

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		4/12/10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley x7479				
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, Kracker Enterprises LLC, a Texas limited liability company, and various Tenants in Common Owners acting by and through their authorized agent Rainier Asset Management LLC, a Texas limited liability company; providing for a business personal property and real property tax abatement; and authorizing its execution by the City Manager, or in his absence, his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	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):				
COMMENTS: The real property improvements is \$750,000 while the business personal property amount to be maintained is \$4,000,000.				
SUMMARY OF ITEM				
This is related to Kracker Enterprises LLC, a Texas limited liability company, request for tax abatement on reinvestment zone 122 and creation of the zone.				
List of Supporting Documents: Tax Abatement Agreement			Other Departments, Boards, Commissions or Agencies	

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, Kracker Enterprises LLC, a Texas limited liability company, and various Tenants in Common Owners acting by and through their authorized agent Rainier Asset Management LLC, a Texas limited liability company; providing for a business personal property and real property tax abatement; and authorizing its execution by the City Manager, or in his absence, 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, Kracker Enterprises LLC, a Texas limited liability company and various Tenants in Common Owners acting by and through their authorized agent Rainier Asset Management LLC, a Texas limited liability company, 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 in his absence 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 in his absence 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 12th day of April, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

Representative” attached hereto as **EXHIBIT “B”**. This Agreement shall be terminated should the Real Property not be leased by Lessee, its successors or affiliates, or should such lease be terminated during the term of this Agreement.

1. The tangible personal property subject to this Agreement shall be personal property, excluding inventory and supplies, used within Reinvestment Zone No.122, which shall be hereinafter referred to as the “Personalty.” The Personalty is presently estimated to have an assessed taxable value as determined by the Collin County Appraisal District of not less than Four Million Dollars (\$4,000,000.00) on the Property by December 31, 2010 and is or will be owned by Lessee or its affiliates. Lessee shall timely render its personal property value each year to the Central Appraisal District

2. Lessee, as owner of the Personalty, may not relocate, for purposes of maintaining taxable situs of tangible personal property, the Personalty on the Real Property in other Reinvestment Zones in the City.

JOBS

3. Lessee estimates the proposed occupancy of the Real Property as shown in **EXHIBIT “C”** (the “Development”) will result in the retention, creation or transfer of approximately 30 full time jobs (“Job Equivalents”) at the Development in Plano by October 31, 2010 and an additional 15 Job Equivalents at the Development in Plano by December 31, 2012. “Job Equivalent” shall mean one or more Company job positions located at the Development which individually or when combined total 2080 hours annually

IMPROVEMENTS

4. The Lessee shall occupy not less than 60,500 gross square feet of commercial space on the Real Property by July 1, 2010. The Lessee or Owner shall make real property improvements to the Real Property with an approximate taxable value of not less than Seven Hundred and Fifty Thousand Dollars (\$750,000.00) by December 31, 2010.

DEFAULT

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

(a) Lessee or Owner, respectively, allow their personal property taxes located on the Real Property or real property improvement taxes owed the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes;

(b) Lessee fails to occupy the Improvements for the Purposes set forth in paragraph 5 above on or before July 1, 2010; or

(c) The value of Personalty placed on the Real Property on or before December 31, 2010 or the value of real property improvements on the Property is less than the minimum amounts set forth in paragraphs 2 and 5 above; or

(d) The assessed value of the Improvements or Personalty falls below the minimum amounts set forth in paragraph 2 and 5 above as the result of the Lessee or Owner filing a protest or as a result of the removal of the Improvements or Personalty from the Development.

(e) Lessee fails to employ at least 75% of its employee commitment as provided in paragraph 4 above; or

(f) Lessee or Owner fail to provide annual certification as required in paragraph 9 below.

(g) Lessee or Owner has been convicted of a violation under 8 U.S.C. Section 1324a (f) regarding the unlawful employment of aliens.

7. In the event that the Lessee or Owner defaults under this Agreement then the City shall give the defaulting party written notice of such default and if the defaulting party has not cured such default, or obtained a waiver thereof from the appropriate authority, within thirty (30) days of said written notice, this Agreement may be terminated by the City as to that party. Notice shall be in writing as provided below. Upon the occurrence of an event of default other than under Paragraph 6(a) or 6 (g) above and after the defaulting party fails to cure same in accordance herewith, this Agreement shall immediately terminate as to the defaulting party and all taxes due after the event of default shall be paid in full without the benefit of any abatement. The parties acknowledge that actual damages in the event of default and termination would be speculative and difficult to determine.

8. Upon the occurrence of an event of default under Paragraph 6(a) above and after Lessee or Owner fails to cure same in accordance herewith or upon the occurrence of an event of default under Paragraph 6(g), this Agreement shall immediately terminate with respect to the tax abatements attributable to the Personalty for Lessee and for real property improvements for Owner and all taxes, including previously abated taxes which would have been paid to the City without the benefit of this Agreement, shall become due and owing to the City, 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. A default under this section by the Lessee shall not constitute a default by the Owner nor shall the Owner be responsible for repayment of taxes or any other amounts resulting from the default that would have been paid but for this Agreement where the default is caused solely by the Lessee.

ANNUAL CERTIFICATION

9. On or before the 1st day of November of each calendar year during the term of this Agreement, the Lessee and Owner , or their successors or assigns, must provide annual certification

(substantially in the form attached as **EXHIBIT “D”** hereto) to the Governing Body of the City certifying compliance with each applicable term of the Agreement.

ASSIGNMENT

10. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement cannot be assigned by Lessee or Owner unless written permission is first granted by the City, which permission shall be at the reasonable discretion of the City, except under the following conditions:

(a) Assignment to an affiliate of Lessee or Owner is permissible;

(b) A transfer or assignment of this Agreement by Lessee or Owner to successors or assigns is permissible wherein the successors or assigns agree to be bound by the terms of this Agreement and Lessee and Owner shall continue to conduct business on the subject premises, and shall remain the primary tenant and landlords.

However, Lessee and Owner agree to give written notice to the City of any assignment or transfer of interest allowed pursuant to subparagraphs (a) and (b) hereof.

ABATEMENT PROVISIONS

11. 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 ad valorem personal property taxes and real property improvements belonging to Lessee and/or Owner located on the Real Property otherwise owed to the City shall be abated as follows:

(a) The tax abatements as to Personalty and real property improvements, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2011, through December 31, 2020.

(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 value of the Personalty and thirty percent (30%) real property improvements for each tax year from January 1, 2011, through December 31, 2020.

(c) The Lessee and Owner shall have the right to protest and/or contest any assessment of the Personalty, and 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 in paragraphs 2 and 5 as a result of a Lessee or Owner filed protest and/or contest or removal of property from the Development.

NOTICE

12. 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. Thomas H. Muehlenbeck
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 Lessee by notice to:

Kracker Enterprises, LLC dba Dr. Kracker
10490 Miller Road
Dallas, TX 75238

For Owner by notice to:

Rainier Asset Management LLC
Attention: Andrew Tompson
Title: Senior Asset Manager
13760 Noel Road Suite 800
Dallas, TX 75240

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

13. The Lessee and Owner further agree that the City, its agents and employees, shall have reasonable right (upon reasonable prior notice to Lessee and Owner) to access the Real Property to inspect the Personalty and real property improvements in order to insure that the location of the Personalty and real property improvements are in accordance with this Agreement and all applicable federal, state, and local laws and regulations. During the term of this Agreement City shall have the continuing right (upon reasonable prior notice to Lessee and Owner) to inspect the Real Property and Personalty to insure that the Personalty and real property improvements are thereafter maintained in accordance with this Agreement.

14. It is understood and agreed between the parties that the Lessee and Owner, in performing their obligations hereunder, are acting independently, and the City assumes no responsibilities or liabilities in connection therewith to third parties and Lessee and Owner agree to indemnify and hold harmless City from any and all claims, suits, and causes of actions, including attorneys' fees, of any nature whatsoever arising out of Lessee's or Owner's default of its obligations hereunder.

15. The City represents and warrants that the Personalty or Property do not include any property that is owned by it or its council or boards, agencies, commissions, or other entities approving, or having responsibility for the approval of this Agreement.

16. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 14th day of December 2009, authorizing the City Manager to execute the Agreement on behalf of the City.

17. This Agreement was entered into by Lessee pursuant to its duly authorized representative.

18. This Agreement was entered into by Owner pursuant to its duly authorized representative.

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

20. Severability. 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.

This Agreement is performable in Collin County, Texas. Signed this 12th day of April, 2010.

ATTEST:

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

Diane Zucco, CITY SECRETARY

Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

ATTEST:

KRACKER ENTERPRISES, LLC, a Texas
limited liability company,
dba DR. KRACKER

Name:
Title:

ATTEST:

RAINIER ASSET MANAGEMENT LLC, a
Texas limited liability company

By: _____
Name:
Title:

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 122

Real Property
Metes and Bounds

Beings Lots 2, 3 and 7 in Block 1, of PLANO TECH CENTER, an Addition to the City of Plano, Collin County, Texas, according to the Map thereof recorded in Volume N, Page 578, of the Map Records of Collin County, Texas, and being more particularly described below:

TRACT 1:

BEING a tract of land situated in the J.B. Roundtree Survey, Abstract No. 759 and the J.T. McCollough Survey, Abstract No. 633, in Collin County, Texas, and being a part of a tract of land described by instrument to Argent Plano Realty, L.P., as recorded in File #99-0011425, Deed Records, Collin County, Texas (D.R.C.C.T.), and being all of Lot 2, Block 1 of the final plat of Plano Tech Center, an addition to the City to Plano, Texas as recorded in Volume N, Page 578-581, Plat Records, Collin County, Texas (P.R.C.C.T.), and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod with a yellow plastic cap stamped "HALFF ASSOC. INC." (hereinafter referred to as "with cap") found at the Southeast end of a corner clip located at the intersection of the North line of Plano Parkway (105 feet wide) and the East line of Klein Road (60 feet wide), being the Southwest corner of Lot 1 of said Block 1;

THENCE South 89 degrees 47 minutes 30 seconds East, along said North line, a distance of 48.72 feet to a 1/2-inch iron rod with cap found for the point of curvature of a circular curve to the left having a radius of 661.21 feet;

THENCE Northeasterly, continuing along said North line and along said curve, through a central angle of 47 degrees 12 minutes 09 seconds, an arc distance of 544.73 feet to an "X" in concrete found for THE POINT OF BEGINNING of the herein described tract, said point being the Southwest corner of Lot 2 of said Plano Tech Center;

THENCE North 46 degrees 59 minutes 16 seconds West, departing said North line and along the common line between said Lots 1 and 2, a distance of 91.36 feet to an "X" in concrete found for corner;

THENCE North 54 degrees 21 minutes 28 seconds West, continuing along said common line, a distance of 200.48 feet to an "X" in concrete found for corner, said point being a common corner for Lots 1, 2 and 4 of said Block 1;

THENCE North 00 degrees 12 minutes 30 seconds East, along the common line between said Lots 4 and 2, a distance of 124.33 feet to an "X" in concrete found for the beginning of a non-

tangent curve to the right having a radius of 1136.28 feet and whose chord bears North 35 degrees 15 minutes 17 seconds East, 230.78 feet;

THENCE Northerly continuing along said common line and along said curve to the right, through a central angle of 11 degrees 39 minutes 25 seconds, an arc distance of 231.18 feet to an "X" in concrete found for corner;

THENCE North 52 degrees 07 minutes 16 seconds East, continuing along said common line, a distance of 299.70 feet to an "X" in concrete found for corner, said point being a common corner for Lots 2, 4, 5 and 3 of said Block 1;

THENCE South 33 degrees 40 minutes 27 seconds East, along the common line between said Lots 2 and 3, a distance of 349.28 feet to an Aluminum disk in concrete found for corner on the aforementioned northerly line of said Plano Parkway, said point being on a non-tangent circular curve to the left having a radius of 769.00 feet and whose chord bears South 42 degrees 57 minutes 14 seconds West, 356.02 feet;

THENCE Southwesterly, along said northerly line and along said curve, through a central angle of 26 degrees 46 minutes 07 seconds, an arc distance of 359.28 feet to a 1/2-inch iron rod with cap found for the point of reverse curvature of a circular curve to the right having a radius of 661.21 feet;

THENCE Southwesterly, continuing along said North line and along said curve, through a central angle of 13 degrees 26 minutes 11 seconds, an arc distance of 155.06 feet to the POINT OF BEGINNING AND CONTAINING 201,062 square feet or 4.616 acres of land, more or less.

TRACT 2:

BEING a tract of land situated in the J.B. Roundtree Survey, Abstract No. 759 and the J.T. McCollough Survey, Abstract No. 633, in Collin County, Texas, and being part of a tract of land described by instrument to Argent Plano Realty, L.P., as recorded in File #99-0011425, Deed Records, Collin County, Texas (D.R.C.C.T.), and being all of Lot 3, Block 1 of the final plat of Plano Tech Center, an addition to the City of Plano, Texas as recorded in Volume N, Page 578-581, Plat Records, Collin County, Texas (P.R.C.C.T.), and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod with a yellow plastic cap stamped "HALFF ASSOC. INC." (hereinafter referred to as "with cap") found at the Southeast end of a corner clip located at the intersection of the North line of Plano Parkway (105 feet wide) and the East line of Klein Road (60 feet wide), being the Southwest corner of Lot 1 of said Block 1;

THENCE South 89 degrees 47 minutes 30 seconds East, along said North line, a distance of 48.72 feet to a 1/2-inch iron rod with cap found for the point of curvature of a circular curve to the left having a radius of 661.21 feet;

THENCE Northeasterly, continuing along said North line and along said curve, through a central angle of 60 degrees 38 minutes 20 seconds, an arc distance of 699.79 feet to a 1/2-inch iron rod

with cap found for the point of reverse curvature of a circular curve to the right having a radius of 769.00 feet;

THENCE Northeasterly, continuing along said North line and along said curve, through a central angle of 26 degrees 46 minutes 07 seconds, an arc distance of 359.28 feet to an Aluminum Monument found for THE POINT OF BEGINNING of the herein described tract, said point being the Southeast corner of Lot 2 of said Block 1 and the Southwest corner of said Lot 3;

THENCE North 33 degrees 40 minutes 27 seconds West, departing said North line and along the common line between said Lots 2 and 3, a distance of 349.28 feet to an "X" in concrete found for corner, said point being a common corner for Lots 2, 3, 4 and 5 of said Block 1, said point also being the beginning of a non-tangent curve to the right having a radius of 1118.28 feet and whose chord bears North 59 degrees 23 minutes 45 seconds East, 119.47 feet;

THENCE Northerly, along the common line between said Lots 3 and 5 and along said curve to the right, through a central angle of 06 degrees 07 minutes 27 seconds, an arc distance of 119.53 feet to a "crow's foot" in concrete found for the point of reverse curvature of a circular curve to the left having a radius of 72.00 feet;

THENCE Northerly, continuing along said common line and along said curve to the left, through a central angle of 62 degrees 14 minutes 45 seconds, an arc distance of 78.22 feet to an "X" in concrete found for the point of tangency;

THENCE North 00 degrees 12 minutes 30 seconds East, continuing along said common line, a distance of 70.76 feet to an "X" in concrete found for corner, said point being a common corner with Lot 8 of said Block 1;

THENCE South 87 degrees 48 minutes 36 seconds East, along the common line between said Lots 3 and 8, a distance of 368.10 feet to an "X" in concrete found for the point of curvature of a circular curve to the left having a radius of 88.00 feet;

THENCE Northeasterly, continuing along said common line and along said curve, through a central angle of 42 degrees 57 minutes 08 seconds, an arc distance of 65.97 feet to an "X" in concrete found for the point of reverse curvature of a circular curve to the right having a radius of 88.00 feet;

THENCE Northeasterly, continuing along said common line and along said curve, through a central angle of 46 degrees 37 minutes 28 seconds, an arc distance of 71.61 feet to an "X" in concrete found for the point of tangency;

THENCE South 87 degrees 50 minutes 54 seconds East, continuing along said common line, a distance of 20.43 feet to an "X" in concrete found for corner on the West line of a tract of land described by deed to Texas Power & Light Company as recorded in Volume 874, Page 566, Deed Records of Collin County, Texas;

THENCE South 02 degrees 11 minutes 24 seconds West, along the common line between said Texas Power & Light Company tract and said Lot 3, a distance of 349.40 feet to a 1/2-inch iron

rod with cap found for corner at the Northeast end of a corner clip at the intersection of the North line of Plano Parkway (variable width) with the West line of said Texas Power & Light Company tract;

THENCE South 45 degrees 59 minutes 27 seconds West, departing said West line and along said North line, a distance of 36.09 feet to a 1/2-inch iron rod with cap found for corner on the North line of said Plano Parkway;

THENCE South 89 degrees 47 minutes 30 seconds West, along said North line, a distance of 0.91 feet to a 1/2-inch iron rod with cap found for the point of curvature of a circular curve to the left having a radius of 779.00 feet;

THENCE Southwesterly, continuing along said North line and along said curve, through a central angle of 12 degrees 51 minutes 04 seconds, an arc distance of 174.73 feet to a 1/2-inch iron rod with cap found for corner;

THENCE South 67 degrees 35 minutes 45 seconds West, continuing along said North line, a distance of 149.13 feet to a 1/2-inch iron rod with cap found for the beginning of a non-tangent circular curve to the left having a radius of 769.00 feet;

THENCE Southwesterly, continuing along said North line and along said curve, through a central angle of 9 degrees 34 minutes 12 seconds, an arc distance of 128.44 feet to the POINT OF BEGINNING AND CONTAINING 221,248 square feet or 5.0792 acres of land, more or less.

TRACT 3:

BEING a tract of land situated in the Eli Murphy Survey, Abstract No. 597, D. Yeamans Survey, Abstract No. 1043, in Collin County, Texas, and being a part of a tract of land described by instrument to Argent Plano Realty, L.P. as recorded in File #99-0011425, Deed Records, Collin County, Texas (D.R.C.C.T.), and being all of Lot 7 Block 1 of the final plat of Plano Tech Center, an addition to the City of Plano, Texas as recorded in Volume N, Page 578-581 Plat Records, Collin County, Texas (P.R.C.C.T.), and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with cap stamped "HALFF ASSOC. INC." (hereinafter referred to as "with cap") found for the most westerly Southwest corner of said Lot 7, said point also being the Southeast corner of Block 21, a Replat of Blocks 16, 17, 20 and 21, Central Plano Industrial Park Phase III as recorded in Cabinet 'F', Page 145, Deed Records of Collin County, Texas, said point also being on the North line of Technology Drive (60 feet wide);

THENCE North 00 degrees 12 minutes 30 seconds East, departing said North line and along the East line of Block 21, a distance of 330.27 feet to a 1/2-inch iron rod with cap found at the Northeast corner of said Block 21, said corner being on the South line of a Dallas Area Rapid Transit Property Acquisition Corporation tract (variable width);

THENCE South 79 degrees 32 minutes 25 seconds East, departing said Block line and along said South line, a distance of 114.68 feet to a 1/2-inch iron rod with cap found for corner;

THENCE South 86 degrees 20 minutes 07 seconds East, continuing along said South line, a distance of 544.82 feet to a 1/2-inch iron rod with cap found for corner;

THENCE South 79 degrees 32 minutes 43 seconds East, continuing along said South line, a distance of 238.72 feet to a 1/2-inch iron rod with cap found for corner, said corner being the Northwest corner of a tract of land described by deed to Texas Utilities Electric Company as recorded in Volume 3409, Page 17, Deed Records of Collin County, Texas;

THENCE South 10 degrees 27 minutes 17 seconds West, departing said South line and along the West line of said Texas Utilities Electric Company tract, a distance of 275.00 feet to a 1/2-inch iron rod with cap found for corner, said point being a common corner with Lot 8 of said Block 1;

THENCE South 39 degrees 26 minutes 15 seconds West, departing said West line and along the common line between said Lots 7 and 8, a distance of 37.48 feet to an "X" in concrete found for corner, said point being a common corner for Lot 6 of said Block 1;

THENCE North 89 degrees 47 minutes 30 seconds West, along the common line between said Lots 6 and 7, a distance of 729.45 feet to a "crow's foot" found for corner on the East line of Klein Road;

THENCE North 10 degrees 27 minutes 35 seconds East, along said East line of Klein Road, a distance of 48.12 feet to an "X" in concrete found at the intersection of said East line and the said North line of Technology Drive;

THENCE North 79 degrees 32 minutes 25 seconds West, along said North line, a distance of 99.67 feet to the POINT OF BEGINNING AND CONTAINING 300,130 square feet or 6.89 acres of land, more or less.

TRACT 4:

Non-Exclusive easement created by Amended and Restated Declaration of Common Access Easement, Sign Easement and Restrictions for Plano Tech Center I, dated --/--/2005, filed 08/10/2004 recorded in Volume 5728, Page 2417, Land Records, Collin County, Texas.

**APPOINTMENT AND AUTHORIZATION
OF
REPRESENTATIVE**

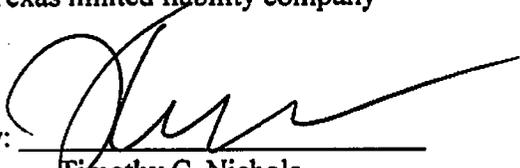
The undersigned, being all of the tenant-in-common owners (collectively, the "Owners") of that certain property identified on Exhibit A hereto (the "Property"), appoint Rainier Asset Management Company, LLC, ("Rainier") as its agent and authorize Rainier, acting through its authorized representatives, in the name of, and on behalf of, the Owners, to enter into negotiations with the City of Plano, Texas for property tax abatements with respect to the improvements to be made to the Property in connection with the lease to Kracker Enterprises, LLC, a Texas limited liability company, d/b/a Dr. Kracker, on such terms and conditions as Rainier shall deem necessary, advisable or appropriate and to execute and deliver any agreements, certificates, instruments or documents that may be necessary in order to obtain such property tax abatements for the Property.

This appointment and authorization may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Amendment. The delivery of a signed facsimile or .pdf copy hereof by an undersigned party shall be deemed to be the execution and delivery by such party of an original of this document.

EXECUTED effective as of February 10, 2010.

RAINIER ASSET MANAGEMENT COMPANY, LLC,
a Texas limited liability company

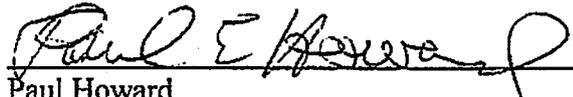
By: _____


Timothy C. Nichols

Its: Vice President.

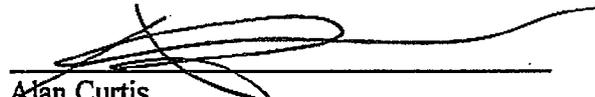
[Signatures of Co-Owners on the following pages]

By: Howard-Plano Tech Center LLC



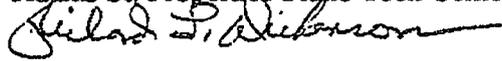
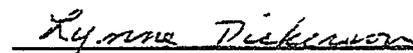
Paul Howard
Munke

By: A. Curtis-Plano Tech Center LLC



Alan Curtis

By: Adams St. Properties-Plano Tech Center LLC

Richard & Lynne Dickerson
Adams Street Properties, LLC

By: Blackwater-Plano Tech Center LLC



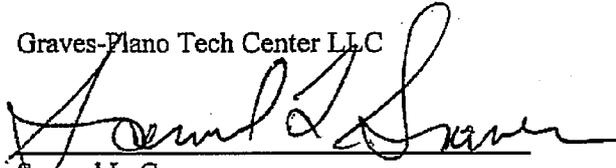
Bill Hall
Blackwater Properties LTD

By: J. Curtis-Plano Tech Center LLC



Jane Curtis

By: Graves-Plano Tech Center LLC


Samuel L. Graves

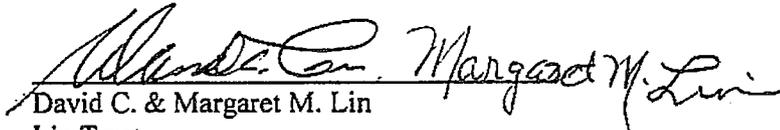
By: Harris-Plano Tech Center LLC


Robert Harris

By: Jack Trust-Plano Tech Center LLC


Samantha Logan, Co-Trustee
Jack Trust

By: Lin Trust-Plano Tech Center LLC


David C. & Margaret M. Lin
Lin Trust

By: McKinney Trust-Plano Tech Center LLC


Blaine McKinney
McKinney Farms, LLC

By: Noto Trust-Plano Tech Center LLC

James Noto - Trustee
James & Patricia Noto
The Noto Trust dated 12/7/2002

*For Appointment and Authorization
of Representative*

By: Pierce-Plano Tech Center LLC

Robert L. Pierce and Anne-Marie Pierce
Robert L. Pierce and Anne-Marie Pierce
12/10/09

By: Swann Trust-Plano Tech Center LLC

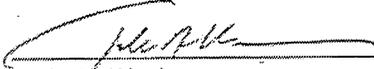
Raymond & Joyce L. Swann
Raymond & Joyce Swann
The Raymond A. Swann & Joyce L. Swann Rev Trust dtd 10/14/1992

By: Tozzolina-Plano Tech Center LLC

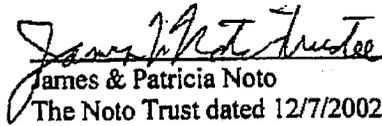
Frank Tozzolina, Jr.
Frank Tozzolina, Jr.

Kathleen A. Tozzolina
Kathleen A. Tozzolina

By: TIC Plano Tech Center, LLC


Josh A. Workman
TIC Retained Interest, LLC

By: Noto Trust-Plano Tech Center LLC


James & Patricia Noto
The Noto Trust dated 12/7/2002

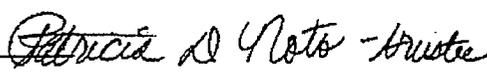

Patricia A. Noto - Trustee

EXHIBIT "C"
THE DEVELOPMENT
REINVESTMENT ZONE NO. 122

(site plan showing location of improvements)

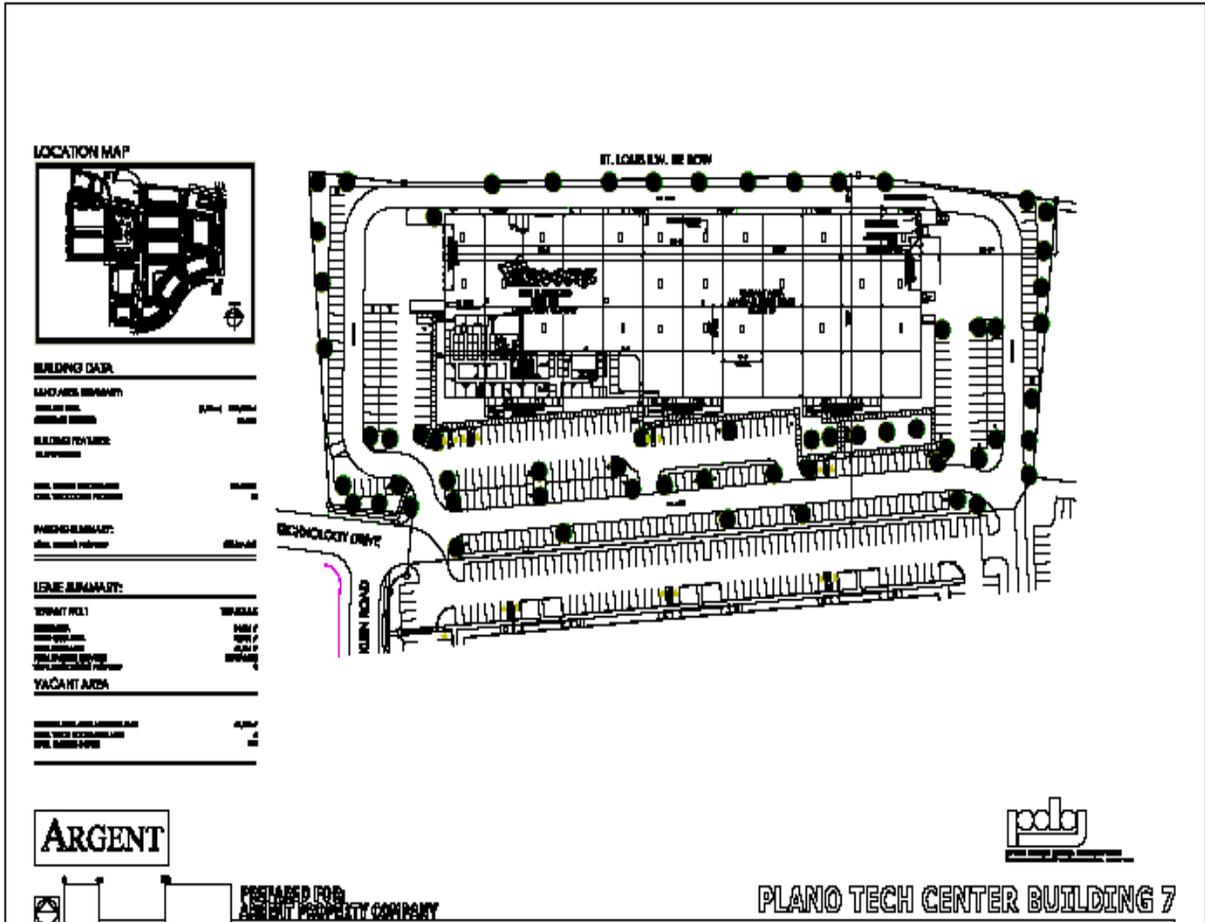


EXHIBIT "D"
CERTIFICATION FORM
REINVESTMENT ZONE NO. 122

This letter certifies that (Dr. Kracker)/(Rainier Asset Management LLC) is in compliance with each applicable term as set forth in the Agreement to Resolution No. _____(R) as of _____. The term of this agreement is January 1, 2011, through December 31, 2020. This form is due on November 1 of each year this tax abatement is in force.

ATTEST:

KRACKER ENTERPRISES, LLC, a Texas
limited liability company,
dba DR. KRACKER

Name:
Title:

ATTEST:

RAINIER ASSET MANAGEMENT LLC, a
Texas limited liability company

By: _____
Name:
Title:

**NOTE: This certification form should be mailed to: City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358**

EXHIBIT "C"
THE DEVELOPMENT
REINVESTMENT ZONE NO. 122

(site plan showing location of improvements)

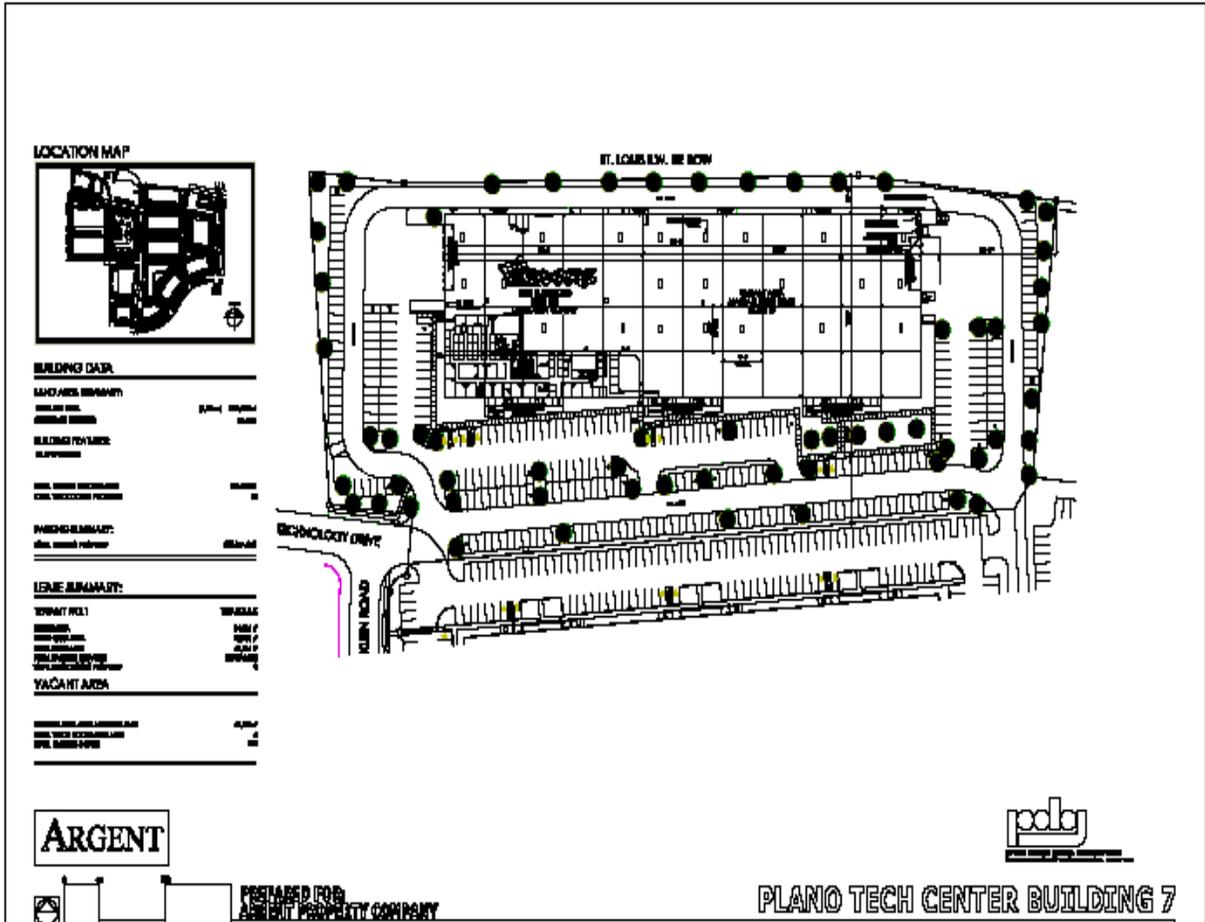


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