KENNEDALE
Kennedale Economic
Development Corporation
www.cityofkennedale.com

ECONOMIC DEVELOPMENT CORPORATION

AGENDA
BOARD OF DIRECTORS - SPECIAL MEETING
April 30, 2015
CITY HALL CONFERENCE ROOM, 405 MUNICIPAL DRIVE

SPECIAL SESSION - 12:00 PM

I. CALL TO ORDER

II. ROLL CALL

III. REGULAR ITEMS

A. Consider authorizing an agreement, which the Executive Director may execute amending the construction commencement performance date of TownCenter Building 7 from 2014 until 2016; Building 4 from 2015 until 2017; Building 5 from 2016 until 2018; and Building 2 from 2017 until 2019, subject to approval of form by the KEDC attorney.

B. Consider authorizing an agreement, which the Executive Director may execute indicating acceptance of the general Economic Development Corporation/Lender Agreement dated June 24, 2011 for each future phase or lot of new construction, subject to applicable laws and duty authorized economic development projects.

C. Consider authorizing an agreement, which the Executive Director may execute approving the assignment of the Commercial Property Management Agreement with D. Johnson Companies, Inc. to an entity to be designated by Hughes Commercial Texas, subject to approval of form by the KEDC attorney.

D. Consider authorizing an agreement, which the Executive Director may execute approving the assignment of the Economic Development Agreement for Development of Kennedale TownCenter (and the First Amendment and Second Amendment to Economic Development Agreement for Development of Kennedale TownCenter) from Kennedale Town Center, L.P. to an entity to be designated by Hughes Commercial Texas and providing for the deletion of "Chicken Express" in section 7g.

E. Consider authorizing an agreement, which the Executive Director to execute providing for the assignment of the Ground Lease from Kennedale Town Center, L.P. to an entity to be designated by Hughes Commercial Texas, subject to approval of form by the KEDC attorney.

F. Consider authorizing an agreement, which the Executive Director may execute, authorizing the assignment of a Reciprocal Parking Agreement between the EDC and Kennedale Town Center, L.P. to an entity to be designated by Hughes Commercial Texas

IV. ADJOURNMENT

In compliance with the Americans with Disabilities Act, the City of Kennedale will provide for reasonable accommodations for persons attending City Council meetings. This building is wheelchair accessible, and parking spaces for disabled citizens are available. Requests for sign interpreter services must be made forty-eight (48) hours prior to the meetings. Please contact the City Secretary at 817.985.2104 or (TDD) 1.800.735.2989

CERTIFICATION

I certify that a copy of the April 30, 2015, Kennedale Economic Development Corporation agenda was posted on the City Hall bulletin board next to the main entrance of the City Hall building, 405 Municipal Drive, of the City of Kennedale, Texas, in a place convenient and readily accessible to the general public at all times and said agenda was posted at least 72 hours preceding the schedule time of said meeting, in accordance with Chapter 551 of the Texas Government Code.

Leslie Galloway

Leslie Galloway, City Secretary

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Staff Report to the Board of Directors

Date: April 30, 2015

Agenda Item No: REGULAR ITEMS - A.

I. Subject:
Consider authorizing an agreement, which the Executive Director may execute amending the construction commencement performance date of TownCenter Building 7 from 2014 until 2016; Building 4 from 2015 until 2017; Building 5 from 2016 until 2018; and Building 2 from 2017 until 2019, subject to approval of form by the KEDC attorney.

II. Originated by:

III. Summary:
See the original Second Amendment to the Economic Development Corporation Agreement for the development of Kennedale TownCenter to be amended.

IV. Recommendation:
Approve

V. Alternative Actions:

VI. Attachments:

1.	Second Amendment to EDC Agreement for TownCenter	Second Amendment - EDC.pdf

SECOND AMENDMENT TO
ECONOMIC DEVELOPMENT AGREEMENT
FOR DEVELOPMENT OF KENNEDALE TOWNCENTER

This Second Amendment to Economic Development Agreement (the "Second Amendment") is entered into between Kennedale TownCenter, L.P., (the "Partnership") and the Kennedale Economic Development Corporation ("Corporation"), effective on October 22, 2013.

Recitals:

A. Partnership and Corporation entered into that certain Economic Development Agreement for Development of Kennedale TownCenter dated March 30, 2010 (the "Development Agreement").

B. Partnership and Corporation desire to modify the Development Agreement, as set forth in this Second Amendment.

Now, therefore, for a good and valuable consideration, Partnership and Corporation agree as follows:

1. The "Improvements Phasing Chart" as set forth in Par. 4(b) of the Development Agreement is deleted in its entirety, and replaced with the following:

Improvements Phasing Chart

Phase	**Building to be Constructed**	**Minimum Size (sqft)**	**Commencement of Construction**	**Estimated Construction Costs**
1	(Existing Building 1)	N/A	N/A	N/A
2	5	8,820	2012	$882,000
3	7	7,620	2014	$762,000
4	4	4,500	2015	$450,000
5	3	9,810	2016	981,000
6	2	6,960	2017	696,000
7	Section House	N/A	N/A	N/A
8	6	6,600	2023	$660,000

2. Except as otherwise provided herein, all capitalized terms used but not defined herein shall have the meaning ascribed in the Development Agreement.

3. The Development Agreement is in full force and effect, as modified by this Second Amendment.

4. This Second Amendment may be executed in counterparts, which taken together shall constitute one agreement. Electronic signatures shall be considered originals.

EXECUTED this 22nd day of October 2013
to be EFFECTIVE on the date set forth above.

KENNEDALE ECONOMIC DEVELOPMENT CORPORATION

By: ______________________
Robert Mundy, Board President

ATTEST:

____
Board Secretary

KENNEDALE TOWNCENTER, L.P.
By: KTC, L.L.C., its General Partner

By: ______________________
David G. Johnson, Manager

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Staff Report to the Board of Directors

Date: April 30, 2015

Agenda Item No: REGULAR ITEMS - B.

I. Subject:
Consider authorizing an agreement, which the Executive Director may execute indicating acceptance of the general Economic Development Corporation/Lender Agreement dated June 24, 2011 for each future phase or lot of new construction, subject to applicable laws and duty authorized economic development projects.

II. Originated by:

III. Summary:
See the original Economic Development Corporation/Lender Agreement to be accepted for future phase or lot of new construction.

IV. Recommendation:
Approve

V. Alternative Actions:

VI. Attachments:

1.	EDC Lender Agreement - TownCenter	Lender Agreement.pdf

ECONOMIC DEVELOPMENT CORPORATION/LENDER AGREEMENT

June 24, 2011

Definitions:

Premises:	The land described on **Exhibit "A"** attached hereto, together with all improvements now or hereafter constructed on such land
Project:	Kennedale Town Center Building #5 primary structure and Exterior Envelope
Borrower:	**KENNEDALE TOWN CENTER, LP**, a Texas limited partnership
KEDC:	**KENNEDALE ECONOMIC DEVELOPMENT CORPORATION**
Lender:	**LONE STAR BANK, S.S.B.**
Loan:	That one certain promissory note executed by Borrower and payable to the order of Lender in the original principal amount of One Million and No/100 Dollars ($1,000,000.00) to be secured by, among other items, a deed of trust lien on the fee simple interest on the Premises.

This Economic Development Corporation/Lender Agreement ("Agreement") is entered into by and between KEDC and Lender for Ten dollars ($10.00) and other good and valuable consideration provided by Lender to KEDC, the receipt of which is hereby acknowledged by KEDC, and the further consideration consideration of Lender's agreement with Borrower to finance construction ("Construction Funds") of the Project in accordance with and subject to that certain Construction Loan Agreement (the "Loan Agreement") of or about even date herewith, executed by the Borrower and Lender and all related writings (collectively, the "Credit Documents"), executed or to be executed by Borrower and others in favor of Lender. Except as provided for herein, all terms used in this Agreement with their initial letters capitalized shall have the respective meanings ascribed to such terms in the Loan Agreement.

As an inducement for Lender to advance construction funds to develop the Project, KEDC is pledging its fee simple interest in the Premises to secure the Loan and other sums due under the terms of the deed of trust securing the Loan. As a condition to pledging the Premises to secure the Loan, Lender has agreed, that in the event circumstances occur causing the Lender to accelerate the maturity of the debt, Lender shall notify KEDC that the maturity of the debt has been accelerated and provide KEDC with the opportunity to purchase the Loan without recourse and without warranty. From the date KEDC receives written notice that the maturity of the debt has been accelerated, KEDC shall have sixty (60) days within which to purchase said Loan in full for cash (herein called the "60-day Purchase Notice"). In the event that KEDC does not purchase the Loan under the 60-day Purchase Notice, Lender shall have the right to proceed to foreclose on the Premises as provided under the terms of the deed of trust.

Notwithstanding anything contained herein, KEDC expressly waives:

1. Any right to require Lender to do any of the following before Lender may pursue its rights under the deed of trust securing the Loan:

    A. exhaust remedies against Borrower or any other person or entity liable for the Loan or any portion thereof;

    B. sue on an accrued right of action in respect of the Loan or bring any other action, exercise any other right, or exhaust any other remedy; or

    C. enforce rights against Borrower's assets or the collateral pledged by Borrower to secure the Loan.

2. Any right related to the timing, manner or conduct of Lender's enforcement of rights against Borrower's assets or the collateral pledged by Borrower to secure the Loan;

3. If Borrower (or any other person or entity) has pledged assets to secure the Loan, any right to require Lender to proceed first against collateral pledged by Borrower (or any other person or entity) before proceeding against the collateral pledged by KEDC;

4. Promptness, diligence, notice of any default, notice of non-payment or non-performance, notice of acceleration or intent to accelerate, demand for payment or performance (although Lender may, but have no obligation to, make demand for payment or performance), acceptance or notice of acceptance of the deed of trust, presentment, notice of protest, notice of dishonor, notice of the incurring by Borrower of additional indebtedness, notice of any suit or action by Lender against Borrower (or any other person or entity), any notice to any person or entity liable for the Loan which is the subject of the suit or action, and all other notices or demands with respect to the Loan, except for the 60-day Purchase Notice set out above.

5. Each of the foregoing rights or defenses, regardless of whether they arise under (a) Rule 31 of the Texas Rules of Civil Procedure, (b) Section 17.001 of the Texas Civil Practice and Remedies Code, (c) Chapter 34 of the Texas Business and Commerce Code, or (d) any other statute or law, common law, in equity, under contract or otherwise, or any amendments,

recodifications, supplements, or any successor statute or law of or to any statute or law.

Any notice, request or other communication required or permitted to be given under this Agreement shall be given in writing by delivering it against receipt for it, by depositing it with an overnight delivery service or by depositing it in a receptacle maintained by the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the respective parties at the addresses shown in this Agreement (and if so given, shall be deemed given when mailed). KEDC's address for notice may be changed at any time and from time to time, but only after thirty (30) days' advance written notice to Lender and shall be the most recent such address furnished in writing by KEDC to Lender. Lender's address for notice may be changed at any time and from time to time, but only after ten (10) days' advance written notice to KEDC and shall be the most recent such address furnished in writing by Lender to KEDC. Actual notice, however and from whomever given or received, shall always be effective when received.

This Agreement shall not be changed orally but shall be changed only by agreement in writing signed by KEDC and Lender. Any waiver or consent with respect to this Agreement shall be effective only in the specific instance and for the specific purpose for which given. No course of dealing between the parties, no usage of trade and no parol or extrinsic evidence of any nature shall be used to supplement or modify any of the terms or provisions of this Agreement.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE APPLICABLE LAWS OF THE STATE OF TEXAS AND THE UNITED STATES OF AMERICA FROM TIME TO TIME IN EFFECT.

Lender's exercise of any right, benefit or privilege under the Credit Documents or any other related papers or at law or in equity shall not preclude the concurrent or subsequent exercise of Lender's other present or future rights, benefits or privileges. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law, the Credit Documents or any related papers or instruments. No failure by Lender to exercise, and no delay in exercising, any right under the Credit Documents or any related papers or instruments shall operate as a waiver thereof.

All covenants, agreements, representations and warranties in this Agreement shall be binding upon any successors and assigns of KEDC.

Wherever the term "including" or a similar term is used in this Agreement, it shall be read as if it were written "including by way of example only and without in any way limiting the generality of the referred to clause or concept." All exhibits described in this Agreement as being attached to it are hereby incorporated into it.

If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and this Agreement shall be liberally construed so as to carry out the intent of the parties to it.

This Agreement embodies the entire agreement and understanding between KEDC and Lender with respect to the subject matter of this Agreement and supersedes all prior conflicting or inconsistent agreements, consents and understandings relating to such subject matter. KEDC acknowledges and agrees that there is no oral agreement between KEDC and Lender which has not been incorporated in this Agreement.

EXECUTED the 24th day of June, 2011.

KEDC:

KENNEDALE ECONOMIC DEVELOPMENT CORPORATION
By:

ROBERT MUNDY, President
Address: **405 Municipal Drive**
Kennedale, TX 76060

LENDER:

LONE STAR BANK, S.S.B.
By:

VAN P. SWIFT, Executive Vice President
Address:
100 South Main Street
PO Drawer A
Moulton, TX 77975

STATE OF TEXAS §
§
COUNTY OF Tarrant §

This instrument was acknowledged before me on June 24, 2011, by **ROBERT MUNDY, President** of **KENNEDALE ECONOMIC DEVELOPMENT CORPORATION**, acting in said capacity.

Notary Public in and for the State of Texas

CELESTE OLIVIA BROWN
Notary Public, State of Texas
My Commission Expires
November 04, 2014

STATE OF TEXAS §
COUNTY OF TRAVIS §
§

This instrument was acknowledged before me on June 27, 2011, by **VAN P. SWIFT, Executive Vice President of LONE STAR BANK, S.S.B.**, acting in said capacity.

Notary Public in and for the State of Texas

CHRISTI C. TENNISON
MY COMMISSION EXPIRES
January 24, 2015

EXHIBIT A

Lot 5 of Replat Block A, Kennedale Retail Center Addition, an Addition to the City of Kennedale, Tarrant County, Texas, according to the Plat thereof recorded under Instrument No. D209321169 of the Plat Records of Tarrant County, Texas.

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Staff Report to the Board of Directors

Date: April 30, 2015

Agenda Item No: REGULAR ITEMS - C.

I. Subject:
Consider authorizing an agreement, which the Executive Director may execute approving the assignment of the Commercial Property Management Agreement with D. Johnson Companies, Inc. to an entity to be designated by Hughes Commercial Texas, subject to approval of form by the KEDC attorney.

II. Originated by:

III. Summary:
See the original Commercial Property Management Agreement to be assigned.

IV. Recommendation:
Approve

V. Alternative Actions:

VI. Attachments:

1.	Commercial Property Management Agreement - TownCenter	Commercial Property Management Agreement.pdf

Commercial Property Management Agreement

This Commercial Property Management Agreement is made and entered into by and between Kennedale Town Center, L.P., ("Agent") by and through David G. Johnson, Manager of KTC GP, L.L.C. the General Partner the Partnership, the principal office of the Partnership being 3977 Fall Creek Road, Spicewood, Texas 78669, and the Kennedale Economic Development Corporation ("Owner"), a nonprofit corporation organized as a Type B Corporation under the Development Corporation Act of 1979, Tex. Loc. Gov't Code Ann. §§ 505.001-505.355 (Vernon Supp. 2008) (the "Act"), for the purposes and consideration below.

WHEREAS, pursuant to a separate Economic Development Agreement, incorporated by reference herein, between Owner and Agent, Agent has agreed with Owner to construct and operate a retail shopping center and professional office complex to be known as the Kennedale TownCenter on certain property owned by Owner;

WHEREAS, pursuant to a separate Ground Lease, incorporated by reference herein, Agent will lease land necessary from Owner in order to develop the Property as Kennedale TownCenter;

WHEREAS, structures currently existing on the property are occupied by tenants;

WHEREAS, Owner has determined that it will serve a public purpose to engage Agent as the property manager for managing and leasing purposes of certain existing structures on the Property and as the property manager to manage and lease the structures that will be built on the Property;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. DEFINITIONS.

"Property" Lots 1R, 2R, 3R, 4R, 5, 6, 7, and 8, BLOCK A, KENNEDALE RETAIL CENTER ADDITION, an Addition to the City of Kennedale, Tarrant County, Texas, as filed in Doc. #D2093211169, Official Records of Tarrant County, Texas, together with all and singular the rights and appurtenances pertaining to such tract of land, including any right, title and interest of the Corporation in and to adjacent streets, alleys or rights-of-way.

2. TERM OF CONTRACT.

a. **Primary Term:** The primary term of this Commercial Property Management Agreement ("Agreement") shall begin on the date of execution and shall end on May 3, 2030 or on the date the purchase option as set out in the Ground Lease is exercised, whichever is sooner ("the Expiration Date").

b. **Automatic Extension:** Unless the aforesaid purchase option is exercised, this agreement will automatically extend on a monthly basis until either party terminates by providing at least 30 days written notice of termination to the other party.

c. **Partial Termination.** Pursuant to the Ground Lease, Agent shall assume responsibility for certain lots within the Property as vertical construction is substantially completed. As a result, there will be no need for the Agent to perform duties after Lessee under the Ground Lease takes control of a particular lot. Therefore, once Lessee becomes responsible for maintenance obligations of a particular lot pursuant to Article 5.01 of the Ground Lease, then this Management Agreement shall terminate with respect to that particular lot and the term Property, as herein defined, shall be deemed to be amended accordingly.

3. **MANAGEMENT SERVICES TO BE PERFORMED.** Owner hereby authorizes Agent to perform, and Agent does hereby agree to perform, in the name of, for the account of, and at the expense of Owner, the following:

a. **General Responsibilities**. Agent shall be responsible for overall management and leasing of the Property as a retail shopping center and professional office complex for the benefit of Owner, except for those responsibilities expressly excluded by the terms of this Agreement.

b. **Lease Execution.** Agent shall negotiate lease agreements in the name of Owner on standard forms approved by Owner with lease provisions as approved by Owner. It is understood that Agent shall execute all leases on behalf of Owner, after prior approval of Owner, which approval shall be deemed granted if Owner has not rejected the lease applicant within 14 days after delivery of applicant information to Owner. Owner shall not unreasonably withhold or delay Owner's approval. Agent shall set written standards for screening and qualifying prospective tenants, and shall screen and qualify all prospective tenants based upon Agent's professional experience.

c. **Statement and Invoices.** Agent shall determine and prepare invoices and/or statements, as applicable, for tenants of the Property for rent, common area maintenance fees, taxes, insurance, assessments, and other charges as shall be due from tenants in accordance with applicable lease provisions.

d. **Collections Agent.** Agent shall collect all rents and other monies due, including percentage rents, from tenants of the Property as and when the same shall become due and payable and give receipts therefor, and in the collection of percentage rents: Agent shall keep records of gross sales of tenants and compute percentage rent due, terminate tenancies, and sign and serve in the name of Owner such notices as are deemed appropriate by Agent. Agent shall, with the prior written consent of Owner, institute and prosecute actions, evict tenants and recover possession of premises occupied by them, and sue in the name of Owner to recover rents and other sums due. When expedient, Agent may settle, compromise and release such actions or suits to reinstate such tenancies, when the total amount sought in such actions or suits is less than $2,000.00.

e. **Operating Account.** Agent shall deposit all receipts collected for Owner in the course of operating the Property, in an FDIC insured operating account ("Operating Account") for the benefit of Owner. Agent may endorse any and all checks drawn to Owner (with the exception of checks for insurance, condemnation, or lawsuit settlements) as may be required for deposit into the Operating Account. Any funds remaining in the Operating Account at the end of each month during the term hereof, after the deduction of a $10,000.00 operating reserve and after the disbursements by the Agent of the expenses and other expenditures authorized hereunder, shall be remitted to Owner. The $10,000.00 operating reserve may be adjusted from time-to-time as mutually agreed by Owner and Agent. Agent will not be held liable in event of bankruptcy, failure or negligence of the depository.

f. **Accounts Payable.** Agent shall pay on behalf of Owner from the Operating Account, all obligations and expenses in operating, managing, leasing and maintaining the Property which are lawfully incurred by or on behalf of the Property, including but not limited to management fees (as described in Paragraph 5.b), leasing fees (as described in Paragraph 5.c) and personal property taxes. In the event the funds in the Operating Account are not sufficient to pay such obligations and expenses, Owner shall at the request of Agent cause to be deposited additional funds necessary to pay such obligations and expenses of the Property. Agent shall pay all invoices in a timely manner that will take full advantage of any discounts offered to the extent that there are monies available in the operating account.

g. **Records.** Agent shall maintain full and detailed books and records at its principal office in relation to its operation, management, and maintenance of the Property. Such books and records shall be kept on a cash basis, as being maintained by Agent for other commercial properties managed by Agent. Owner shall at all reasonable times have access, electronically and in person, to such records for the purpose of review and/or audit. Owner shall have the right to duplicate such records. Any audit by Owner of the Agent's books covering the Property shall be at the expense of Owner, but if Owner's audit discloses a difference equal to or greater than 5% of the Agent's operating numbers, then the expenses incurred by Owner in connection with said audit shall be paid by Agent.

h. **Financial Reports.** Agent shall provide to Owner on or before the 30th day of each calendar month, an Operating Report prepared by Agent setting forth all rents and other income collected and disbursements of all funds related to the operation, management, leasing and maintenance of the Property, for the immediately preceding fiscal month of operation. The fiscal year-end Operating Report for the project shall be due within 120 days following the end of the last month of the fiscal year for the Property. The Operating Report shall compare receipts and disbursements for such prior month and for the year-to-date. A written memorandum is to be provided with the Operating Report setting forth explanations for deviations from budgeted amounts. Agent shall also provide with such report a list of all tenants who are delinquent, a cash reconciliation report, and a leasing report.

i. **Budget.** Agent shall prepare and submit to Owner for approval at least thirty (30) days prior to the start of each year, an annual operating budget (the "Budget") for the Property showing monthly and annual income, operating expense and capital expenditures. The fiscal year for the Property shall end December 31st of each calendar year, unless otherwise agreed in writing by both Agent and Owner. Subject to the terms of this Agreement, approval of the Budget by Owner will constitute Agent's authority to incur the operating expenses and capital expenditures as set forth in the Budget.

j. **Sales and Use Tax Return.** Agent shall prepare all sales and use tax returns, if any, necessary in the operation of the Property, and make all deposits and payments required with respect to such taxes.

k. **Audited Statement.** Agent shall, if requested by Owner and at the cost of Owner, provide annual financial statements audited and certified by a certified public accounting firm satisfactory to Owner.

l. **Employees and Independent Contractors.** Agent shall cause to be hired, supervised, discharged and paid, at reasonable wages, all employees and contractors reasonably necessary for the efficient operation, management, leasing and maintenance of the Property. Agent shall use reasonable care in selection and supervision of such employees and contractors. All persons employed shall be employees of Agent and not of Owner. Agent's management employees, such as Property Manager, Assistant Property Manager, accounting personnel, Building Superintendent, Tenant Services Supervisor, secretarial and clerical staff, whether part-time or full-time employees, utilized in the management of the Property are referred to herein as "Building Management" employees.

m. **Discrimination.** Neither Agent nor any party acting by, through or on behalf of Agent shall discriminate upon the basis of race, sex, color, creed, familial status, religion, disability, or national origin in the sale, lease, or rental or in the use or occupancy of the Property of any improvements erected or to be erected thereon, or any part thereof, or in the management of the Property.

n. **Utilities.** Agent shall negotiate and enter into contracts in the name of Owner for electricity, gas, fuel, water, telephone, window cleaning, refuse handling, janitorial service, extermination service and other services required in the operation and maintenance of the Property. All contracts shall be on an "arms length" market rate basis, and shall not be surcharged by Agent. Owner shall assume the obligation of any contract so entered into and outstanding at the termination of this Agreement. All service and maintenance contracts initiated by Agent shall be negotiated to include thirty (30) days notice of termination clause without penalty.

o. **Maintenance.** Agent shall maintain or cause to be maintained the Property and common areas thereof, including sidewalks, signs, parking lots and landscaping; to make or cause to be made and supervise minor repairs (under $ 2,500.00) and minor alterations or renovations (under $ 2,500.00); to purchase supplies required for the operation and maintenance of the Property, and pay all bills therefor from Owner's funds, and to report to Owner conditions related to the Property requiring the attention of Owner.

Agent shall purchase all supplies, materials and equipment as Agent may determine advisable. Agent agrees to secure the approval of Owner on all expenditures in excess of $ 2,500.00 for any one item, unless said expenditure was set forth in the Budget, or for an emergency repair necessary to the tenants per the lease, or for the protection of human life.

p. **Promotion.** Agent may conduct or cause to be conducted a promotional program as may be appropriate and customary for the tenants within the Property with the consultation and prior approval of Owner.

q. **Advertisement.** Agent shall advertise the Property or portions thereof, as available for rent, and prepare other forms of advertising relating to said rental activity.

r. **Insurance.** Agent shall, if requested by Owner, (1) determine all insurance coverage reasonably required or desirable for the Property, and on behalf of Owner negotiate and procure such insurance coverage; (2) upon receiving the prior written consent of Owner, institute and prosecute claims under all such coverage; (3) upon receiving the prior written consent of Owner, settle and compromise such claims; (4) procure periodic insurance appraisals as may be required; and (5) make reports, upon Owner's request, but not less than annually, to Owner of the kinds and amounts of insurance coverage in force, the expiration dates thereof, and the premium costs thereof.

At all times during the term of this Agreement, Owner shall keep in full force and effect one or more policies of commercial general liability and property damage insurance with respect to the Property, and the business conducted by Owner, or Agent on behalf of Owner, upon the Property. The limits of liability coverage shall not be less than $500,000.00 per person and $1,000,000.00 per accident and the property damage liability coverage shall not be less than $1,000,000.00. The commercial general liability policy shall name Owner as insured and Agent as additional insured, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the Agent at least ten (10) days prior written notice.

At all times during the term of this Agreement, the Agent shall keep in full force and effect one or more policies of commercial general liability insurance covering the business conducted by Agent on behalf of Owner upon the Property. The limits of liability coverage shall not be less than $500,000.00 per person and $1,000,000.00 per accident and the property damage liability coverage shall not be less than $1,000,000.00. The commercial general liability policy shall name Agent as insured and Owner as additional insured, and shall contain a clause that the insurer will not cancel or change the insurance without first giving Owner at least ten (10) days prior written notice.

Agent shall cooperate with and provide reasonable access to the Property to agents of any and all insurance companies and/or insurance brokers or agencies who may, from time to time, be involved with the issuance of insurance policies or with inspections of the Property in connection with insurance policies then in force.

Agent shall make, if requested by Owner and in the name of Owner, payments of insurance premiums.

s. **Agent's Office.** Agent shall maintain a suitable business office with such management, secretarial and bookkeeping personnel as may be required to maintain such office and the books and records to adequately perform the terms of this Agreement and reflect the transactions incidental to the operation and maintenance of the Property.

t. **Commercially Reasonable Efforts.** Agent shall use commercially reasonable efforts in the exercise of the power and duties conferred and assumed under this Agreement and in the operation, management and maintenance of the Property for the period and upon the terms herein provided.

u. **Operating Account.** Agent shall operate the Property and make expenditures pursuant to this Agreement in a manner in accordance with the Budget submitted to and approved by Owner. Except for emergency expenditures, any expenditures or commitments which are not in accordance with the approved Budget must have approval from Owner.

v. **Taxes and Assessments.** The parties have agreed in the Ground Lease on the respective responsibility for property taxes and assessments. Property taxes or assessments applicable to the Property may be passed along to the tenants of the Property as a "triple-net" expense. Agent shall promptly forward to Owner or the appropriate tax collecting agency any and all Assessments or property taxes related to the Property which it collects on behalf of the Owner or the lessee under the Ground Lease..

w. **Compliance With Laws.** Agent shall use commercially reasonable efforts to cause to be done in or about the Property all acts and things which are necessary in order to comply with federal, state or municipal order, rules, regulations, ordinances, or statutes affecting the Property and orders of any board of fire underwriters or other similar body, subject to the limitations contained hereinabove regarding maximum amounts or contracts requiring Owner's prior written approval. Agent shall promptly notify Owner of all notices it receives regarding governmental requirements affecting the Property. Agent shall obtain and maintain current all licenses and/or permits as shall be required in the operation and maintenance of the Property.

x. **Professional Assistance.** Agent shall with prior consultation and written approval of Owner engage attorneys, accountants, ad valorem tax consultants, data processing personnel, architects, engineers or other persons furnishing services reasonably required in connection with the discharge of Agent's duties hereunder, on behalf of Owner, and pay the reasonable charges for all such services from Owner's funds.

y. **Service Notice.** Agent shall advise and promptly send copies to Owner of the service upon Agent of any summons, subpoena, or other like legal document, including any notices, letters, or other communications setting out or claiming an actual or alleged potential liability of Owner or Agent in managing or operating the Property. Agent shall advise and send copies to Owner of any letter or notice by the tenant that may lead to cancellation, voidance or termination of the lease or any part thereof.

Agent shall (1) promptly notify Owner of any notice of violation of any governmental requirement relating to the Property or of any defect in the Property; (2) promptly notify Owner of any fire or other damage to the Property and to complete customary loss reports in connection with such damage to the Property; (3) promptly file such reports with the insurers and Owner; and (4) promptly notify Owner's general liability insurance carrier and Owner of any personal injury or property damage occurring to or claimed by any tenant or third party on or with respect to the Property.

z. **Agent's Signage.** Agent shall be permitted to install, at its sole cost and expense, sign(s) identifying Agent's management and/or leasing of the Property. The location of said sign(s) shall be at a place mutually acceptable to Owner and Agent.

aa. **Tenant Improvements.** Agent shall manage and supervise construction of tenant improvements.

bb. **Security Deposits.** Agent will collect the security deposits, but will transfer such deposits to Owner to maintain. Agent will notify Owner when a security deposit needs to be returned or used for lawful deductions.

4. **<u>EXCLUDED SERVICES.</u>** Agent shall not be required under the terms and provisions of this Agreement to render any of the following services:

a. The planning, developing, financing or supervision of construction for any additional building or land which may hereafter be added to or become a part of the Property from time to time; however, such service may be performed by Agent subject to written agreement between Owner and Agent for such additional services at the rate of two percent (2 %) of expenditures.

b. Services requiring time in excess of the stated duties required hereunder, such as in connection with litigation, arbitration or mediation other than suits for the collection of rent or the enforcement of leases, whether such litigation, arbitration or mediation shall be instituted by Owner, by tenant or others.

5. **<u>AGENT'S COMPENSATION.</u>**

a. **Expenses and Expenditures.** Agent will be reimbursed by Owner from the Operating Account each month for the following listed expenses and expenditures incurred or accrued by Agent in the operation of the Property:

i. All direct labor and contract costs, and all materials, supplies, equipment, tools, components, and related systems and parts with respect to the maintenance, repair, improvement and operation of the Property.

ii. Operating costs and expenses of supplies, materials, equipment, Property stationery, forms, books and records, all with respect to the Property or other locations approved by Owner, and audited financial statements and certifications thereof as may be required by this Agreement.

iii. All necessary equipment, tools and supplies, whether purchased, leased or otherwise acquired for the performance by Agent of the duties required hereunder for the operation of the Property pursuant to this Agreement.

iv. All other ordinary and necessary expenses or expenditures paid or accrued in the operation of the Property pursuant to the Budget.

v. All monies which Agent may elect to advance for the Owner for expenses which Owner is required to pay under this Agreement; however, Agent will not be obligated to make such advancements.

b. **Management Fee**. For the services rendered by Agent pursuant to this Agreement, and in addition to other fees and reimbursements to Agent as set forth in this Agreement, Owner shall pay Agent monthly a management fee in an amount of $500.00 per month. All such fees are due and payable by the last day of each month.

Agent shall have the authority to make such payments on Owner's behalf from the Operating Account, so long as such payments are made in accordance with the terms and conditions of this Agreement.

c. **Leasing Commissions.** This Paragraph shall apply exclusively to the existing Buildings which are currently on the Property as of the date this contract is signed and shall not apply to any newly constructed Building to be built by Agent pursuant to the Economic Development agreement. Owner grants to Agent the exclusive right to lease the Property described by this Paragraph and Owner shall compensate Agent for its services as Leasing Agent in accordance with the following:

i. Commissions on Initial Leases - Commission equal to Four percent (4%) of the Aggregate Total Base Rental provided in the Lease Agreement for the initial term shall be paid to Agent where Agent was the "procuring cause" of the initial lease for Buildings.

ii. Commissions on Lease Renewals - Commission equal to Two percent (2%) of the Aggregate Total Base Rental provided in the Agreement for the renewal term shall be paid to Agent where an existing tenant renews a lease for its existing premises, including the exercise of an option to renew.

iii. Commissions on Tenant Expansion - For the purpose of determining compensation under this Agreement, tenant expansions shall be considered as an initial lease hereunder; however, such commission shall only be applicable for the net increase in tenant's square footage. Furthermore, the same method of determining Agent's commission shall be used if an existing tenant relocates within the Property for the purpose of expanding.

iv. Commissions on Month-To-Month Lease - A commission equal to one-half (½) of the first month's rental, when a tenant initially occupies the premises on a "month-to-month" basis; however, such commission shall not be less than $250.00.

v. Commission When Other Brokers Are Procuring Cause - A commission equal to Six percent (6%) of the Aggregate Total Base Rental provided in the Lease Agreement for the initial lease term shall be paid to Agent when an outsider broker (i.e. not an employee of Agent) is the "procuring cause" of the lease as defined by the laws within the state the Property is located. Agent shall indemnify Owner against any commission liability to such outside broker. A commission equal to Four percent (4%) of the Aggregate Total Base Rental provided in the Lease Agreement for the renewal term shall be paid to Agent when an outside broker has been appointed as the tenant's exclusive agent for the renewal and Agent shall indemnify Owner from any commission claims from such outside broker with respect to the renewal.

vi. Definition of Aggregate Total Base Rental - Aggregate Total Base Rental shall mean all guaranteed minimum rent provided for in the primary term of the lease. Percentage rental and additional rent is excluded from this definition.

vii. Leasing Commissions - Leasing commissions due Agent will be earned and paid one-half upon signing of the lease and one-half upon tenant's opening for business.

viii. Leasing Expenses - In addition to the commissions provided herein, Owner shall pay to or reimburse Agent for the following expenses:

1. Advertising and promotion expenses paid by Agent as set forth in the approved Budget, or as otherwise approved by Owner.

2. Space planning expenses paid by Agent as set forth in the approved Budget, or as otherwise approved by Owner.

3. Special events and promotions, subject to prior approval by Owner.

4. Any other special marketing projects which are approved by Owner.

5. Any legal expenses incurred in connection with lease preparation and negotiations which are pre-approved by Owner.

6. Travel expenses (excluding entertainment expenses) which are pre-approved by Owner.

6. **AUTHORITY.** Agent is vested with such general authority and powers as may be necessary or advisable to carry out the intent of this Agreement.

7. **INDEMNIFICATION.** Agent agrees to protect, defend, indemnify and hold Owner and the Property harmless from and against any and all loss, cost, damage, liability and expense (including court costs and reasonable attorneys' fees) arising out of (i) obligations or liabilities of Owner incurred by Agent or any of its officers, employees or agents, other than those expressly permitted hereby to be so incurred by Agent, or (ii) any negligence, willful misconduct or fraud of Agent or any of its officers, employees, or agents.

8. **REIMBURSEMENT FOR CLAIMS.** Owner agrees to reimburse Agent for Agent's reasonable legal expenses incurred defending legal claims from third parties that may arise as a result of Owner's performance of this Agreement, provided that such claims are not covered by Owner's insurance policies or by the City's insurance policies. In the event that such legal expenses exceed or are anticipated to exceed $10,000, then Agent will notify Owner, and the parties will reasonably cooperate in determining a legal strategy with respect to such claim.

9. **TERMINATION OF AGENT.**

a. **Termination By Either Party.**

i. Either party shall have the right to terminate this Agreement upon thirty (30) days prior written notice.

ii. Either party shall have the right to terminate this Agreement upon ten (10) days prior written notice in the event of a sale or exchange of all or any portion of the Property, or substantial destruction of the Property.

iii. If either party shall file a petition in bankruptcy, or be granted relief under the Bankruptcy Code of the United States of America, or make an assignment for the benefit of creditors or like arrangement or composition or file a petition in the federal court for reorganization or otherwise seek relief under any bankruptcy or insolvency law, federal or state, or be placed in the hands of a receiver or trustee, then this Agreement is terminated.

iv. If either party fails to comply with any rule, order, determination, ordinance, or law of any federal, state, or municipal authority, the other party may terminate this Agreement upon ten (10) days prior written notice.

b. **Termination by Owner.** Owner shall have the right to terminate this Agreement in the event of Agent's breach of its obligations under this Agreement which shall not have been cured within 7 days after Agent's receipt of Owner's written notice thereof. Owner shall have the right to terminate this Agreement immediately upon giving written notice to Agent in the event of gross negligence, willful misconduct or fraud by Agent in the performance of any provision of this Agreement. In such event, all obligations of Owner to Agent shall immediately terminate, and Agent shall be deemed to have forfeited any outstanding fees and commissions earned by Agent, including reimbursements of all amounts provided herein, prior to and including the effective date of termination. Owner shall have the right to terminate this Agreement immediately in the event of an uncured Event of Default by Agent pursuant to the Economic Development Agreement or the Ground Lease.

c. **Termination By Agent**. Agent shall have the right to terminate this Agreement in the event of Owner's breach of its obligations under this Agreement which shall not have been cured within 7 days after Owner's receipt of Agent's written notice thereof.

d. **Agent's Cooperation Upon Termination.** Agent shall cooperate with Owner in notifying all tenants of the Property of the expiration and termination of this Agreement by written notice sent by certified mail, return receipt requested, and Agent shall cooperate with Owner to accomplish an orderly transfer of the operation and management of the Property to a party designated by Owner. Agent shall, at its sole cost and expense, promptly remove from the Property all signs indicating that Agent is the managing agent. Agent shall provide a final accounting and shall transfer all books, records, leases, keys and other materials belonging to Owner, and shall, within thirty (30) days after termination, deliver a list of prospective tenants whom Agent (or others working by or through Agent) has introduced to the Property (the "Qualified Prospects"). If the Qualified Prospects have demonstrated an interest to lease any portion of the Property, then Agent shall be entitled to the scheduled commission for any lease executed by Owner and any Qualified Prospect within one hundred eighty (180) days after termination of this Agreement, payable as provided above, unless this Agreement is terminated by Owner in accordance with Paragraph 9.b above, in which case no commission shall be due to Agent.

10. CONFIDENTIALITY. Agent shall hold in strict confidence all information related to Owner's business concerning the Property furnished to or obtained by Agent in the form of information gathered from Owner's books or records. In no event shall Agent issue or make any statement on behalf of Owner, to the press or other media, without Owner's prior approval in each and every instance. Nothing herein shall prevent Agent from disclosing information that is subject to disclosure through open records or open meetings laws of the state of Texas.

11. **ASSIGNMENT.** Agent may not assign its interest in this Agreement without the prior written consent of the Owner, except as may be otherwise specifically provided herein. By its signature below, Owner consents to the assignment of this Agreement from the Agent to D. Johnson Companies, Inc.

12. **OWNER'S CREDITORS.** Agent is not and never shall be liable to any creditor of Owner.

13. **NO JOINT VENTURE OR PARTNERSHIP.** Nothing contained in this Agreement or in the relationship of Owner and Agent shall be deemed to constitute or be construed to be or create a partnership or joint venture between Owner and Agent.

14. **NO WAIVER OF RIGHTS.** Failure by Owner or Agent at any time to exercise any right or remedy herein granted or established by law shall not be deemed to operate as a waiver of its right to exercise such right or remedy at any other future time.

15. **COMPLIANCE WITH LAW.** Owner and Agent shall comply with all statutes, ordinances, laws, rules and orders of any federal, state, or local government or department or office thereof having jurisdiction over the Property respecting the use, operation, maintenance and construction thereof.

16. **GOVERNING LAW.** If any one or more of the covenants, agreements or provisions of this Agreement shall be determined by a court of competent jurisdiction to be invalid, the invalidity of such covenants, agreements and provisions shall in no way affect the validity or effectiveness of the remainder of this Agreement and this Agreement shall continue in force to the fullest extent permitted by law. This Agreement shall be governed by the laws of Texas and all parties hereto submit to mandatory jurisdiction in Tarrant County, Texas.

17. **NOTICES.** Any notice which Agent may desire or be required to give to Owner shall be deemed sufficiently given or rendered if in writing, delivered to Owner by courier, electronic mail or facsimile, with evidence of delivery, or by certified or registered mail, return receipt requested and addressed to Owner as follows:

OWNER:

KENNEDALE ECONOMIC DEVELOPMENT CORPORATION
Attn: President
405 Municipal Drive, Kennedale, TX 76060
FAX:817-478-7169 Tel: 817-985-2102
E-Mail: bhart@cityofkennedale.com

Any notice which Owner may desire or be required to give to Agent shall be deemed sufficiently given or render if, in writing, delivered to Agent by courier, electronic mail or facsimile, with evidence of delivery, or by certified or registered mail, return receipt requested and addressed to Agent as follows:

AGENT:

Kennedale Town Center, L.P.
Attention: David G. Johnson
3977 Fall Creek Road
Spicewood, Texas 78669,

18. **ATTORNEYS FEES.** In the event of any dispute between the parties hereto arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover from the other its reasonable attorneys fees and costs incurred in connection therewith.

19. MULTIPLE COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original constituting one and the same instrument.

20. ENTIRE AGREEMENT. This Agreement and the exhibits attached hereto constitute the entire agreement of the parties hereto regarding the subject matter hereof, and may not be amended or modified except by written instrument signed by the parties hereto.

21. BINDING EFFECT. This Agreement shall be binding upon the parties hereto, their legal representatives, successors and assigns, and may not be changed except by agreement in writing.

22. INTERMEDIARY DISCLOSURE. An Intermediary Disclosure Addendum is attached hereto and incorporated herein and Owner authorizes Agent to act as an intermediary.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year written below by their officers thereunto duly authorized.

EXECUTED this 3 day of May, 2010.

OWNER: KENNEDALE ECONOMIC DEVELOPMENT CORPORATION

By: ______________________
President

ATTEST:

By: Kathy Turner
Secretary

AGENT: KENNEDALE TOWN CENTER, L.P.

By: ______________________
David G. Johnson, Manager of KTC GP, L.L.C.,
General Partner of Kennedale Town Center L.P.

INTERMEDIARY DISCLOSURE ADDENDUM

A broker who acts as an intermediary between parties in a transaction:

1. may not disclose to the buyer or tenant that the seller or landlord will accept a price less than the asking price unless otherwise instructed in a separate writing by the seller or landlord;

2. may not disclose to the seller or landlord that the buyer or tenant will pay a price greater than the price submitted in a written offer to the seller or landlord unless otherwise instructed in a separate writing by the buyer or tenant;

3. may not disclose any confidential information or any information a party specifically instructs the real estate broker in writing not to disclose unless otherwise instructed in a separate writing by the respective party or required to disclose such information by the Texas Real Estate License Act or a court order or if the information materially relates to the condition of the property;

4. shall treat all parties to the transaction honestly; and

5. shall comply with the Texas Real Estate License Act.

KENNEDALE
Kennedale Economic
Development Corporation
www.cityofkennedale.com

Staff Report to the Board of Directors

Date: April 30, 2015

Agenda Item No: REGULAR ITEMS - D.

I. Subject:
Consider authorizing an agreement, which the Executive Director may execute approving the assignment of the Economic Development Agreement for Development of Kennedale TownCenter (and the First Amendment and Second Amendment to Economic Development Agreement for Development of Kennedale TownCenter) from Kennedale Town Center, L.P. to an entity to be designated by Hughes Commercial Texas and providing for the deletion of "Chicken Express" in section 7g.

II. Originated by:

III. Summary:
See the original Economic Development Agreement for the Development of Kennedale TownCenter to be assigned.

IV. Recommendation:
Approve

V. Alternative Actions:

VI. Attachments:

1.	Economic Development Agreement for Kennedale TownCenter	TownCenter Development-RD-10 3-3-10 CLEAN.doc

ECONOMIC DEVELOPMENT AGREEMENT
FOR DEVELOPMENT OF KENNEDALE TOWNCENTER

This Economic Development Agreement ("Agreement") is made and entered into by and between Kennedale Town Center, L.P., ("the Partnership") acting by and through David G. Johnson, Manager of KTC GP, L.L.C. the General Partner of the Partnership, the principal office of the Partnership being 3977 Fall Creek Road, Spicewood, Texas 78669, and the Kennedale Economic Development Corporation ("Corporation"), a nonprofit corporation organized as a Type B Corporation under the Development Corporation Act of 1979, Tex. Loc. Gov't Code Ann. §§ 505.001 – 505.355 (Vernon Supp. 2008) ("Act"), for the purposes and considerations stated below. For convenience, the Partnership and the Corporation may be hereinafter referred to collectively as "parties" and individually as a "party."

RECITALS:

WHEREAS, the Corporation has purchased certain real property located within the corporate limits of the City of Kennedale, Texas ("City") (hereinafter referred to as the "Property");

WHEREAS, the Corporation has determined and found that the Project and Improvements, as hereinafter defined and described, and the expenditures of the Corporation set forth in this Agreement are suitable or required for the development of a new business enterprise and fall within the definition of a "Project" as defined in the Act;

WHEREAS, the Corporation, after diligent search for a development partner spanning in excess of two years, requested the Partnership to develop the Property as a multi-use development to be known as Kennedale TownCenter that will include office and retail uses, as depicted in the approved plan showing the concept and phasing of the development, attached hereto as Exhibit "A" (the "Concept / Phasing Plan");

WHEREAS, the Corporation, having determined that substantial economic benefit and the creation of new opportunities of employment will accrue to the City as a result of the Partnership's development and operation of the Improvements, desires to have the Partnership construct the Improvements and operate and/or lease the Property for the operation of the Kennedale TownCenter, a retail shopping center and professional office complex.

WHEREAS, the Corporation has determined that the Partnership's development and operation of the Improvements will eventually, after exercise of the option to purchase, increase the taxable value of the Property and will directly and indirectly result in the creation of additional jobs throughout the City, the value of which will outweigh the amount of expenditures required of the Corporation under this Agreement;

WHEREAS, the Corporation, in order to encourage the development and operation of the Property, desires to lease the Property to the Partnership to develop as hereinafter set forth, and to extend an option to the Partnership to purchase the Property upon completion of the Project or as phases of the Project are completed, in the discretion of the Corporation;

WHEREAS, the Partnership desires to obtain and the Corporation shall provide up to three hundred fifty (350) parking spaces on the Property and the adjacent Municipal Drive for use by TownCenter visitors and employees, and City of Kennedale municipal complex employees and visitors;

WHEREAS, the Partnership desires to obtain and the Corporation agrees to provide certain additional Public Improvements such as landscaping, irrigation, parking lot lighting, street access improvements, and utility extensions as hereinafter described;

WHEREAS, the Corporation, in order to accomplish the purposes of this Agreement, intends to utilize the resources of the Kennedale TownCenter Development District ("District") as necessary or appropriate;

WHEREAS, the Partnership acknowledges and accepts the benefits to be derived from the construction of Public Improvements and the imposition of taxes, assessments and impact fees by the District;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Authorization.**

This Agreement is authorized by Tex. Loc. Gov't Code Ann. Chapter 505.

2. **Definitions.**

"Approved Plans" means the plans and specifications for the Partnership Improvements prepared by, or on behalf of, the Partnership and to be approved by all applicable governmental authorities and the EDC Board. In the event the plans and specifications comply with the applicable Planned Development approved for the Property, then no additional approvals by the EDC Board shall be required.

"City" means the City of Kennedale, Texas.

"Construction Cost" means the costs of all hard construction, construction equipment charges, the costs of construction materials, building systems installation and repairs, contractor fees, architectural and engineering costs, impact fees, and fees attributable to the construction of the Improvements plus tenant finish-out of the improvements located on the Property. Construction Cost shall also include demolition of any existing improvements. Construction Cost does not include marketing fees.

"Corporation" means the Kennedale Economic Development Corporation.

"District" means the Kennedale TownCenter Development District, created as a

Municipal Management District by the Texas Legislature.

"EDC Board" means the board of directors of the Corporation.

"Existing Building 1 Improvements" means addition of a façade to the Existing Building 1 shown on Exhibit "A".

"Force Majeure" means an event or circumstance which prevents one party from performing its obligations under this Agreement, which event or circumstance is not within the reasonable control of, or the result of the negligence of, the party claiming Force Majeure, and which, by the exercise of due diligence, the party claiming Force Majeure is unable to overcome or avoid or cause to be avoided. Force Majeure includes, but is not limited to: acts of God, fire, flood, hurricane, tornado, earthquake, war, and terrorism.

"Ground Lease" means that certain 45 year ground lease pursuant to which the Corporation leases portions of the Property to the Partnership, the form of which is attached hereto as Exhibit "B" and incorporated herein for all purposes. The Ground Lease will contain a Purchase Option granting the Partnership the right to purchase the Property at the completion of the Project, or in the discretion of the Corporation, portions of the Project as they are completed. Any sale of the Property pursuant to the Purchase Option will exclude mineral interests which will be retained by the Corporation, but will contain a surface waiver preventing the surface of the Property from being used for mineral exploration or production.

"Improvements" means collectively, the Partnership Improvements, the Public Improvements, the Existing Building 1 Improvements, the Municipal Drive Improvements and the Lot 8 Improvements.

"**Lot 8 Improvements**" means the building to be relocated and/or constructed and the Public Improvements and public market area to be constructed on Lot 8, as depicted on Exhibit "A", by the Corporation.

"Municipal Drive Improvements" means the parking improvements to Municipal Drive (which is owned by the City) as depicted on Exhibit "A".

"Partnership Improvements" means the construction of six additional structures labeled on Exhibit "A" as Buildings 2 through 7. The sizes and phasing of such buildings is set forth in Paragraph 4(b) below.

"Partnership" means Kennedale Town Center, L.P. a Domestic Limited Partnership organized under the laws of Texas.

"Project" means the lease by the Partnership of the Property pursuant to the Ground Lease and the option to purchase the Property by the Partnership, in accordance with the terms of the Purchase Option; the development of the Property by the Partnership for use as a retail shopping center and professional office complex; and the construction of Improvements to be made by the Partnership and Corporation; all as more fully set forth in this Agreement.

"Property" means Lots 1R, 2R, 3R, 4R, 5, 6, 7, and 8, BLOCK A, KENNEDALE RETAIL CENTER ADDITION, an Addition to the City of Kennedale, Tarrant County, Texas, as filed in Doc. #D2093211169, Official Records of Tarrant County, Texas, together with all and singular the rights and appurtenances pertaining to such tract of land, including any right, title and interest of the Corporation in and to adjacent streets, alleys or rights-of-way.

"Property Management Agreement" means the agreement, in the form attached hereto as Exhibit "C", between the Partnership and the Corporation, in which the Partnership agrees to provide management and leasing services to the Corporation for portions of the Property.

"Public Improvements" means the improvements to be constructed by or on behalf of the Corporation incidental to the Improvements to be constructed by the Partnership, including but not limited to street access improvements, sidewalks, landscaping, irrigation, parking lot lighting, parking, and utility extensions. This definition does not prohibit the parties from mutually agreeing to allow the Partnership to bear the costs of constructing improvements which are defined as Public Improvements, as set forth in this Agreement.

"Purchase Option" means the right of the Partnership to purchase the Property pursuant to the terms and conditions contained in the Ground Lease.

"Substantially Complete" means the date the City issues a certificate of occupancy for any Improvements.

3. **Term.**

This Agreement shall be effective as of the date of execution by the parties. This Agreement will terminate on December 16, 2054 or as otherwise provided in this Agreement. Notwithstanding the above, if either party is not in compliance with the covenants described in this Agreement as of the date of termination, then this Agreement shall remain in full force and effect for the purpose of enforcing the terms of this Agreement.

4. **Covenants of the Partnership.**

(a) In consideration of the Corporation agreeing to make certain Public Improvements on the Property, to lease portions of the Property to the Partnership at a rate temporarily below fair market value in accordance with the Ground Lease, and to grant the Partnership a Purchase Option in accordance with the terms of the Ground Lease, the Partnership agrees to:

(1) Engage civil engineers and other qualified consultants for platting, zoning, geotechnical, utility, drainage, access, landscape and irrigation, and parking lot design on the Property as necessary and desirable to allow development of the Improvements in accordance with the Approved Plans and the Concept / Phasing Plan. The Partnership agrees and shall include in any agreement with the engineer that the Corporation shall be entitled to receive all

work product of the engineer related to the Project and shall be entitled to use all work product of the engineer for any purpose related to the Project.

(2) Engage an architect to design the Concept/Phasing Plan.

(3) Provided the Corporation is in compliance with Section 7 of this Agreement, commence façade improvements (in accordance with the Approved Plans) of Existing Building 1 when the funding is made available by the Corporation, and Substantially Complete construction of the façade improvements within 180 days of commencement.

(4) Substantially Complete the construction of each building in accordance with the Approved Plans and the Phasing Chart contained in Par. 4(b) below. Construction shall include demolition of certain structures currently on the Property, but no demolition shall occur until the necessary improvements have been completed and are prepared to allow tenants currently in the existing structures to be relocated to those improvements.

(5) When the Corporation notifies the Partnership that it has funds available for the Lot 8 Improvements and Municipal Drive Improvements, then the Partnership will construct such improvements if requested. In such event, the Partnership will be paid a fee equal to 10% of the total cost of the Lot 8 Improvements and Municipal Drive Improvements.

(6) Construct the Improvements in compliance in all material respects with all applicable local ordinances and state and federal law.

(7) Operate the Improvements or lease the Improvements for use as a retail space or office space pursuant to the Property Management Agreement for the entire term of this Agreement.

(8) Enter into and comply with obligations under the Property Management Agreement with the Corporation to manage the existing structures on the Property and the Improvements, once built. The Partnership agrees to use all commercially reasonable efforts applicable to projects similar in nature, market type, and market share to the Project to keep the lease portions of the Property as fully leased as is commercially reasonable, at all times.

(9) Comply with all obligations imposed under the Ground Lease.

(10) Construct the Partnership Improvements at the Partnership's sole cost except as provided in Section 7, and title to the Improvements will remain in the name of the Corporation unless transferred to the Partnership in accordance with the Ground Lease.

(11) Execute a mutually agreeable reciprocal access easement on the Property so that all phases of the Project will have access to the Public Improvements.

(12) Obtain and maintain insurance in the minimum amounts specified in the Ground Lease, and naming the Corporation as an additional insured, covering damages and

liabilities that may arise from the construction, use or occupancy of the Property by the Partnership and its contractors.

(b) The construction of the Improvements shall take place pursuant to the following Phasing Chart, and in compliance with the minimum sizes and estimated Construction Costs as shown. The Corporation acknowledges that numerous factors and market conditions make it difficult to predict a construction schedule and completion date for each Improvement. The Partnership intends to construct the Partnership Improvements as the leasing market dictates, while using commercially reasonable efforts to lease space in the buildings. However, the Corporation requires the Partnership exercise due diligence in constructing the Improvements within a reasonable time frame. While the Corporation is not imposing strict timelines for completion dates for the Improvements, the Corporation and the Partnership agree to the construction deadlines, as follows and further agree that unless properly extended, failure to comply with the deadlines shall be an event of default. The construction deadline on a building can be extended by the Partnership paying "Extension Rent". "Extension Rent" is rent at the fair market value (as determined pursuant to the Ground Lease), on the lot on which construction has not commenced pursuant to the schedule below. Extension Rent shall be due and payable on the first day of each month during the term of the Ground Lease, pursuant to the same terms set forth in the Ground Lease for payment of rent. Extension Rent shall be due until commencement of construction on that lot begins, at which time the Extension Rent requirement shall cease to be due and payable on the lot on which construction has commenced. If Extension Rent is timely paid, the Partnership shall not be considered in default. Further, the Partnership agrees that each building will be substantially complete within eighteen (18) months of commencement of construction and available for rent and that failure to finish each building within the specified eighteen months shall be an event of default. The order of buildings to be constructed may be substituted if market conditions dictate, except that Building 6 cannot be completed if the view corridor, required by existing leases, is still in place.

Improvements Phasing Chart

Phase	Building to be Constructed	Minimum Size (sq ft)	Commencement of Construction	Estimated Construction Costs
1	(Existing Building 1)	N/A	N/A	N/A
2	5	8,820	2011	$882,000
3	7	7,620	2012	$762,000
4	4	4,500	2013	$450,000
5	3	9,810	2014	$981,000
6	2	6,960	2015	$696,000
7	Section House	N/A	N/A	N/A
8	6	6,600	2022	$660,000

(c) For the consideration recited above in Paragraph 4(a), in the event the Partnership obtains financing from any source to construct the Partnership Improvements, the Partnership further covenants and agrees that no lien will be allowed to attach to the Property nor will the Partnership otherwise encumber the Property. Any documents executed by the Partnership that allow for the creation of a lien shall provide that such lien may only attach to the Partnership's leasehold interest and/or rents due to the Partnership pursuant to the Ground Lease and shall in no event apply to the Property or the Corporation's interest in this Agreement. The Partnership further agrees that no lien that attaches to the leasehold estate shall be obtained in excess of the cost of designing and constructing the Partnership Improvements.

(d) The Partnership additionally covenants and agrees that it will be solely responsible and liable for any labor or materials furnished for the construction of the Partnership Improvements and that no mechanic's or other lien for any such labor or materials shall attach to or affect the Property or the estate or interest of the Corporation in and to the Property. The Partnership shall provide in all agreements executed by any contractor or subcontractor and all others who will furnish plans, labor or materials in connection with work on the Property that any mechanic's or materialmen's lien which may arise from such person furnishing plans, labor, or materials with respect to any such work shall apply only to the Partnership's leasehold interest hereunder and shall in no event apply to the Property or the Corporation's interest in this Agreement.

(e) Whenever and as often as any lien shall be filed against the Property based upon any act or interest of the Partnership or of anyone claiming through or against the Partnership, the Partnership shall take such action by bonding, deposit or paying any sum of money required to discharge any such lien. In such event, and provided the lien has not been discharged within thirty (30) days after notice from the Corporation to the Partnership, the Corporation may pay the amount of such lien or discharge the same by deposit, and the amount so paid or deposited shall be immediately due and owing by the Partnership to the Corporation. If such payment is demanded of the Partnership by the Corporation and the payment is not made, the failure to pay shall be an event of default.

5. **Covenant Running with the Land.**

As long as this Agreement is in effect, all rights, covenants, restrictions, burdens, privileges and charges set forth in this Agreement shall exist. Any person who, within the restrictions of this Agreement, shall assume or become vested of the leasehold estate of the Partnership hereunder, shall be bound by and liable upon all such rights, covenants, restrictions, burdens, privileges and charges set forth in this Agreement.

6. **Improvements.**

The Partnership shall be solely responsible for the design and construction of the Partnership Improvements and shall comply with all zoning regulations, subdivision regulations, building codes and other ordinances of the City applicable to the Partnership Improvements and the Approved Plans.

7. **Covenants of the Corporation.**

(a) The Corporation agrees to reimburse the Partnership or pay directly to the provider, expenses incurred by the Partnership to engage civil engineers and other qualified consultants for platting, zoning, geotechnical, utility, drainage, access, landscape and irrigation, and parking lot design on the Property (all as required pursuant to Par. 4(a)(1) above) in an amount not to exceed $50,000.

(b) The Corporation agrees to compensate the Partnership for services as construction manager in the Existing Building 1 Improvements in an amount of 10% of the actual costs of said improvements (including the Public Improvements associated therewith) to be paid in not more than 6 monthly installments as work progresses upon the submission to the Corporation of satisfactory documentation evidencing the expenditures for the construction of such improvements, provided the Partnership is in compliance with Section 4 of this Agreement.

(c) Provided the Partnership is in compliance with Section 4 of this Agreement, the Corporation agrees to construct certain Public Improvements on the Property. The Corporation may construct Public Improvements related to the construction of the Improvements in phases, within timeframes mutually agreeable to the parties which shall take in to account the construction schedule to be determined by the Partnership and the amount of funds available to the Corporation. Alternatively, the Corporation may construct all Public Improvements at once.

(d) If constructed in phases, the Corporation may contract with the Partnership as construction manager to construct the Public Improvements for each phase in order to facilitate construction on the Property. In such event, the Partnership will not be entitled to a fee for coordinating the construction of the Public Improvements. If the Partnership elects to not contract to construct the Public Improvements, then the Corporation shall contract with another party. If constructed all at once, the Corporation will bid the project pursuant to applicable requirements, and the Partnership shall be free to bid on such project. The Partnership shall have no preference to be awarded the project, and shall compete for the project on the same terms and conditions as any other bidder. In either event, the Corporation shall pay the cost of the Public Improvements directly to the contractors, and will not allow any liens to be placed on the Property.

(e) The Public Improvements within the Municipal Drive right of way that are designed in direct support of each of Phases 5, 6, & 7 must be constructed prior to or simultaneously with construction of each said phase.

(f) The Corporation agrees to enter into and comply with a Ground Lease (with Purchase Option) with the Partnership, in the form attached hereto as Exhibit "B". The Corporation will lease to the Partnership the land necessary to construct Buildings 2 through 7 in the amount of $1.00 (one dollar) per year for the first 20 years of the term of the Ground Lease. However, the rent will increase to the fair market value at the end of the 20 year period if the Partnership does not exercise its option to purchase. During the term of the Ground Lease, all rents on Buildings 2 through 7 will be paid to the Partnership. Rents from Existing Building 1 and the Lot 8 Improvements will be retained by the Corporation. Further, rents from all existing tenants will be retained by the Corporation until the tenants are relocated into the Partnership Improvements.

(g) The Corporation agrees to subsidize the rents of certain tenants that will occupy Buildings to be constructed on the Property by the Partnership. The tenants to which this subsection applies are Chicken Express, Ace Cash, Subway and any other tenant occupying existing buildings on or after the effective date of this Agreement which were required to relocate due to demolition of buildings in order to construct the Improvements related to this Project. The Corporation agrees to pay the Partnership an amount ("the Rent Subsidy") to be determined by calculating the difference between the stated base rental of $24 per square foot for Buildings 4, 5, 6, & 7 and the amount per square foot paid by the existing tenants on the effective date of this Agreement. The Rent Subsidy shall be paid to the Partnership monthly on the 1st day of the month beginning the first month that the tenants to whom this subsection applies are required to relocate due to the Project, and shall continue during the primary term of such leases plus any exercised extensions. The Partnership will pay the first $30 per square foot of tenant finish out expenses and the Corporation will pay the difference, subject to prior approval by the EDC Board. The Corporation will pay for the relocation expenses. The tenant finish out and relocation costs paid by the Corporation will be considered part of the Project Costs as defined in the Ground Lease.

(h) The Corporation agrees to execute a Property Management Agreement with the Partnership for the management of the existing structures on the Property upon execution of this Agreement. The form of the Property Management Agreement is attached hereto as Exhibit "C".

(i) The Corporation will use its resources and best efforts to help support the Project and the leasing of space.

(j) The Corporation will execute a mutually agreeable reciprocal access easement on the Property so that all phases of the Project will have access to the Public Improvements.

(k) The Corporation will not encumber any portion of the Property for which the Partnership has an option to purchase. The Corporation additionally covenants and agrees that on construction it undertakes, that it will be solely responsible and liable for any labor or materials furnished for said construction and that no mechanic's or other lien for any such labor or materials shall attach to or affect the Property for which the Partnership has an option to purchase.

(l) If the Corporation does not have adequate funding to construct any portion of the Public Improvements, then (i) the term of this Agreement (and the Partnership's option to purchase) shall be extended for that portion of time that funding is not available; (ii) the Partnership may pay for such Public Improvements and then get reimbursed through an agreement to be reached between the parties at that time; and (iii) the Corporation may sell one or more of the completed phases of the Project to the Partnership (including Existing Building 1 but not including the Lot 8 Improvements or Municipal Drive Improvements) provided that the Corporation must use the funds from such purchase to fund the required Public Improvements. In the event the Partnership purchases any portion of the Property abutting Municipal Drive, the Partnership shall have no claim of ownership or interest in the land on which Municipal Drive is located when the right-of-way is abandoned by the City of Kennedale.

8. **Sign.**

The Partnership agrees to permit the Corporation to erect a sign on the Property which may state that the Corporation has provided funding for the Project and to allow the Corporation to use the name "Kennedale Town Center, L.P." and/or "Cypress Properties" and "David G. Johnson" or his development company and representations of the Improvements and the Project in promotion of the City, the Corporation, the Partnership, and the Project.

9. **Hold Harmless.**

THE PARTNERSHIP, IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT IS ACTING INDEPENDENTLY, AND THE CORPORATION ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE PARTNERSHIP'S USE OR DEVELOPMENT OF THE PROPERTY, PROJECT OR IMPROVEMENTS. THE PARTNERSHIP ASSUMES RESPONSIBILITY FOR AND AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CORPORATION, ITS OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS, CLAIMS FOR COPYRIGHT AND PATENT INFRINGEMENT, AND ATTORNEYS' FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF, LOSS OF USE OF, OR DAMAGE TO PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE ACTS OR OMISSIONS OF THE PARTNERSHIP AND ITS CONTRACTORS ON THE PROPERTY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE CORPORATION WILL FIRST LOOK TO INSURANCE COVERAGE PROVIDED BY THE PARTNERSHIP OR OTHER RESPONSIBLE THIRD PARTIES IN EXERCISING THEIR RIGHTS PROVIDED HEREIN.

10. **Access to Information.**

The Partnership agrees to provide the Corporation access (at its sole expense) to information related to the construction of the Improvements during regular business hours upon reasonable notice.

11. **Default.**

(a) In the event of a default by the Partnership with respect to any of its obligations hereunder, and the failure, after delivery of written notice of such default from the Corporation, to cure such default, then the Corporation may take the following action(s):

(1) The Corporation may terminate this Agreement and the Ground Lease and pay the Partnership the "Termination Purchase Price" for its interest in this Agreement, the Ground Lease, and the Partnership Improvements. The "Termination Purchase Price" is the lesser of (i) the Partnership's cost of designing and constructing the Partnership Improvements

actually constructed plus 10%; or (ii) the Fair Market Value of such improvements, as determined by the same method set forth in the Ground Lease for determining fair market value of rent. However, in no event shall the Termination Purchase Price be less than any outstanding loan on the Partnership's leasehold estate acquired to design and construct the Partnership Improvements. In the event the Partnership has an outstanding lien secured by the leasehold estate, or any other outstanding liens on the property, then a portion of the Termination Purchase Price shall be paid to the lender to satisfy such lien.

(2) In the event all buildings are not completed by May 3, 2030, and regardless of whether the Partnership has been paying Extension Rent, the Corporation may provide the Partnership with a "20 Year Default Notice". In such event, the Partnership must purchase from the Corporation (i) all completed phases of the project for $1.00; plus (ii) Existing Building 1 for its fair market value as determined by the same method set forth in the Ground Lease; plus (iii) all uncompleted phases of the project for its fair market value as determined by the same method set forth in the Ground Lease. However, in no event shall the purchase price be less than the Corporation's "Outstanding Amortized Debt" as attached to the Ground Lease. The purchase shall be on the same terms and conditions as the Option to Purchase set forth in the Ground Lease, except that the purchase price shall be as set forth herein, and the purchase must be closed within 90 days from the 20 Year Default Notice. If the Partnership fails to purchase the property as set forth herein, then the Corporation may exercise the remedies set forth in Par. 11(a)(1) above.

(3) If the Partnership is unable to make any payments to the bank on loans for or liens against any completed or partially completed Improvements, upon notice of default from the bank, the Corporation shall have a first right of refusal to purchase any completed or partially completed Improvements and cure defaults on the bank loans, subject to the terms agreed to by the bank. This provision shall be made a condition of any bank lending agreement executed by the Partnership for any phase of the Project.

(4) The Corporation may terminate the Property Management Agreement.

(5) The Corporation may bring an action for reimbursement or payment of actual amounts agreed to be paid under this Agreement, but not an action for consequential damages.

(6) The Corporation may extend the time for performance.

(b) In the event of a default by the Corporation with respect to any of its obligations hereunder, and the failure, after delivery of written notice of such default from the Partnership to cure such default, then the Partnership may take the following action(s):

(1) The Partnership may terminate this Agreement as it applies to uncompleted phases of the Project. In such event, the Partnership must also terminate the Ground Lease and Property Management Agreement with respect to uncompleted phases of the Project. In the event the Partnership terminates the Ground Lease with respect to uncompleted phases, then the Corporation shall pay to the Partnership $50,000 for costs incurred by the

Partnership under Paragraph 4(a)(2) (but only for the uncompleted portions of the Project, as prorated on an equal basis among all six phases), and (ii) continue to pay the Rent Subsidy as set forth in Paragraph 7(g) above as if this Agreement had not been terminated.

(2) The Partnership may bring an action for reimbursement or payment of actual amounts agreed to be paid under this Agreement, but not an action for consequential damages.

(3) If the Corporation does not have adequate funding to pay for any portion of the Public Improvements, Lot 8 Improvements, or Municipal Drive Improvements then (i) the term of this Agreement (and the Partnership's option to purchase) shall be extended for that portion of time that funding is not available; (ii) the Partnership shall have the option to pay for such improvements and then get reimbursed through an agreement to be reached between the parties at that time; and (iii) if offered for sale by the Corporation, the Partnership may purchase the completed phases of the Project (including Existing Building 1 but not including the Lot 8 Improvements or Municipal Drive Improvements) provided that the Corporation must use the funds from such purchase to fund the required Public Improvements.

(4) The Partnership may extend the time for performance.

(5) The Partnership may enforce specific performance, including enforcing the Option to Purchase contained in the Ground Lease, and may also exercise all other remedies at law or in equity.

(c) In the event that a notice and opportunity to cure is required by either party following an event of default, then such opportunity to cure shall be not less than 30 days from receipt of notice. Furthermore, no remedy shall be taken following such 30 day period provided the defaulting party is diligently pursuing action to come into compliance.

(d) Prior to either party exercising the remedies hereunder (except for an extension of time for performance or some agreed resolution), the parties agree to participate in a mediation to attempt to reach a satisfactory resolution of the issues. The cost of such mediation shall be borne equally by the parties. The non-defaulting party must send a request for mediation to the defaulting party prior to exercising any remedies. That request may be simultaneous with the notice and opportunity to cure. If the defaulting party refuses to participate in a mediation within 30 days of receipt of a request for mediation by the non-defaulting party, then the non-defaulting party is free to pursue available remedies (assuming the time period for notice and opportunity to cure has passed.)

(e) An event of default hereunder shall mean:

(1) The party fails to comply with any obligation it has under this Agreement or the Ground Lease;

(2) The party fails to comply with any term of this Agreement or the Ground Lease, subject only to delays caused by Force Majeure;

(3) An occurrence of an Event of Bankruptcy or Insolvency. For purposes hereof, an "Event of Bankruptcy or Insolvency" shall mean if the party makes an assignment for the benefit of creditors; or a receiver shall be appointed for any of the assets of the party and such appointment is not terminated within ninety (90) days after such appointment is initially made; or the party is the subject of a bankruptcy or other insolvency proceeding and such proceeding shall not be dismissed within ninety (90) days after the filing thereof.

12. **Mutual Assistance.**

The Partnership and the Corporation shall do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying the terms and provisions.

13. **Representations and Warranties.**

The Partnership represents and warrants to the Corporation that it will not knowingly or intentionally violate any federal, state or local laws in operating the Project and that all proposed Improvements shall conform to the applicable building codes, zoning ordinances and all other ordinances and regulations.

14. **Section or Other Headings.**

Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

15. **Attorneys Fees.**

In the event any legal action or process is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its reasonable attorneys fees and expenses incurred by reason of such action.

16. **Entire Agreement.**

This Agreement, the Property Management Agreement, and the Ground Lease (with Purchase Option) contain the entire agreement between the parties with respect to the transaction contemplated herein.

17. **Amendment.**

This Agreement may only be amended, altered, or revoked by written instrument signed by the Partnership and the Corporation.

18. **Successors and Assigns.**

This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. The Partnership may assign all or part of its rights and obligations hereunder only upon prior written approval of the Corporation, such approval not to be unreasonably withheld.

19. **Notice.**

Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

PARTNERSHIP:	KENNEDALE TOWN CENTER, L.P. Attn: David G. Johnson 3977 Fall Creek Road Spicewood, Texas 78669
with a copy to:	Alan McGraw Alan M. McGraw, P.C. 211 Round Rock Avenue Round Rock, Texas 78664
CORPORATION:	Kennedale Economic Development Corporation Attn: Executive Director 405 Municipal Drive Kennedale, Texas 76060
with a copy to:	City of Kennedale Attn: City Manager 405 Municipal Drive Kennedale, Texas 76060
with a copy to:	Wayne K. Olson Taylor, Olson, Adkins, Sralla & Elam, L.L.P. 6000 Western Place, Suite 200 Fort Worth, Texas 76107

20. **Applicable Law.**

This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas. In any proceeding brought for the enforcement or interpretation of this Agreement, venue shall lie in Tarrant County, Texas.

21. **Severability.**

In the event any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

22. **Counterparts.**

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

23. **No Joint Venture.**

Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.

24. **Compliance with Texas Government Code Chapter 2264.**

In compliance with Texas Government Code Chapter 2264, the Partnership certifies it does not and will not, and the branches, divisions, or departments of the Partnership do not and will not, knowingly employ an undocumented worker as defined in Chapter 2264. If, after receiving a public subsidy, the Partnership, or a branch, division, or department of the Partnership, is convicted of a violation under 8 U.S.C. Section 1324a(f), the Partnership shall repay the amount of the public subsidy with interest, at the rate and according to the other terms provided below, not later than the 120th day after the date the Corporation notifies the Partnership of the violation. The rate of interest shall be 6% per annum, and shall be due at the time the repayment of the subsidy is due.

KENNEDALE ECONOMIC DEVELOPMENT CORPORATION

By: ________________________________
Robert Mundy, Board President

Date:____________________________

ATTEST:

____
Board Secretary

KENNEDALE TOWN CENTER, L.P.
By: KTC GP, L.L.C., its General Partner

By:________________________________
David G. Johnson, Manager

Date: ____________________________

ATTEST:

____
Notary Public

Exhibits Attached to this Agreement:

Exhibit "A" Concept Phasing Plan
Exhibit "B" Form Ground Lease
Exhibit "C" Form Property Management Agreement

KENNEDALE
Kennedale Economic
Development Corporation
www.cityofkennedale.com

Staff Report to the Board of Directors

Date: April 30, 2015

Agenda Item No: REGULAR ITEMS - E.

I. Subject:
Consider authorizing an agreement, which the Executive Director to execute providing for the assignment of the Ground Lease from Kennedale Town Center, L.P. to an entity to be designated by Hughes Commercial Texas, subject to approval of form by the KEDC attorney.

II. Originated by:

III. Summary:
See the original Ground Lease for Kennedale TownCenter to be assigned.

IV. Recommendation:
Approve

V. Alternative Actions:

VI. Attachments:

1.	Ground Lease - TownCenter	TownCenter Ground Lease-RD-10 3-3-10 CLEAN.doc

GROUND LEASE

STATE OF TEXAS §
§
COUNTY OF TARRANT §

This lease (the "Lease") is made by and between the Kennedale Economic Development Corporation, a nonprofit corporation organized as a Type B Corporation under the Development Corporation Act of 1979, Tex. Loc. Gov't. Code Ann. §§505.001 – 505.355, acting through its duly authorized president (hereinafter called "Lessor"), and Kennedale Town Center, L.P., acting by and through David G. Johnson, Manager of KTC GP, L.L.C. the General Partner the Partnership, the principal office of the Partnership being 3977 Fall Creek Road, Spicewood, Texas 78669, (hereinafter called "Lessee").

WHEREAS, Lessee wishes to enter into a lease with Lessor to use a parcel of Lessor's land for economic development purposes;

WHEREAS, pursuant to a separate Economic Development Agreement for the Development of Kennedale TownCenter ("Economic Development Agreement"), the terms of which are incorporated herein by reference, Lessee has agreed with Lessor to construct and operate a retail shopping center and professional office complex to be known as the Kennedale TownCenter on the land;

WHEREAS, Lessor has determined that it will serve a public purpose to lease such land to Lessee initially for less than the fair market value rent because the proposed use of the land will create substantial economic benefit and new employment opportunities for the citizens of the City of Kennedale;

WHEREAS, capitalized terms contained in this Lease shall have the same meaning as set forth in the Definitions contained in this Agreement, or where the term is not defined in this Agreement, the term shall have the same meaning as set forth in the Economic Development Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

ARTICLE I.
DEMISE

1.01 Leased Premises. Lessor hereby leases to Lessee and Lessee hereby rents from Lessor upon the terms and subject to the conditions set forth in this Lease, the following property (hereinafter called "Premises"):

Lots 2R, 3R, 4R, 5, 6, and 7, BLOCK A, KENNEDALE RETAIL CENTER ADDITION, an Addition to the City of Kennedale, Tarrant County, Texas, as filed in Doc. #D2093211169, Official Records of Tarrant County, Texas The Premises are visually shown in Exhibit "A" which is attached hereto and made a part hereof by reference.

1.02 **Quiet Enjoyment.** Lessor warrants that, during the term of this Lease, so long as Lessee is not in default hereunder, Lessee will have the quiet enjoyment of the Premises and the uninterrupted right of use and possession thereof in accordance with the terms of this Lease.

1.03 **Mineral Rights Reserved.** Lessor reserves all oil, gas, and other mineral interests in, under, and that may be produced from the Property, as defined in the Economic Development Agreement, for Lessor, Lessor's heirs, successors and assigns forever. This reservation includes any existing production or existing lease. However, Lessor hereby waives the right of ingress and egress to and from the surface of the Premises for purposes of exploration or production relating to the mineral estate reserved by Lessor.

ARTICLE II.
DEVELOPMENT OF PREMISES

2.01 As consideration for this Lease, Lessee agrees to develop the property in accordance with the terms and conditions of the Economic Development Agreement.

2.02 Upon completion, Lessor and the City of Kennedale, shall have the right to inspect and approve the improvements required to be made to the Premises to determine if they are in compliance with the Economic Development Agreement.

2.03 Lessor shall construct all Public Improvements on the Premises, as well as the Lot 8 Improvements and Municipal Drive Improvements, in accordance with the terms and conditions of the Economic Development Agreement.

ARTICLE III.
TERM

3.01 **Term.** The term of this Lease shall be for a period of approximately forty five (45) years commencing on the date of final execution and terminating on December 16, 2054. The term may be extended based on mutual agreement between the parties.

3.02 **Termination.** Either party may terminate this Lease only as provided in the default provisions of Paragraph 11 of the Economic Development Agreement.

ARTICLE IV.
RENTALS PAYABLE

4.01 Lessee agrees to pay Lessor one dollar ($1.00) per year until May 3, 2030. This amount may be prepaid in the amount of $20.00 for rent for the period of time from the date of commencement of this Lease until May 3, 2030. Lessee shall prepay said rent upon the execution hereof. Lessor and Lessee acknowledge that the Premises are being rented to Lessee for less than fair market rent in consideration of the construction of a facility by Lessee in the City of Kennedale that will create substantial economic benefit and will provide new employment opportunities for the citizens of Kennedale.

4.02 Beginning May 4, 2030, and assuming that Lessee has not given notice of its intent to exercise the Option to Purchase, Lessee agrees to pay monthly to Lessor a fair market value rental for the remainder of the term of the Lease. The fair market value shall take into consideration the land and Public Improvements only, and not any Improvements constructed at Lessee's expense. In determining fair market value, the parties shall first try to reach an agreement on a fair and equitable number. If the parties are unable to agree, then each party shall hire a MAI appraiser. Each appraiser shall determine an amount that they believe is the fair market value, and then the two amounts shall be averaged to determine the actual rental to be paid hereunder for the next five years. Every five years thereafter, the rental amount shall be adjusted proportionate to any increase or decrease in rental rates charged by Lessee to its subtenants.

4.03 All payments shall be made by Lessee to Lessor without notice or demand, at Lessor's address set forth above. Monthly rental payments shall be due on the 1st day of each month. If Lessee fails to pay any installment of Rent on or before the 10th day of the month, Lessee must pay to Lessor, in addition to the installment of Rent, an amount equal to 5% of the past due installment as additional Rent.

4.04 In addition to the rental in Sections 4.01 and 4.02, Lessee agrees to reimburse Lessor for all assessments on the Premises levied by the Kennedale TownCenter Municipal Management District and paid by Lessor. The assessments shall be paid to Lessor after Lessor sends notice to Lessee, and shall be paid (or reimbursed) by Lessee prior to delinquency in the same timeframe as normal property taxes. The assessment shall become due on a particular lot only after vertical construction on that lot is complete (i.e., a certificate of occupancy issued by the City). The amount of the assessment to be paid by Lessee shall be equal to what would have been paid on that lot for *ad valorem* property taxes, had the Premises been taxable. Once the Premises subject to the assessments are purchased by Lessee or other third party, such that the Premises becomes taxable, the assessment shall no longer be payable. In the event that the Central Appraisal District determines that the property is taxable, then the assessments shall no longer be due.

ARTICLE V.
MAINTENANCE, REPAIRS, AND UTILITIES

5.01 Lessee agrees to maintain all structures to be constructed on the Premises by Lessee, in a reasonable and habitable condition, and in condition marketable for lease. Lessee shall also be responsible for the cost of all routine maintenance and repairs to the Public Improvements on a particular lot on the Premises once vertical construction on that particular lot has been completed. Lessor shall be responsible for the cost of (i) any major structural repairs necessary to the Public Improvements on a particular lot on the Premises; and (ii) for all routine maintenance and repairs of Public Improvements within the Premises prior to vertical construction on the particular lot being completed. Pursuant to the purchase option granted by this Lease, Lessor shall be responsible for any major structural repairs to the Public Improvements on Lot 1 and all routine maintenance and repairs to the Public Improvements contained on Lot 1 until the time Lessee purchases Lot 1 from Lessor. Lessor's obligation for repairs and maintenance as set forth herein shall terminate at the time Lessee purchases the Premises from Lessor. It is understood by the parties that annual assessments will be made upon the Premises by the Kennedale Town Center Municipal Management District and such assessments may be recovered by the Lessee (or Lessee's management company) through the tenant leases.

5.02 Lessee shall be responsible for the cost of all utilities serving the Premises.

ARTICLE VI.
NATURE OF RELATIONSHIP

Lessor and Lessee agree that the nature of the relationship between them is one of landlord and tenant, and no other. Nothing contained in this Lease shall be deemed or construed to create the relationship of principal and agent or that of partnership, joint venture or of any association between Lessor and Lessee, and any intention to create a joint venture or partnership relationship between the parties hereto is hereby expressly disclaimed. No provision contained in this Lease, or any acts of the parties hereto shall be deemed to create any relationship between Lessor or Lessee, other than the relationship of landlord and tenant. Lessee and its assignees or subtenants shall maintain exclusive control, direction and management of their employees, and Lessor shall have no rights with respect thereto, except for Lessor's right to enforce covenants of the Lessee as set forth in this Lease.

ARTICLE VII.
ASSIGNMENT AND SUBLEASE

Lessee may not assign this Lease or any portion thereof, except with the written consent of Lessor, which consent will not be unreasonably withheld, nor may Lessee assign, transfer or delegate to any person Lessee's rights or duties with respect to this Lease unless it obtains Lessor's written consent, which consent will not be unreasonably withheld. Lessee may sublease space in the buildings to be constructed on the Premises as provided in the Economic

Development Agreement and in accordance with this Lease and Section 1.02, so long as such subtenants operate businesses that would be permitted by the Kennedale TownCenter Planned Development Zoning Ordinance. At no time shall the Premises ever be used by a Sexually Oriented Business, as defined in Section 11-203 of the City of Kennedale Code of Ordinances or by any other type of business that offers the selling, renting or exhibition of devices or any other items designed or intended to provide sexual stimulation or gratification, including any photographic depiction of nudity, or provision of a service designed or intended to provide sexual stimulation or gratification.

ARTICLE VIII.
PARKING SPACES

Lessee agrees that all parking spaces located or to be constructed on the Premises and the Adjoining Property in accordance with the Economic Development Agreement shall be used as common parking and shall remain open to all visitors of the Premises, the Adjoining Property, and the City of Kennedale Municipal Complex. This common parking covenant shall include a right of access through the common parking areas. This Article shall not be construed as to prohibit Lessee from placing reasonable restrictions on the use of parking spaces (such as designating disabled parking permit spaces); however, no restriction may prohibit the use of any parking space on the Premises by visitors to the Adjoining Property or the City of Kennedale Municipal Complex. Notwithstanding anything to the contrary, Lessee may in its discretion designate up to two spaces per building as dedicated spaces during store hours to facilitate tenant special parking needs.

ARTICLE IX.
GENERAL PROVISIONS

9.01 <u>Notices</u>. All rent shall be paid or mailed to Lessor at the address set forth below, and all notices required herein shall be sent to the respective parties by certified mail, return receipt requested, at the following addresses:

To Lessor: Kennedale Economic Development Corporation
Attention: Executive Director
405 Municipal Drive
Kennedale, Texas 76060

with a copy to: City of Kennedale
Attn: City Manager
405 Municipal Drive
Kennedale, Texas 76060

with a copy to: Wayne K. Olson
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

To Lessee: Kennedale Town Center, L.P.
Attention: David Johnson
3977 Fall Creek Road
Spicewood, Texas 78669

with a copy to: Alan McGraw
Alan M. McGraw, P.C.
211 Round Rock Avenue
Round Rock, Texas 78664

9.02 Binding Effect. The provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

9.03 Interpretation and Place of Performance. This Lease shall be construed under the laws of the State of Texas and is deemed by the parties to be performable in Tarrant County, Texas.

9.04 Partial Invalidity. If any one or more of the provisions contained in this Lease shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision herein, and this Lease shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

9.05 Amendment. This Lease may not be altered, waived, or otherwise modified, except where done in writing, and signed by Lessor and Lessee.

9.06 Attorneys Fees. In the event any legal action or process is commenced to enforce or interpret provisions of this Lease, the prevailing party in any such legal action shall be entitled to recover its reasonable attorneys fees and expenses incurred by reason of such action.

9.07 Casualty/Total or Partial Destruction.

(a) If the Partnership Improvements are damaged by casualty and can be restored within ninety days, Lessee will, at its expense, restore them to substantially the same condition that existed before the casualty. If Lessee fails to complete restoration within ninety days from the date of casualty, then Lessee shall be in default.

(b) If the Premises cannot be restored within ninety days, Lessee has an option to restore the Partnership Improvements. Lessee must notify Lessor within 90 days of the casualty whether it intends to restore or not. If Lessee notifies that it is not going to restore, then Lessee shall be in default, unless Lessee begins paying Extension Rent, as defined in the Economic Development Agreement, on the lot containing the damaged improvements beginning on the 91st day following casualty. If Lessee notifies that it is going to restore, then Lessee shall, at its expense, restore them to substantially the same condition that existed before the casualty. Lessee will diligently pursue construction, including pursuing all insurance proceeds and other requirements to enable construction. If Lessee fails to complete restoration with two years from the date of casualty, then Lessee shall be in default. Notwithstanding, Lessee shall not be in default if Lessee is able to present sufficient evidence of its diligence in attempting to complete construction, but has been hampered by situations beyond its control.

9.08 Condemnation/Substantial or Partial Taking.

(a) If the Premises cannot be used for the purposes contemplated by this Lease because of condemnation or purchase in lieu of condemnation, this Lease will terminate.

(b) Lessee and Lessor will each have a claim to the condemnation award or proceeds in lieu of condemnation respective to each party's percentage of interests in the portion of land and improvements that was condemned.

ARTICLE X
INSURANCE

Lessee, at its expense, shall maintain public liability insurance, including bodily injury and property damage, for the Premises and the conduct of Lessee's business on the Premises. The insurance must insure against injuries or damages to persons or property sustained on or about the Premises and the appurtenances thereto, including but not limited to the parking lots, sidewalks and alleyways adjacent thereto. Lessor must be named as an additional insured who shall be provided with 30 day notice of cancellation or material change in coverage, with minimum coverage as follows:

(a)	Bodily Injury:	$250,000 per person, or
		$500,000 per occurrence; and
(b)	Combined single limit for bodily injury and property damage:	$1,000,000

Lessee shall deliver certificates of insurance to Lessor before the commencement date of this Lease, and thereafter when requested. All insurance companies and coverage must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the Lessor

ARTICLE XI.
HOLD HARMLESS

THE LESSEE, IN PERFORMING ITS OBLIGATIONS UNDER THIS LEASE IS ACTING INDEPENDENTLY, AND THE LESSOR ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE LESSEE'S USE OR DEVELOPMENT OF THE PROPERTY, PROJECT OR IMPROVEMENTS. THE LESSEE ASSUMES RESPONSIBILITY FOR AND AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE LESSOR, ITS OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS, CLAIMS FOR COPYRIGHT AND PATENT INFRINGEMENT, AND ATTORNEYS' FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF, LOSS OF USE OF, OR DAMAGE TO PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE ACTS OR OMISSIONS OF THE LESSEE AND ITS CONTRACTORS ON THE PROPERTY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, LESSOR WILL FIRST LOOK TO INSURANCE COVERAGE PROVIDED BY LESSEE OR OTHER RESPONSIBLE THIRD PARTIES IN EXERCISING THEIR RIGHTS PROVIDED HEREIN.

ARTICLE XII.
TAXES

The Premises are currently exempt from property taxes because they belong to the City of Kennedale Economic Development Corporation. If the County's Central Appraisal District determines that the property is taxable, Lessee agrees that it shall promptly pay any such taxes but the assessments required in Article 4.04 shall no longer be due. The Corporation will obtain the consent of the Kennedale TownCenter Development District to this provision, and provide to the Partnership. If consent has not been obtained within 60 days from the date hereof, then the Corporation will be in default.

ARTICLE XIII.
OPTION TO PURCHASE

13.01 Grant of Option to Purchase. Lessor, for the consideration expressed in this Lease, grants to Lessee an option to purchase the Premises and Lot 1R including Existing Building 1, at the price and subject to the terms set forth in this Article. In the event Lessee purchases the Premises and Lot 1R including Existing Building 1, Lessee agrees it will not change the name of the Premises from "Kennedale TownCenter" without the written permission of Lessor.

13.02 Conditions Precedent. In order to exercise its option, Lessee must not be in default of this Lease or the Economic Development Agreement.

13.03 Time and Manner of Acceptance. To exercise the purchase option extended in this Article, Lessee must give written notice to Lessor, in the manner required for notices under this Lease, of the Lessee's election to exercise the option. The purchase option must be exercised by May 3, 2030. The written notice to exercise this purchase option shall be accompanied by a signed and tendered real estate contract setting forth the terms and conditions of the purchase of the Premises by Lessee. The real estate contract shall provide that the cost of the title insurance and all closing costs shall be paid by Lessee. The purchase must close within 60 days of the exercise of the option to purchase.

13.04 <u>Parking</u>. In the event Lessee exercises the purchase option, the provisions of Article VIII ("Parking Spaces") are to remain in effect after the sale of the Premises, and the parties shall be required to enter into a mutually agreeable reciprocal access easement as required in the Economic Development Agreement.

13.05 <u>Consideration</u>. If the purchase closes after May 3, 2030, and all Partnership Improvements have been completed, then Lessee shall pay for the purchase of the Premises plus Lot 1R including the Existing Building 1 the amount of $1.00.

If the purchase closes before May 3, 2030, and all Partnership Improvements have been completed, then the purchase price for the Premises and Lot 1R including the Existing Building 1 shall be the "Unamortized Project Cost" as defined below.

If Lessee exercises the option to purchase and closes *prior to or after* May 3, 2030, and all Partnership Improvements have *not* been completed, then the purchase price shall be the greater of (a) the "Unamortized Project Cost" or (b) the sum of (i) the fair market value of Lot 1R containing Existing Building 1, plus (ii)_the fair market value of lots with uncompleted Partnership Improvements, plus (iii) $1.00 for lots with completed Partnership Improvements,. Fair market value shall be determined in the same manner set forth above.

The Unamortized Project Cost is the sum of the four cost categories of Lessor as set forth in **Exhibit "B"** (that is, Land Cost, Debt Issuance #1, Debt Issuance #2, and Cash Injection, totaling $4,200,000) attached hereto, amortized using the attached schedules up until the date of closing. In no event shall any additional amounts be added to the Unamortized Project Cost, the parties agreeing that $4,200,000 shall be the maximum amount to be amortized.

Lessee and Lessor shall have the option until May 3, 2030 to make additional Public Improvements to the Premises if mutually agreed to in writing by both parties ("Additional Public Improvements"). If Additional Public Improvements are constructed as mutually agreed, the cost of the Additional Public Improvements shall be amortized and shall be added to the purchase price.

13.06 <u>Expiration</u>. The option to purchase the Premises shall expire on May 3, 2030 unless exercised by Lessee prior to that date. Lessor may, at its sole discretion, give written permission to allow the purchase option to be extended beyond the expiration date. To avoid an inadvertent failure to exercise the option at such a long period into the future, Lessor agrees that prior to fair market value rent becoming due, it shall provide a written notice and request to Lessee to calculate the fair market value of rent, as required by Article 4.02. If such a notice is given after May 3, 2030, then notwithstanding anything to the contrary, Lessee shall have a period of 30 days within which to still exercise the option to purchase.

13.07 <u>Mineral Rights:</u> The real estate contract shall provide that Seller (Lessor) reserves all oil, gas, and other mineral interests in, under, and that may be produced from the

Property for Seller, Sellers's heirs, successors and assigns forever, but will contain a surface waiver preventing the surface of the Property from being used for mineral exploration or production. This reservation includes any existing production or existing lease.

13.08 **Municipal Drive.** In the event Lessee purchases any portion of the Premises abutting Municipal Drive, the Lessee shall have no claim of ownership or interest in the land on which Municipal Drive is located when the right-of-way is abandoned by the City of Kennedale.

13.09 **Protection of Existing Building 1**. In the event of a casualty to Existing Building 1, Lessor agrees to restore it to substantially the same condition prior to the casualty.

ARTICLE XIV
DEFAULT

14.01 All events of default shall be governed by Paragraph 11 of the Economic Development Agreement.

14.02 An event of default hereunder shall mean:

(a) The party fails to comply with any obligation it has under this Agreement;

(b) The party fails to comply with any term of this Agreement, subject only to delays caused by Force Majeure;

(c) An occurrence of an Event of Bankruptcy or Insolvency. For purposes hereof, an "Event of Bankruptcy or Insolvency" shall mean if the party makes an assignment for the benefit of creditors; or a receiver shall be appointed for any of the assets of the party and such appointment is not terminated within ninety (90) days after such appointment is initially made; or the party is the subject of a bankruptcy or other insolvency proceeding and such proceeding shall not be dismissed within ninety (90) days after the filing thereof.

EXECUTED this_____day of ______________________, 2010.

LESSOR:

KENNEDALE ECONOMIC DEVELOPMENT CORPORATION

By: ______________________________
Robert Mundy, President

ATTEST:

____
Secretary

LESSEE:

KENNEDALE TOWN CENTER, L.P.,
By: KTC GP, L.L.C.,
Its General Partner

By: ______________________________
David G. Johnson, Manager

Attest:

____
Notary Public

STATE OF TEXAS §
§
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority in and for County, Texas, on this day personally appeared David G. Johnson, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he is the manager of KTC GP, L.L.C., the General Partner of Kennedale Town Center, L.P., and that he/she is authorized by said corporation to execute the foregoing instrument as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ________ day of ________________________, 2010.

____
Notary Public in and for the State of Texas

____
Type or Print Notary's Name

My Commission Expires: ___________________

Exhibits Attached to this Agreement:

Exhibit "A" Concept Phasing Plan showing the Premises
Exhibit "B" Unamortized Project Cost

KENNEDALE
Kennedale Economic
Development Corporation
www.cityofkennedale.com

Staff Report to the Board of Directors

Date: April 30, 2015

Agenda Item No: REGULAR ITEMS - F.

I. Subject:
Consider authorizing an agreement, which the Executive Director may execute, authorizing the assignment of a Reciprocal Parking Agreement between the EDC and Kennedale Town Center, L.P. to an entity to be designated by Hughes Commercial Texas

II. Originated by:

III. Summary:
See the original Agreement Declaring Reciprocal Driveway Ingress-Egress, and Parking Easements to be assigned.

IV. Recommendation:
Approve

V. Alternative Actions:

VI. Attachments:

1.	Parking Agreement - TownCenter	Easement Agreements - Parking.pdf

4

AGREEMENT DECLARING RECIPROCAL DRIVEWAY, INGRESS-EGRESS, AND PARKING EASEMENTS

STATE OF TEXAS §
§
COUNTY OF TARRANT §

THIS AGREEMENT establishing a non-exclusive easement (hereinafter "Agreement") is made and entered into by and between Kennedale Town Center, L.P., ("the Partnership") acting by and through David G. Johnson, Manager of KTC GP, L.L.C. the General Partner of the Partnership, the principal office of the Partnership being 3977 Fall Creek Road, Spicewood, Texas 78669, the Kennedale Economic Development Corporation (the "Corporation"), a nonprofit corporation organized as a Type B Corporation under the Development Corporation Act of 1979, Tex. Loc. Gov't Code Ann. §§ 505.001 – 505.355 (Vernon Supp. 2008) ("Act"), acting by and through its President, Robert Mundy, and the City of Kennedale, Texas ("the City"), a home rule municipality in the State of Texas, acting by and through its City Manager, Bob Hart.

Recitals:

WHEREAS, the Corporation is the owner of Lots 1R, 2R, 3R, 4R, 5, 6, 7, and 8, BLOCK A, KENNEDALE RETAIL CENTER ADDITION, an Addition to the City of Kennedale, Tarrant County, Texas, as filed in Doc. #D2093211169, Official Records of Tarrant County, Texas (hereinafter "TownCenter Property").

WHEREAS, the City is the owner of the real estate adjacent to the TownCenter Property on which the street known as Municipal Drive was located and vacated by the City on April 8, 2010, as more particularly described in Exhibit "A" attached hereto (hereinafter "Municipal Drive Property").

WHEREAS, the TownCenter Property and the Municipal Drive Property shall hereinafter be collectively referred to as the "Property".

WHEREAS, the Corporation intends to transfer Lot 8 to the City and the City intends to replat Lot 8 to include the Municipal Drive Property (hereinafter "Lot 8 Replat").

WHEREAS, the Partnership has leased Lots 2R, 3R, 4R, 5, 6, and 7 with an option to purchase Lots 1R, 2R, 3R, 4R, 5, 6, and 7 pursuant to an Economic Development Agreement and a Ground Lease entered into with the Corporation.

WHEREAS, pursuant to the Economic Development Agreement the Corporation will be constructing parking lots for the benefit and use of the Kennedale Municipal Complex (including currently the city hall, community center, library, police station, and city park), the public market area to be constructed on the Lot 8 Replat, and the retail and office development to be constructed on the TownCenter Property by the Partnership.

WHEREAS, in addition to the access provided through the Municipal Drive Property, there will be at lease five other points of access constructed on the Property, as well as driveways throughout the Property, to allow ingress and egress to the Kennedale TownCenter, the public market area to be constructed on the Lot 8 Replat, and the Kennedale Municipal Complex.

WHEREAS, the Parties desire to make provisions for the continued use, enjoyment, and benefit of the present and future owners of the Property, including the TownCenter Property, the Municipal Drive Property, and the Kennedale Municipal Complex, of the common driveways, ingress/egress and curb cuts.

WHEREAS, parking facilities will be constructed on the TownCenter Property and the Municipal Drive Property.

WHEREAS, the Parties desire to grant reciprocal parking rights to and for the benefit of the present and future owners of the Property, including the TownCenter Property, the Municipal Drive Property, and the Kennedale Municipal Complex.

WHEREAS, the Partnership understands and agrees that the TownCenter Property being leased and to be purchased by the Partnership will be subject to the covenants, easements, licenses and restrictions in this Agreement and agrees to be bound thereby.

NOW THEREFORE, in consideration of the mutual terms, covenants and agreements contained herein, the Corporation, the Partnership and the City hereby agree to create an easement and agreement for reciprocal driveways, ingress/egress and parking, described as follows:

1. There is hereby imposed upon the TownCenter Property and the Municipal Drive Property the following non-exclusive perpetual private easements on, over, and across the servient estate, such easements being appurtenant to and for the benefit of the Kennedale Municipal Complex and their customers, associates, invitees, assigns and employees and for the benefit of the Kennedale TownCenter and their customers, associates, invitees, assigns and employees and for the benefit of the owners of the Property, and each of the mortgagees, heirs, successors, permittees, and assigns of the owners of such dominant estate and all others acting under their authority, but subject to the limitations set out below:

    (a) **Reciprocal Driveway and Ingress/Egress Easements.** Perpetual, non-exclusive licenses, privileges, and easements for the free, continuous and uninterrupted ingress, egress and regress of vehicular and pedestrian traffic over and across the vehicular street entrances, curb cuts, driveways, walkways, fire lanes, emergency access easements, and sidewalks (the "Driveway Easement") as from time to time exist on the TownCenter Property and the Municipal Drive Property, but excluding therefrom any area then covered by buildings or other improvements.

(b) **Reciprocal Parking Easement.** Perpetual, non-exclusive licenses, privileges and easements for the free, continuous and uninterrupted use of all paved areas designated and/or used as parking areas for the tenants (the "Parking Easement") as from time to time exist on the TownCenter Property and the Municipal Drive Property, but excluding therefrom any area then covered by buildings or other improvements, subject to the right of the Partnership to designate up to two spaces per building as restricted spaces during store hours to be dedicated to tenant special parking needs on the TownCenter Property pursuant to the Ground Lease.

2. **Validity.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

3. **Matters of Record.** The conveyance of the licenses, privileges and easements in this Agreement is expressly made subject to all matters of record to the extent still in effect with respect to the Property.

4. **Relocation of Certain Easements.** The owner of any lot within the Property may relocate any of the easements located on the lot so long as the relocation is done at the sole cost and expense of the owner of the servient estate and does not materially or unreasonably interfere with service to the dominant estate.

5. **Run with Land.** The Property shall be held, transferred, improved, sold, conveyed, used and occupied subject to the restrictions, licenses, privileges and easement herein set forth, all of which shall (i) run with and bind the Property, (ii) inure to the benefit of and be enforceable by the record owner or mortgagee(s) from time to time of the dominant estate, and (iii) be binding upon and enforceable against all subsequent owners of the Property or any portion thereof whether by purchase, descent, devise, gift, trade, or otherwise and each and all individuals and entities by the acceptance of the title to any portion of the Property, shall and do thereby agree and covenant to abide by and perform and observe the restrictions, licenses, privileges and easement herein set forth on their part to be performed. Notwithstanding any provisions hereof to the contrary, said grant of restrictions, licenses, privileges, and easements shall not inure to the benefit of any third party not expressly named herein, specifically or by class, nor shall said grant constitute a public dedication of the Property or any part thereof.

6. **Obstruction of Easements.** The owner of each lot within the Property shall not erect or permit any obstruction of any restriction, license, privilege, or easement granted herein.

7. **Maintenance.** The owner of each lot, at its cost and expense, shall maintain and repair (and replace when necessary), all improvements constructed upon the Driveway Easement and Parking Easement located upon such Party's tract so that such access areas are kept in a reasonably safe, sightly and serviceable condition for vehicular and

pedestrian passage including the patching of holes, seal coating, and any other repairs which may be necessary to repair and maintain the same in a quality condition and in keeping with first-class commercial properties located in Tarrant County, Texas. However, nothing in this Paragraph 7 shall have the effect of modifying the maintenance rights and responsibilities of the parties as allocated in the Economic Development Agreement or Ground Lease.

8. **Amendment; Termination.** This Agreement shall not be terminated, released, or amended unless by written agreement among the record owner(s) of fee title to all lots within the Property and the Kennedale Municipal Complex, all mortgagees of the fee estates of record at the time of such termination, release, or amendment, and the Partnership (or its successor and assign) so long as the Ground Lease is still in effect.

EXECUTED this 18 day of May, 2010.

KENNEDALE ECONOMIC DEVELOPMENT CORPORATION

By: ______________________
Robert Mundy, President

ATTEST:

____
Board Secretary

CITY OF KENNEDALE

By: ______________________
Bob Hart, City Manager

ATTEST:

____
City Secretary

KENNEDALE TOWN CENTER, L.P.,
By: KTC GP, L.L.C.,
Its General Partner

By: ______________________
David G. Johnson, Manager

STATE OF TEXAS §
§
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority in and for County, Texas, on this day personally appeared David G. Johnson, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he is the manager of KTC GP, L.L.C., the General Partner of Kennedale Town Center, L.P., and that he/she is authorized by said corporation to execute the foregoing instrument as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 18 day of May, 2010.

Kathy Turner
Notary Public in and for the State of Texas

KATHY TURNER
My Commission Expires
February 17, 2013

KATHY TURNER
Type or Print Notary's Name

My Commission Expires: 2.17.2013

AFTER RECORDING RETURN TO:

CITY SECRETARY'S OFFICE
CITY OF KENNEDALE
405 MUNICIPAL DRIVE
KENNEDALE, TX 76060

Exhibit "A"

[Municipal Drive Property]

Being 0.739 acres of land located in the Canzada Rose Survey, Abstract No. 1285, Tarrant County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at an 1/2" iron rod found at the Southeast corner of Lot 1, Block 1, Municipal Addition, an addition to the City of Kennedale, Tarrant County, Texas according to the plat recorded in Cabinet A, Slide 6502, Plat Records, Tarrant County, Texas;

THENCE N00°11'52"W, a distance of 569.57 feet along the East line of said Lot 1 to a point lying S00°11'52"E a distance of 50.33 feet from the most Easterly Northeast corner of said Lot 1;

THENCE N89°42'14"E, a distance of 29.98 feet to a point;

THENCE S00°12'10"E, a distance of 60.87 feet to a point;

THENCE N89°49'48"E, a distance of 30.00 feet to a Southwestern Bell Telephone Company monument found at the Southwest corner of a tract of land described in the deed to Southwestern Bell Telephone Company recorded in Volume 3156, Page 453, Deed Records, Tarrant County, Texas, said monument being the Northwest corner of Lot 3R, Block A, Kennedale Retail Addition, an addition to the City of Kennedale, Tarrant County, Texas according to the revised plat recorded in County Clerks Document No. D209321169, Deed Records, Tarrant County, Texas;

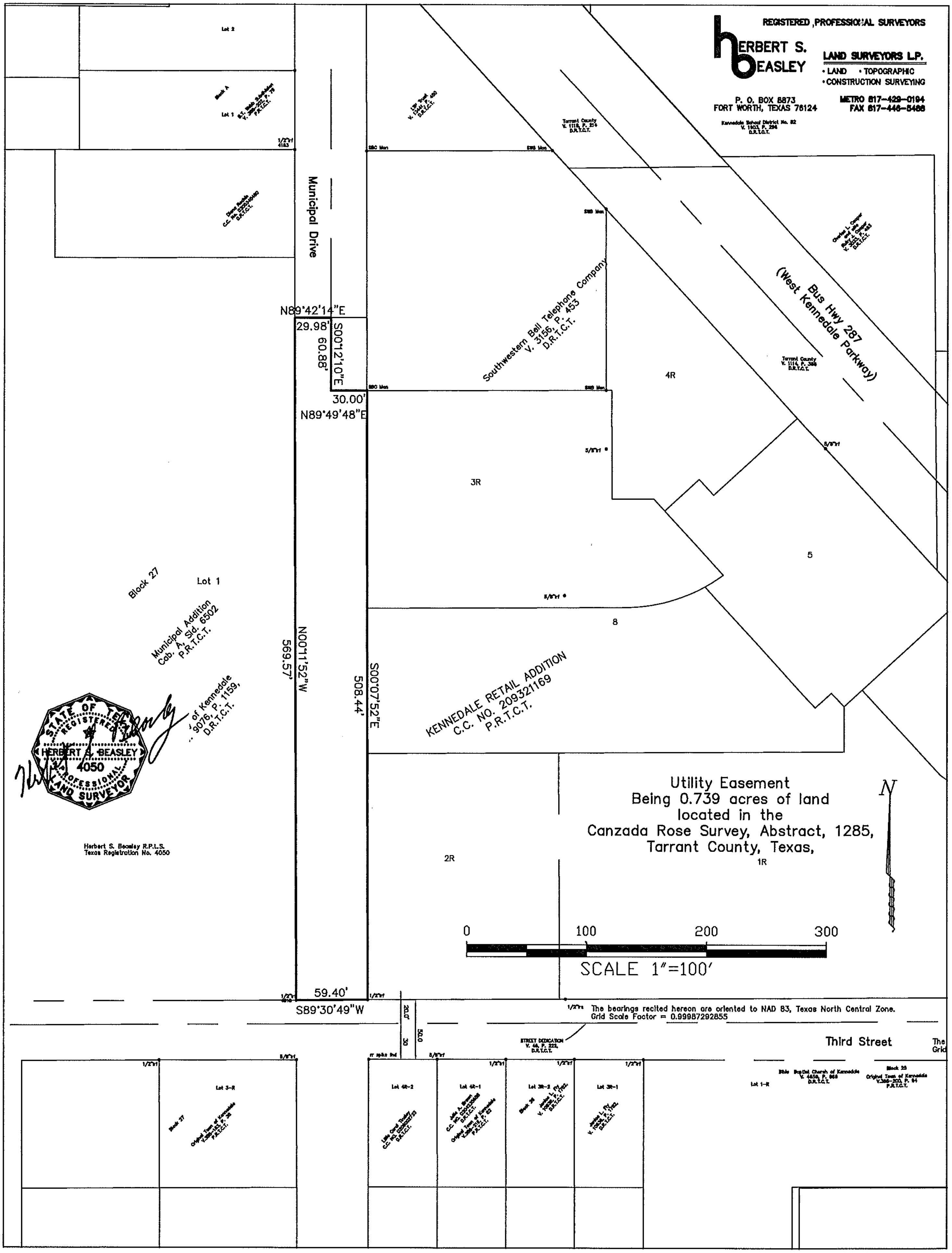
THENCE S00°07'52"E, a distance of 508.44 feet along the West line of said Block A to an 1/2" iron rod found at the Southwest corner of Lot 2R in said Block A, Kennedale Retail Addition;

THENCE S89°30'49"W, a distance of 59.40 feet to the point of beginning, containing 0.739 acres of land.

The bearings recited hereon are oriented to NAD 83 North Central Texas Grid.

Herbert S. Beasley
Registered Professional
Land Surveyor No. 4050

STATE OF TEXAS
REGISTERED
HERBERT S. BEASLEY
4050
PROFESSIONAL
LAND SURVEYOR


REGISTERED PROFESSIONAL SURVEYORS
HERBERT S. BEASLEY
LAND SURVEYORS L.P.
• LAND • TOPOGRAPHIC
• CONSTRUCTION SURVEYING
P. O. BOX 8873
FORT WORTH, TEXAS 76124
METRO 817-429-0194
FAX 817-446-5488
Municipal Drive
N89°42'14"E
29.98'
S00°12'10"E
60.88'
30.00'
N89°49'48"E
Southwestern Bell Telephone Company
V. 3156, P. 453
D.R.T.C.T.
Bus Hwy 287
(West Kennedale Parkway)
4R
3R
5
8
Block 27
Lot 1
Municipal Addition
Cab. A, Sld. 6502
P.R.T.C.T.
N00°11'52"W
569.57'
S00°07'52"E
508.44'
KENNEDALE RETAIL ADDITION
C.C. NO. 209321169
P.R.T.C.T.
STATE OF TEXAS
REGISTERED
HERBERT S. BEASLEY
4050
PROFESSIONAL LAND SURVEYOR
Herbert S. Beasley R.P.L.S.
Texas Registration No. 4050
Utility Easement
Being 0.739 acres of land
located in the
Canzada Rose Survey, Abstract, 1285,
Tarrant County, Texas,
2R
1R
N
0
100
200
300
SCALE 1"=100'
59.40'
S89°30'49"W
The bearings recited hereon are oriented to NAD 83, Texas North Central Zone.
Grid Scale Factor = 0.99987292855
Third Street
Lot 3-R
Lot 4R-2
Lot 4R-1
Lot 3R-2
Lot 3R-1
Lot 1-R

SUZANNE HENDERSON

COUNTY CLERK

100 West Weatherford Fort Worth, TX 76196-0401

PHONE (817) 884-1195

CITY SECRETARY'S OFFICE
CITY OF KENNEDALE
405 MUNICIPAL DR
KENNEDALE, TX 76060

Submitter: CITY OF KENNEDALE

DO NOT DESTROY
WARNING - THIS IS PART OF THE OFFICIAL RECORD.

Filed For Registration:	5/21/2010 2:37 PM		
Instrument #:	D210120847		
A	9	PGS	$44.00

By: Suzanne Henderson

D210120847

ANY PROVISION WHICH RESTRICTS THE SALE, RENTAL OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

Prepared by: DNCLARK