



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11-8-10		
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, and Capital One, National Association, a national banking association; providing for a real property tax abatement; and authorizing its execution by the City Manager or his 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 improvement to be maintained is \$5,000,000.				
SUMMARY OF ITEM				
This is related to Capital One, National Association, a national banking association, request for tax abatement on reinvestment zone 111.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
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 banking association; providing for a real property tax abatement; and authorizing its execution by the City Manager or his 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 banking 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 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 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 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 immediately upon its passage.

DULY PASSED AND APPROVED this the 8th day of November, 2010.

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 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 banking association hereinafter referred to as “**Owner**.”

WITNESSETH:

WHEREAS, on the 28th day of April, 2008, the City Council of the City of Plano, Texas, passed Ordinance No. 2008-4-43 establishing Reinvestment Zone No. 111, 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 revised policy statement for Tax Abatement by Resolution No. 2009-9-21(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 benefiting the City in accordance with the said Ordinance and Act; and

WHEREAS, the contemplated use of the Real Property, as hereinafter defined, the contemplated improvements to the Real Property in the amount as set forth in this Agreement and the other terms hereof are consistent with encouraging development of said Reinvestment Zone No. 111 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. The real property subject to this Agreement is described by metes and bounds in **EXHIBIT “A”** (the “**Real Property**”) and the Improvements as shown on **EXHIBIT “B”** thereon (the “**Development**”) attached hereto and made a part hereof.

JOBS

2. The Owner estimates the proposed development of the Real Property as shown in **EXHIBIT "B"** (the "Development") will result in approximately 200 full-time jobs at the Development when the new office building is completed.

IMPROVEMENTS

3. The Owner shall complete construction of improvements and/or repairs to the Real Property (hereinafter referred to as Improvements) consisting primarily of new buildings consisting of a total of not less than 135,000 square feet of office space with a Taxable Value of not less than **Five Million Dollars (\$5,000,000)** on or before March 31, 2012 subject to an event of Force Majeure. For this purpose, "force majeure" shall mean 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 or work stoppages any of which event(s) directly impact the Company's operations in Plano. The date of completion of the Improvements shall be defined as the date a Certificate of Occupancy is issued by the City of Plano. The term "Taxable Value" shall mean the assessed value for ad valorem tax purposes as determined by the Collin County Appraisal District.

4. The Owner agrees and covenants that they will in a good and workmanlike manner pursue the substantial completion of the Improvements as a good and valuable consideration of this Agreement. Owner further covenants and agrees that all construction of the Improvements will be in accordance with all applicable federal, state and local laws and regulations or valid waiver thereof.

5. The Owner agrees and covenants that they shall occupy not less than 135,000 square feet of office space on the Real Property and they or their affiliates shall employ thereon approximately 200 full time jobs, referred to herein as the "Purposes."

DEFAULT

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

- (a) The Improvements are not completed in accordance with this Agreement;
- (b) Owner allows their real property taxes owed the City on the Real Property Improvements to become delinquent or fails to timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes;

(c) Owner fails to occupy the Improvements for the Purposes set forth in paragraph 5 above on or before March 31, 2012 or

(d) The Taxable Value of the Improvements to the Property on or before January 1, 2012 and maintained on the Real Property during the term of this Agreement is less than the minimum amounts set forth in paragraph 3 above; or

(e) Owner fails to employ at least 75% of their employee commitment on or before July 1, 2012 as provided in paragraph 2 above;

(f) Owner fails to provide annual certification as required in paragraph 9 below;
or

(g) Owner or Lessee 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 Owner defaults under this Agreement then the City shall give the Owner written notice of such default and if the Owner 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; provided, however, that such 30 day period shall be extended if the default is of a nature that cannot be cured within such 30-day period and Owner is diligently pursuing such remedy. Notice shall be in writing as provided below. Upon the occurrence of an event of default other than under Paragraph 6(b) or 6(g) above and if Owner fails to cure same in accordance herewith, this Agreement shall immediately terminate 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(b) above or upon the occurrence of an event of default under Paragraph 6(g), then the City shall give the Owner written notice of such default and if the Owner has not cured such default, or obtained a waiver thereof from the appropriate authority, within forty-five days (45) days of said written notice, this Agreement may be terminated by the City 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.

ANNUAL CERTIFICATION

9. On or before the 1st day of November of each calendar year during the term of this Agreement, the Owner, or its successors or assigns, must provide annual certification (substantially in the form attached as **EXHIBIT "C"** 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 Owner unless written permission is first granted by City, which permission shall be at the reasonable discretion of the City, except under the following conditions:

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

(b) A transfer or assignment of the Real Property and Improvements, or an assignment of this Agreement, by Owner to successors or assigns is permissible wherein the successors or assigns agree to be bound by the terms of this Agreement and Owner shall continue to conduct business on the subject premises.

However, Owner agrees 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, a portion of ad valorem real property taxes from the Real Property Improvements otherwise owed to the City shall be abated as follows:

(a) The tax abatements as to the Real Property Improvements as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2012, through December 31, 2021.

(b) In accordance with all applicable federal, state, and local laws and regulations, the City's abatement shall be based on amounts equal to fifty percent (50%) of the improved value of the Real Property Improvements for each tax year from January 1, 2012, through December 31, 2021.

(c) The Owner shall have the right to protest and/or contest any assessment of the Real Property Improvements 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.

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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 Owner by notice to:

Capital One, National Association
Attention: Chief Counsel - Contracts
1680 Capital One Drive
McLean, Virginia 22102

Capital One, National Association
Corporate Real Estate
Attention: Ms. Sandy Garber
15000 Capital One Drive
Richmond, VA 23238

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 Owner further agrees that the City, its agents and employees, upon prior written notice of Owner and provided that Owner shall accompany City, shall have reasonable right (upon reasonable prior notice to Owner) during construction to access the Real Property to inspect the Improvements in order to insure that the construction of the Improvements are in accordance with

this Agreement and all applicable federal, state, and local laws and regulations. After completion of the Improvements, City shall have the continuing right (upon reasonable prior notice to Owner) to inspect the Real Property to insure that the Real Property is thereafter maintained, operated and occupied in accordance with this Agreement.

14. It is understood and agreed between the parties that the Owner, in performing its obligations hereunder, is acting independently, and the City assumes no responsibilities or liabilities in connection therewith to third parties.

15. The City represents and warrants that the Real Property Improvements do not include any property that is owned by a member of its governing body.

16. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 8th day of November, 2010, authorizing the City Manager to execute the Agreement on behalf of the City.

17. This Agreement was entered into by an officer of Owner authorized to execute this Agreement on behalf of Owner.

18. This instrument shall constitute a valid and binding agreement between the City and Owner when executed.

19. 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 _____th day of _____, 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 C. Wetherbee, CITY ATTORNEY

ATTEST:

CAPITAL ONE, NATIONAL
ASSOCIATION, a national banking
association

By: _____

Daniel R. Mortensen
Senior Vice President
Facilities Management/Real Estate

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 111
Real Property
Metes and Bounds

BEING a tract of land situated in the Samuel Brown Survey, Abstract No. 108, and the Collin County School Land Survey, Abstract No. 153, in the City of Plano, Collin County, Texas, being a part of that tract of land described as Tract 3B in deed to West Plano Land Company, L.P., as recorded in Collin County Clerk's File No. 20060920001358250, Land Records of Collin County, Texas (L.R.C.C.T.), and being all of Lot 3, Block 1 of Capital One Addition Lots 3 & 4, Block 1, an Addition to the City of Plano as recorded in Volume 2007, Page 269-270, L.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." (hereafter referred to as "with cap") found at the southwest corner of a tract of land described in deed to McAfee, Inc., recorded in Collin County Clerk's File No. 20060703000911570, L.R.C.C.T., and being on the north line of Lot 4, Block 1 of said Capital One Addition;

THENCE North 64 degrees 39 minutes 06 seconds East, with the southeast line of said McAfee tract, and the north line of said Lot 4, passing at a call distance of 196.54 feet the southeast corner of said McAfee tract, also being the southwest corner of Network Associates, an addition to the City of Plano according to the plat thereof recorded in Cabinet O, Page 322, of the Map Records of Collin County, Texas (M.R.C.C.T.), and continuing along the southeast line of said Network Associates addition, for a total distance of 430.07 feet to a 1/2-inch iron rod with cap set at the westerly most corner of said Lot 3 for THE POINT OF BEGINNING;

THENCE North 64 degrees 39 minutes 06 seconds East, continuing along the southeast line of said Network Associates addition and along the north line of said Lot 3, a distance of 713.02 feet to 5/8-inch iron rod with a cap stamped "Kimley-Horn Assoc., Inc" found on the west right-of-way line of Preston Road (State Highway 289 – variable width right-of-way) for the beginning of a non-tangent curve to the left with a radius of 3,369.35 feet and a chord bearing South 30 degrees 56 minutes 44 seconds East, a distance of 681.56 feet;

THENCE Southeasterly along said west right-of-way line and with said curve to the left, through a central angle of 11 degrees 36 minutes 35 seconds, an arc distance of 682.73 feet to a 1/2-inch iron rod with cap set for corner;

THENCE South 29 degrees 32 minutes 01 second East, continuing along said west right-of-way line, a distance of 86.81 feet to a 1/2-inch iron rod with cap set for the beginning of a non-tangent curve to the left with a radius of 3,381.35 feet and a chord bearing South 39 degrees 18 minutes 40 seconds East, a distance of 129.32 feet;

THENCE Southeasterly along said west right-of-way line and with said curve to the left, through a central angle of 02 degrees 11 minutes 29 seconds, an arc distance of 129.33 feet to a 1/2-inch iron rod with cap set for the southeast corner of said Lot 3 and on the north line of Lot 2, Block 1

of Capital One Addition, Lots 1, 2 & 3, Block 1, an addition to the City of Plano, recorded in Volume 2007, Page 122, L.R.C.C.T.;

THENCE South 47 degrees 12 minutes 12 seconds West, departing said west right-of-way line and along the common line between said Lots 2 and 3, a distance of 992.02 feet to a 1/2-inch iron rod with cap set for corner;

THENCE South 37 degrees 29 minutes 43 seconds West, continuing along said common line, a distance of 63.29 feet to a 5/8-inch iron rod with aluminum cap stamped "City of Plano Monument" set for corner on the east right-of-way line of Dominion Parkway (a proposed 92 foot wide right-of-way), and being on a non-tangent curve to the left with a radius of 1,446.00 feet and a chord bearing North 64 degrees 04 minutes 15 seconds West, a distance of 583.54 feet;

THENCE Northwesterly along said east right-of-way line and with said curve to the left, through a central angle of 23 degrees 16 minutes 54 seconds, an arc distance of 587.57 feet to a 1/2-inch iron rod with cap set for corner, said point being the southwesterly corner of said Lot 3 and the southeasterly corner of said Lot 4;

THENCE North 17 degrees 12 minutes 12 seconds East, departing said east right-of-way line and along the common line between said Lots 3 and 4, a distance of 870.25 feet to a 1/2-inch iron rod with cap set for corner;

THENCE North 42 degrees 47 minutes 48 seconds West continuing along said common line, a distance of 126.18 feet to the POINT OF BEGINNING AND CONTAINING 1,082,487 square feet or 24.850 acres of land, more or less.

EXHIBIT "B"
THE DEVELOPMENT (Phase III)
REINVESTMENT ZONE NO. 111

Site Plan/Map of Project

Preston Road



EXHIBIT "C"
CERTIFICATION FORM (Phase III)
REINVESTMENT ZONE NO. 111

This letter certifies that Capital One National Association is in compliance with each applicable term as set forth in the Agreement to Resolution No. _____(R) as of November 1, 20____. The term of this agreement is January 1, 2012 through December 31, 2021. This form is due on November 1 of each year this tax abatement is in force.

ATTEST:

CAPITAL ONE, NATIONAL
ASSOCIATION, a national banking
association

By: _____

Daniel R. Mortensen
Senior Vice President
Facilities Management/Real Estate

Date

NOTE: This certification form should be mailed to:

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