

(Draft 7/20/09)

STATE OF TEXAS

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COUNTY OF
KAUFMAN

**Shared Parking Agreement Between
City of Kaufman, Texas, and**

This Shared Parking Agreement is made by and between the _____, and _____, its permitted assigns, acting by and through their respective authorized officers and partners.

WITNESSETH:

WHEREAS, the _____ owns the real property generally located at _____ within the City of Kaufman as further described in **Exhibit “A”** (the “Land”); and

WHEREAS, the _____ requires the use of certain parking spaces; and

WHEREAS, the _____ and the _____ desire to enter an agreement regarding the terms and conditions for shared use of portions of the parking to be developed as part of the Project;

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**Article I
Term**

The term of this Agreement shall begin on the last date of execution hereof (“Effective Date”) and continue until terminated as provided herein.

**Article II
Right to Use Public Parking; Limitations**

3.1 Generally. _____ agrees that during the term of this Agreement, Company and its officers, directors, members, employees, agents, successors, assigns, tenants, invitees, licensees, contractors, customers, and guests, and the officers, directors, members, employees, tenants, invitees, licensees, contractors, customers, and guests of the successors and/or assigns of Company and its interest in the Land, shall have the non-exclusive right to use the Parking described in Exhibit “B” for the purpose of parking motor vehicles with respect to the uses developed on the Land by _____.

**Article IV
Miscellaneous**

4.1 **Assignment.** This Agreement may not be assigned without the prior written consent of _____ and _____.

4.2 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

4.3 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received (i) three (3) days after deposit into the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below or (ii) on the day actually received if sent by courier or otherwise hand delivered.

If intended for City, to:

Attn: _____

With a copy to:

If intended for Company, to:

Attn: _____

With a copy to:

Any party shall have the right to change its address for notice by sending notice of change of address to each other party, in the manner described above.

4.4 **Entire Agreement.** This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement among the parties that in any manner relates to the subject matter of this Agreement, except as provided or referred to in this Agreement (including the Related Agreements) or as provided in any Exhibits attached hereto.

4.5 **Governing Law.** This Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Kaufman County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

4.6 **Amendment.** This Agreement may only be amended by a written agreement executed by all parties, including all subsequent owners of any portion of the Land; provided, however, with respect to any portion of the Land that is developed for residential use which requires mandatory membership in an owners association, such association may bind all such owners and the approval of each individual owner shall not be required.

4.7 **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.

4.8 **Recitals.** The recitals to this Agreement are incorporated herein.

4.9 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

4.10 **Exhibits.** The exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

4.11 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

4.12 **Indemnification by Company.** CITY SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, DEFENDED, HELD HARMLESS AND RELEASED BY COMPANY FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE,

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OR DESCRIPTION, INCLUDING ALL REASONABLE EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE COMPANY, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY THE PERFORMANCE OF COMPANY UNDER THIS AGREEMENT. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS AGREEMENT IS AN INDEMNITY EXTENDED BY COMPANY TO INDEMNIFY AND PROTECT CITY FROM THE CONSEQUENCES OF THE COMPANY'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE COMPANY SHALL NOT DEFEND, INDEMNIFY OR HOLD THE CITY HARMLESS FROM AND AGAINST ANY CLAIMS ARISING OUT OF, OR OCCASIONED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

4.13 **Approvals.** Whenever an approval or consent is required by a party under the terms of this Agreement, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

Article V Termination

5.1 This Agreement shall terminate upon one of the following events:

- (a) The parties (including the Company, any successor owners of any portion of the Land, and their respective mortgagees) mutually agree in writing to terminate this Agreement; or
- (b) The Related Agreements are terminated prior to Company purchasing all or any portion of the Land pursuant to the Option Agreement.

[Signatures Appear on the Following Page]

(Draft 7/20/09)

EXECUTED in duplicate originals this the ____ day of _____, 2009.

City of Kaufman, Texas

By: _____
Paula Bacon, Mayor

Attest:

By: _____
Jo Ann Talbot, City Secretary

Agreed as to Form:

By: _____
City Attorney

EXECUTED in duplicate originals this the _____ day of _____, 2009.

By: _____

By: _____

(Draft 7/20/09)

City Acknowledgment

State of Texas §
 §
County of Kaufman §

This instrument was acknowledged before me on the ____ day of _____, 2009 by Jayne Peters, Mayor of the City of Kaufman, a Home Rule Municipality.

Notary Public, State of Texas

My Commission expires: _____

Company Acknowledgment

State of Texas §
 §
County of Kaufman §

This instrument was acknowledged before me this ____ day of _____, 2009, by Charles Cotten, a member of Debco Partners, LLC, a Texas limited liability company the general partner of _____, a Texas limited partnership, on behalf of said limited partnership.

Notary Public, State of Texas

My Commission expires: _____