

Rockwall County
Lisa Constant
County Clerk

Rockwall, Texas 75087 (972) 882-0220



70 2008 00399949

Instrument Number: 2008-00399949

As

Recordings

Recorded On: June 10, 2008

Parties: N3 DEVELOPMENT LTD

To PUBLIC

Billable Pages: 17

Number of Pages: 17

Comment: DECLARATION

(Parties listed above are for Clerks reference only)

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

Recordings	76.00
Total Recording:	76.00

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

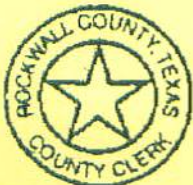
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2008-00399949
Receipt Number: 201836
Recorded Date/Time: June 10, 2008 11:18:16A
Book-Vol/Pg: BK-OR VL-5487 PG-66
User / Station: V D - Cashier Station 2

Record and Return To:

LANDAMERICA - PATRIOT OFFICE
8222 DOUGLAS AVE STE 430
DALLAS TX 75225



I hereby certify that this instrument was filed on the date and time stamped hereon and was duly recorded in the Volume and Page of the named records in Rockwall County, Texas

Any provision herein which restricts the sale, rental or use of the described Real Estate because of color or race is invalid and unenforceable under Federal law

Lisa Constant
Lisa Constant
Rockwall County Clerk

AGREEMENT:

NOW, THEREFORE. Declarant agrees that the Property shall be held, sold, conveyed and occupied subject to the following terms, restrictions, covenants, easements, and agreements, which are intended to protect the value and desirability of the Property, and Declarant therefore agrees and declares as follows:

ARTICLE I

RECIPROCAL ACCESS EASEMENT/CROSS PARKING EASEMENT

1.01 Reciprocal Access Easement.

(a) Declarant hereby retains for itself and its successors and assigns, and grants and conveys to the future owners from time to time of the other Lot(s), and their successors and assigns (including Declarant, the "Owners"), a non-exclusive, perpetual easement and right-of-way on, across and over all areas of the Property and used as common vehicular drives and common pedestrian walkways, in approximately the areas depicted by cross-hatching on Exhibit C attached hereto (collectively, the "Common Area").

(b) The easement described in this Section 1.01 shall be referred to herein as the "Access Easement" and shall be for the purpose of granting to the Owners, their respective successors and assigns, and the lessees, employees, customers, agents, independent contractors and invitees of same the right to use the Access Easement on the terms and conditions described herein. The Access Easement shall only be used for vehicular and pedestrian access, ingress and egress, and such Access Easement shall not be obstructed by improvements or other permanent or semi-permanent obstructions.

1.02 Cross Parking Easement.

(a) Declarant hereby retains for itself and its successors and assigns, and grants and conveys to the future owners from time to time of the other Lot(s), and their successors and assigns, a non-exclusive, perpetual easement and right-of-way on, across and over the parking areas in approximately the 27 parking spaces depicted as "Shared Parking" and the 111 parking spaces depicted as "CDR Parking" by cross-hatching on Exhibit D attached hereto (collectively, the "Parking Area").

(b) The easement described in this Section 1.02 shall be referred to herein as the "Parking Easement" and shall be for the purpose of granting to the customers and invitees of the Owners, their respective successors and assigns, the right to use the Parking Easement on the terms and conditions described herein. The Parking Easement shall only be used for the temporary parking of vehicles by customers and invitees of the Owners, and such Parking Area shall not be obstructed by improvements or other permanent or semi-permanent obstructions. Employees of the Owners are not allowed to park their vehicles in the Parking Area outside of their respective Lot. The Parking Area is intended to represent each party's parking capabilities for purposes of complying with

any applicable governmental requirements for construction on the Lots to qualify for their respective building permits.

1.03 No Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Access Easement or Parking Easement areas described herein to the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

1.04 Construction of Common Area. Declarant shall bear the cost and expenses incurred in connection with the initial construction of the Common Area, subject to reimbursement as provided in agreements affecting the Property, if any. All other obligations for construction of driveways, entrances, curb cuts and other related improvements to a Lot (including access points to and from each Lot) shall be the sole obligation of the respective Owner of its Lot, unless otherwise provided in an easement or other agreement affecting the Property, including satisfaction of any requirements imposed on a Lot by applicable governmental authorities as part of the platting of a Lot or in connection with obtaining permits relating thereto.

1.05 Maintenance and Taxes. The costs and expenses incurred in connection with any maintenance of the Common Area shall be shared proportionately between all Owners on the basis of the square footage contained within a Lot as compared to the square footage contained within the Property. Each Owner shall be responsible for maintaining and repairing in a timely manner the improvements on its Lot (including without limitation the portion of the Common Area on its Lot, the Parking Area on its Lot, if applicable, and other driveways, entrances, curb cuts and other related improvements) in good condition and repair, consistent with the standards of the surrounding retail area, clean and free of rubbish and other hazards, and in compliance with all applicable laws, rules, regulations and ordinances. The Owner's maintenance obligations shall include, but not be limited to the following: (i) preparing, maintaining and replacing all paved surfaces and curbs for all driving and parking areas in a sightly, orderly and safe condition, in good repair, and in a smooth and even condition; (ii) periodic removal of debris, refuse, snow and ice in order to maintain such areas in a sightly, orderly and safe condition, in good repair and condition consistent with the standards of the surrounding retail area; (iii) preparing, maintaining and replacing any appropriate directionals and signage, including stop signs, and striping of driving lanes and parking spaces for purposes of designation, traffic direction, marking loading and un-loading zones, no parking areas and pedestrian cross walks; (iv) preparing, maintaining and replacing any appropriate lighting and lighting improvements; (v) preparing, maintaining and replacing any appropriate landscape plantings, trees, shrubbery and grass in an attractive, sightly condition, trimmed and weed-free, in good repair and condition consistent with the standards of the surrounding retail area; (vi) preparing, maintaining and replacing all common utility mains and lines; (vii) preparing, maintaining and replacing the sidewalks in a sightly condition, in good repair and condition consistent with the standards of the surrounding retail area; and (viii) keeping the Common Areas and Parking Area, if applicable, free of obstructions and parked vehicles (other than temporarily parked vehicles). Likewise, ad valorem taxes and assessments, and similar requirements or incidentals of ownership, shall be paid by the Owner owning the Lot or portion thereof to which such ad valorem taxes or assessments attach (including without limitation the portion of the Common Area on its Lot); and nothing herein shall (i) require that any Owner be

responsible for any accidents, injury, loss or damage occurring on the Lot of the other, or (ii) impose any specific obligation or requirement with respect to the use, ownership, operation or maintenance of the Lot owned by such party, except as expressly set forth in this Declaration.

1.06 Utility Lines and Facilities. Declarant hereby retains for itself and the Owners, a permanent, perpetual, non-exclusive easement over the Lots to allow for the construction and maintenance of utilities (including, but not limited to, sanitary sewer, water and drainage), at a location reasonably approved by each respective Owner prior to commencement of construction of such utilities. Additionally, each Owner agrees not to unreasonably withhold its consent or unreasonably condition its response to a request from another Owner for additional underground easements which are reasonably required by any public or private utility for the purpose of providing utility services to the requesting party's Lot, provided such easements do not encroach on any building or other existing structures or unreasonably interfere with the property of the Owner to whom the request is made, and are not otherwise inconsistent with the provisions of this Declaration and further provided that all expenses related to the easement and utility installation and maintenance (including fully restoring the easement area after installation and/or maintenance) are borne by the requesting Owner. Furthermore, the Owner to whom the request is made shall have the right to require that all construction, repair and maintenance activities be undertaken after normal business hours or at such other times as, in the opinion of the party to whom the request is made, will minimize the impact of such activities upon the conduct of its business.

ARTICLE II

RESTRICTIVE COVENANT/SIGNAGE

2.01 Restrictive Covenant. No portion of Lot 12 or Lot 13 shall be conveyed, assigned, licensed, sold or leased for the operation of a restaurant whose gross sales revenues from Mexican food exceeds twenty percent (20%) of its total gross sales revenues at such site (the "Use Restriction"). This Use Restriction shall also apply to kiosks and carts on Lot 12 or Lot 13 and shall apply so long as (i) Texas Taco Cabana, L.P. is operating a Mexican restaurant on Lot 14 and (ii) Texas Taco Cabana, L.P. is not in default in the payment of Annual Rent or Additional Rent (as such terms are defined in the Taco Cabana Lease) or in the performance of any other material obligation of tenant beyond any applicable cure or grace periods, all as set forth in that certain Lease Agreement dated March 1, 2007 (the "Taco Cabana Lease") between Wyndham Investment Properties, Inc., as Lessor, and Texas Taco Cabana, L.P., as Lessee, as it may be extended. The Use Restriction is only for the benefit of Texas Taco Cabana, L.P., as lessee of Lot 14 of the Property, who shall have the right to invoke and enforce the restriction contained herein by any and all means available at law or in equity. The Use Restriction may be waived or modified by Texas Taco Cabana, L.P. by proper written instrument recorded in the Real Property Records of Rockwall, Texas. This Use Restriction shall be a covenant running with the land during the term of the Taco Cabana Lease, as it may be extended, as a burden on Lot 12 and Lot 13 of the Property for the benefit of Lot 14 of the Property, and there is currently no Use Restriction on Lot 14.

2.02 Signs.

(a) Monument/Pylon Signs. No more than one (1) sign (other than signage attached to the building located on such Lot) may be constructed on each Lot. Each such sign shall be a monument sign or a pylon sign and shall be built in accordance with the standards of the City of Rockwall, Texas, or other applicable governmental authority.

(b) Store Signs. Signage on the buildings of the Lots shall comply with all rules and regulations of the applicable governmental authorities.

ARTICLE III

DEFAULT; REMEDIES

3.01 Default/Remedies. In the event of a breach, or attempted or threatened breach, by any Owner of any of the terms, covenants, and conditions hereof, and after prior written notice and a reasonable period to cure such breach, any one or all of the other Owners shall be entitled forthwith to injunctive relief and/or all such other available legal and equitable remedies from the consequences of such breach, including without limitation the cure of such breach by the non-defaulting Owner, in which event the defaulting Owner shall owe the non-defaulting Owner reimbursement of all reasonable costs and expenses incurred by the non-defaulting Owner, including without limitation reasonable legal fees. All cost and expenses incurred by any Owner in any such suit or proceedings shall be assessed against the non-prevailing party Owner and shall constitute a lien against the non-prevailing Owner's Lot effective upon recording notice thereof in the Office of the County Clerk of Rockwall County, Texas (provided however any such lien shall be subject to and subordinate to any lender providing financing for any such Lot). The remedies of any one or all such Owners shall be cumulative as to each Owner and as to all other remedies permitted at law or in equity.

ARTICLE IV

INDEMNIFICATION AND INSURANCE

4.01 Indemnification.

(a) Each Owner (the "Indemnifying Owner") agrees to indemnify and hold harmless the Owner of any other Lot (the "Indemnified Owner") from any and all liability or damages which the Indemnified Owner may suffer as a result of claims, demands, costs, liens, judgments or awards against the Indemnified Owner arising out of or as a result of any event or circumstance occurring on the Lot owned by the Indemnifying Owner to the extent caused by the negligence or willful misconduct of the Indemnifying Owner, but not to the extent caused by the negligence or willful misconduct of the Indemnified Owner or the employees, contractors or employees of the Indemnified Owner.

(b) Notwithstanding the provisions of Section 4.01 (a), a party exercising its rights under Section 1.06 above shall indemnify, defend and hold harmless the Owner of the Lot into which such utility facilities are installed (the "Burdened Owner") from any and all claims, demands, liabilities, losses, costs and expenses (including attorneys' fees)

suffered or incurred by the Burdened Owner which arise out of, or relate to, the installation and maintenance of such utility facilities.

4.02 Insurance.

(a) Each Owner shall, with respect to its Lot and the operations thereon (including the construction of any improvements), at all times during the term of this Declaration, maintain in full force and effect comprehensive public liability insurance with a financially responsible insurance company or companies; such insurance to provide for a combined single limit of not less than Two Million Dollars (\$2,000,000.00) for personal or bodily injury or death and for property damage in commercially reasonable amounts. Such insurance shall extend to the contractual obligation of the insured party arising out of the applicable indemnification obligation set forth in Section 4.01 above; however, to the maximum extent permitted by commonly available insurance, the parties hereby waive subrogation with regard to their respective insurance coverages and agree that the location of the damage shall determine whose insurance coverage shall be applicable to the damage.

(b) Notwithstanding anything to the contrary set forth herein, each Owner hereby releases the other from any and all liability or responsibility to the other Owners, or to any other party claiming through or under them by way of subrogation or otherwise, for any loss or damage to property caused by a casualty which is insurable under standard fire and extended coverage insurance; provided, however, that this mutual waiver shall be applicable only with respect to a loss or damage occurring during the time when property insurance policies, which are readily available in the marketplace, contain a clause or permit an endorsement to the effect that any such release shall not adversely affect or impair the policy or the right of the insured party to receive proceeds under the policy; provided, further, that this release shall not be applicable to the apportion of any damage which is not reimbursed by the damaged party's insurer because of the "deductible" in the damaged party's insurance coverage.

4.03 Condemnation and Casualty. In the event of condemnation by any duly constituted authority for a public or quasi-public use of all or any part of any Lot, that portion of the award attributable to the value of the land within the area covered by that portion of the reciprocal easement granted herein and so taken shall be payable to the Owner in fee thereof and no claim thereon shall be made by any other Owner; provided, however, that such other Owners may file a collateral claim with the condemning authority over and above the value of the land within the easement area so taken, to the extent of any damages suffered resulting from the severance of the appurtenant easement area so taken. In the event all or any portion of any building on a Lot is damaged or destroyed by fire or other casualty, the Owner of such Lot (or portion thereof) shall promptly restore or cause to be restored such building or, in lieu thereof, shall remove or cause to be removed the damaged portion of such building together with all rubble and debris related thereto. Any area formerly covered by buildings which are not reconstructed following a casualty shall be graded to the level of the adjoining Lot and shall be covered by well-maintained grass or a one inch asphalt dust cap and shall be kept weed free and clean at the sole cost and expense of the Owner of such Lot (or portion thereof).

4.04 Municipal Compliance and Violations. Each Owner shall promptly address, pay all fines, penalties, remove of record and cure the condition of all notes or notices of violation of municipal ordinances and each Owner covenants and agrees not to create or permit to exist any violation that would prevent the other Owner from using the Common Area.

ARTICLE V

MISCELLANEOUS

5.01 Notices. Any and all notices, elections, demands, requests and responses thereto permitted or required to be given under this Declaration, except as otherwise provided for herein, shall be in writing, signed by or on behalf of the party giving the same, and shall be deemed to have been properly given and shall be effective upon being personally delivered, or upon one (1) business day after being deposited in the United States mail, postage prepaid, certified with return receipt requested, or upon being deposited on a paid basis with a nationally recognized overnight delivery service, to the other respective parties at the address of such other party set forth below (or as given from time to time) or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance herewith; provided, however, no notice of change of address shall be effective until the date of receipt thereof personal delivery to a party or to any officer, partner, agent or employee of such party at said address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt and, if given to Declarant, shall be addressed as follows:

N3 DEVELOPMENT, LTD
Attention: Chris Baker
505 Pecan Street, Suite 201
Forth Worth, Texas, 76102

with a copy to: JACKSON WALKER L.L.P.
Attention: Brad Knippa
100 Congress, Suite 1100
Austin, Texas 78701

Until such time as the Taco Cabana Lease is terminated, to:

Texas Taco Cabana, L.P.
8918 Tesoro Drive, Suite 200
San Antonio, Texas 78217
Attention: Mr. Bradley Smith, Vice President Real Estate

with a copy to: Carrols Corporation
968 James Street
Syracuse, New York 13203
Attention: Real Estate Department/Legal Department

5.02 Saturdays, Sundays and Holidays. Unless otherwise specifically set forth herein, the term "days" shall include Saturdays, Sundays and all holidays, and the term "months" shall refer to calendar months. If the last day for performance falls on a Saturday, Sunday or holiday, the time for performance shall be extended to the next regular business day. Holidays shall include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day and any other legal holiday or holiday recognized by banks in Rockwall, Texas.

5.03 No Joint Venture or Partnership. This Declaration shall not be construed to create a partnership or joint venture among the Owners, but merely set forth the terms and conditions of the obligations of Owners regarding the Lots, the development of same, and other related matters. No Owner is authorized to act as agent for any other party or to otherwise act on behalf of any other Owner.

5.04 Invalid Provisions to Affect No Others. If fulfillment of any provisions hereof or any transaction related hereto at the time performance of such provisions shall be due shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained is held unlawful, such clause or provision shall be stricken, as though not herein contained, and the remainder of this Declaration shall remain operative and in full force and effect.

5.05 Departure from Terms. Any indulgence or departure at any time or by any party hereto from any of the provisions hereof or failure to exercise any of its rights and remedies shall not modify the same or relate to the future, or waive future compliance therewith by the other party. This Declaration may not be amended or modified except by a written instrument signed by all then current Owners and filed of record in Rockwall County, Texas.

5.06 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Owners from time to time, their respective heirs, legal representatives, successors, successors-in-title and assigns.

5.07 Law Governing. The laws of the State of Texas shall govern the interpretation, validity and enforceability hereof.

5.08 Captions. Titles or captions of articles, sections or paragraphs contained in this Declaration are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Declaration or the intent of any provisions hereof.

5.09 Estoppel. If requested to do so in writing by an Owner, the other Owners shall execute and deliver, within ten (10) business days of receipt of such request, estoppel certificates to the requesting Owner, a lender proposing to lend funds secured by all or a portion of the Lot of the requesting Owner, to a party proposing to lease all or a portion of the Lot of the requesting Owner (or improvements located thereon) or to a party proposing to purchase all or a portion of the Lot owned by the requesting Owner, which certify, if true (and if not true, explains why not): (i) that this Declaration is in full force and effect and has not been modified or amended; (ii) that

the applicable Owner has not delivered any notice of default under this Declaration to another party; (iii) that, to the knowledge of such Owner, there is no outstanding default under this Declaration, or if such Owner has knowledge of a default, specifying such default; and (iv) other information regarding this Declaration reasonably requested by such Owner, prospective lender, tenant or purchaser.

5.10 Covenants Running With the Land. The rights and obligations contained in this Declaration constitute covenants running with the land, which shall bind all Owners succeeding to any right, title or interest in or to the Property or any part thereof, and their respective heirs, successors and assigns. During the period Declarant is an Owner, Declarant shall be entitled to specific enforcement of all the terms and provisions hereof. The obligations described herein shall not be personal obligations of an Owner once such Owner is no longer an owner of a Lot, but shall be obligations of the Owners owning a Lot from time to time. The Access Easement and the Parking Easement are easements appurtenant to the Lots.

5.11 Further Instruments. The Owners of the Property shall make a good faith effort to cooperate in all matters involving the use, maintenance and repair of the Access Easement and the Parking Easement and all rights referred to in this Declaration, and each Owner of the Property agrees to execute, acknowledge and record any and all further instruments, easements, agreements, declarations or other documents which are reasonably necessary to fulfill the terms and intentions of this Declaration.

5.12 Consents. Except where expressly provided herein to the contrary, any consent, determination, judgment, decision or approval required or permitted hereunder including without limitation consent, acknowledgement or other documents reasonably requested by a mortgagee of Lot 12, Lot 13 or Lot 14, shall be made or determined in the exercise of such party's reasonable discretion and judgment and shall not be unreasonably delayed, withheld or conditioned.

5.14. Exhibits. Each of the exhibits referred to herein and attached hereto is incorporated herein by reference and made a part of this Declaration.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK.]

N3 DEVELOPMENT, LTD.,
a Texas limited partnership

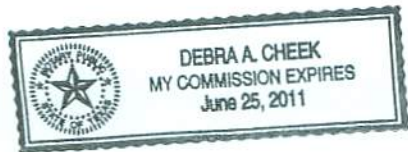
By: N3 Capital, LLC,
a Texas limited liability company,
its general partner

By: Chris Behm
Name: Chris Baker
Title: g.c.

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this 5th day of June, 2008, personally appeared Chris Baker, the Secretary of N3 Capital, LLC, a Texas limited liability company, as general partner of N3 Development, Ltd., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged before me that he executed the same for the purposes and consideration therein expressed, as the act of said limited liability company and limited partnership, and in the capacity therein stated.



Debra Cheek
NOTARY PUBLIC, STATE OF TEXAS
Printed Name: Debra A. Cheek
My Commission Expires: 6-25-2011

CONSENTED TO BY:

TEXAS TACO CABANA, L.P.,
a Texas limited partnership

By: T.C. Management, Inc.,
its general partner

By: William E Myers
Name: William E. Myers
Title: Vice President

ACKNOWLEDGMENT

STATE OF ~~TEXAS~~ NEW YORK §
 ONONDAGA §
COUNTY OF ~~TARRANT~~ §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this 4th day of June, 2008, personally appeared William E. Myers, the Vice President of T.C. Management, Inc., a Delaware corporation, as general partner of Texas Taco Cabana, L.P., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged before me that he executed the same for the purposes and consideration therein expressed, as the act of said limited liability company and limited partnership, and in the capacity therein stated.

Terry L Hook
NOTARY PUBLIC, STATE OF ~~TEXAS~~ NEW YORK
Printed Name: Terry L Hook
My Commission Expires: 10/31/2010

TERRY L. HOOK
Notary Public, State of New York
Qualified in Onon. Co. No. 4664541
Commission Expires Oct. 31, 2010

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Being Lots 15 - 17, Block A of the LaJolla Pointe Addition, Phase 2. an addition to the City of Rockwall, Rockwall County, Texas, according to the plat recorded in Cabinet G, Page 258, Plat Records, Rockwall County, Texas.

EXHIBIT B

PLAT

STAMPED FOR SCANNING
PURPOSES ONLY

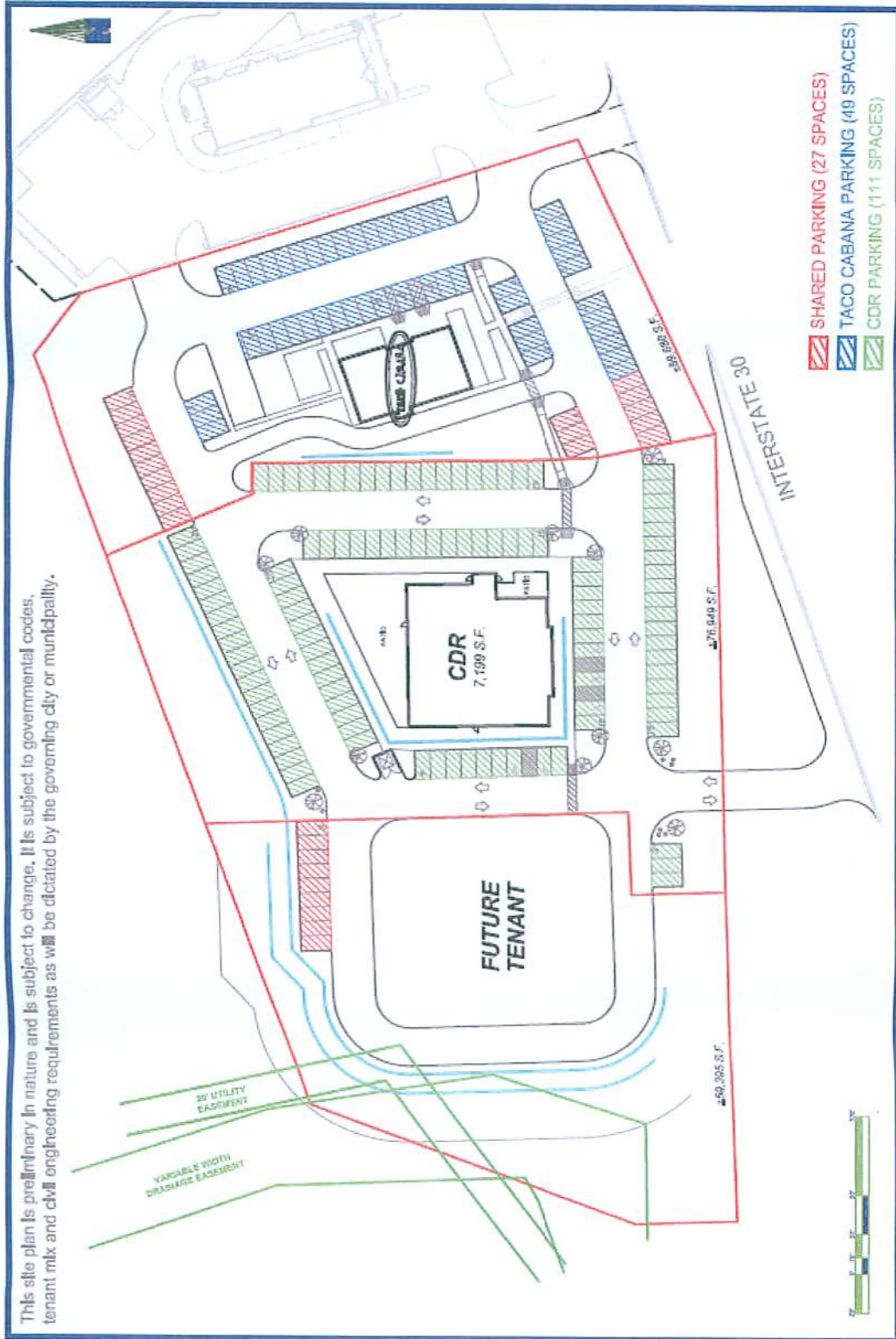
EXHIBIT C

COMMON AREA

**STAMPED FOR SCANNING
PURPOSES ONLY**

EXHIBIT D

PARKING AREA



CDR Parking Exhibit
 Interstate 30 Frontage Road
 Rockwall, Texas 75087
 Date Created: 11/17/07
 Revision Number: 10
 LINC # 00397744

N3 DEVELOPMENT, LTD.
 505 Pecan Street | Suite 201 | Fort Worth, Texas 76102
 P: 817.348.8748 | F: 817.348.8468 | W: www.N3CAPITAL.COM

Filed for Record in: Rockwall County
 On: Jun 10, 2008 at 11:18A