CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY
☐ Consent ☐ Regular ☐ Statutory

Council Meeting Date:	11/26/12
Department:	Economic Development
Department Head	Sally Bane
Agenda Coordinator (include phone #):	**Linda Thomason x8301**

CAPTION

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, and Capital One, National Association, a national association, providing for real property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: **2012-13**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	0	0	**0**
BALANCE	0	0	0	**0**

FUND(S): N/A

COMMENTS: This item has no fiscal impact. Strategic Plan Goal: Providing economic development incentives relates to the City's goal of Strong Local Economy.

SUMMARY OF ITEM

This relates to Capital One, National Association, for tax abatement on Reinvestment Zone 132 and the creation of the zone on Dominion Parkway.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Resolution Tax Abatement Agreement	

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, and Capital One, National Association, a national association, providing for real property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas and Capital One, National Association, a national association, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS:

Section I. The terms and conditions of the Agreement having been reviewed by the City Council of the City of Plano, Texas, and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective from and after its passage.

DULY PASSED AND APPROVED this the 26th day of November, 2012.

_____
Phil Dyer, MAYOR

ATTEST:

_____
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

THE STATE OF TEXAS)
)
COUNTY OF COLLIN)

TAX ABATEMENT AGREEMENT

This Tax Abatement Agreement (this "Agreement") is entered into by and between the City of Plano, Texas, a home-rule municipal corporation of Collin and Denton Counties, Texas, duly acting herein by and through its City Manager, hereinafter referred to as "City" and Capital One, National Association, a national association, duly acting by and through its authorized representative, hereinafter referred to as "Owner".

W I T N E S S E T H:

WHEREAS, on the 26th day of November, 2012, the City Council of the City of Plano, Texas, passed Ordinance No. 2012- - establishing Reinvestment Zone No. 132, for commercial/industrial tax abatement, hereinafter referred to as the "Ordinance", as authorized by V.T.C.A. Tax Code, Chapter 312.001, et seq., cited as the Property Redevelopment and Tax Abatement Act, hereinafter referred to as "Act"; and

WHEREAS, the City has adopted a policy statement for Tax Abatement by Resolution No. 2012-1-6(R) stating that it elects to be eligible to participate in tax abatement (the "Policy Statement"); and

WHEREAS, the Policy Statement sets forth appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by the Act; and

WHEREAS, the tax abatement will maintain and enhance the commercial/industrial economic and employment base of the Plano area thereby benefitting the City in accordance with the said Ordinance and Act; and

WHEREAS, the contemplated use of the Real Property, as hereinafter defined, and the other terms hereof are consistent with encouraging development of said Reinvestment Zone No. 132 in accordance with the purposes for its creation and are in compliance with the intent of the Policy Statement and the Ordinance and similar guidelines and criteria adopted by the City and all applicable law.

NOW THEREFORE, the parties hereto do mutually agree as follows:

1. Owner's real property subject to this Agreement is described by metes and bounds in **EXHIBIT "A"** (the "Real Property") attached hereto and made a part hereof.

IMPROVEMENTS

2. (a) By December 31, 2013, the Owner shall make or cause to be made improvements to the Real Property consisting of a new building(s) and/or building improvements that are at least 360,000 gross square feet of office space with an assessed taxable value of not less than Fifty-Four Million Dollars ($54,000,000) for new improvements added to the Real Property in the calendar years of 2012 and 2013, as determined by the Collin County Central Appraisal District. The real property abatement for the new improvements shall begin in the January 1, 2014 tax year pursuant to Section 9(a) herein unless an extension as a result of an Event of Force Majeure has been approved by the City in writing. The term "Event of Force Majeure" means any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns, shortages or unavailability of materials or labor, or work stoppages any of which event(s) directly impact the Owner at the Real Property. The term shall not include a downturn in the economy.

(b) Upon the occurrence of an Event of Force Majeure, the affected party shall notify the City in writing not less than sixty (60) days of the commencement of the Event of Force Majeure with supporting documentation, the anticipated duration and the actions that the party will take to alleviate the Event of Force Majeure. The City Manager shall consider such request and may grant an extension of time to complete the obligations; such extension shall not be unreasonably withheld. If the Event of Force Majeure results in a delay of meeting the required improvement value, the party requesting the extension agrees that in the following year the minimum required taxable value of the improvements shall be met.

DEFAULT

3. Any of the following events shall be deemed a breach of this Agreement resulting in default:

(a) Owner allows its real property improvement taxes owed the City to become delinquent and fails to either (1) timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes, or (2) cure such delinquency within thirty (30) days of receipt of notice of such delinquency; or

(b) Owner fails to construct the improvements required in Section 2(a); or

(c) At any time during the Agreement, the assessed taxable value of the Real Property improvements is less than the minimum amount set forth in Section 2(a) as a result of the Owner's protest; or

(d) (i) Owner fails to provide the annual certification as required in Section 7; or

(ii) Owner fails to comply with the Assignment provision in Section 8; or

(e) Owner has been convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of aliens at the Real Property.

4. In the event that the Owner defaults under any provision of this Agreement, the City shall give written notice of such default to the Owner and if the default is not cured or a waiver obtained thereof within thirty (30) days of said written notice, this Agreement shall be automatically terminated except any damages as specified below shall survive the termination of this Agreement. The City Manager is authorized on behalf of the City to send notice of default and to terminate the Agreement for any default that is not cured.

5. Upon the occurrence of an event of default under Section 3(a), (b) or (e) above and that remains uncured, all taxes, including previously abated taxes which would have been paid to the City by the Owner without the benefit of this Agreement, shall become due and owing to the City from the Owner, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07 and Texas Government Code Chapter 2264.

Upon the occurrence of an event of default under Section 3(c) or (d) above and that remains uncured, at the City's sole option, it may require all or a portion of all previously abated taxes which would have been paid to the City by the Owner without the benefit of this Agreement to become due and owing to the City from the Owner, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07. City shall exercise such option within ninety (90) days of notice of default.

EFFECT OF TERMINATION/SURVIVAL OF OBLIGATIONS

6. The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations or default(s) that existed prior to such termination or as otherwise provided herein and those liabilities and obligations shall survive the termination of this Agreement, including the refund provision, maintenance of records, and access thereto.

ANNUAL CERTIFICATION

7. Beginning November 1, 2014, and on or before the 1st day of November of each calendar year thereafter during the Term (as defined below) of this Agreement, the Owner, or their successors or assigns, must provide annual certification (substantially in the form attached as **EXHIBIT "B"** hereto) to the City certifying compliance with each applicable term of the Agreement.

ASSIGNMENT

8. In the event of a merger, sale, or assignment to an affiliate of Owner's property, Owner may terminate this Agreement with thirty (30) days prior notice to the City. If Owner wishes to assign its rights and duties under this Agreement, it must comply with the following provisions. A failure to comply is an event of default and all remedies may apply including but not limited to a suspension of the abatement for the year(s) for which non-compliance occurred.

(a) City Consent Required. Except as permitted by (b) below, this Agreement may not be assigned without the express written consent of the City. Subject to 8 (b) below, the assignment agreement must be furnished in a form acceptable to the City and be provided at least sixty (60) days prior to the effective assignment date for the City Council review and approval.

(b) Exceptions to City Consent. Owner may assign this Agreement without obtaining the City's consent:

(i) To a wholly owned affiliate of Owner; or

(ii) Any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than ninety percent (90%) of the assets of the Owner; or

(iii) Upon the sale of the Real Property by Owner.

(c) Subject to (d) below, prior to the effective date of the assignment or sale under Section 8(a) or (b) above, the assigning party agrees to have the assignee or successor execute an agreement with the City to be bound to all the terms and conditions of this Agreement, without exception, and the assignee or successor shall be responsible for any default(s) of the assignor or seller that occurred prior to or after the effective date of the assignment.

(d) If the assignment agreement cannot be furnished at least sixty (60) days prior to the effective assignment date, pursuant to Section 8 (a) above, due to a disclosure prohibition pursuant to law, notice of new ownership shall be provided to the City within thirty (30) days of the earlier of the disclosure prohibition end date or the acquisition of the assets by the new owner with an executed agreement signed by the new owner that they agree to be bound to all the terms and conditions of this Agreement without exception and the new owner shall be responsible for any defaults of the prior Owner that occurred prior to or after the effective date of the acquisition which is subject to City Council approval if required herein pursuant to (a) and/or (b) above.

ABATEMENT PROVISIONS

9. Subject to the terms and conditions of this Agreement, and subject to the rights of holders of any outstanding bonds of the City, a portion of real property improvement taxes belonging to Owner located on the Real Property otherwise owed to the City shall be abated as follows:

(a) The tax abatement as to Real Property improvements, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2014 through December 31, 2023.

(b) In accordance with all applicable federal, state, and local laws and regulations, the abatement shall be based on amounts equal to fifty percent (50%) of the taxable value of the Real Property improvements for the tax years set forth above.

(c) The Owner shall have the right to protest and/or contest any assessment of the Real Property improvements where such assessment is above the minimum amount required to be maintained under Section 2(a) of this Agreement. The abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest. Notwithstanding the above, it shall be a breach of this Agreement if assessed values fall below those required in Section 2(a) as a result of an Owner filed protest and/or contest.

NOTICE

10. Notices required to be given to any party to this Agreement shall be given personally or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered as of the date deposited in the United States mail:

For City by notice to:

City of Plano
Attention: Mr. Bruce D. Glasscock
City Manager
P.O. Box 860358
Plano, Texas 75086-0358

With copy to:

City of Plano
Attention: Ms. Diane C. Wetherbee
City Attorney
P.O. Box 860358
Plano, Texas 75086-0358

For Owner by notice before and after relocation to:

Capital One, National Association
Attention: Real Estate Administration
14601 Sweitzer Lane, 17304-0135
Laurel, Maryland 20707

With copy to:

Capital One, National Association
Attention: Chief Counsel - Transactions
1680 Capital One Drive
McLean, VA 22102

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

MISCELLANEOUS PROVISIONS

11. During the term of the Agreement, the Owner further agrees that the City, its agents and employees, shall have reasonable right (with no less than five (5) business days prior written notice to Owner and accompanied by Owner's representative) to access the Real Property during regular business hours to inspect the Real Property improvements in order to insure that the Real Property improvements are in accordance with this Agreement and all applicable federal, state, and local laws and regulations.

12. It is understood and agreed between the parties that the Owner, in performing its respective obligations hereunder, is acting independently, and the City assumes no responsibilities or liabilities in connection therewith to third parties and Owner agrees to indemnify and hold harmless City from any claims, suits and causes of actions, including attorneys' fees, of any nature whatsoever arising out of its default of its obligations hereunder, and Owner shall in no event be liable for consequential damages arising hereunder.

13. Based upon the certification provided by Owner, the City represents that the Real Property is not owned by any member of the City Council of the City of Plano or by a member of the Planning and Zoning Commission.

14. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 26th day of November, 2012, authorizing the City Manager to execute the Agreement on behalf of the City.

15. This Agreement was entered into by the Owner pursuant to its duly authorized representatives.

16. This instrument shall constitute a valid and binding agreement between the City and the Owner when executed in accordance herewith.

17. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term or provision, to persons or circumstances other than those in respect of which it is invalid or unenforceable) except those terms or provisions, which are made subject to or conditioned upon such invalid or unenforceable term or provision, shall not be affected thereby, and each other term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

18. This Agreement is performable in Collin County, Texas and venue for any dispute arising out of this Agreement shall be in Collin County, Texas.

This Agreement shall be effective upon the last date on which all parties have executed this Agreement.

ATTEST:

CITY OF PLANO, TEXAS, a home-rule municipal corporation

_____
Diane Zucco, CITY SECRETARY

_____
Bruce D. Glasscock, CITY MANAGER
Date: _____

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

OWNER

Capital One, National Association, a national association

_____
Title: _____

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT "A"
LEGAL DESCRIPTION

BEING a tract of land situated in the Samuel Brown Survey, Abstract No. 108, City of Plano, Collin County, Texas, and being part of that tract of land described in Special Warranty Deed to Capital One National Association as recorded in Document Number 20081008001203900, of the Official Public Records of Collin County, Texas (O.P.R.C.C.T.), and being part of Lot 4, Block 1 of the Revised Conveyance Plat of CAPITAL ONE ADDITION LOT 4, BLOCK 1, an addition to the City of Plano, Collin County, Texas as recorded in Volume 2012, Pages 42-43, O.P.R.C.C.T., and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with a yellow plastic cap stamped "Halff" (hereafter referred to as "with cap") found at an interior corner on the north line of said Lot 4, same being the southwest corner of Lot 2, Block A of the Conveyance Plat of NETWORK ASSOCIATES, LOT 2, BLOCK A, an addition to the City of Plano, Collin County, Texas as recorded in Volume 2006, Page 535, O.P.R.C.C.T.;

THENCE North 64 degrees 39 minutes 06 seconds East, along the common line between the northwest line of said Lot 4 and the southeast line of said Lot 2, passing at a call distance of 196.54 feet the southeast corner of said Lot 2, same being the southwest corner of Lot 1, Block A of the Final Plat of NETWORK ASSOCIATES, INC., BLOCK A, LOT 1, an addition to the City of Plano, Collin County, Texas as recorded in Volume O, Pages 322-323, Map Records of Collin County, Texas, and continuing along the common line between said Lot 4 and along the southeast line of said NETWORK ASSOCIATES, INC Addition, in all a total distance of 430.07 feet to a 1/2-inch iron rod with cap found for corner, said point being the northwest corner of Lot 3R, Block 1 of the Replat of CAPITAL ONE ADDITION LOT 3R, BLOCK 1, an addition to the City of Plano, Collin County, Texas as recorded in Volume 2012, Pages 164-165, O.P.R.C.C.T.;

THENCE South 42 degrees 47 minutes 48 seconds East, departing said common line, and along the common line between said Lot 4 and said Lot 3R, a distance of 55.13 feet to a 1/2-inch iron rod with cap found for corner;

THENCE South 17 degrees 12 minutes 12 seconds West, continuing along said common line, a distance of 546.04 feet to a point for corner;

THENCE South 42 degrees 50 minutes 57 seconds East, continuing along said common line, a distance of 71.01 feet to a 1/2-inch iron rod with cap set for corner;

THENCE South 17 degrees 12 minutes 12 seconds West, continuing along said common line, passing at a distance of 312.27 feet the most westerly corner of said Lot 3R, said corner being on the northeasterly right-of-way line of Dominion Parkway, being a northerly corner of a 12.02 foot jog in said right-of-way line, and continuing in all a total distance of 324.29 feet to a City of Plano monument found for corner on said east line of Dominion Parkway (92 feet wide at this point) and the southwesterly line of said Lot 4, said point being the beginning of a non-tangent curve to the left with a radius of 1,446.00 feet and a chord bearing North 80 degrees 43 minutes 00 seconds West, a distance of 252.31 feet;

THENCE Northwesterly, along the common line between the southeasterly line of said Lot 4, and the northeasterly right-of-way line of said Dominion Parkway, and along said curve, through a central angle of 10 degrees 00 minutes 37 seconds, an arc distance of 252.63 feet to a 1/2-inch iron rod with cap set for corner;

THENCE North 85 degrees 43 minutes 18 seconds West, continuing along said common line, a distance of 223.92 feet to a point for the beginning of a non-tangent curve to the right with a radius of 1,004.00 feet and a chord that bears North 76 degrees 56 minutes 00 seconds West, a distance of 306.78 feet;

THENCE Northwesterly, continuing along said common line, and along said curve, through a central angle of 17 degrees 34 minutes 35 seconds, an arc distance of 307.99 feet to a point for corner;

THENCE departing said common line, and over and across said Lot 4, the following bearings and distances:

> North 16 degrees 47 minutes 24 seconds East, a distance of 420.55 feet to a point for the beginning of a non-tangent circular curve to the left with a radius of 567.37 feet and a chord that bears North 84 degrees 59 minutes 11 seconds West, a distance of 31.57 feet;
>
> Northwesterly, along said curve, through a central angle of 03 degrees 11 minutes 17 seconds, an arc distance of 31.57 feet to the point of reverse curvature of a circular curve to the right with a radius of 62.00 feet and a chord that bears North 79 degrees 53 minutes 41 seconds West, a distance of 14.44 feet;
>
> Northwesterly, along said curve, through a central angle of 13 minutes 22 minutes 16 seconds, an arc distance of 14.47 feet to the point of tangency;
>
> North 73 degrees 12 minutes 33 seconds West, a distance of 15.64 feet to the beginning of a non-tangent curve to the right with a radius of 32.00 feet and a chord that bears North 28 degrees 11 minutes 44 seconds West, a distance of 45.25 feet;
>
> Northwesterly, along said curve, through a central angle of 90 degrees 00 minutes 00 seconds, an arc distance of 50.27 feet to a point for corner;
>
> North 16 degrees 48 minutes 16 seconds East, a distance of 183.77 feet to the beginning of a non-tangent curve to the right with a radius of 32.00 feet and a chord that bears North 63 degrees 01 minute 14 seconds East, a distance of 45.25 feet;
>
> Northeasterly, along said curve, through a central angle of 90 degrees 00 minutes 00 seconds, an arc distance of 50.27 feet to the point of reverse curvature of a non-tangent curve to the left with a radius of 251.15 feet and a chord that bears South 89 degrees 52 minutes 27 seconds East, a distance of 154.53 feet;

Southeasterly, along said curve, through a central angle of 35 degrees 50 minutes 09 seconds, an arc distance of 157.08 feet to the point of reverse curvature of a non-tangent curve to the right with a radius of 234.23 feet and a chord that bears North 88 degrees 19 minutes 13 seconds East, a distance of 106.21 feet;

Northeasterly, along said curve, through a central angle of 26 degrees 12 minutes 34 seconds, an arc distance of 107.15 feet to a point for corner;

North 40 degrees 29 minutes 33 seconds East, a distance of 74.93 feet to a point for corner on the common northeast line of said Lot 4 and southwest line of said Lot 2;

THENCE South 49 degrees 30 minutes 24 seconds East, along said common line, a distance of 147.09 feet to the POINT OF BEGINNING AND CONTAINING 607,189 square feet or 13.939 acres of land, more or less.

EXHIBIT "B"
CERTIFICATION FORM

[DATE]

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

RE: Certification Form – Reinvestment Zone No. 132
Tax Abatement Agreement (the "Agreement") between Capital One, N.A. ("Owner") and the City of Plano.

This letter certifies that the Owner is in compliance with each applicable term as set forth in the Agreement. The term of the tax abatement pursuant to the Agreement is January 1, 2014 through December 31, 2023. This form is due on November 1, 2014 and on November 1 of each year thereafter that the Agreement is in force.

Capital One, National Association, a
national association

By: _____
Name: _____
Title: _____