

ORDINANCE NO. 3936

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN AGREEMENT WITH BRC ASSOCIATES, INC., A TEXAS CORPORATION AND NEW BIG TOWN ASSOCIATES, A TEXAS LIMITED PARTNERSHIP (COLLECTIVELY "KIMCO") AND KENT E. JONES & COMPANY, INC., A TEXAS CORPORATION ("KJI"); PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Mesquite (the "City") recognizes the importance of its continued role in local economic development; and

WHEREAS, Kent E. Jones & Company, Inc. ("KJI"), plans to develop a multi-purpose sports training facility at the former site of the Big Town Mall on property owned by BRC Associates, a Texas corporation and New Big Town Associates, a Texas limited partnership (collectively "Kimco"); and

WHEREAS, an agreement has been negotiated between the City, Kimco and KJI ("the Agreement"), a copy of which is attached hereto and made a part hereof for all purposes as Exhibit "A;" and

WHEREAS, the City will contribute \$650,000 towards the purchase of the property for KJI from Kimco; and

WHEREAS, Kimco will dedicate a utility easement across the northern property line of the site, will provide title to the property where the City's water tower is currently located, will dedicate a utility easement located on the western boundary of the City's water tower property to Samuell Boulevard and an access easement to be executed at the time of platting from Big Town Boulevard to the water tower property and to the proposed development; and

WHEREAS, KJI will repay the full purchase amount to the City if the project is not substantially underway at the end of a three-year period from the time of closing; and

WHEREAS, at that time, the City will retain all previously dedicated easements; and

WHEREAS, the City Council has been presented with the proposed agreement between the City, Kimco, and KJI, attached hereto as Exhibit "A;" and

WHEREAS, after holding due hearings and affording a full and fair hearing to all property owners generally and to the persons interested and situated in the area, the City is of the opinion that the Agreement be granted herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

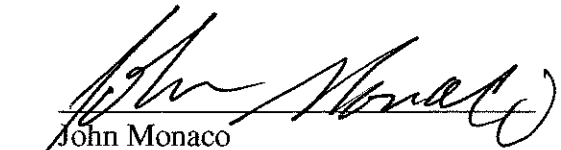
SECTION 1. That the terms and conditions of the agreement as finally negotiated between the City of Mesquite, BRC Associates, a Texas corporation and New Big Town Associates, a Texas limited partnership (collectively "Kimco") and Kent E. Jones & Company, Inc. ("KJI"), (the "Agreement"), a copy of which is attached hereto and made a part hereof for all purposes as Exhibit "A," having been reviewed by the City Council and found to be in the best interests of the City of Mesquite and its citizens, are hereby in all things approved.

SECTION 2. That the City Manager is hereby authorized to finalize and execute the Agreement and all other documents in connection therewith on behalf of the City of Mesquite substantially according to the terms and conditions set forth therein.


SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 4. That the need to enter into this Agreement and the need to protect the public interest, comfort and general welfare of the citizens of the City of Mesquite, creates an urgency and an emergency for the preservation of the public health, safety and welfare, and requires that this ordinance shall take effect immediately from and after its passage and publication of said ordinance, as the law in such cases provides.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 3rd day of March, 2008.



John Monaco
Mayor

ATTEST:



Judy Womack
City Secretary

APPROVED:



B.J. Smith
City Attorney

EXHIBIT "A"
TO
AGREEMENT BETWEEN
THE CITY OF MESQUITE, TEXAS, KIMCO AND KJI

Description of Real Property Being Acquired by KJI

APPROVED BY CITY COUNCIL
DATE 3.3.08#14B
CITY CLERK [Signature]

**AGREEMENT BETWEEN
THE CITY OF MESQUITE, TEXAS, BRC ASSOCIATES, INC., NEW
BIG TOWN ASSOCIATES, AND KENT E. JONES & COMPANY,
INC.**

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This Agreement is made and entered into by and between the City of Mesquite, Texas ("City"), BRC Associates, Inc., a Texas Corporation and New Big Town Associates, a Texas limited partnership (collectively "Kimco"), and Kent E. Jones & Company, Inc., a Texas corporation ("KJI").

RECITALS

Kimco is in the process of selling the real property described in Exhibit "A" appended to this Agreement ("the former Big Town Mall Site") to KJI.

City desires to plan for and improve vehicular thoroughfares and vehicular access in the vicinity of the former Big Town Mall Site. Specifically, City desires to acquire utility easement rights along U. S. Highway 80 along the northern boundary of the former Big Town Mall Site; promote orderly access to the former Big Town Mall Site from Big Town Boulevard; and to acquire fee simple title to certain property presently leased by City located on the former Big Town Mall Site to facilitate access to such property and for the ancillary purpose of reserving the availability of such property for public use.

KJI proposes to develop a project on the former Big Town Mall Site described in Exhibit "B".

City desires the project proposed by KJI for the former Big Town Mall Site described in Exhibit "B" to become a reality and to be successful.

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions, agreements, detriments and benefits more specifically hereinafter set out, City, Kimco, and KJI make and enter into the following:

AGREEMENT

1. Immediately prior to the close of KJI's acquisition of the real property described in Exhibit "A" appended to this Agreement (the "Big Town Closing"), Kimco agrees to grant to City a 15 foot utility easement and a 20 foot construction easement on, over and

across the real property described by metes and bounds in Exhibit "C" appended to this Agreement. The document granting such easement shall be in such form and contain terms satisfactory to City in its sole discretion.

2. Immediately prior to the Big Town Closing, Kimco agrees to bargain, sell, transfer and convey to City fee simple title to the real property described by metes and bounds in Exhibit "D" appended to this Agreement, free and clear of all liens, encumbrances and leases of any nature not specifically agreed to by City in writing. Title to the property described in Exhibit "D" shall be conveyed by special warranty deed, in such form and containing such terms as shall be satisfactory to City in its sole discretion.

a. City and KJI agree that KJI shall retain the right to rent advertising space on the water tower presently situated on the real property described in Exhibit "D". KJI shall further be entitled to obtain, receive and retain all rent payments generated by the rental of such advertising space. The foregoing provision notwithstanding, however, City and KJI further agree that all advertisers, and text of advertising, must be approved in writing by City prior to KJI's entry into any binding contracts with advertisers, such approval not to be unreasonably withheld or delayed. City may reject such advertising as it sees fit in its sole discretion, reasonably exercised. In the event that City rejects an advertiser, or text of advertising, KJI agrees to refrain from entering into a contract with the prospective advertiser.

3. Kimco agrees to grant a 35 foot utility easement as described in Exhibit "E" parallel and adjacent to the western side of the real property described in Exhibit "D".

4. KJI agrees to retain the current access to the former Big Town Mall Site from Big Town Boulevard and to keep same open and unobstructed for public ingress and egress to the site from Big Town Boulevard. KJI further agrees that upon final plat approval for the project described in Exhibit "B", it will grant (at City's election either by easement documents or via the plat) a 70 foot access and utility easement to City, should City so desire in its sole discretion, for vehicular and pedestrian ingress and egress and underground City utilities to the project from Big Town Boulevard at such location as shall be mutually agreeable to KJI and City. Any easement delivered in furtherance of this paragraph shall be in the form and contain such terms as shall be agreeable to City in its sole discretion reasonably exercised.

5. KJI agrees that any underground City utilities necessary to serve the project or adjacent sites shall be granted the appropriate width easements if such easements do not already exist, to include a 15' utility easement from the property described in Exhibit "C" south to Samuel Boulevard.

6. KJI agrees to build and develop the former Big Town Mall Site substantially as described in Exhibit "B" with the construction of the approximately 200,000 square foot multi-sports training facility to be built and a certificate of occupancy issued within 2 years from the date of this agreement. Should KJI fail to gain a certificate of occupancy

for the multi-sports training facility prior to the expiration of three (3) years from the date of this agreement then KJI shall repay the City \$650,000.

7. KJI agrees to reimburse its prorata share of the water line constructed in the easement described in Exhibit "C" within six (6) months of the final acceptance of the water line by the City. KJI's prorata share of such costs shall be reasonably determined by the engineering department of City.

8. KJI for itself, its successors and assigns agrees that any development constructed on the former Big Town Mall Site shall have its principal entrance and address in the City of Mesquite, Dallas County, Texas.

9. City agrees to pay Kimco the sum of Six Hundred Fifty Thousand and No/Hundreds (\$650,000.00) Dollars at the City Closing.

10. Closing of the transactions made the subject of this Agreement (the "City Closing") shall be held simultaneously with the Big Town Closing at the offices of Fidelity National Title Insurance Company, 5323 Spring Valley Road, Suite 150, Dallas, TX 75254, which closing may be in person or via escrow at the option of each party.

- a. Intentionally Deleted.
- b. All closing costs attributable to City's acquisition of the property and easements made the subject of this Agreement shall be paid by City.
- c. At the City Closing, City shall deliver to Kimco the consideration described in paragraph 9 of this Agreement together with evidence of its authority to enter into this Agreement.
- d. At closing, Kimco shall deliver to City:
 - (1) The easement described in paragraph 1 of this Agreement;
 - (2) The special warranty deed described in paragraph 2 of this Agreement together with a written termination of all leases concerning such property;
 - (3) An IRS Non foreign Person Affidavit; and
 - (4) Evidence of Kimco's authority to close this transaction.
- e. Taxes on the real property described in Exhibit "B" shall be prorated as of the date of closing.

11. The obligations of City and Kimco under this Agreement are specifically made contingent upon KJI's acquisition of the real property described in Exhibit "A" appended

to this Agreement. In the event that KJI does not acquire the real property described in Exhibit "A" appended to this Agreement within one hundred eighty (180) days from the date of this Agreement, this Agreement shall become null and void without further notice or action by either party, unless time for performance is extended in writing duly executed by both parties to this Agreement.

12. To be effective, any notice to City under this Agreement relating to claims of default must strictly comply with the provisions of the Texas Government Code, the Texas Local Government Code and City's ordinances regarding suits and/or claims against a municipality. However, notices sent to City in the ordinary course of this Agreement shall be sent in duplicate to the City Manager and City Attorney of City at the following address:

City of Mesquite
1515 North Galloway Avenue
Mesquite, Texas 75149

13. All notices to KJI under this Agreement shall be sent to:

Kent E Jones & Company, Inc.
2001 N. Lamar, Suite 250
Dallas, Texas 75202

With a copy to:
Louis I. Cole
Underwood, Perkins and Ralston,
P.C.
5420 LBJ Freeway, #1900
Dallas, Texas 75240

14. All notices to Kimco under this Agreement shall be sent to:

Kimco Realty Corporation
3333 New Hyde Park Road
Suite 100
New Hyde Park, New York
11042

With a copy to:
Gary Tilley
Kimco Realty Corporation
3102 Maple Avenue
Suite 620
Dallas, TX 75201

15. KJI's rights under this Agreement may not be assigned or transferred to any third party without the express prior written consent of City, not to be unreasonably withheld.

16. Exhibits "A," "B" "C", "D" and "E" appended to this Agreement are incorporated herein for all purposes as fully as if same were copied herein verbatim.

17. Miscellaneous Provisions:

a. Any notice, demand or other communication required to be given or to be served upon any party hereunder shall be in writing and delivered to the person to whom the notice is directed, either:

- (1) In person;
- (2) By United States Mail as a registered or certified item with return receipt requested; or
- (3) Delivered by a recognized delivery service (including any express mail or delivery service) that provides a delivery receipt.

Notices, demands or other communications delivered by mail shall be deemed given and received three (3) days from the date when deposited in a post office or other depository under the care or custody of the United States Postal Service, enclosed in a wrapper, addressed properly, with proper postage affixed. Any notice, demand or other communication given other than by certified or registered mail, return receipt requested, shall be deemed to have been given and received when delivered to the address of the party to whom it is addressed at the address set out in this Agreement. Either party hereto may change its address for notice by giving the other party ten days' advance written notice of such change of address.

b. All representations, warranties, covenants and agreements contained herein, whether to be performed before or after the closing date, shall not be deemed to be merged into the instruments of the closing and shall survive the closing.

c. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

d. THIS AGREEMENT SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN DALLAS COUNTY, TEXAS.

e. Where required for proper interpretation, words in the singular shall include the plural and words of any gender shall include all genders. The descriptive headings of the articles, sections and paragraphs in this Agreement are

for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

- f. This Agreement may not be amended and no condition, covenant or obligation may be waived except by an agreement in writing signed by City, Kimco, and KJI.
- g. If any of the parties files a lawsuit in connection with this Agreement, the prevailing party(ies) in such action shall be entitled to recover from the non-prevailing party(ies), in addition to all other remedies or damages as limited herein, reasonable attorneys' fees and costs of court incurred in such lawsuit.
- h. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supercedes all prior and contemporaneous agreements and understandings of the parties in connection therewith.
- i. This Agreement may be executed simultaneously in three or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.
- j. The effective date of this Agreement (the "Effective Date") shall be the date on which the last of City, Kimco, and KJI execute this Agreement. Any act performable on an official United States holiday or a Saturday or Sunday shall be performable on the next business day following such date.
- k. The parties acknowledge that they have had the opportunity to be represented by counsel in connection with this transaction and that this Agreement shall be interpreted according to its fair construction and shall not be construed against any party. If any provision 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.
- l. Time is of the essence with respect to every provision of this Agreement.
- m. No waiver by any party of any of its rights or remedies hereunder or otherwise shall be considered a waiver of any other subsequent right or remedy. Except as expressly provided herein, no waiver by any party of any of its rights or remedies hereunder or otherwise shall be effective unless such waiver is evidenced in a written instrument executed by the waiving party.

n. Legal Construction. In the event 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 other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall 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.

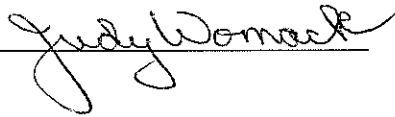
18. Each party represents and warrants to the other that no brokers or finders have been engaged by it in connection with the transactions contemplated by this Agreement, or, to its knowledge, is in any way connected with such transaction. In the event of any claim for broker's or finder's fees or commissions in connection with the negotiation, execution or consummation of this Agreement, then each party shall indemnify, hold harmless and defend the other party(ies) from and against any such claim based upon any statement, representation or agreement made by, or allegedly made by, the indemnifying party. This indemnity shall survive the closing or termination of this Agreement.

DATED: March 6, _____, 2008

ATTEST:

CITY OF MESQUITE:

By: _____



Judy Womack
Printed Name

City Secretary
Title

By: _____

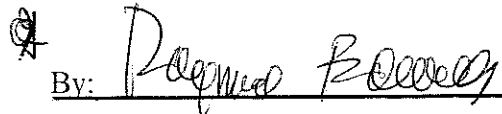


Ted Barron
Printed Name

City Manager
Title

BRC ASSOCIATES, INC.

By: _____



Raymond Edwards
Printed Name Vice President

Title

NEW BIG TOWN
ASSOCIATES,

By: KIMCO BT Corp., its general partner.
By: Raymond Edwards

Printed Name Raymond Edwards
Vice President

Title

KENT E. JONES & COMPANY,
INC.

By: Kent E. Jones

KENT E. JONES
Printed Name

PRESIDENT
Title

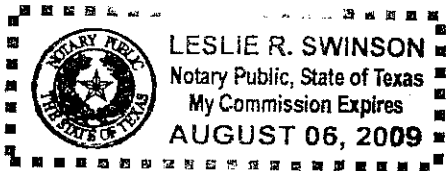
APPROVED AS TO FORM AND
LEGALITY:

[Signature]
City Attorney or His Designee

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared Ted Barron, City Manager of the CITY OF MESQUITE, TEXAS, a municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he was duly authorized to perform the same by appropriate resolution of the City Council of the City of Mesquite and that he executed the same as the act of the said City for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 6th day of March, 2008.



Leslie R. Swinson
Notary Public in and for the State of Texas

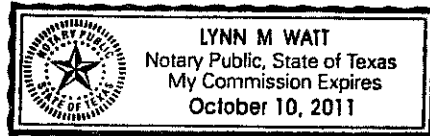
Leslie R. Swinson
Notary's Printed Name

August 6, 2009
Commission Expiry Date

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared KENT E. JONES, PRESIDENT with KENT E. JONES & COMPANY, INC., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that said instrument was signed on behalf of said corporation and for the purposes stated therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE in said County and State this 26th day of March, 2008. *Lynn Watt*



THE STATE OF NEW YORK §
 §
COUNTY OF NASSAU §

BEFORE ME, the undersigned authority, on this day personally appeared Raymond Edwards, Vice President of BRC ASSOCIATES, INC. AND Vice President of Kimco BT Corp., the general partner of NEW BIG TOWN ASSOCIATES, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that said instrument was signed on behalf of said entities and for the purposes stated therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE in said County and State this 17th day of March, 2008. *Josephine Engle*

JOSEPHINE ENGLE
Notary Public, State of New York
No. 01EN6098873
Qualified in Queens County
Certificate on file in Nassau County
My Commission Expires 9/22/2011

EXHIBIT "A"
TO
AGREEMENT BETWEEN
THE CITY OF MESQUITE, TEXAS, KIMCO AND KJI

Description of Real Property Being Acquired by KJI

BEING a tract of land out of the Isaac Bauman Survey, Abstract No. 82, and the W. A. Cole Survey, Abstract No. 261, in the City of Mesquite, Dallas County, Texas, and being part of BIG TOWN ADDITION to the City of Mesquite, Texas, according to the plat thereof recorded in Volume 27, Page 219 of the Map Records of Dallas County, Texas and being more particularly described as follows:

BEGINNING at 1 1/2" iron pipe found in the north right-of-way line of Samuell Boulevard (120' ROW) for the southwest corner of a tract of land described in deed to Big Town Company, recorded in Volume 4502, Page 559 of the Deed Records of Dallas County, Texas and the southwest corner of TRINITY PLACE, an addition to the City of Mesquite, Texas, according to the plat thereof recorded in Volume 84189, Page 4455 of Deed Records of Dallas County, Texas;

THENCE with the north right-of-way line of Samuell Boulevard, North 87°54'30" West a distance of 1515.00 feet to a point for the southwest corner of the Big Town Company tract;

THENCE with the west line of said Big Town Company Tract, North 02°04'05" East a distance of 2083.07' to the southwest corner of the 105,306 square foot tract of land described in deed to the State of Texas, recorded in Volume 72050, Page 0892 of the Deed Records of Dallas County

THENCE with the south line of the said 105,306 square foot tract, the following courses and distance to wit:

North 83°12'15" East, a distance of 647.57' to a point for the beginning of a non-tangent curve to the right, having a radius of 762.94 feet, a central angle of 25°54'03" and a chord bearing and distance of S61°10'19" East, 342.52 feet
Eastward with the said curve, an arc distance of 316.45 feet to a point in the southerly right-of-way line of U.S. Highway 80 (300' ROW);

THENCE with the said southerly right-of-way line, South 87°50'00" East, a distance of 875.24 feet to the westerly near northeast corner of Big Town Company tract;

THENCE with an east line of said Big Town Company Tract, South 02°04'27" West, a distance of 752.45 feet to a point for corner;

THENCE S87°54'25"E, a distance of 754.85 feet to a point in the west right-of-way line of Big Town Boulevard, (100' ROW);

THENCE with the west right-of-way line of said Big Town Boulevard, the following courses and distances to wit:

South 01°42'08" West, a distance of 60.11' to a point for corner;
South 03°03'08" West, a distance of 87.90' to a point for corner;

THENCE North 87°54'28" West, a distance of 753.08' to a point for corner in the east line of the Big Town Company tract;

THENCE with the east line of said Big Town Company tract, South 02°04'05" West, a distance of 1005.00 feet to the Point of Beginning and containing 74.88 acres of land, more or less.

fs

GF No.: 7002822-D-0070

BEING a tract of land situated in the W.H. Cole Survey, Abstract No. 261, in the City of Mesquite, Dallas County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at an iron rod found for corner in the South line of U.S. Highway 80, Interstate 20, (a 300.0 foot right-of-way), same being the Northeast corner of Big Town Addition, an Addition to the City of Mesquite, Texas, according to the Plat recorded in Volume 37, at Page 215 of the Map Records of Dallas County, Texas;

THENCE South 70 degrees 00 minutes 16 seconds East along the said South line of U.S. Highway 80 for a distance of 671.71 feet to an iron rod found for corner at the intersection of the West line of Big Town Boulevard (a 240.0 foot right-of-way, formerly Shiloh Road) with the said South line of U.S. Highway 80;

THENCE South 00 degrees 05 minutes 24 seconds East along the said West line of Big Town Boulevard for a distance of 402.22 feet to an iron rod found for corner;

THENCE South 44 degrees 32 minutes 06 seconds East along the said West line of Shiloh Road for a distance of 169.35 feet to an iron rod found for corner at the intersection of the North line of a 138.00 foot private roadway with the said West line of Big Town Blvd.;

THENCE North 89 degrees 58 minutes 57 seconds West along the said North line of 138.00 foot private roadway for a distance of 749.31 feet to an iron rod found for corner;

THENCE North 00 degrees 05 minutes 59 seconds West along the East line of said Big Town Addition for a distance of 752.40 feet to the POINT OF BEGINNING.

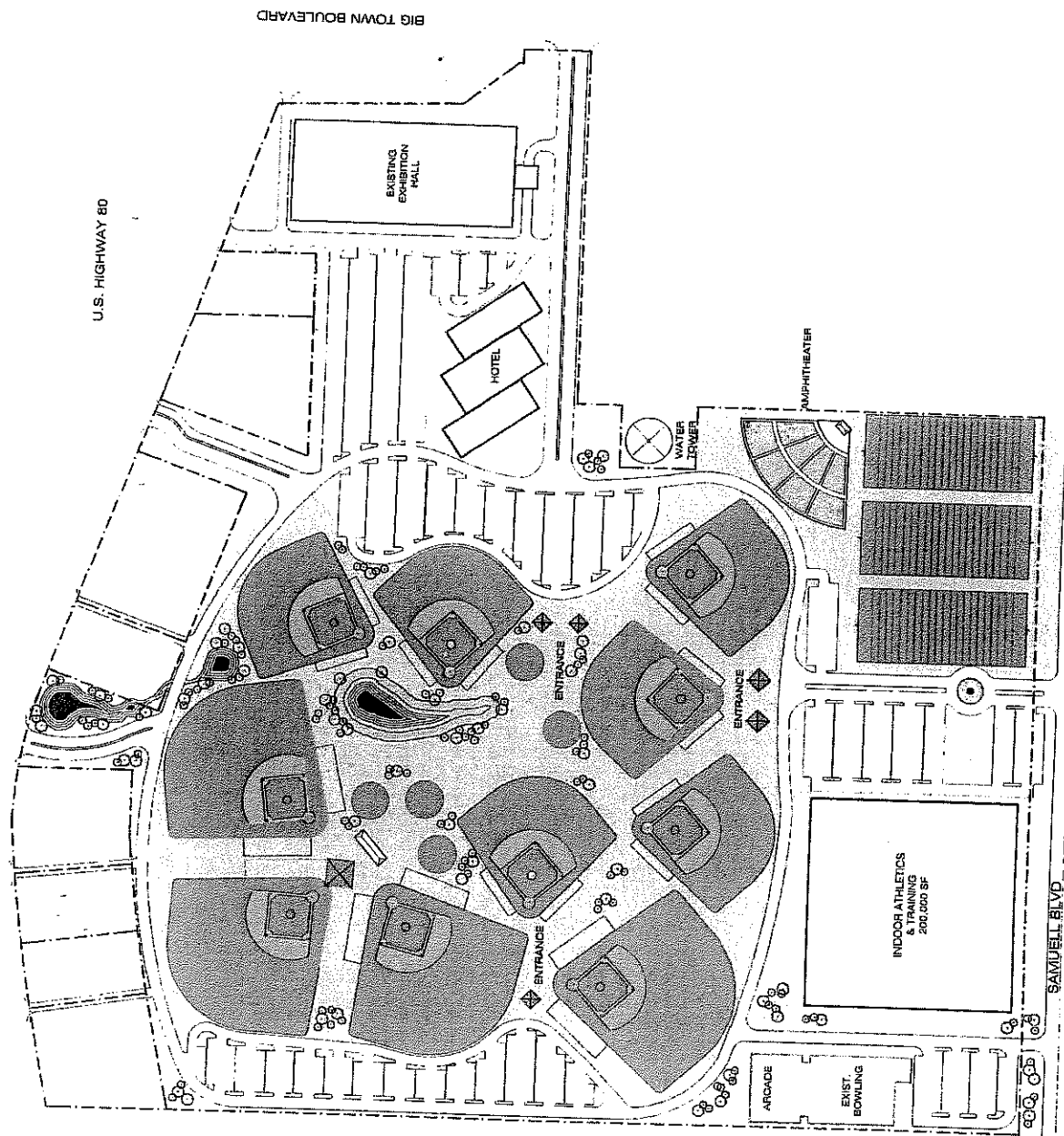
CONTAINING 409,370.6549 square feet or 9.3979 acres of land.

NOTE: THE COMPANY DOES NOT REPRESENT THAT THE ACREAGE AND/OR SQUARE FOOTAGE CALCULATIONS ARE CORRECT.

BS

EXHIBIT "B"
TO
AGREEMENT BETWEEN
THE CITY OF MESQUITE, TEXAS, KIMCO AND KJI

Big Town Mall Site Development Plan



SITE PLAN

EXHIBIT "C"
TO
AGREEMENT BETWEEN
THE CITY OF MESQUITE, TEXAS, KIMCO AND KJI

Metes and Bounds Description of Real Property Kimco is Granting to the City of
Mesquite an Easement On, Over and Across

15' UTILITY EASEMENT

BEING a tract of land situated in the I. Beeman Survey, Abstract No. 82 and the W.A. Cole Survey, Abstract No. 261, Dallas County, Texas, and being part of Big Town Addition, an addition in the City of Mesquite, Texas, as recorded in Volume 37, Page 215 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and being part of that tract of land described in deed to New Big Town Associates as recorded in Volume 85246, Page 6261, D.R.D.C.T., and being more particularly described as follows:

COMMENCING at a point for the northeast corner of said Big Town Addition and the northwest corner of a 15 foot Utility Easement to the City of Mesquite, Texas, as recorded in Volume 5650, Page 626, D.R.D.C.T., said point also being on the southerly right-of-way line of U.S. Highway 80 (a 300' wide public right-of-way);

THENCE South 00 degrees 32 minutes 55 seconds East, departing said southerly right-of-way line of U.S. Highway 80 and along the east line of said Big Town Addition and the west line of said 15 foot Utility Easement, a distance of 42.58 feet to a 1/2-inch set iron rod with yellow plastic cap stamped "HALFF ASSOC INC." (hereinafter referred to as "with cap") for the POINT OF BEGINNING;

THENCE South 00 degrees 32 minutes 55 seconds East, continuing along the east line of said Big Town Addition and the west line of said 15 foot Utility Easement, a distance of 15.97 feet to a 1/2-inch set iron rod with cap for corner;

THENCE North 70 degrees 30 minutes 32 seconds West, departing said east line of Big Town Addition and said west line of said 15 foot Utility Easement and over and across said Big Town Addition, a distance of 676.03 feet to a 1/2-inch set iron rod with cap for the point of curvature of a tangent circular curve to the left having a radius of 1104.07 feet whose chord bears North 84 degrees 58 minutes 28 seconds West a distance of 551.59 feet;

THENCE Westerly, continuing over and across said Big Town Addition and along said curve to the left, through a central angle of 28 degrees 55 minutes 52 seconds, an arc distance of 557.49 feet to a 1/2-inch set iron rod with cap for the point of tangency;

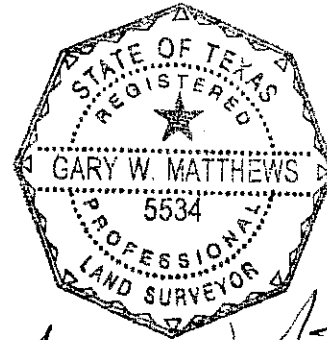
THENCE South 80 degrees 33 minutes 36 seconds West, 15 feet south of and parallel to said southerly right-of-way line of U.S. Highway 80, a distance of 336.54 feet to a 1/2-inch set iron rod with cap on the west line of said Big Town Addition;

THENCE North 00 degrees 37 minutes 56 seconds West, departing said parallel line and along said west line of Big Town Addition, a distance of 15.18 feet to a found brass TXDOT monument for the intersection of said west line of Big Town Addition with the aforementioned southerly right-of-way line of U.S. Highway 80;

THENCE North 80 degrees 33 minutes 36 seconds East, departing said west line of Big Town Addition and along said southerly line of U.S. Highway 80, a distance of 334.21 feet to a 1/2-inch set iron rod with cap for the point of curvature of a tangent circular curve to the right having a radius of 1119.07 feet whose chord bears South 84 degrees 58 minutes 28 seconds East a distance of 559.08 feet;

THENCE Easterly, over and across said Big Town Addition and along said curve, through a central angle of 28 degrees 55 minutes 52 seconds, an arc distance of 565.07 feet to a 1/2-inch set iron rod with cap for the point of tangency;

THENCE South 70 degrees 30 minutes 32 seconds East, continuing over and across said Big Town Addition, a distance of 670.56 feet to the POINT OF BEGINNING AND CONTAINING 23,549 square feet or 0.5406 acres of land, more or less.



Gary W. Matthews
2-26-2008

TEMPORARY CONSTRUCTION EASEMENT NO. 1

BEING a tract of land situated in the I. Beeman Survey, Abstract No. 82, Dallas County, Texas, and being part of Big Town Addition, an addition in the City of Mesquite, Texas, as recorded in Volume 37, Page 215 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and being part of that tract of land described in deed to New Big Town Associates as recorded in Volume 85246, Page 6261, D.R.D.C.T., and being more particularly described as follows:

COMMENCING at a found brass TXDOT monument for the intersection of the west line of said Big Town Addition with the southerly right-of-way line of U.S. Highway 80 (a 300 foot wide public right-of-way);

THENCE South 00 degrees 37 minutes 56 seconds East, departing said southerly right-of-way line of U.S. Highway 80 and along said west line of Big Town Addition, a distance of 15.18 feet to a 1/2-inch set iron rod with yellow plastic cap stamped "HALFF ASSOC INC." (hereinafter referred to as "with cap") for the POINT OF BEGINNING;

THENCE North 80 degrees 33 minutes 36 seconds East, departing said west line of Big Town Addition, 15 feet south of and parallel to said southerly right-of-way line of U.S. Highway 80, a distance of 336.54 feet to a 1/2-inch set iron rod with cap for the point of curvature of a tangent circular curve to the right having a radius of 1104.07 feet whose chord bears North 86 degrees 40 minutes 05 seconds East a distance of 234.95 feet;

THENCE Easterly, departing said parallel line and over and across said Big Town Addition and along said curve to the right, through a central angle of 12 degrees 12 minutes 58 seconds, an arc distance of 235.40 feet to a point for corner;

THENCE South 80 degrees 33 minutes 36 seconds West, continuing over and across said Big Town Addition, a distance of 574.03 feet to a point for corner in the aforementioned west line of said Big Town Addition;

THENCE North 00 degrees 37 minutes 56 seconds West, along the west line of said Big Town Addition, a distance of 25.30 feet to the POINT OF BEGINNING AND CONTAINING 12,364 square feet or 0.2838 acres of land, more or less.

TEMPORARY CONSTRUCTION EASEMENT NO. 2

BEING a tract of land situated in the I. Beeman Survey, Abstract No. 82 and the W.A. Cole Survey, Abstract No. 261, Dallas County, Texas, and being part of Big Town Addition, an addition in the City of Mesquite, Texas, as recorded in Volume 37, Page 215 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and being part of that tract of land described in deed to New Big Town Associates as recorded in Volume 85246, Page 6261, D.R.D.C.T., and being more particularly described as follows:

BEGINNING at the northeast corner of said Big Town Addition and the northwest corner of a 15 foot Utility Easement to the City of Mesquite, Texas as recorded in Volume 5650, Page 626, D.R.D.C.T., said point being on the southerly right-of-way line of U.S. Highway 80 (a 300' wide public right-of-way);

THENCE South 00 degrees 32 minutes 55 seconds East, departing said southerly right-of-way line of U.S. Highway 80 and along the east line of said Big Town Addition and the west line of said 15 foot Utility Easement, a distance of 42.58 feet to a 1/2-inch set iron rod with yellow plastic cap stamped "HALFF ASSOC INC." (hereinafter referred to as "with cap") for corner;

THENCE North 70 degrees 30 minutes 32 seconds West, departing said east line of Big Town Addition and said west line of said 15 foot Utility Easement and over and across said Big Town Addition, a distance of 670.56 feet to a 1/2-inch set iron rod with cap for the point of curvature of a tangent circular curve to the left having a radius of 1119.07 feet whose chord bears North 84 degrees 58 minutes 28 seconds West a distance of 559.08 feet;

THENCE Westerly, continuing over and across said Big Town Addition and along said curve to the left, through a central angle of 28 degrees 55 minutes 52 seconds, an arc distance of 565.07 feet to a point for corner on said southerly right-of-way line of U.S. Highway 80;

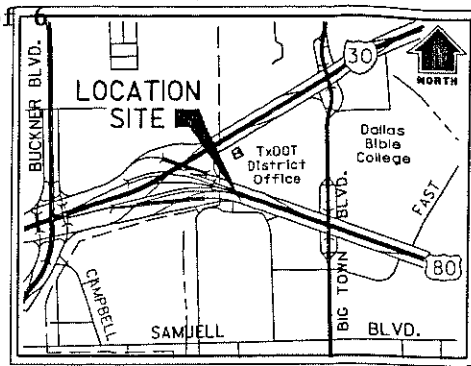
THENCE North 80 degrees 33 minutes 36 seconds East, along said southerly line of U.S. Highway 80, a distance of 213.36 feet to a point from which a found brass TXDOT monument bears South 67 degrees 26 minutes 24 seconds West a distance of 0.18 feet for the beginning of a non-tangent circular curve to the right having a radius of 763.94 feet whose chord bears South 83 degrees 25 minutes 36 seconds East a distance of 341.95 feet;

THENCE Easterly, continuing along said southerly line of U.S. Highway 80 and along said curve to the right, through a central angle of 25 degrees 51 minutes 55 seconds, an arc distance of 344.87 feet to a 1/2-inch found iron rod for the end of said curve;

THENCE South 70 degrees 30 minutes 32 seconds East, continuing along said southerly line of U.S. Highway 80, a distance of 677.31 feet to the POINT OF BEGINNING AND CONTAINING 40,501 square feet or 0.9298 acres of land, more or less.

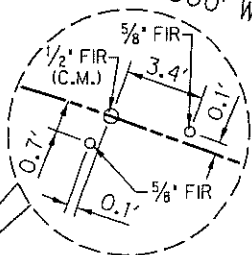
U.S. HIGHWAY NO. 80

(300' WIDE PUBLIC R.O.W.)



MATCH LINE (SEE SHEET 6 OF 6)

$\Delta=25^{\circ}51'55''$
 $R=763.94'$
 $T=175.42'$
 $L=344.87'$
 $C.B.=S83^{\circ}25'36''E$
 $C.L.=341.95'$



$10'$ SOUTHWESTERN BELL TELEPHONE CO. EASEMENT (VOL. 84146, PG. 665)

$1/2"$ SIR W/CAP

$S70^{\circ}30'32''E$

$15'$ UTILITY EASEMENT
 23,549 SQ. FT.
 OR
 0.5406 ACRES

POINT OF BEGINNING
 TEMPORARY CONSTRUCTION
 EASEMENT NO. 2
 POINT OF COMMENCING
 $15'$ UTILITY EASEMENT
 GRID COORDINATES:
 N = 6,978,039.955
 E = 2,530,507.235

$1/2"$ SIR W/CAP

$\Delta=28^{\circ}55'52''$
 $R=1,119.07'$
 $T=288.69'$
 $L=565.07'$
 $C.B.=S84^{\circ}58'28''E$
 $C.L.=559.08'$

$S70^{\circ}30'32''E$
 $N70^{\circ}30'32''W$

TEMPORARY CONSTRUCTION
 EASEMENT NO. 2
 40,501 SQ. FT.
 OR
 0.9298 ACRES
 BIG TOWN ADDITION
 (VOL. 37, PG. 215)

$\Delta=28^{\circ}55'52''$
 $R=1,104.07'$
 $T=284.82'$
 $L=557.49'$
 $C.B.=N84^{\circ}58'28''W$
 $C.L.=551.59'$

LONE STAR GAS COMPANY EASEMENT (VOL. 4921, PG. 29)

$10'$ SOUTHWESTERN BELL TELEPHONE CO. EASEMENT (VOL. 84146, PG. 665)

(OWNER)
 NEW BIG TOWN ASSOCIATES
 (VOL. 85246, PG. 6261)

$10'$ UTILITY EASEMENT (VOL. 37, PG. 215)

$677.31'$
 $670.56'$
 $676.03'$
 $1/2"$ SIR W/CAP

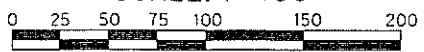
POINT OF BEGINNING
 $15'$ UTILITY EASEMENT
 $S00^{\circ}32'55''E$
 $15.97'$
 $1/2"$ SIR W/CAP

POINT OF BEGINNING
 $15'$ UTILITY EASEMENT
 $S00^{\circ}32'55''E$
 $42.58'$

$15'$ UTILITY EASEMENT TO THE CITY OF MESQUITE (VOL. 5650, PG. 626)



SCALE: 1"=100'



SCALE IN FEET

EXHIBIT

OF 15' UTILITY EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT NO. 1 TEMPORARY CONSTRUCTION EASEMENT NO. 2

PART OF BIG TOWN ADDITION
 SITUATED IN THE

I. BEEMAN SURVEY, ABSTRACT NO. 82
 W. A. COLE SURVEY, ABSTRACT NO. 261
 CITY OF MESQUITE, DALLAS COUNTY, TEXAS
 FOR

PROLOGIS
 BY



HALFF ASSOCIATES INC., ENGINEERS ~ SURVEYORS
 1201 NORTH BOWSER ROAD ~ RICHARDSON, TEXAS ~ 75081-2275
 SCALE: 1"=100' (214)346-6200 AVO. 25327 JANUARY, 2008

5/6

Basis of Bearing is the Texas State Plane Coordinate System, 1983, North Central Zone 4202, City of Mesquite Geodetic Control Network, based upon GPS measurements from horizontal control monument "GPS1" and "GPS5". Convergence angle of "GPS1" is = 01 degree 01 minute 01.5034 seconds as published in the City of Mesquite control Network. Combined Scale Factor (CSF) 0.999861855.

LEGEND:

- $1/2"$ SIR 1/2-INCH SET IRON ROD WITH A YELLOW
- W/CAP PLASTIC CAP STAMPED "HALFF ASSOC. INC."
- $1/2"$ FIR 1/2-INCH FOUND IRON ROD
- (C.M.) CONTROL MONUMENT

U.S. HIGHWAY NO. 80
(300' WIDE PUBLIC R.O.W.)

**POINT OF COMMENCING
TEMPORARY CONSTRUCTION
EASEMENT NO. 1**
GRID COORDINATES:
N = 6,978,215.261
E = 2,528,989.095

$\Delta=12^{\circ}12'58''$
 $R=1,104.07'$
 $T=118.15'$
 $L=235.40'$
 $C.B.=N86^{\circ}40'05''E$
 $C.L.=234.95'$

$\Delta=25^{\circ}51'55''$
 $R=763.94'$
 $T=175.42'$
 $L=344.87'$
 $C.B.=S83^{\circ}25'36''E$
 $C.L.=341.95'$

TEMPORARY
CONSTRUCTION
EASEMENT NO. 2
40,501 SQ. FT.
OR
0.9298 ACRES

15' UTILITY EASEMENT
23,549 SQ. FT.
OR
0.5406 ACRES

FND. BRASS TXDOT
MONUMENT
Bears=S67°26'24"W
0.18'

FND. BRASS
TXDOT MONU.
(C.M.)

1/2" SIR
W/CAP

$N80^{\circ}33'36''E$
213.36'

$N80^{\circ}33'36''E$

334.21'

574.03'

$S80^{\circ}33'36''W$

336.54'

1/2" SIR
W/CAP

$\Delta=28^{\circ}55'52''$
 $R=1,119.07'$
 $T=288.69'$
 $L=565.07'$
 $C.B.=S84^{\circ}58'28''E$
 $C.L.=559.08'$

$N00^{\circ}37'56''W$
15.18'

EASEMENT TO
STATE OF TEXAS
(VOL. 72050, PG. 690)

TEMPORARY
CONSTRUCTION
EASEMENT NO. 1
12,364 SQ. FT.
OR
0.2838 ACRES

**POINT OF BEGINNING
TEMPORARY CONSTRUCTION
EASEMENT NO. 1**

$N00^{\circ}37'56''W$
25.30'

BIG TOWN ADDITION
(VOL. 37, PG. 215)

LONE STAR GAS
COMPANY EASEMENT
(VOL. 5080, PG. 54)

NEW BIG TOWN
ASSOCIATES
(OWNER)
(VOL. 85246, PG. 6261)

LONE STAR GAS
COMPANY EASEMENT
(VOL. 4921, PG. 29)

10' UTILITY EASEMENT
(VOL. 37, PG. 215)

I. BEEMAN SURVEY, ABSTRACT NO. 82
W. A. COLE SURVEY, ABSTRACT NO. 261

MATCH LINE (SEE SHEET 5 OF 6)

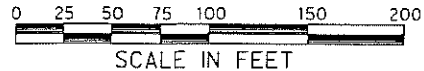


Gary W. Matthews
2-26-2008



☉ of
T.P. & L.
EASEMENT
(VOL. 4890,
PG. 170)

SCALE: 1"=100'



EXHIBIT

OF
**15' UTILITY EASEMENT AND
TEMPORARY CONSTRUCTION EASEMENT NO. 1
TEMPORARY CONSTRUCTION EASEMENT NO. 2**

PART OF BIG TOWN ADDITION

SITUATED IN THE
I. BEEMAN SURVEY, ABSTRACT NO. 82
W. A. COLE SURVEY, ABSTRACT NO. 261
CITY OF MESQUITE, DALLAS COUNTY, TEXAS

FOR
PROLOGIS

BY
HALFF

6/6

HALFF ASSOCIATES INC., ENGINEERS ~ SURVEYORS
1201 NORTH BOWSER ROAD ~ RICHARDSON, TEXAS ~ 75081-2275
SCALE: 1"=100' (214)346-6200 AVO. 25327 JANUARY, 2008

LEGEND:

- ☉ CENTERLINE
- 1/2" SIR 1/2-INCH SET IRON ROD WITH A YELLOW
- W/CAP PLASTIC CAP STAMPED "HALFF ASSOC. INC."
- 1/2" FIR 1/2-INCH FOUND IRON ROD
- (C.M.) CONTROL MONUMENT

Basis of Bearing is the Texas State Plane Coordinate System, 1983, North Central Zone 4202, City of Mesquite Geodetic Control Network, based upon GPS measurements from horizontal control monument "GPS1" and "GPS5". Convergence angle at "GPS1" is 01 degree 01 minute 01.5034 seconds as published in the City of Mesquite control Network. Combined Scale Factor (CSF) 0.999861855.

EXHIBIT "D"
TO
AGREEMENT BETWEEN
THE CITY OF MESQUITE, TEXAS, KIMCO AND KJI

**Metes and Bounds Description of Real Property Kimco is Agreeing to Bargain, Sell,
Transfer and Convey to the City of Mesquite a Fee Simple Title**

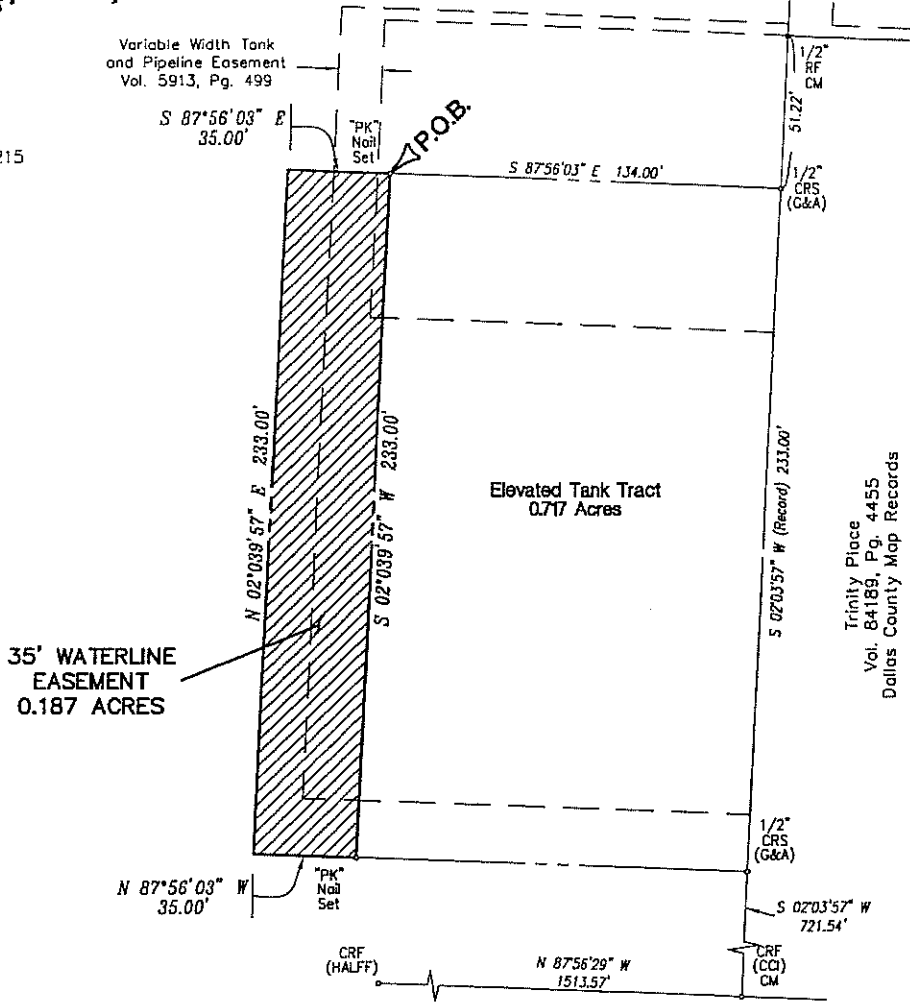
EXHIBIT "E"
TO
AGREEMENT BETWEEN
THE CITY OF MESQUITE, TEXAS, KIMCO AND KJI

**Metes and Bounds Description of Real Property Kimco is Granting to the City of
Mesquite an Easement On, Over and Across (35' easement)**

W.A. COLE SURVEY
A-261

Big Town
Vol. 37, Pg. 215

BIG TOWN SHOPPING
(PRIVATE DRIVE)



SAMUELL BOULEVARD

EXHIBIT
for
35' Waterline Easement
0.187 Acre
in the
W.A. COLE SURVEY, ABSTRACT NO. 261
CITY OF MESQUITE
DALLAS COUNTY, TEXAS

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

Bearings based on plat.