

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

AMENDED AND RESTATED TAX ABATEMENT AGREEMENT

This Amended and Restated Tax Abatement Agreement is entered into by and among 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”; the County of Collin, Texas, duly acting herein by and through its County Judge, and hereinafter referred to as “County”, and together are hereinafter collectively referred to as “Taxing Units,” and Capital One, National Association, a national banking association, along with Capital One Auto Finance, Inc., a Texas Corporation duly acting by and through their officers, hereinafter collectively referred to as “Owner.”

WITNESSETH:

WHEREAS, on the City, County and the Owner previously entered into that certain Tax Abatement Agreement dated May 29, 2008 relating to approximately 150,000 square feet of improvements known as Building 4 located at 8000 Dominion Parkway, Plano, Texas and tangible personal property located therein (the “2008 Tax Abatement Agreement”); and

WHEREAS, the City and Capital One, National Association previously entered into that certain Tax Abatement Agreement dated March 9, 2011 relating to approximately 135,000 square feet of improvements known as Building 3 located at 7941 Preston Road, Plano, Texas (the “2011 Tax Abatement Agreement”); and

WHEREAS, the Parties desire to consolidate, amend and restate the 2008 and 2011 Tax Abatement Agreements as set forth herein for the purpose of establishing distinct phases of development in one tax abatement agreement; and

WHEREAS, the V.T.C.A. Tax Code, Chapter 312 authorizes the Parties to amend the 2008 and 2011 Tax Abatement Agreements; and

WHEREAS, 8th 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 adopted a revised policy statement for Tax Abatement by Resolution No. 2007-8-27(R) stating that it elects to be eligible to participate in tax abatement (the “Policy Statement”); and

WHEREAS, the City 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 both the City and the Taxing Units 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 Phase I Improvements (hereinafter defined) as shown on **EXHIBIT "B"** thereon (the "Phase I Development") and the Phase II Improvements (hereinafter defined) as shown on **EXHIBIT "B"** thereon (the "Phase II Development") attached hereto and made a part hereof.

2. The tangible personal property subject to this Agreement shall be personal property, excluding inventory and supplies, used within Reinvestment Zone No. 111 and located within the Phase I Improvements, which shall be hereinafter referred to as the "Personalty." The Personalty will have an approximate investment value of **Four Million Dollars (\$4,000,000)** and is, or will be, owned by the Owner and/or their affiliates. Owner shall timely render the personal property value each year to the Central Appraisal District.

3. Owner 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

4. The Owner estimates the proposed development of the Real Property as shown in **EXHIBIT "B"** for the Phase I Improvements will result in approximately 200 full-time jobs when the Phase I Improvements are completed. The Owner estimates the proposed development of the Real Property for the Phase II Improvements as shown in **EXHIBIT "B"** will result in approximately 200 full-time jobs when the Phase II Improvements are completed.

PHASE I IMPROVEMENTS

5. The Owner shall complete construction of improvements and/or repairs to the Real Property (hereinafter referred to as the "Phase I Improvements") consisting primarily of new buildings consisting of a total of 150,000 gross square feet of office space known as Building 4 located at 8000 Dominion Parkway, Plano, Texas with an initial expenditure of not less than **Thirty Million Dollars (\$30,000,000)** on or before April 30, 2009 provided that Owner shall have such additional time to complete the Phase I Improvements as may be required in the event of "force

majeure," if Owner is diligently and faithfully pursuing the completion of the Phase I Improvements, or if in the reasonable opinion of the City, the Owner has made substantial progress toward completion of the initial phase of the Phase I Improvements. For this purpose, "force majeure" shall mean any contingency or cause beyond the reasonable control of Owner including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action (unless caused by acts or omissions of Owner), fire, shortages of material and/or labor, explosion or flood, and labor disturbances. The date of completion of the Phase I Improvements shall be defined as the date a Certificate of Occupancy is issued by the City of Plano.

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

7. The Owner agrees and covenants that they shall occupy 150,000 gross square feet of office space within the Phase I Improvements on the Real Property and Owner or its affiliates employ thereon approximately 200 full time jobs, referred to herein as the "Purposes."

PHASE II IMPROVEMENTS

8. For purposes of Phase II Improvements and Obligations hereunder, the Owner is Capital One, National Association. The Owner shall complete construction of improvements and/or repairs to the Real Property (hereinafter referred to as Phase II Improvements) consisting primarily of new buildings consisting of a total of not less than 135,000 square feet of office space known as Building 3 located at 7941 Preston Road, Plano, Texas 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 Phase II 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.

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

10. The Owner agrees and covenants that it shall occupy not less than 135,000 square feet of office space within the Phase II Improvements on the Real Property and Owner or its affiliates shall employ thereon approximately 200 full time jobs, referred to herein as the "Purposes."

DEFAULT

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

(a) The Phase I and/or the Phase II Improvements are not completed in accordance with this Agreement;

(b) Owner allows their real or personal property taxes owed the City or County on the Real Property, the Phase I and/or the Phase II Improvements, or Personalty to become delinquent and 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 Phase I Improvements for the Purposes set forth in paragraph 7 above on or before December 31, 2009 or Owner fails to occupy the Phase II Improvements for the Purposes set forth in paragraph 10 above on or before March 31, 2012 or

(d) The initial investment value of the Phase I Improvements to Real Property and the initial investment value of Personalty placed on the improved Real Property on or before April 30, 2009 and maintained on the Real Property during the term of this Agreement is less than the minimum amounts set forth in paragraphs 2 and 5 above; or

(e) The Taxable Value of the Phase II Improvements 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 8 above; or

(f) Owner fails to employ at least 75% of their employee commitment on or before December 31, 2009 as provided in paragraph 4 above; or

(g) Owner fails to employ at least 75% of their employee commitment on or before July 1, 2012 as provided in paragraph 10 above;

(h) Owner fails to provide annual certification as required in paragraph 14 below; or

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

12. In the event that the Owner defaults under this Agreement then the City or County, as the case may be, 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 or the County, as the case may be; (the "Terminating Party") 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 11(b) or 11(i) above and after Owner fails to cure same in accordance herewith, this Agreement shall immediately terminate with respect

to the Terminating Party and all taxes due the Terminating Party 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.

13. Upon the occurrence of an event of default under Paragraph 11(b) above or upon the occurrence of an event of default under Paragraph 11(i), then the **City or County**, as the case may be, as the Terminating Party, 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 with respect to and by the Terminating Party and all taxes, including previously abated taxes which would have been paid to the **Terminating Party** without the benefit of this Agreement, shall become due and owing to the **Terminating Party**, 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

14. 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 and the County certifying compliance with each applicable term of the Agreement.

ASSIGNMENT

15. 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 **Taxing Units**, which permission shall be at the reasonable discretion of the **Taxing Units**, 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 **Taxing Units** of any assignment or transfer of interest allowed pursuant to subparagraphs (a) and (b) hereof.

ABATEMENT PROVISIONS

16. **Phase I.** Subject to the terms and conditions of this Agreement, a portion of ad valorem real and personal property taxes from the Real Property, Phase I Improvements, Phase II Improvements and Personalty, otherwise owed to the **Taxing Units** shall be abated as follows:

(a) The City and County grant the Owner tax abatements as to the Real Property, Phase I Improvements, and Personalty, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2009, through December 31, 2018.

(b) In accordance with all applicable federal, state, and local laws and regulations, the City grants the Owner tax abatement equal to fifty percent (50%) of the improved value of the Real Property and Phase I Improvements and fifty percent (50%) of the Personalty for each tax year from January 1, 2009, through December 31, 2018. The County grant the Owner tax abatement equal to fifty percent (50%) of the Phase I Improvements and fifty percent (50%) of the Personalty for each tax year from January 1, 2009 through December 31, 2018.

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

17. **Phase II.** Subject to the terms and conditions of this Agreement, a portion of ad valorem real property taxes from the Phase II Improvements otherwise owed to the City shall be abated as follows:

(a) The tax abatements as to the Phase II 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 grants the Owner an abatement equal to fifty percent (50%) of the improved value of the Phase II 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 Phase II 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.

NOTICE

18. 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 Taxing Units by notice to:

County of Collin, Texas
Attention: The Honorable Keith Self
County Judge
Collin County Commissioners' Court
210 S. McDonald, Ste. 626
McKinney, Texas 75069

For Owner by notice to:

Capital One, National Association
Attention: Mr. Brady Green
4871 Cox Road
Glen Allen, Virginia 23060

Capital One, National Association
Attention: Shahin Rezai, Esq.
1680 Capital One Drive
McLean, Virginia 22102

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

Capital One Auto Finance, Inc.
Corporate Real Estate
Attention: Ed Buckley
7933 Preston Road
Plano, TX 75024-2359

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

19. The Owner further agrees that the **Taxing Units**, their agents and employees, shall have reasonable right (upon reasonable prior notice to Owner) to access the Real Property to inspect the Improvements and Personalty in order to insure that the construction of the Improvements and locations of the Personalty are in accordance with this Agreement and all applicable federal, state, and local laws and regulations. After completion of the Improvements, the **Taxing Units** shall have the continuing right (upon reasonable prior notice to Owner) to inspect the Real Property and Personalty to insure that the Real Property and Personalty is thereafter maintained, operated and occupied in accordance with this Agreement.

20. It is understood and agreed between the parties that the Owner, in performing its obligations hereunder, is acting independently, and the **Taxing Units** assume no responsibilities or liabilities in connection therewith to third parties and Owner agrees to indemnify and hold harmless **Taxing Units** from any and all claims, suits, and causes of actions, including attorneys' fees, of any nature whatsoever arising out of Owner's default of its obligations hereunder.

21. The **Taxing Units** each represent and warrant that the Real Property, Improvements and Personalty do not include any property that is owned by a member of their respective councils or boards, agencies, commissions, or other governmental bodies approving, or having responsibility for the approval of this Agreement.

22. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 11th day of April, 2011, authorizing the City Manager to execute the Agreement on behalf of the City.

23. This Agreement was authorized by the minutes of the Commissioners' Court of Collin County, Texas, at its meeting on the 6th day of June, 2011, whereupon it was duly determined that the County Judge would execute the Agreement on behalf of Collin County.

24. This Agreement was entered into by Owner pursuant to authority granted by its general partner, whereby the general partner of the limited partnership was authorized to execute this Agreement on behalf of Owner.

25. This instrument shall constitute a valid and binding agreement between the **City** and **Owner** when executed in accordance herewith, regardless of whether the **County** executes this Agreement. This Agreement shall constitute a valid and binding Agreement between the **County** and Owner when executed on behalf of said parties, for the abatement of the **County's** taxes in accordance therewith.

26. 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 the _____ day of _____, 2011.

ATTEST:

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

Diane Zucco, CITY SECRETARY

BRUCE D. GLASSCOCK
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

COMMISSIONERS' COURT OF COLLIN
COUNTY

Georgia Shepherd

Keith Self
KEITH SELF, COUNTY JUDGE

ATTEST:

CAPITAL ONE, NATIONAL
ASSOCIATION, a national banking
association

By:

Dan Mortensen
Senior Vice President Facilities
Management/ Real Estate

ATTEST:

CAPITAL ONE AUTO FINANCE, INC.,
a Texas Corporation

By:

Dan Mortensen
Senior Vice President Facilities
Management/ Real Estate

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

LEGAL DESCRIPTION

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 PHASE I AND PHASE II DEVELOPMENT
REINVESTMENT ZONE NO. 111
Site Plan/Map of Project

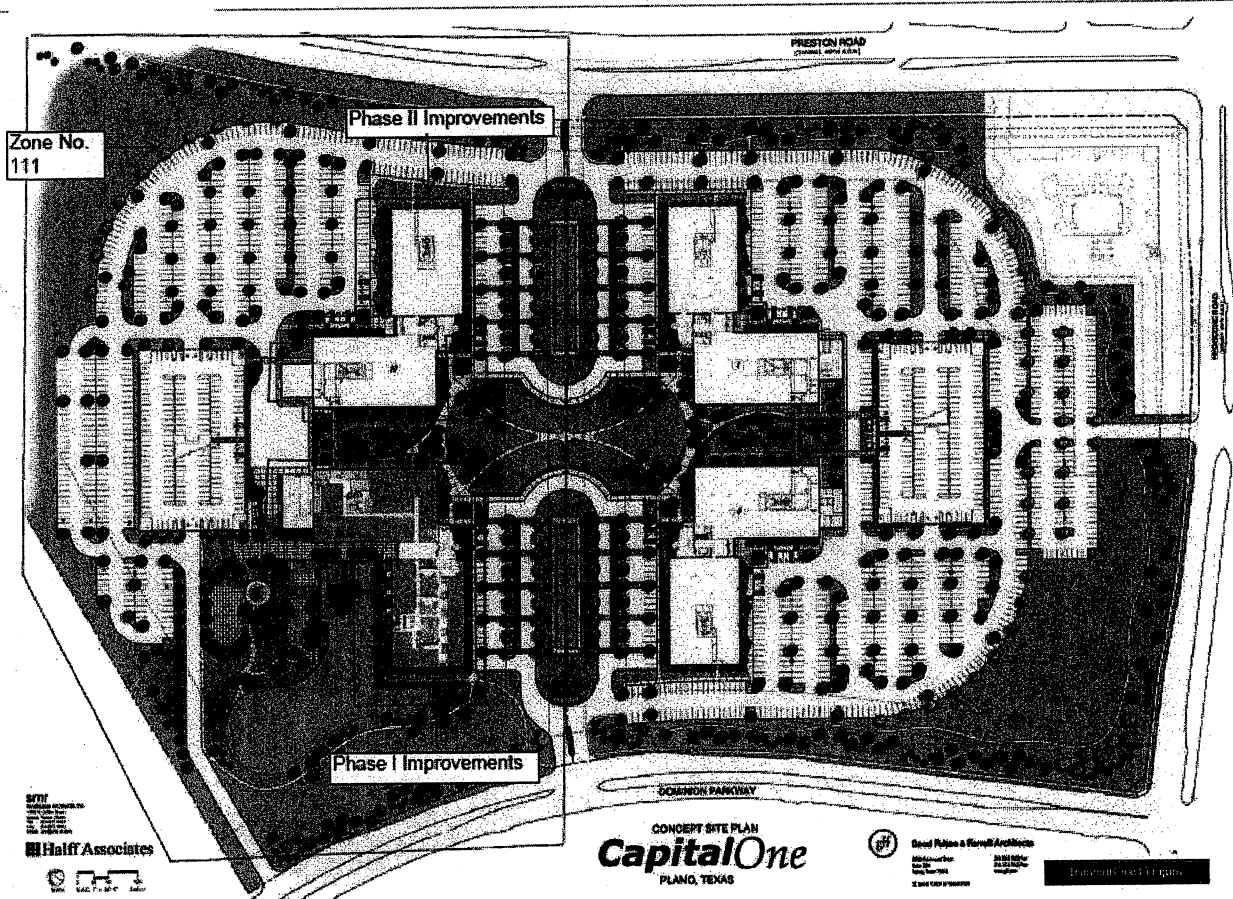


EXHIBIT "C"
CERTIFICATION FORM
REINVESTMENT ZONE NO. 111

This letter certifies that Capital One National Association is in compliance with each applicable term as set forth in the Amended and Restated Tax Abatement Agreement to Resolution No. _____ as of November 1, 20____. 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: _____

Dan Mortensen
Senior Vice President Facilities
Management/Real Estate

Date

ATTEST:

CAPITAL ONE AUTO FINANCE, INC., a
Texas Corporation

By: _____

Dan 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**