereof, S 80°57'20" W 329.61 feet to a concrete monument (highway R/W marker) found for an interior corner of said right of way line, being the Southwest corner hereof and of said original tract called 11.319 acres;

THENCE along an East line of said highway right of way line, being along a West line hereof and of said original tract called 11.319 acres, N 06°17'36" W 10.00 feet to a concrete monument (highway R/W marker) found for an exterior corner of said right of way line, being a Southeast corner of the Justin Flasowski, et ux, tract called 11.826 acres as described in Volume 882, Page 692, in said Official Records, being an angle point hereof and of said original tract called 11.319 acres;

THENCE along East lines of said Flasowski tract called 11.826 acres and said Flasowski tract called 3.181 acres for West lines hereof, being along the West lines of said original tracts called 11.319 acres and 9.097 acres, being along or near an existing fence, as follows: N 17°56'23" W 33.58 feet to a ½ inch iron rod found at the base of a 6 inch Cedar fence corner post, N 09°29'45" W 1337.78 feet to a ½ inch iron rod found at the base of a 6 inch treated fence brace post, N 08°18'53" W 170.50 feet to a ½ inch iron rod found at the base of a railroad tie fence corner post for the Northeast corner of said Flasowski tract called 11.826 acres, being the Southeast corner of said Flasowski tract called 3.181 acres, being the division corner of said original tracts called 9.097 acres and 11.319 acres, and N 01°33'35" E 422.65 feet to the place of beginning and containing 21.373 acres of land, including said 0.012 acre conflict area.

The bearings stated herein are relative to True North as obtained by GPS Observations, observed at Latitude: 30°08'08.07" N - Longitude: 96°15'31.60" W (WGS-84).

EXHIBIT C

Tract 3 -- Property Owned by Seller in a One Mile Radius

None.

STATE OF TEXAS  
COUNTY OF WASHINGTON.

I hereby certify that this instrument was FILED on  
the date and at the time affixed hereon by me and  
was duly RECORDED in the volume and page of the  
OFFICIAL RECORDS of Washington County, Texas, as  
stamped hereon by me on

JAN 02 2014



*Beth A. Rothemel*  
Beth Rothemel, County Clerk  
Washington County, Texas

FILED  
WASHINGTON COUNTY, TEXAS  
2013 DEC 31 PM 1:40  
CLERK OF COUNTY CLERK



## DRAINAGE AND DETENTION EASEMENT AGREEMENT

6806

THIS DRAINAGE AND DETENTION EASEMENT AGREEMENT (this "Agreement") is entered into this 30<sup>th</sup> day of December, 2013 (the "Effective Date"), by and between CHAPPELL HILL RETAIL CENTER L.P., a Texas limited partnership ("Grantor"), whose address is: 7058 Lakeview Haven Dr., Suite 113, Houston, Texas 77095, and BIG DIAMOND, LLC., a Texas limited liability company ("Corner Store"), whose address is: One Valero Way, Building D, Suite 200, San Antonio, Texas 78249-1616, Attention: Retail Real Estate Department.

## WITNESSETH:

WHEREAS, Grantor is the owner of the property more particularly described on Exhibit A attached hereto (the "Adjacent Property") located in Washington County, Texas, and has agreed to convey to Corner Store, and its successors and assigns, the property more particularly described on Exhibit B attached hereto (the "Corner Store Property"), which is located adjacent to the Adjacent Property; and

WHEREAS, Corner Store and Grantor have determined that the future development of the Corner Store Property, in order to properly direct and control the flow of storm water from the Corner Store Property as the Corner Store Property is intended to be developed (the "Corner Store Drainage and Detention Requirements"), will require the installation and maintenance of a drainage and detention system on the Adjacent Property (the "Storm Water Drainage and Detention System") for the (a) non-exclusive drainage of surface storm water from the Corner Store Property and the Adjacent Property in, along, on and under the locations within the Adjacent Property respectively described and depicted on Exhibit C-1 and Exhibit C-2 attached hereto (the "Drainage Easement Area") and the detention of surface storm water the Corner Store Property and the Adjacent Property in the locations within the Adjacent Property respectively described and depicted on Exhibit D-1 and Exhibit D-2 attached hereto (the "Detention Easement Area"); and

WHEREAS, in order to provide for the implementation of the Storm Water Drainage and Detention System, Grantor and Corner Store desire to enter into this Agreement to provide for the grant to Corner Store of a non-exclusive easement in the Drainage Easement Area and Detention Easement Area in order to permit the drainage and detention of storm water from the Corner Store Property in compliance with the Corner Store Drainage and Detention Requirements (the "Drainage and Detention Easement Purpose"), as more particularly set forth in this Easement Agreement, which rights shall additionally include but not be limited to the right to install and maintain storm water drainage improvements in the Drainage Easement Area, which improvements may include both surface and underground drainage improvements (the "Corner Store Drainage Facilities") and a detention pond in the Detention Easement Area (the "Detention Pond"), all on the terms set forth in this Easement Agreement; and

NOW, THEREFORE, for and in consideration of the sum of \$10.00 and other good and valuable consideration paid each to the other, the receipt and sufficiency of which is hereby acknowledged, Grantor and Corner Store do hereby agree as follows:

1. The Drainage and Detention Easements. Grantor does hereby grant, bargain, sell and convey unto Corner Store, and its legal representatives, successors and assigns forever, the following easements (collectively, the "Drainage and Detention Easements"):

(a) a non-exclusive easement in, over and under the Drainage Easement Area for the Drainage and Detention Easement Purpose, which shall include but not be limited to the right to install, use and maintain such drainage improvements, if any, within the Drainage Easement Area as Corner Store may determine in its sole discretion and sufficient to satisfy only the Corner Store Drainage and Detention Requirements (the "Drainage Easement");

(b) a non-exclusive easement in the Detention Easement Area for the Drainage and Detention Easement Purpose, which shall include but not be limited to the right to construct, excavate, use and maintain a Detention Pond within the Detention Easement Area, as Corner Store may determine in its own discretion and sufficient to satisfy only the Corner Store Drainage and Detention Requirements (the "Detention Easement"). It is specifically acknowledged the grant of the Detention Easement specifically includes, without limitation, the right of Corner Store to enlarge and/or modify the existing pond within the Detention Easement Area to satisfy the Corner Store Drainage and Detention Requirements; and

(c) a non-exclusive right and easement to permit the surface drainage of storm-water from the Corner Store Property over the surface of the Adjacent Property (the "Surface Drainage Easement"), provided that such Surface Drainage Easement shall terminate upon the completion of the installation of the Corner Store Drainage Facilities and the construction of the Detention Pond.

The Drainage Easement Area and the Detention Easement Area, together with such areas over which the surface drainage of storm water from the Corner Store Property may flow over the Adjacent Property from time to time, are sometimes collectively referred to herein as the "Easement Areas".

TO HAVE AND TO HOLD the Drainage and Detention Easements for the Drainage and Detention Easement Purpose, together with all rights and appurtenances thereto in anyway belonging, unto Corner Store, and its successors and assigns forever, subject to the further provisions of this Agreement, and Grantor does hereby bind itself and its successors and assigns to warrant and to forever defend the rights granted in the Easement Areas unto Corner Store and its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through, or under Grantor, but not otherwise.

2. Reservation of Rights in Favor of Grantor. Subject to the rights of Corner Store under this Agreement and the obligations of Grantor set forth in Section 3 below, Grantor expressly reserves the following rights with respect to the Easement Areas:

(a) the right to the use and enjoyment of the surface of the Easement Areas, for any and all purposes that do not materially conflict with or interrupt the use or enjoyment of the Storm Water Drainage and Detention System for the Drainage and Detention Easement Purpose, specifically including, without limitation, the right to construct, use and maintain its own drainage improvements within the Drainage Easement Area and/or enlarge the Drainage Facilities and/or the Detention Pond for the use and benefit of the Adjacent Property, provided that such use does not diminish, obstruct or impair the capacity of the Storm Water Drainage and Detention System to satisfy the Corner Store Drainage and Detention Requirements; further, Grantor, for itself and its successors and assigns, agrees not to construct or place on the Easement Areas any permanent buildings or other permanent above grade improvements or to plant any trees, shrubs or other vegetation that interferes with, or restricts, the full and complete use and enjoyment of any of the Easement Areas for the Drainage and Detention Easement Purpose, and Corner Store shall have the right to remove such improvements and/or vegetation placed on the Easement Areas in violation hereof; and

(b) the right to grant additional easements in the Easement Areas to future owners of any portion of the Adjacent Property for the Drainage and Detention Easement Purposes as necessary for the development of the Adjacent Property, but only for the purpose of providing drainage from the Adjacent Property, or portions thereof, to the Detention Pond, and provided that such use shall be subject to the satisfaction of Section 3 below.

3. Limitation on Use of and Improvements in Easement Areas.

Notwithstanding the foregoing provisions of Section 2 of this Agreement, the Drainage and Detention Easements shall be subject to the following limitations: (a) the use of the Easement Areas shall be limited to use for the benefit of the Corner Store Property and the Adjacent Property only, and (b) to the extent that the use of the Easement Areas by the Adjacent Property, or any portion thereof (which is currently undeveloped as of the date of this Agreement) shall cause the Detention Pond or the Drainage Facilities to be insufficient to satisfy the Corner Store Drainage and Detention Requirements, the use of the Drainage Easement Area and/or the Detention Easement Area by the Remainder Property shall be limited to only such use as does not interfere with sufficiency of the Storm Water Drainage and Detention System to satisfy the Corner Store Drainage and Detention Requirements, and Grantor shall, at its own expense, enlarge the Drainage Facilities and/or the Detention Pond to permit the use of the Easement Areas by the Remainder Property, or portions thereof, so as not to interfere with the satisfaction by the Storm Water Drainage and Detention System of all Corner Store Drainage and Detention Requirements. If the enlargement of the Drainage Facilities and/or the Detention Pond would cause the Detention Pond to exceed the boundaries of the Easement Areas, then, prior to any installation of additional drainage facilities or enlargement of the Detention Pond, this Agreement must be amended by each of Grantor and Corner Store to reflect a revised legal description and depiction of the Easement Areas sufficient to include within its boundaries the

entirety of the additional drainage facilities or expanded Drainage Facilities and/or the Detention Pond, as applicable, the approval and execution of such amendment not to be unreasonably withheld or delayed by either of Corner Store or Grantor.

4. Temporary Construction Easement. Grantor, for itself and its successors and assigns, does hereby grant, bargain, sell and convey unto Corner Store, and its legal representatives, successors and assigns, or its employees or agents, (a) the right to temporarily enter onto the portion of the Adjacent Property which is not more than 30 feet adjacent to either side of the Easement Areas (the "Temporary Construction Easement Area") for the purposes of construction, reconstruction, inspection, maintenance and repair of the Drainage Facilities and the Detention Pond (the "Temporary Construction Easement Purposes"). Corner Store will not hinder or prevent the proper and reasonable use and enjoyment of the Adjacent Property or the surface of the Temporary Construction Easement Area which is subject to the terms of this temporary easement.

5. Construction, Operation and Maintenance of Storm Water Drainage and Detention System. With respect to the construction, operation, maintenance and repair of the Storm Water Drainage and Detention System, Grantor and Corner Store agree as follows

(a) Corner Store shall be responsible for the cost of the construction and installation of the Drainage Facilities and Detention Pond at such time as Corner Store commences to construct the Drainage Facilities and Detention Pond, subject to the limitations set forth in subsection (b) of this Section 5.

(b) At such time as Corner Store commences the construction of improvements on the Corner Store Property, Corner Store agrees to design, construct and/or install the Drainage Facilities and the Detention Pond, subject to the limitation that Corner Store shall not be obligated to build Drainage Facilities or a Detention Pond which is other than a type and size as Corner Store designs to satisfy the Corner Store Drainage and Detention Requirements only, without taking into account any usage of the Drainage Facilities and the Detention Pond by the Adjacent Property.

(c) Once the Drainage Facilities and the Detention Pond are constructed and completed by Corner Store, Corner Store agrees to maintain and make or cause to be made all repairs to the Drainage Facilities and the Detention Pond as may be necessary in order to keep the Drainage Facilities and the Detention Pond in good order and repair (the "Operation and Maintenance Obligations"), subject to cost-sharing provisions of Subsection (d) below.

(d) Other than the initial construction of the Drainage Facilities and the Detention Pond by Corner Store and any enlargement thereof by Grantor which may become necessary incident to any development or future uses of the Adjacent Property (including but not limited to as may be required under Section 3(c) of this Agreement), the costs of operating, maintaining, repairing and replacing the Drainage Facilities and the Detention Pond (the "Costs") shall be shared by the Adjacent Property and the Corner Store Property prorata in accordance with the percentage which the number of square feet

within the Adjacent Property and the Corner Store Property, respectively, bears to the number of total square footage within the combined area of the Adjacent Property and the Corner Store Property, which Grantor and Corner Store acknowledge to be \_\_\_\_% and \_\_\_\_%, respectively (the "Allocated Percentages"). The party who incurs the Costs shall invoice the other party for its share of the Costs on a not more frequently than semi-annual basis, based upon the Allocated Percentage of the other party, and such other party shall reimburse to the invoicing party its share of the Costs within thirty (30) days after its receipt of the detailed invoice setting forth the amount and nature of the Costs and supporting documentation evidencing the Costs incurred and actually paid. Each party shall keep accurate books and records of the Costs incurred by it, which shall be subject to the audit by the other party. In the event such audit discloses any error in the determination of the Costs, then the adjustment necessary to correct such error or errors, and/or the allocation of such Costs, shall be made promptly. If either party fails to perform its obligations under this Section 5 in a manner satisfactory to the other party, the other party shall have the right, but not the obligation, to cause such obligations to be performed and charge the actual cost thereof to the party obligated to perform such obligations, who agrees to pay the same within thirty (30) days after its receipt of receipt of the detailed invoice setting forth the amount and nature of the Costs and supporting documentation evidencing the Costs incurred. If either Grantor or Corner Store fails to pay the Costs as provided herein, then the other party shall have any and all remedies available at law or in equity to collect such Costs.

6. Covenants Running With the Land. The terms and provisions of this Agreement shall be binding covenants running with the land affected thereby and shall adhere to the benefit of and be binding upon Grantor and Corner Store, and their respective successors and assigns.

7. Exceptions to Grant of Easements. The Easements granted in this Agreement are subject to each and every, all and singular, the valid and existing restrictions, conditions, exceptions, mineral and oil royalty reservations, and covenants of whatsoever nature of record, if any, and also the laws, regulations, ordinances, and statutes of municipal, or other governmental authorities, if any, applicable to, and enforceable against, the Adjacent Property and/or the Corner Store Property.

8. No Conveyance of Title. The Easements granted in this Agreement are not intended to and shall not be deemed or construed as effecting a conveyance of any title to the real property underlying the area of the easements described herein, including, without limitation, the mineral or surface estates thereof, but grants only the easement herein specified for the limited purposes set forth herein.

9. Term and Termination. The Drainage and Detention Easements granted herein are perpetual; provided, however, that:

(a) if the Corner Store Drainage Facilities are not installed and the Detention Pond is not constructed by the date which is twenty-four (24) months following the Effective Date, and Corner Store has determined, in its sole discretion, that its Intended Use of the Property does not or will not require the installation of a Storm Water

Drainage System as contemplated by subsections (a) and (b) of Section 1 of this Agreement, then Corner Store agrees to affirmatively execute and record a release of the Drainage Easement and the Detention Easement respectively provided in subsections (a) and (b) of Section 1 of this Agreement; and

(b) if the Storm Water Drainage and Detention System is ever modified or replaced by public drainage improvements, such that the use of the Drainage and Detention Easements for the Drainage and Detention Easement Purpose is, following the installation of public drainage improvements, abandoned for a period of 365 consecutive days (the "Abandoned Easement Area"), then the Abandoned Easement Area shall be deemed to be released from this Agreement and, if the entirety of the Easement Areas shall constitute the Abandoned Easement Area, then the Drainage and Detention Easements shall terminate.

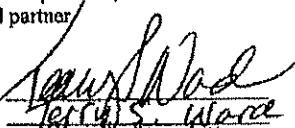
*[Remainder of Page Intentionally Left Blank -- Signatures on Following Page]*

EXECUTED as of the day and year first written above.

GRANTOR:

CHAPPELL HILL RETAIL CENTER L.P.,  
a Texas limited partnership

By: Country Communities, Inc.,  
a Texas corporation, its  
general partner

By:   
Name: Terry S. Wace  
Title: President

CORNER STORE:

BIG DIAMOND, LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Douglas M. Miller  
Vice President

STATE OF TEXAS

COUNTY OF Harris

§  
§  
§

The foregoing instrument was acknowledged before me on December 30 2013, by William L. McNeider of Country Communities, Inc., general partner of Chappell Hill Retail Center L.P., a Texas limited partnership, on behalf of said limited partnership.



Jamie C. Nayslip  
Notary Public, State of TEXAS

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

§  
§  
§

This instrument was acknowledged before me on December \_\_\_\_\_, 2013, by Douglas M. Miller, Vice President of Big Diamond, LLC, a Texas limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

[Notary Stamp/Seal]



EXECUTED as of the day and year first written above.

GRANTOR:

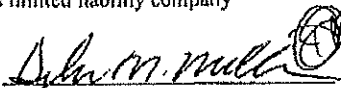
CHAPPELL HILL RETAIL CENTER L.P.,  
a Texas limited partnership

By: Country Communities, Inc.,  
a Texas corporation, its  
general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CORNER STORE:

BIG DIAMOND, LLC,  
a Texas limited liability company

By:   
Douglas M. Miller  
Vice President

STATE OF TEXAS

§  
§  
§

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me on December \_\_\_\_, 2013, by \_\_\_\_\_ of Country Communities, Inc., general partner of Chappell Hill Retail Center L.P., a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

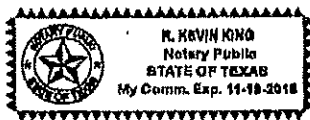
[Notary Stamp/Seal]

STATE OF TEXAS

§  
§  
§

COUNTY OF Bexar

This instrument was acknowledged before me on December 27, 2013, by Douglas M. Miller, Vice President of Big Diamond, LLC, a Texas limited liability company, on behalf of said limited liability company.



R. Kevin King  
\_\_\_\_\_  
Notary Public, State of TX

[Notary Stamp/Seal]

**MORTGAGOR CONSENT AND SUBORDINATION**

The Property is encumbered by the following (the "Liens"):

(a) All liens and security interests securing that certain Promissory Note dated September 12, 2007, executed by Country Communities, Inc., a Texas corporation, general partner of Chappell Hill Retail Center, L.P., a Texas limited partnership, and payable to the order of Preferred Bank, in the original principal amount of \$1,009,800.00, including, but not limited to the liens and security interests set forth or granted in that certain Deed of Trust of even date therewith, recorded in Volume 1257, Page 1015, of the Official Records of Washington County, Texas; as renewed, extended and modified by that certain Renewal, Extension and Modification Agreement recorded in Vol. 1294, Page 685, Official Records of Washington County, Texas, and in Vol. 1454, Pg. 0674, Official Records of Washington County, Texas, and the vendor's lien retained in deed of even date therewith, executed by Julia S. Derkowski to Chappell Hill Retail Center, L.P., a Texas limited partnership, recorded in Vol. 1257, Pg. 1011, Official Records of Washington County, Texas; and

(b) Any other liens or security interests held by the undersigned covering Tract Exhibit "A" indebtedness secured by Tract Exhibit "A"

The Mortgagor joins in the execution of this Drainage and Detention Easement Agreement solely for the purpose of evidencing its consent to the Drainage and Detention Easement Agreement and the subordination of the Liens to the Drainage and Detention Easement Agreement such that the provisions of the Drainage and Detention Easement Agreement will survive a foreclosure of the Liens.

**MORTGAGOR:**

PREFERRED BANK

By: [Signature]Name: Tricia AtchisonTitle: CCOSTATE OF TEXAS

§

COUNTY OF HARRIS

§

The foregoing instrument was acknowledged before me on the 30th day of December, 2013, by Tricia Atchison, the CCO of PREFERRED BANK, a bank, on behalf of said bank.



[Notary Stamp/Seal]

Cynthia A. Hugo  
Notary Public, State of Texas

EXHIBIT A

## Adjacent Property

All that certain tract or parcel of land, lying and being situated in Washington County, Texas, part of the William Munson Survey, A-90, and the David Lawrence Survey, A-75, being a resurvey of the same land described as 9.097 acres in the deed from Johnnie Kopycinski, et ux, to Richard Collins Barnett, et ux, dated February 17, 1993, as recorded in Volume 691, Page 666, in the Official Records of Washington County, Texas, being a resurvey of the same land described as 0.895 acre in the deed from W.E. Whiddon and wife, Dorothy Pawlak Whiddon to Richard Collins Barnett and wife Carol Schatz Barnett, dated August 21, 1997, as recorded in Volume 867, Page 589, in the Official Records of Washington County, Texas, being a resurvey of the same land described as 11.319 acres (Tract I) and 0.895 acre (Tract II) (Tract II being part of the 9.097 acres tract mentioned above) in the deed from W.E. Whiddon and wife, Dorothy Pawlak Whiddon to Richard Collins Barnett A/K/A/ Richard C. Barnett and wife, Carol Schatz Barnett A/K/A/ Carol S. Barnett, dated August 21, 1997, as recorded in Volume 867, Page 600, in the Official Records of Washington County, Texas, and including a 0.012 acre conflict area, being part of the same land described as 10.08 acres in the deed from Beverly Anne Elkins and husband, Max Elkins and Edward H. Shaver and wife, Janet K. Shaver to Parker Interests, L.P., dated March 26, 2001, recorded in Volume 984, Page 19, in the Official Records of Washington County, Texas, (this conflict area being part of the 9.097 acres tract mentioned above) and including the remaining portion of the called 0.638 acre tract intended to be included in the 11.319 acres tract mentioned above, said 0.638 acre tract being the same land described as 0.638 acre in the deed from Nathan L. Winfield, Jr., et ux, to W.E. Whiddon, dated April 15, 1971, as recorded in Volume 304, Page 735, in the Deed Records of Washington County, Texas, and being more fully described by metes and bounds as follows, To-Wit:

BEGINNING at a ¾ inch iron rod found at the base of a railroad tie fence corner post on the South margin of Edna Mae Lane for the Northwest corner hereof and of said original tract called 9.097 acres, being the Northeast corner of the Justin Flasowski, et ux, tract called 3.181 acres as described in Volume 882, Page 699, in said Official Records;

THENCE along the South margin of said Edna Mae Lane for a North line hereof and of said original tract called 9.097 acres, being partly along or near an existing fence, S 89°52'42" E at 432.35 feet crossing the West line of said Parker Interests, L.P. tract, being the Northwest corner of said 0.012 acre conflict area, and at a total distance of 462.25 feet to a ¾ inch iron rod found at the base of a railroad tie fence corner post for a Northeast corner hereof and of said original tract called 9.097 acres, being on or near the division line of said Munson Survey and said Lawrence Survey, being the Northeast corner of said 0.012 acre conflict area, and being the apparent Southeast corner of said Edna Mae Lane, a ½ inch iron rod found for the Southwest corner of said Parker Interests, L.P. tract, being the Southwest corner of 0.012 acre conflict area bears S 60°36' W 34.23 feet;

[Continued on Next Page]

THENCE along or near the division lines of said surveys for an East line hereof, being along an East line of said original tract called 9.097 acres, S 00°52'36" E at 16.71 feet cross a South line of said Parker Interests, L.P. tract, being the Southeast corner of said 0.012 acre conflict area, and at a total distance of 60.03 feet to a ¼ inch iron rod found near the base of a railroad tie fence corner post for an interior corner hereof, being an interior corner of said original tract called 9.097 acres, also being a Southwest corner of a parcel of land of which the owner is unknown;

THENCE along a North line of said original tract called 9.097 acres for a North line hereof, being along a South line of said unknown owner, being along or near an existing fence, N 89°03'30" E 189.51 feet to a ¼ inch iron rod found 1.4 feet North of a railroad tie fence corner post on the Southwest margin of an apparent old road (not in use) for an exterior corner hereof and of said original tract called 9.097 acres;

THENCE along the Southwest margin of said apparent old road for Northeast lines hereof and of said original tract called 9.097 acres, being partly along or near an existing fence, S 46°06'43" E 129.73 feet to a ¼ inch iron rod set with plastic Id. cap near fence angle, S 30°29'43" E 193.64 feet to a ¼ inch iron rod set with plastic Id. cap and S 21°15'17" E 8.83 feet to a ¼ inch iron rod found in fence line near a 4 inch Oak Tree on the Southwest margin of said old apparent road for a Southeast corner hereof, being the Northeast corner of the Mozell A. Deary tract called 0.190 acre (Tract Two) as described in Volume 341, Page 343, in said Deed Records, being a Southeast corner of said original tract called 9.097 acres;

THENCE along the North line of said Deary tract for a South line hereof, said original tract called 9.097 acres, S 89°14'33" W 186.16 feet to a ¼ inch iron rod found at the base of a 4 inch by 4 inch post for an interior corner hereof and of said original tract called 9.097 acres, being the Northwest corner of said Deary tract called 0.190 acre;

THENCE along the West line of said Deary tract called 0.190 acre, along the West line of the Mozell Deary residue of original tract called 3.68 acres as described in Volume 300, Page 747, in said Deed Records and along a portion of the West line of the Leslie Robertson, et ux, tract called 28/100 acre as described in Volume 333, Page 679, in said Deed Records, for an East line hereof and of said original tract called 9.097 acres, S 00°51'02" E 222.94 feet to a ¼ inch iron rod set with plastic Id. cap to replace a ¼ inch iron rod found disturbed for a Southeast corner hereof and of said original tract called 9.097 acres, being on the West line of said Robertson tract and being the apparent Northeast corner of the Harold Williams, et al, (formerly Sam F. Francis) lot as conveyed in Volume 230, Page 171, in said Deed Records, another ¼ inch iron rod found bears N 00°51'02" W 10.27 feet;

THENCE along the apparent North line of said Williams lot for a South line hereof, being along a South line of said original 9.097 acres tract, being along or near an existing fence, S 89°09'21" W 193.78 feet to a ¼ inch iron rod found on or near the division line of said Munson Survey and said Lawrence Survey for an interior corner hereof and of said original tract called 9.097 acres, also being the apparent Northwest corner of said Williams, et al, lot, a ¼ inch iron rod found bears N 89°23'18" E 5.25 feet;

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THENCE along the apparent West line of said Williams lot and along the West line of an apparent old road not in use, for an East line hereof, being along a portion of an East line of said original tract called 9.097 acres and along a portion of the East line of said original tract called 0.895 acres which is part of said original 9.097 acres tract, being partly along or near the division line of said surveys, being West of an existing fence, S 00°54'27" E at 164.46 feet pass a ½ inch iron rod found at a railroad tie brace post for the Northeast corner of said original 0.895 acre tract, Volume 867, Page 600, and at a total distance of 260.93 feet to a ¼ inch iron rod set with plastic Id. Cap for an interior corner hereof, being on an East line of said original tract called 9.097 acres and said original tract called 0.895 acres, Volume 867, Page 600, being on or near the division line of said surveys, being at an intersection of the North line of said original tract called 0.638 acre with an East line of said original tract called 9.097 acres, being an apparent Southwest corner of last said apparent old road, a ½ inch rod found for a Northwest corner of said original tract called 11.319 acres bears N 1°27'41" W 13.53 feet, another ½ inch iron rod found for the Northwest corner of said original tract called 0.638 acre bears S 89°58'28" E 6.01 feet;

THENCE along a North line hereof, S 89°58'28" E at 6.01 feet passing said ½ inch iron rod found for the Northwest corner of said original 0.638 acre tract, and at a total distance of 13.90 feet to a ¼ inch iron rod found at the base of a railroad tie fence corner post for the Northeast corner hereof and of said original tract called 0.638 acre, being the Northwest corner of the Nathan L. Winfield, et ux, residue of original tract called 3.615 acres as described in Volume 303, Page 164, in said Deed Records, being on the South line of last said apparent old road, a ¼ inch iron rod found for a Northeast corner of said original tract called 11.319 acres bears N 28°02'48" W 15.50 feet;

THENCE along the West line of said Winfield residue of said original tract called 3.615 acres, being along the West line of the Nathan L. Winfield, Jr., residue of original tract called 13.15 acres as described in Volume 196, Page 316, in said Deed Records and along the West lines of a 5.663 acres tract surveyed this date for Real Estate Holdings, Inc., being a resurvey of the same land called 5.661 acres as described in the deed to Julia Derkowski as recorded in Volume 482, Page 270, in said Official Records for an East line hereof, being along the East line of said original tract called 0.638 acre, being along or near an existing fence, and East of an East deed line of said original tract called 11.319 acres, S 04°18'56" E 768.94 feet to a ½ inch iron rod found at the base of a railroad tie fence corner post for the Southwest corner of said Winfield residue of original tract called 13.15 acres, being the Northwest corner of said 5.663 acres tract, being the Northwest corner of a called ½ acre tract deeded to Washington County in Volume 289, Page 87 and included in said 5.661 acres tract, said ½ acre being vacated and the surface conveyed to Julia Derkowski by The Commissioners Court of Washington County, Texas in an order of vacating, dated July 3, 2006, as recorded in Volume 1209, Page 11, in said Official Records, S 03°32'54" E 21.01 feet to a ¼ inch iron rod found in fence line, being an angle point of said 5.663 acres tract, being the Southwest corner of said ½ acre, Volume 289, Page 87, and S 04°17'29" E 301.81 feet to a ¼ inch iron rod set with plastic Id. Cap, 4.4 feet Southeast of a pipe fence corner post on the North right of way line of U.S. Highway No. 290 E for the Southeast corner hereof and of said original tract called 11.319 acres, being the Southwest corner of said 5.663 acres tract;

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THENCE along a portion of the North right of way line of said highway for the South line hereof, S 80°57'20" W 329.61 feet to a concrete monument (highway R/W marker) found for an interior corner of said right of way line, being the Southwest corner hereof and of said original tract called 11.319 acres;

THENCE along an East line of said highway right of way line, being along a West line hereof and of said original tract called 11.319 acres, N 06°17'36" W 10.00 feet to a concrete monument (highway R/W marker) found for an exterior corner of said right of way line, being a Southeast corner of the Justin Flasowski, et ux, tract called 11.826 acres as described in Volume 882, Page 692, in said Official Records, being an angle point hereof and of said original tract called 11.319 acres;

THENCE along East lines of said Flasowski tract called 11.826 acres and said Flasowski tract called 3.181 acres for West lines hereof, being along the West lines of said original tracts called 11.319 acres and 9.097 acres, being along or near an existing fence, as follows: N 17°56'23" W 33.58 feet to a ½ inch iron rod found at the base of a 6 inch Cedar fence corner post, N 09°29'45" W 1337.78 feet to a ½ inch iron rod found at the base of a 6 inch treated fence brace post, N 08°18'53" W 170.50 feet to a ½ inch iron rod found at the base of a railroad tie fence corner post for the Northeast corner of said Flasowski tract called 11.826 acres, being the Southeast corner of said Flasowski tract called 3.181 acres, being the division corner of said original tracts called 9.097 acres and 11.319 acres, and N 01°33'35" E 422.65 feet to the place of beginning and containing 21.373 acres of land, including said 0.012 acre conflict area.

The bearings stated herein are relative to True North as obtained by GPS Observations, observed at Latitude: 30°08'08.07" N – Longitude: 96°15'31.60" W (WGS-84).

EXHIBIT B**Corner Store Property**

5.663 acre (246,699 square foot) tract of land located in the W. Munson Survey, Abstract Number 90, Washington County, Texas, and said 5.663 acre tract of land being all of the called 5.663 acre tract described in the deed to Chappell Hill Retail Center, L.P., recorded under Vol. 1257, Pg. 1011, of the Official Records of Washington County (O.R.W.C.), said 5.663 acre tract being more particularly described by metes and bounds as follows (The bearings described herein are oriented to the Texas Coordinate System, Central Zone, NAD 1983.):

BEGINNING at a Texas Department of Transportation (TxDOT) concrete monument found marking the southerly end of a cut-back line for the northerly Right-of-Way (R.O.W.) line of U.S. Highway 290 East (based on a width of 220 feet) and the westerly R.O.W. line of F.M. 1155 South (based on a width of 60 feet), the most southerly southeast corner of said called 5.663 acre tract and the herein described tract;

THENCE, South 78 degrees 51 minutes 31 seconds West, departing the westerly R.O.W. line of said F.M. 1155 South and along the northerly R.O.W. line of said U.S. Highway 290 East, a distance of 930.40 feet, to a 5/8 inch iron rod found in the northerly R.O.W. line of said U.S. Highway 290 East marking the southeast corner of the called 21.373 acre tract described in the deed to Chappell Hill Retail Center, L.P., recorded under Vol. 1257, Pg. 1000, O.R.W.C., the southwest corner of said called 5.663 acre tract and the herein described tract;

THENCE, North 06 degrees 23 minutes 18 seconds West, departing the northerly R.O.W. line of said U.S. Highway 290 East and along the common line of said called 21.373 acre tract and said called 5.663 acre tract, a distance of 301.81 feet, to a 3/8 inch iron rod found marking an angle in said common line and the west line of the herein described tract;

THENCE, North 05 degrees 38 minutes 43 seconds West, continuing along said common line, a distance of 21.01 feet, to a 1/2 inch iron rod found in the east line of said called 21.373 acre tract marking the southwest corner of the called 13.15 acre tract described in the deed to Nathan L. Winfield, Jr., recorded under Vol. 196, Pg. 316, O.R.W.C., the northwest corner of said called 5.663 acre tract and the herein described tract;

THENCE, North 87 degrees 06 minutes 44 seconds East, departing said common line and along the common line of said called 13.15 acre tract and said called 5.663 acre tract, a distance of 998.55 feet, to a 5/8 inch iron rod with plastic cap stamped "Hodde & Hodde" found in the westerly R.O.W. line of aforesaid F.M. 1155 South marking the southeast corner of said called 13.15 acre tract, the northeast corner of said called 5.663 acre tract and the herein described tract;

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THENCE, South 02 degrees 45 minutes 43 seconds East, along the westerly R.O.W. line of said F.M. 1155 South, a distance of 96.98 feet, to a TxDOT concrete monument found marking the northerly end of aforesaid cut-back line, the most easterly southeast corner of said called 5.663 acre tract and the herein described tract;

THENCE, South 29 degrees 29 minutes 21 seconds West, along said cut-back line, a distance of 108.57 feet, to the POINT OF BEGINNING and containing a computed area of 5.663 acres (246,699 square feet) of land as depicted on the ALTA/ACSM Land Title Survey dated: November 21, 2013, prepared by West Belt Surveying, Inc., Project No. S342-0143A.

EXHIBIT C-1

## Drainage Easement Area

FIELD NOTE DESCRIPTION of a 0.193 acre (8,416 square foot) tract of land located in the W. Munson Survey, Abstract Number 90 and the D. Lawrence Survey, Abstract Number 75, Washington County, Texas and said 0.193 acre tract of land being out of and a part of the called 21.373 acre tract described in the deed to Chappell Hill Retail Center, L.P., recorded under Volume (Vol.) 1257, Page (Pg.) 1000 of the Official Records of Washington County (O.R.W.C.), said 0.193 acre tract being more particularly described by metes and bounds as follows (The bearings described herein are oriented to the Texas Coordinate System, Central Zone, NAD 1983.):

COMMENCING at a 5/8-inch iron rod found in the northerly Right-of-Way (R.O.W.) line of U.S. Highway 290 East (based on a width of 220 feet) marking the most southwest corner of the called 5.663 acre tract described in the deed to Chappell Hill Retail Center, L.P. and southeast corner of said called 21.373 acre tract;

THENCE, North 06 degrees 23 minutes 18 seconds West, departing the northerly R.O.W. line of said U.S. Highway 290 East and along the common line of said 5.663 acre tract and said called 21.373 acre tract, a distance of 292.78 feet, to a point in said common line marking the POINT OF BEGINNING and the southeast corner of the herein described tract;

THENCE, departing said common line and over and across said called 21.373 acre tract the following courses and distances;

1. South 87 degrees 06 minutes 44 seconds West, a distance of 30.06 feet, to the southwest corner of the herein described tract;
2. North 06 degrees 23 minutes 18 seconds West, a distance of 7.39 feet, to an angle in the west line of the herein described tract;
3. North 05 degrees 38 minutes 43 seconds West, a distance of 21.45 feet, to an angle in the west line of the herein described tract;
4. North 06 degrees 24 minutes 41 seconds West, a distance of 130.78 feet, to an interior corner of the herein described tract;
5. North 83 degrees 32 minutes 35 seconds West, a distance of 96.08 feet, to an exterior corner of the interior corner of the herein described tract;
6. North 06 degrees 27 minutes 25 seconds West, a distance of 30.00 feet, to the northwest corner of the interior corner of the herein described tract;

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7. South 83 degrees 32 minutes 35 seconds East, a distance of 120.00 feet, to a point in the west line of the called 13.15 acre tract described in the deed to Nathan L. Winfield, Jr. recorded under Vol. 196, Pg. 316, O.R.W.C., common with the east line of aforesaid called 21.373 acre tract marking the northeast corner of the herein described tract;

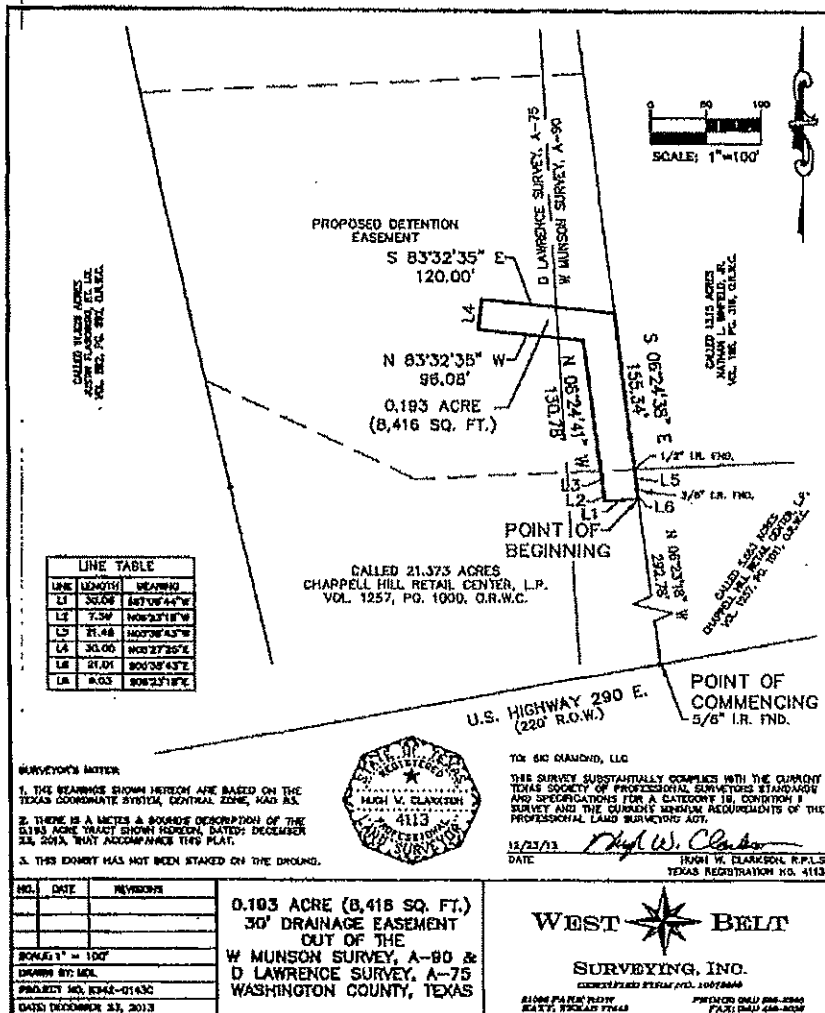
THENCE, South 06 degrees 24 minutes 38 seconds East, along said common line, a distance of 155.34 feet, to a 1/2-inch iron rod found marking the southwest corner of said called 13.15 acre tract, the northwest corner of aforesaid called 5.663 acre tract and an angle in the east line of the herein described tract;

THENCE, South 05 degrees 38 minutes 43 seconds East, along the common line of said called 5.663 acre tract and aforesaid called 21.373 acre tract, a distance of 21.01 feet, to a 3/8-inch iron rod found marking an angle in said common line and the east line of the herein described tract;

THENCE, South 06 degrees 23 minutes 18 seconds East, continuing along said common line, a distance of 9.03 feet, to the POINT OF BEGINNING and containing a computed area of 0.193 acres (8,416 square feet) of land as depicted on the 30' Wide Drainage Easement Exhibit dated: December 23, 2013, prepared by West Belt Surveying, Inc., Project No. S342-0143C.

EXHIBIT C-2

Depiction of Drainage Easement Area



Drainage and Detention Easement Agreement / 55161.3

Exhibit C-2 - Page 1

Store No. 1496 - NW Corner of US 290 & FM 1155, Chappell Hill, Washington County, Texas

EXHIBIT D-1**Detention Easement Area**

FIELD NOTE DESCRIPTION of a 1.257 acre (54,771 square foot) tract of land located in the W. Munson Survey, Abstract Number 90 and the D. Lawrence Survey, Abstract Number 75, Washington County, Texas and said 1.257 acre tract of land being out of and a part of the called 21.373 acre tract described in the deed to Chappell Hill Retail Center, L.P., recorded under Volume (Vol.) 1257, Page (Pg.) 1000 of the Official Records of Washington County (O.R.W.C.), said 1.257 acre tract being more particularly described by metes and bounds as follows (The bearings described herein are oriented to the Texas Coordinate System, Central Zone, NAD 1983.):

COMMENCING at a 5/8-inch iron rod found in the northerly Right-of-Way (R.O.W.) line of U.S. Highway 290 East (based on a width of 220 feet) marking the most southwest corner of the called 5.663 acre tract described in the deed to Chappell Hill Retail Center, L.P. and southeast corner of said called 21.373 acre tract;

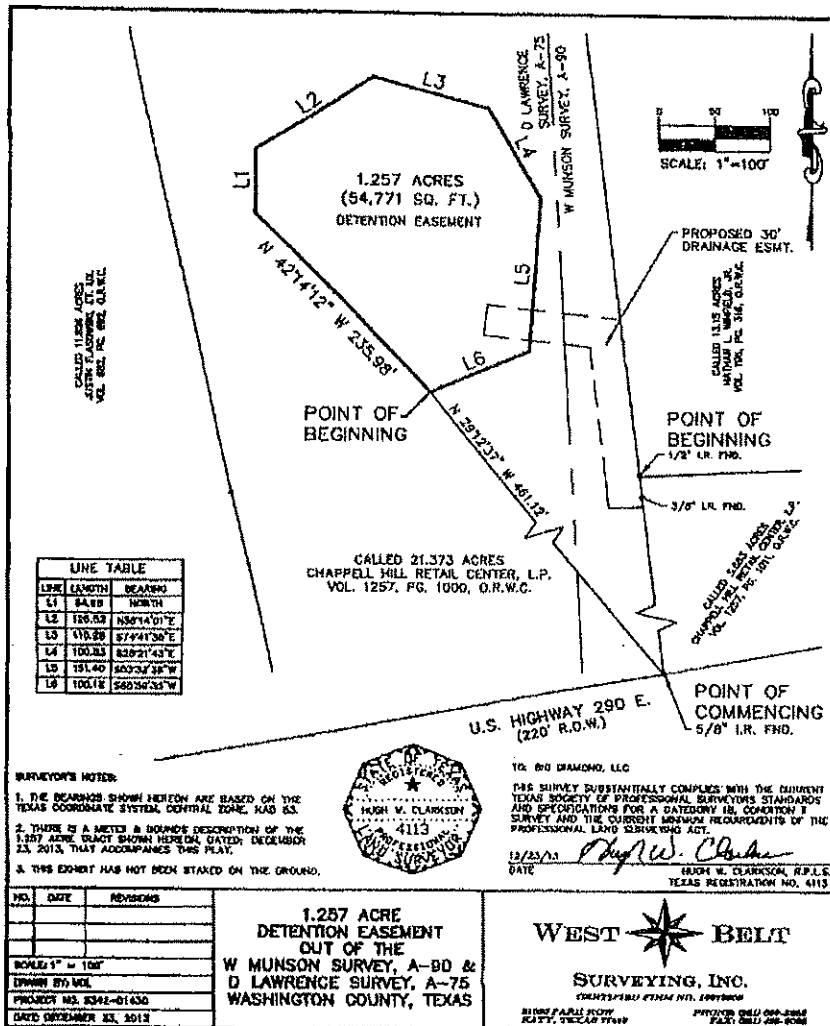
THENCE, North 29 degrees 12 minutes 37 seconds West, departing the northerly R.O.W. line of said U.S. Highway 290 East and over and across said called 21.373 acre tract, a distance of 461.12 feet, to the POINT OF BEGINNING and the southwest corner of the herein described tract;

THENCE, continuing over and across said called 21.373 acre tract the following courses and distances:

1. North 42 degrees 14 minutes 12 seconds West, a distance of 235.98 feet, to an angle in the west line of the herein described tract;
2. North, a distance of 64.65 feet, to the north corner of the herein described tract;
3. North 56 degrees 14 minutes 01 seconds East, a distance of 126.52 feet, to the most northerly corner of the herein described tract;
4. South 74 degrees 41 minutes 35 seconds East, a distance of 110.28 feet, to the northeast corner of the herein described tract;
5. South 28 degrees 21 minutes 43 seconds East, a distance of 110.83 feet, to an angle in the east line of the herein described tract;
6. South 03 degrees 32 minutes 38 seconds West, a distance 151.40 feet, to the southeast corner of the herein described tract;

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THENCE, South 65 degrees 59 minutes 35 seconds West, continuing over and across aforesaid called 21.373 acre tract, a distance of 100.12 feet, to the POINT OF BEGINNING and containing a computed area of 1.257 acres (54,771 square feet) of land as depicted on the Detention Easement Exhibit dated: December 23, 2013, prepared by West Belt Surveying, Inc., Project No. S342-0143C.

**EXHIBIT D-2****Depiction of Detention Easement Area**

Drainage and Detention Easement Agreement / 53161.3

Exhibit D-2 - Page 1

Store No. 1496 - NW Corner of US 290 &amp; FM 1155, Chappell Hill, Washington County, Texas

STATE OF TEXAS  
COUNTY OF WASHINGTON.

I hereby certify that this Instrument was FILED on the date and at the time affixed hereon by me and was duly RECORDED in the volume and page of the OFFICIAL RECORDS of Washington County, Texas, as stamped hereon by me on

JAN 02 2014



*Both Rothermel*  
 Both Rothermel, County Clerk  
 Washington County, Texas

FILED FOR RECORD  
WASHINGTON COUNTY, TEXAS

2013 DEC 21 PM 1:40

*Both Rothermel*  
 Both Rothermel, County Clerk  
 Washington County, Texas