

AN ORDINANCE 2012-06-07-0409

APPROVING A CONSENT AGREEMENT AND AMENDMENT TO THE WALZEM ROAD REDEVELOPMENT MASTER ECONOMIC INCENTIVE AGREEMENT AMONG THE CITY OF WINDCREST, THE WINDCREST ECONOMIC DEVELOPMENT CORPORATION, WINDCREST ECONOMIC DEVELOPMENT COMPANY, L.L.C., BEXAR COUNTY, THE CITY OF SAN ANTONIO AND RACKSPACE US, INC d/b/a RACKSPACE HOSTING.

* * * * *

WHEREAS, the City Council approved a Master Economic Incentives Agreement (the “Agreement”) and Boundary Change Agreement among the City of Windcrest, the Windcrest Economic Development Corporation, Windcrest Economic Development Company, L.L.C., Bexar County and Rackspace, U.S., Inc. through City Ordinance 2007-08-02-0811; and

WHEREAS, the Agreement provided for certain economic incentives for the relocation and expansion of Rackspace Hosting’s operations including certain development obligations to be undertaken by the Windcrest Economic Development Company, L.L.C; and

WHEREAS, upon the dissolution of Windcrest Economic Development Company, L.L.C., the remaining parties seek to amend the Agreement by removing the dissolved party and continuing the remaining obligations in the Agreement by the remaining parties; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Council approves the terms and conditions of the San Antonio Consent to Amendment of the MEIA (the “Consent Agreement”) and Amendment to the Walzem Road Redevelopment Master Economic Incentive Agreement (the “Amendment”) among the City of Windcrest, the Windcrest Economic Development Corporation, Windcrest Economic Development Company, L.L.C., Bexar County and Rackspace, U.S., Inc.

SECTION 2. The City Manager or her designee is authorized to execute the Consent Agreement and the Amendment. Copies of the Consent Agreement and the Amendment, in substantially final form, are attached to this Ordinance as **Attachment I and Attachment II.** The final agreements shall be filed with this Ordinance upon execution.

SECTION 3. This Ordinance shall be effective immediately upon its passage by eight (8) votes or after the 10th day after its passage by less than eight (8) affirmative votes.

PASSED AND APPROVED this 7th day of June, 2012.



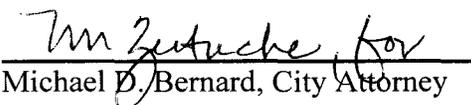
M A Y O R
Julián Castro

ATTEST:

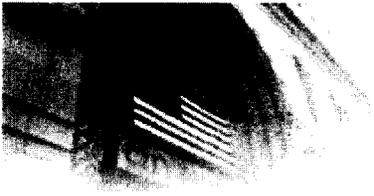


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 14

Name:	4, 7A, 7B, 8A, 8B, 9, 11, 12, 13, 14, 15						
Date:	06/07/2012						
Time:	09:25:30 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance approving a consent agreement and amendment to the Walzem Road Redevelopment Master Economic Incentive Agreement among the City of Windcrest, the Windcrest Economic Development Corporation, Windcrest Economic Development Company, L.L.C., Bexar County, the City of San Antonio and Rackspace US, Inc dba Rackspace Hosting. [Pat DiGiovanni, Deputy City Manager; Rene Dominguez, Director, Economic Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
W. Reed Williams	District 8		x			x	
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

ATTACHMENT I

SAN ANTONIO CONSENT TO AMENDMENT OF MEIA

This Consent to Amendment (“**Consent**”) is granted effective as of the ___ day of October, 2011 (the “**Effective Date**”) by the City of San Antonio, Texas (“**City of San Antonio**”), through its undersigned duly-authorized official.

WHEREAS, Bexar County, Texas (the “**County**”), the City of Windcrest, Texas, a Texas home rule municipality (the “**City of Windcrest**”), the City of San Antonio, Windcrest Economic Development Corporation, a Section 4B corporation created pursuant to the authority of the Development Corporation Act of 1979 (the “**City EDC**”), Rackspace US, Inc., a Delaware corporation (“**Rackspace**”), and Windcrest Economic Development Company, LLC, a Texas limited liability company (“**Developer LLC**”), entered into that certain agreement entitled Walzem Road Redevelopment Project Master Economic Incentives Agreement dated August 2, 2007 (the “**MEIA**”); and

WHEREAS, the City of Windcrest, the City EDC and the Developer LLC have agreed to amend the MEIA and have requested that the County, the City of San Antonio and Rackspace consent to an amendment of the MEIA so as to remove the Developer LLC as a party to the MEIA, to release the Developer LLC from any obligations under the MEIA or any documents or agreements entered into in furtherance of the MEIA, and to eliminate any rights of the Developer LLC under the MEIA, and the City of San Antonio has agreed to grant this Consent.

NOW, THEREFORE, the City of San Antonio, for itself and its successors and assigns, hereby irrevocably consents to the amendment of the MEIA so as to (a) remove the Developer LLC as a party to the MEIA, (b) to release the Developer LLC from any and all liabilities, duties and obligations under the MEIA and any documents or agreements to which the City of San Antonio is a party with the Developer LLC that were entered into in furtherance of the MEIA, and (c) to eliminate any rights of the Developer LLC under the MEIA, it being the intention of the City of San Antonio to grant to the Developer LLC the broadest, most comprehensive release from liability permitted by law in regard to the MEIA and any document or agreement executed contemporaneously with or in furtherance of the MEIA, such that any and all existing contractual or legal obligations between the City of San Antonio and the Developer LLC under the MEIA and any documents or agreements entered into in furtherance of the MEIA which relate or pertain in any way to the purchase, sale, or development of properties in Windcrest, Texas or San Antonio, Texas are fully released and discharged, and of no further force and effect, it being the intention of the City of San Antonio to dissolve any and all express or implied contractual relationships between the City of San Antonio and the Developer LLC, so that the Developer LLC is completely free to pursue its own interest in the future without regard to any express or implied contractual obligation or other legal obligation of any kind owing to the City of San Antonio under the MEIA and under any documents or agreements entered into in furtherance of the MEIA or relating to or pertaining in any way to the purchase, sale or development of property in Windcrest, Texas or San Antonio, Texas.

The City of San Antonio hereby further consents to the manner in which the City EDC, in its capacity as a Section 4B corporation created pursuant to the authority of the Development Corporation Act of 1979, acquired and held title to property in the City of San Antonio, so as to render said property exempt from the payment of ad valorem taxes and assessments while the City EDC held and may continue to hold title to such property and hereby acknowledges and agrees that, during the period while the City EDC holds and may continue to hold title to such property, such property shall remain exempt from the payment of ad valorem taxes and assessments imposed by the City of San Antonio.

IN WITNESS WHEREOF, the County has executed this Consent, through its undersigned, duly-authorized official in the presence of the undersigned witnesses, to be effective as of the Effective Date.

WITNESSES:

CITY OF SAN ANTONIO, TEXAS

By: _____

Its: _____

ATTACHMENT II

AMENDED AND RESTATED
RACKSPACE US, INC.
REDEVELOPMENT PROJECT
MASTER ECONOMIC INCENTIVES
AGREEMENT

____, 2012

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AMENDED AND RESTATED RACKSPACE US, INC. REDEVELOPMENT PROJECT

MASTER ECONOMIC INCENTIVES AGREEMENT

THIS AMENDED AND RESTATED RACKSPACE US, INC. REDEVELOPMENT PROJECT MASTER ECONOMIC INCENTIVES AGREEMENT (this "Agreement") is hereby made and entered into effective as of _____, 2012 (the "Effective Date") by and between the CITY OF WINDCREST, TEXAS (the "City of Windcrest"), the CITY OF SAN ANTONIO, TEXAS (the "City of San Antonio"), the COUNTY OF BEXAR, TEXAS (the "County"), the WINDCREST ECONOMIC DEVELOPMENT CORPORATION (the "Windcrest EDC"), and RACKSPACE US, INC., a Delaware corporation ("Rackspace"). The City of Windcrest, the City of San Antonio, the County, the Windcrest EDC, and Rackspace may hereinafter be referred to collectively as the "Parties."

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JOINT RECITALS OF ALL PARTIES

WHEREAS, the Parties and WINDCREST ECONOMIC DEVELOPMENT COMPANY, LLC, were parties to that certain WALZEM ROAD REDEVELOPMENT PROJECT MASTER ECONOMIC INCENTIVES AGREEMENT dated August 2, 2007 (the "Original MEIA"); and

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WHEREAS, the WINDCREST ECONOMIC DEVELOPMENT COMPANY, LLC is no longer involved in or in any way associated with the subject matter of the Original MEIA and no longer a party to the Original MEIA; and

WHEREAS, the Parties agree to amend and restate the Original MEIA so as to remove WINDCREST ECONOMIC DEVELOPMENT COMPANY, LLC as a party to the Original MEIA, to remove WINDCREST ECONOMIC DEVELOPMENT COMPANY, LLC as the "Developer" under the Original MEIA, to release WINDCREST ECONOMIC DEVELOPMENT COMPANY, LLC from any obligations under the Original MEIA and any documents or agreements entered into in furtherance of the Original MEIA, and to eliminate any rights of WINDCREST ECONOMIC DEVELOPMENT COMPANY, LLC under the Original MEIA; and

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WHEREAS, the Parties desire to enter into this Agreement and agree that this Agreement shall supersede the Original MEIA in all respects and shall govern the rights, obligations, covenants and agreements of the Parties with respect to the subject matter contained herein; and

WHEREAS, Article III, Section 52-a of the Texas Constitution expressly authorizes the State of Texas (the "State") and local governments to use public funds for the public purposes of development and diversification of the economy of the State, the elimination of unemployment or underemployment in the State, or the development or expansion of transportation or commerce in the State; and

WHEREAS, consistent with Article III, Section 52-a of the Texas Constitution, the Parties made specific proposals to Rackspace for the purpose of inducing Rackspace to relocate its corporate headquarters to the Leased Property, as defined below, and thereby advance the public purposes of developing and diversifying the economy of the State, eliminating unemployment or

underemployment in the State, and developing or expanding transportation or commerce in the State; and

WHEREAS, to ensure that the benefits the Parties provide under this Agreement are utilized in a manner consistent with Article III, Section 52-a of the Texas Constitution, and other law, Rackspace has agreed to comply with certain conditions for receiving those benefits, including performance measures relating to job creation; and

WHEREAS, the Windcrest EDC is a Section 4B corporation created pursuant to the authority of the Development Corporation Act of 1979, as amended, Texas Revised Civil Statutes Annotated, Article 5190.6 (the "EDC Act"); and

WHEREAS, it has been determined that Section 4B(a)(3) of the EDC Act allows the Windcrest EDC to use funds in connection with land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that the board of directors of the Windcrest EDC believes would promote new or expanded business development in the City of Windcrest; and

WHEREAS, it has been determined that pursuant to Section 23(a) of the EDC Act and Article 1396-2.02.A.(4) of the Texas Nonprofit Corporation Act (Article 1396-1.01 *et seq.*, Vernon's Texas Revised Civil Statutes) (the "Nonprofit Corporation Act") the Windcrest EDC may acquire certain real estate located partially in the City of Windcrest and partially in the City of San Antonio; and

WHEREAS, it has been determined that as provided by Section 23(a) of the EDC Act and pursuant to Article 1396-2.02.A.(8) of the Nonprofit Corporation Act, the Windcrest EDC may make contracts and incur liabilities, borrow money at such rates of interest as the Windcrest EDC may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income; and

WHEREAS, pursuant to the Original MEIA, Rackspace joined with the Windcrest EDC to assist with the redevelopment of that certain tract of land and improvements comprising the property formerly known as the Windsor Park Mall (and hereinafter defined in Section 1.13 as the "Leased Property") into a corporate headquarters for Rackspace (the "Leased Property Project" as hereinafter defined in Section 1.14); and

WHEREAS, pursuant to the EDC Act, the Windcrest EDC acquired the Leased Property and leased it to Rackspace; and

WHEREAS, Rackspace has relocated its U.S. corporate headquarters to the Leased Property and as of December 31, 2011, Rackspace had in excess of 2400 employees located at the Leased Property; and

WHEREAS, Rackspace and the State of Texas are parties to that certain Economic Development Agreement dated August 1, 2007, as amended by Amendment Number One to the Economic Development Agreement dated July 24, 2009 ("TEF Amendment") which sets forth criteria for employment creation by Rackspace in the State of Texas for Rackspace's Texas Enterprise Fund grants; and

WHEREAS, the Parties acknowledge that the TEF Amendment triggered an automatic adjustment to the employment commitment as set forth in Section 2.1 of the Original MEIA, to wit under Section 2.f. of the TEF Amendment, the job requirement for Windcrest, Texas has been set at two-thirds of the entire state job requirement of 2,661 jobs, or a total of 1774 jobs at Windcrest, Texas, by December 31, 2012, therefore, the total Employment Commitment under the Original MEIA was automatically reduced to 1774 jobs at the Leased Property by December 31, 2012; and

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WHEREAS, the Parties acknowledge that Rackspace has satisfied the employment commitment ahead of schedule due the fact that it had greater than 1774 jobs at the Leased Property effective December 31, 2011.

AGREEMENTS

NOW, THEREFORE, upon and in consideration for the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 Reserved.

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Section 1.2 "Agreement" means this Agreement and any addendum to this Agreement agreed to by the Parties.

Section 1.3 "Annexed Area" means the property described in Exhibit "A".

Section 1.4 Reserved.

Section 1.5 "Boundary Change Agreement" means an agreement entered into effective August 2, 2007 between the City of San Antonio and the City of Windcrest pursuant to Section 43.035 of the Local Government Code containing the terms and provisions of Article 9 of this Agreement, attached hereto as Exhibit "B", and made a part of this Agreement.

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Section 1.6 "Business Activities" means the operation by Rackspace of an information technology services business, including acting as the U.S. corporate headquarters for such business, and the business operations of any assignee, tenant or subtenant of Rackspace approved by the City of Windcrest and located at the Leased Property.

Section 1.7 "City Economic Development Grant Agreement" means the agreement entered into between the City of Windcrest and Rackspace effective August 2, 2007 entered into pursuant to Chapter 380 of the Local Government Code, and containing the terms and provisions of Section 3.11 of this Agreement.

Section 1.8 "County Economic Development Grant Agreement" means the agreement entered into between the County and Rackspace effective August 2, 2007, pursuant to Chapter 381 of

the Local Government Code, and containing the terms and provisions of Section 3.12 of this Agreement.

Section 1.9 "Cure Period" means that if either party believes the other is in default under any of the terms set forth in this Agreement it shall notify the allegedly Defaulting Party of the nature of the breach as provided in Section 13.6. The party receiving notice of default shall have ninety (90) calendar days from the date such notice is received to cure the default. If the default has not been cured by that date this Agreement may be terminated after giving ten (10) calendar days written notice. The Nondefaulting Party shall have the option, to be exercised reasonably and in good faith, to extend the Cure Period if the Defaulting Party commences to cure said default within the ninety (90) day Cure Period and it is diligently pursuing such cure. Any extension of the Cure Period shall not operate or be construed as a further or continuing waiver of such default or as a waiver of any other or subsequent default under any of the terms of this Agreement.

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Section 1.10 "Eisenhauer Development Tract" means the property described in Exhibit "C"

Section 1.11 "Exemption Period" has the meaning provided in Section 3.4 of this Agreement.

Section 1.12 "Force Majeure" means the occurrence of any of the following events that results in the impossibility of performance: war, domestic terrorist acts, riots, strikes, embargoes, acts of God, earthquakes, fires, hurricanes, tornadoes, floods, wash outs, and unusually severe weather, interruption or unavailability of utilities, or due to failure of performance by suppliers.

Section 1.13 "Leased Property" means that certain tract of land and improvements comprising the real property located at 5000 Walzem Road, San Antonio, Texas, formerly known as the Windsor Park Mall and being more particularly described in Exhibit "D". The term also includes the improvements, additions and renovations made by Rackspace or Windcrest EDC to the Leased Property from time to time for use as part of the Leased Property Project that become subject to the terms of the Mall Lease. Further, the Leased Property shall be modified to reflect any boundary changes due to (a) the construction of Racker Road (as hereinafter provided in Section 5.1) or (ii) the acquisition by Rackspace or the Windcrest EDC of that certain tract of land and improvements as more particularly described on Exhibit "E" (the "Firestone Tract") which is a subject of the lawsuit styled Rackspace US, Inc. v. Michael White, Gary Cain, et al.: Cause No. 2009 CI 15428, 408th District Court, Bexar County, Texas.

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- Comment [PM1]: We need a copy of this Exhibit
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Section 1.14 "Leased Property Project" means the Rackspace U.S. corporate headquarters at the Leased Property.

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Section 1.15 "Mall Lease" means the lease agreement dated effective August 2, 2007 entered into between the Windcrest EDC, as landlord, and Rackspace, as tenant, for the lease of the Leased Property, as amended from time to time attached hereto as Exhibit "F."

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Section 1.16 "Personal Property Improvements" means the tangible personal property for

use at the Leased Property Project, including that leased by Rackspace from the Windcrest EDC.

Section 1.17 "PILOT Payment" means a payment to the City of Windcrest or other taxing unit required by this Agreement that has ad valorem taxes as its basis of calculation, and includes any payment in lieu of the ad valorem property taxes that would otherwise be assessed for a given tax year against the Rackspace Corporate Headquarters Property if it was not property tax exempt.

The parties acknowledge that Bexar Appraisal District may have not previously determined the appraised value for property tax purposes that would typically be used to calculate the amount of taxes otherwise assessed against the Rackspace Corporate Headquarters Property since the property is exempt from appraisal for ad valorem property taxes. Therefore, it is the intent of the parties that whenever it is necessary to determine the appraised value of the Rackspace Corporate Headquarters Property for the purpose of calculating a PILOT Payment, the parties and any appraisers selected under this Agreement shall strive to determine what appraised value for property tax purposes would have been determined by the Bexar Appraisal District for the relevant time period. This shall be accomplished pursuant to the provisions in Section 3.5 below.

If the Bexar Appraisal District takes steps to determine the appraised value for property tax purposes of the Rackspace Corporate Headquarters Property or to determine the qualification of the Rackspace Corporate Headquarters Property for exemption under the EDC Act or other applicable law, Windcrest EDC and the City of Windcrest hereby automatically designate Rackspace to act as their agent for property tax matters involving the Rackspace Corporate Headquarters Property, including for filing and management of any necessary protests or appeals. If Rackspace obtains an appraisal for the value for property tax purposes of the Rackspace Corporate Headquarters Property pursuant to Section 3.5 of this Agreement, the automatic designation of Rackspace as the agent for Windcrest EDC and the City of Windcrest does not apply.

Section 1.18 "Rackspace Corporate Headquarters Property" means the Leased Property, the Personal Property Improvements and the Real Property Improvements (and any taxable leasehold or other possessory interest in the property) located in Bexar County, Texas that are owned by the Windcrest Economic Development Corporation and leased to Rackspace (or its assignees, tenants or subtenants approved by the City of Windcrest) under this Agreement for use as part of the Leased Property Project.

Section 1.19 "Real Property Improvements" means the buildings and other property improvements owned by the Windcrest EDC (now existing or constructed in the future) and leased by Rackspace (or its assignees, tenants or subtenants approved by the City of Windcrest) for use at the Leased Property Project.

Section 1.20 "Related Organizations" means an entity or person who (a) is directly or indirectly controlled by, or under common control with Rackspace; (b) owns directly or indirectly fifty percent (50%) or more of the equity or voting interest of Rackspace; (c) is a successor by merger or other business combination with Rackspace such that substantially all of the business assets of Rackspace remain in the merged or combined entity; or (d) an approved purchaser or assignee of Rackspace.

Section 1.21 "Relocation" or "Relocate" shall mean that Rackspace (or a Related Organization, which has taken the place of Rackspace) moves all or substantially all of the Business Activities previously conducted at the Leased Property to a location outside the Leased Property.

Section 1.22 "Section 4B(k) of the EDC Act" shall mean Section 5190.6-4B(k) of the EDC Act and any other statute that enables the Rackspace Corporate Headquarters Property to be exempt from ad valorem property taxation.

Section 1.23 "Windcrest Development Site" means the property described on Exhibit "C".

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ARTICLE 2

RACKSPACE COMMITMENT AND RECAPTURE

Section 2.1 The Parties agree that Rackspace has met or exceeded the employment commitment requirements as set forth in the Original MEIA during the Exemption Period through December 31, 2011. From and after December 31, 2011 and continuing through the end of the Exemption Period, Rackspace agrees to maintain 1774 employees at the Leased Property, with a median total annual payroll (salary and bonus) of not less than \$51,000 (the "Employment Commitment") throughout the Exemption Period. The Parties agree that this Employment Commitment was achieved effective December 31, 2011.

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Section 2.2

(a) If Rackspace, a Related Organization, or a City of Windcrest-approved assignee or subtenant as provided below occupies and uses the Leased Property for Business Activities and subsequently all or substantially all Business Activities (or a substantial portion thereof) at the Leased Property are ceased for a continuous period of three (3) months (hereinafter referred to as a "Cessation of Business Activities") during the Exemption Period for any reason, except if such cessation is caused by a Force Majeure, then the City of Windcrest shall have the right to terminate this Agreement upon delivery of the notices and expiration of the Cure Period. Said termination shall be effective for the calendar year during which such Cessation of Business Activities occurred.

(b) Upon a termination under Section 2.2(a), an amount equal to the ad valorem taxes which would have been assessed by the City of Windcrest, Bexar County and North East Independent School District ("NEISD") (hereafter referred to collectively as the "Taxing Units") against the Rackspace Corporate Headquarters Property for the calendar year in which the Cessation of Business Activity occurred, as if the property had not been exempt from property taxes, shall be paid as a PILOT Payment by Rackspace to the City of Windcrest.

(c) In addition to the PILOT Payment under Section 2(b), upon a termination under Section 2.2(a), an amount equal to the ad valorem taxes which would have been assessed by the City of Windcrest and Bexar County against the Rackspace Corporate Headquarters Property for the previous years during the Exemption Period if the property had not been exempt from property

taxes shall be paid as a PILOT Payment by Rackspace to the City of Windcrest. The City of Windcrest shall pay to the County the County's portion of such PILOT Payment. A PILOT Payment shall also be made to NEISD (or its foundation, at the City of Windcrest's discretion) upon a termination under 2.2(a) for the same time period, but shall be calculated as follows. For each year of the Exemption Period, Rackspace shall pay the amount required to offset the net amount of actual tax revenue and state aid loss to the NEISD for the given year(s) caused as a result of the Texas school finance laws and the tax-exempt nature of the Rackspace Corporate Headquarters Property. The purpose of this payment is to make NEISD whole, but not to place it in any better position than if it had actually received the property taxes, after taking into account the effect such a receipt of property taxes would have had on state funding to NEISD. To assist in determining the amounts due, the parties agree to utilize the services of the school finance consulting firms of either Moak, Casey & Associates, LLC of Austin, Texas or Kavoussi & Associates of San Antonio, Texas, as determined by NEISD, the cost of which shall be paid by Rackspace but then credited as a reduction in the amount of the next PILOT Payment to NEISD.

(d) Any PILOT Payment under this Section 2.2 shall be paid by Rackspace to the City of Windcrest within ninety (90) calendar days from the date the Cure Period has expired. The City of Windcrest shall pay any portion of such PILOT Payment due to other governmental entities within thirty (30) days after its receipt of such PILOT Payment. If a Cessation of Business Activity is caused by a Force Majeure, Rackspace may continue or terminate this Agreement, for all or a portion of the Leased Property, without liability for any PILOT Payment or other penalty.

Section 2.3 If Rackspace, a Related Organization, or a City of Windcrest-approved assignee or subtenant as provided below fails to satisfy the Employment Commitment during a calendar year in the Exemption Period, then for each such calendar year of noncompliance, Rackspace shall pay the City of Windcrest a PILOT Payment representing the property taxes that would have been assessed against the Real Property Improvements or Personal Property Improvements by the City of Windcrest or Bexar County as if they were not property tax exempt, and the City of Windcrest shall distribute such PILOT Payments to the appropriate taxing entities. The amount of the PILOT Payment shall be computed by multiplying the amount of property taxes that would have been assessed against the Real Property Improvements and Personal Property Improvements by the City of Windcrest and Bexar County by the same percentage as the deficiency in the Employment Commitment. The NEISD amount shall be calculated using the methodology set forth in Section 2.2(c).

For example, if Rackspace creates and retains ninety percent (90%) of the minimum number of full-time employee positions required to comply with the Employment Commitment in a given year, Rackspace shall be required to pay 10% of the taxes that would have otherwise been assessed by the Taxing Units (which for purposes of this Section 2.3 excludes NEISD as it is already covered by the separate provisions of Section 2.2(c)) against the Real Property Improvements or Personal Property Improvements for the given year of deficiency, but subject to a floor of fifty percent (50%). Since the Employment Commitment requires that the median total annual payroll of the employees credited to meet the Employment Commitment be not less than \$51,000, when calculating the Employment Commitment the lowest paying jobs will be excluded from the number of jobs credited toward satisfying the Employment Commitment to the extent necessary to cause the median total compensation of the remaining employees to equal or exceed \$51,000. If Rackspace fails to create

and retain at least fifty percent (50%) of the minimum number of full-time employee positions required to comply with the Employment Commitment in a given year then, at the option of the City of Windcrest, the City of Windcrest may terminate this Agreement. Said termination shall be effective for the calendar year during which at least fifty percent (50%) of the minimum number of full-time employee positions required to comply with the Employment Commitment have not been created or retained by Rackspace. Upon said termination, a PILOT Payment equal to the ad valorem taxes that would otherwise have been assessed by the Taxing Units against the Real Property Improvements and Personal Property Improvements for that calendar year shall be calculated as set forth in Section 2.2(c). A PILOT Payment equal to the property taxes that would otherwise have been assessed by the Taxing Units against the Real Property Improvements and Personal Property Improvements for the years in the Exemption Period preceding the year of termination shall be paid to the Taxing Units and calculated as set forth at Section 2.2.(b). If the failure to create and retain at least fifty percent (50%) of the minimum number of full-time employee positions required to comply with the Employment Commitment is caused by a Force Majeure, Rackspace shall have the right to continue or to terminate this Agreement, for all of or any remaining portion of the Leased Property, without recapture or other penalty. Rackspace may count employees of a subtenant or Related Organization that are located on a fulltime basis on the Leased Property as if they were Rackspace employees (including the median salary calculations) for purposes of meeting the Employment Commitment.

Section 2.4 During the Exemption Period the City of Windcrest may declare a default if Rackspace fails to comply with any of the conditions set forth in Sections 2.2 and 2.3 (but only below the 50% requirement) of this Agreement. Should the City of Windcrest determine that Rackspace is in default under any of the terms set forth in Sections 2.2 and 2.3 (but only below the 50% requirement) of this Agreement, the City of Windcrest shall notify Rackspace in writing, and if said default is not cured within the Cure Period, then the City of Windcrest shall have the right to terminate this Agreement upon ten (10) calendar days prior written notice. The City of Windcrest shall have the option, to be exercised reasonably and in good faith, to extend the Cure Period if Rackspace commences to cure said default within the Cure Period and Rackspace is diligently pursuing such cure. If this Agreement is terminated as a result of a default described under this Section 2.4, the Taxing Units shall be entitled to the PILOT Payments calculated in the amounts and paid in the manner set forth in Sections 2.2 and 2.3. For the purpose of calculating the PILOT Payments under Sections 2.2 and 2.3 there shall be no right of double recovery by any taxing unit entitled to a PILOT Payment. For example, if Rackspace ceases business activity under Section 2.2, and at the same time breaches its Employment Commitment under Section 2.3, the taxing unit shall elect as its remedy whether to proceed under Section 2.2 or Section 2.3. In addition, Rackspace shall be entitled to a credit against such PILOT Payments for any previous PILOT Payments or property taxes it has paid to the Taxing Units.

Section 2.5 If the Exemption Period expires and Rackspace Relocates or there is a Cessation of Business Activities at the Leased Property (other than as a result of a Force Majeure) during the one year period after the end of the Exemption Period, then the Taxing Units shall also have the right to a payment (by PILOT Payment, if necessary) from Rackspace equal to 20% of the property taxes (except for the payment to NEISD which shall be calculated in the manner set forth in Section 2.2(c)) that would have been assessed for the preceding tax year by the Taxing Units against

the Real Property Improvements or Personal Property Improvements had they not been exempt from property taxes.

Section 2.6 If during the term of the Mall Lease, as set forth therein (the "Lease Term"), (a) Rackspace allows a PILOT Payment to become delinquent or there is a default; and (b) Rackspace does not cure such delinquency or default within the Cure Period, the City of Windcrest shall have the right to terminate this Agreement. A PILOT Payment will then be due for the calendar year during which the termination occurred on the same basis set forth in Section 2(b). In addition a PILOT Payment shall be paid on the same basis set forth in Section 2(c) and 2(d).

Section 2.7 The Parties recognize, agree, and stipulate that the financial, civic, and social benefits to the City of Windcrest from the presence of Rackspace on the Leased Property are great, but that the precise value of those benefits is difficult to quantify due to the number of citizens and businesses that rely upon and benefit from the presence of Rackspace on the Leased Property. Accordingly, the magnitude of the damages that would result from a violation of Sections 2.2 through 2.6 hereof would be significant in size but difficult to quantify including, without limitation, damages to the reputation and finances of the City of Windcrest. Therefore, the Parties agree that in the event of a violation of Sections 2.2 through 2.6 hereof including, without limitation, any such breach arising pursuant to the provisions of section 365(g) of the United States Bankruptcy Code or similar provision of any successor thereto, the City of Windcrest will be entitled to recover from Rackspace the PILOT Payments provided for in Sections 2.2 through 2.6 hereof, which are stipulated to be reasonable estimated damages, as reasonable liquidated damages and not as a penalty. The Parties hereby acknowledge that they have negotiated the above amounts in a good faith attempt to quantify the amount of damages arising due to a violation of Sections 2.2 through 2.6 hereof despite the difficulty in making such determination. Accordingly, in the event the City of Windcrest collects the above referenced liquidated damages, then the City of Windcrest hereby waives any right to collect additional monetary damages (other than legal fees and expenses) including lost or prospective profits, or for any other special, indirect, incidental, consequential, exemplary, or punitive damages.

Section 2.8 Other Remedies Available. Subject to the preceding paragraph, the City of Windcrest shall have the right to take appropriate action to which it may be entitled, at law or in equity, to enforce the obligations of Rackspace pursuant to this Agreement.

Section 2.9 Rackspace shall calculate the number of employees meeting the Employment Commitment and the median salary of such employees as of December 31 of each year and shall certify such numbers to the City of Windcrest. The City of Windcrest shall, at its expense, have the right to cause its auditor to audit Rackspace's and any other entities' books and records which make up part of the calculation of the Employment Commitment, for the sole purpose of calculating the Employment Commitment.

ARTICLE 3

LEASED PROPERTY REDEVELOPMENT

Section 3.1 The Parties agree that Rackspace and the Windcrest EDC entered into the Mall Lease and that it remains in full force and effect. If the Leased Property is modified as contemplated by the definition of "Leased Property" as set forth in Section 1.13, the Windcrest EDC and Rackspace will amend the Mall Lease from time to time to reflect those changes.

Section 3.2 Reserved.

Section 3.3 The Parties agree that Rackspace has fulfilled its obligation to make a cumulative investment of at least \$100 million in the acquisition of and improvements to the Rackspace Corporate Headquarters Property. During the term of this Agreement, Rackspace shall pay to the City of Windcrest an administrative fee of \$100,000 per year, provided, however, Rackspace shall be obligated to pay an administrative fee in any year if, and only if, the tax exemption on the Leased Property, the Real Property Improvements and the Personal Property Improvements pursuant to Section 4B(k) of the EDC Act remains in effect and if such condition is not met Rackspace will not owe the administrative fee to the City of Windcrest for that year.

Section 3.4 The Rackspace Corporate Headquarters Property will be owned by the Windcrest EDC and therefore will be exempt from property taxation during the term of the Lease pursuant to Section 4B(k) of the EDC Act. Nonetheless, Rackspace has agreed to make PILOT Payments as provided elsewhere in this Agreement, except during a 14-year exemption period, (the "Exemption Period"). The Exemption Period began on January 1, 2009 pursuant to proper notice given to the City of Windcrest. The Exemption Period will be for a 14-year period regardless of whether the Leased Property is actually exempt during such period. The PILOT Payments shall be calculated in the manner and amounts as set forth in Section 2.2(c). Rackspace shall also make PILOT Payments as set forth in Section 3.5 after the Exemption Period has expired and until the Mall Lease is terminated.

Section 3.5 Except during the Exemption Period, the PILOT Payments shall be paid to the City of Windcrest (or other entity designated by the City of Windcrest) for distribution to each Taxing Unit in an amount equal to the taxes that would have been assessed by each Taxing Unit against the Fee Simple Interest in the Rackspace Corporate Headquarters Property (including any improvements or additions) as if the property was not exempt from property taxation. These payments will be due by February 28th of the year following the tax year for which they are being paid. In the event the Bexar Appraisal District does not determine an appraised value for property tax purposes for the Rackspace Corporate Headquarters Property, then the appraised value for property tax purposes will be determined in the following manner. Rackspace will obtain an appraisal for the Rackspace Corporate Headquarters Property for property tax purposes from a real estate appraiser designated as a Member of the Appraisal Institute to appraise the Real Property and an appraiser who has an ASA designation to appraise the Tangible Personal Property ("Qualified Appraisers"). If the City of Windcrest agrees with that appraised value, then that value shall be used for purposes of this Section 3.5. If the City of Windcrest does not agree with that appraised value, then Rackspace and the City of Windcrest will attempt to agree on Qualified Appraisers to determine the appraised value for property tax purposes to be used. If Rackspace and the City of Windcrest are unable to mutually agree on Qualified Appraisers, then the City of Windcrest will select Qualified Appraisers who will, along with Rackspace's Qualified Appraisers, select a third set of Qualified Appraisers to assist the appraisers chosen by the parties to value the property, which value shall be as

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determined by a majority of such appraisers for each type of property (real and personal). In determining the relevant appraised values for property tax purposes, Rackspace, the City of Windcrest, and the appraisers shall be guided by the definitions contained in Section 1.17. Upon collection by the City of Windcrest, the PILOT Payments under this Section shall be distributed within thirty (30) days to each taxing unit as appropriate.

Section 3.6 During the Lease Term, Rackspace agrees to make additional PILOT Payments to the City of Windcrest for the benefit of the NEISD and the City will distribute them to the NEISD or its foundation, at the City of Windcrest's discretion, as follows: (a) the first payment will be payable no later than February 28, 2008 and shall be equal to the taxes that the NEISD would have assessed for the 2007 tax year against the Leased Property, if it was not exempt from property taxes, based on the Leased Property's 2007 tax year appraised value as determined by the Bexar Appraisal District; and (b) each year thereafter until the end of the Exemption Period Rackspace will make a PILOT Payment to the City of Windcrest (or such other entity the City may designate) in an amount calculated by multiplying the appraised value for tax purposes of the Rackspace Corporate Headquarters Property times the debt service portion (as defined in Texas Education Code Section 45.001(a)(2) or its successor provision) of the NEISD's tax rate for each such year.

Section 3.7 At the election of Rackspace upon notice to the Windcrest EDC, the Windcrest EDC and Rackspace will enter into a sale/leaseback, rental or similar agreements for any of such Personal Property Improvements Rackspace determines to be part of any such transaction which are acquired for use by Rackspace at the Leased Property. At the end of the Exemption Period, Rackspace shall purchase any such Personal Property Improvements from Windcrest EDC for \$1.00. Rackspace will be responsible for all accounting associated with its leases from Windcrest EDC of the Personal Property Improvements.

Section 3.8 All additions to the Leased Property and the Rackspace Corporate Headquarters Property will also be subject to ownership by the Windcrest EDC and shall therefore be subject to property tax exemption under Section 4B(k) of the EDC Act for the Exemption Period and shall also be subject to the PILOT Payments and the appraisal process provided herein.

Section 3.9 At any time during the term of this Agreement, and at Rackspace's option in its sole discretion, Rackspace may terminate the Mall Lease by written notice thereof to the Windcrest EDC and a copy to Alamo Title Company, Attn: Chris Varley, 4 Dominion Drive Bldg. 4, Suite 100, San Antonio, Texas 78257, (the "Title Company"), upon which notice of termination the Title Company shall release from escrow and record in the Official Public Records of Bexar County, Texas the special warranty deed (executed by the Windcrest EDC contemporaneously herewith and delivered to the title company in escrow) conveying the Leased Property and all improvements thereto to Rackspace in consideration of the prepaid lease payments under Section 3.1 above and an additional \$1.00 cash. The Parties hereby acknowledge and agree that Rackspace's options under Section 3.7 and this Section 3.9 are each supported by \$50.00 independent consideration (for a total of \$100.00 independent consideration) paid by Rackspace to Windcrest EDC as of August 2, 2007.

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Section 3.10 The Windcrest EDC will work with Rackspace so that materials incorporated into improvements to the Leased Property and the Real Property Improvements will be exempt from

ad valorem taxes. The Windcrest EDC shall take such action as reasonably requested by Rackspace to achieve such tax exemption. Rackspace will provide Windcrest EDC with an indemnification for any such actions.

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Section 3.11 The City of Windcrest and Rackspace have entered into a City Economic Development Grant Agreement, pursuant to Chapter 380 of the Texas Local Government Code, which agreement provides that, in the event it is determined that Section 4B(k) of the EDC Act does not apply or exempt the Leased Property, the Real Property Improvements or the Personal Property Improvements from property taxes, the City of Windcrest will make a grant to Rackspace of the property and sales taxes the City of Windcrest collects from the Annexed Area, the Eisenhower Development Tract, and the Windcrest Development Site (less its cost of providing municipal services to the Annexed Area that are not covered by one-half of the local sales taxes collected as hereafter provided, and less any payments to the City of San Antonio under Section 10.4 (“the Boundary Change Agreement”) to reimburse Rackspace for any property taxes it must pay during the Exemption Period. These grants will be made each year until the sooner of (a) full reimbursement to Rackspace of any and all accrued property taxes paid by Rackspace on the Leased Property, the Real Property Improvements or the Personal Property Improvements, or (b) December 31, 2047, after which such grant payments shall cease. The City Economic Development Grant Agreement shall survive the expiration or the earlier termination of this Agreement. The City of Windcrest agrees it will not enter into any Economic Development Grants or other arrangements affecting any of the Annexed Area other than the Leased Premises (other than possibly as serving as the general contractor or owner in order to exempt the purchase of construction materials from sales taxes, similar to the arrangement described in Section 3.10 above) that have the effect of reducing or committing the property tax and sales tax revenues therefrom to other purposes not specifically provided for in this Agreement if such grant or arrangement, without the prior consent of Rackspace, would either (i) provide the described incentive for a period lasting longer than five (5) years after completion of construction of the incentivized improvement(s), or (ii) constitute an abatement, cumulatively with all other incentives or exemptions in effect on such property, in excess of fifty percent (50%) of the expected tax value of the Annexed Area other than the Leased Premises after construction of all anticipated improvement(s).

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Section 3.12 As its sole obligation under this Agreement, the County has entered into a County Economic Development Grant Agreement with Rackspace, pursuant to Chapter 381 of the Texas Local Government Code, which agreement provides that, in the event it is determined that Section 4B(k) of the EDC Act does not apply or exempt the Leased Property, the Real Property Improvements or the Personal Property Improvements from property taxes, the County will make a grant to Rackspace of the property taxes the County collects in the Annexed Area (less the amount of property taxes the County is currently collecting in the Annexed Area) for ten (10) tax years following the first day of the Exemption Period. Ad valorem taxes eligible under this Agreement shall be the ad valorem taxes levied by the Commissioners Court for and on behalf of Bexar County only, and shall not include taxes levied by the Commissioners Court for and on behalf of the Bexar County Hospital District operating as University Health System, the Bexar County Flood Control District, or any other taxing entity. The County Economic Development Grant Agreement and the terms of this Agreement shall be Rackspace’s sole recourse against the County in the event that the Leased Property, the Real Property Improvements or the Personal Property Improvements becomes

subject to taxation. The County Economic Development Grant Agreement shall survive the early termination of this Agreement. The County agrees it will not enter into any Economic Development Grants or other arrangements affecting any of the Annexed Area other than the Leased Premises that have the effect of reducing or committing the property tax and sales tax revenues therefrom to other purposes not specifically provided for in this Agreement if such grant or arrangement, without the prior consent of Rackspace, would either (i) provide the described incentive for a period lasting longer than five (5) years after completion of construction of the incentivized improvement(s), or (ii) constitute an abatement, cumulatively with all other incentives or exemptions in effect on such property, in excess of fifty percent (50%) of the expected tax value of the Annexed Area other than the Leased Premises after construction of all anticipated improvement(s). Notwithstanding the foregoing, however, the County may make CDBG or EDA grants, a grant of its general funds, or another type of grant or incentive in the Annexed Area if it will not adversely affect the value of (or impair the ability of the County to pay) the grants to Rackspace under the County Economic Development Grant Agreement. Rackspace agrees that from the effective date of this Agreement throughout the term hereof, one-hundred percent (100%) of all Rackspace employment positions at the Rackspace Corporate Headquarters Property shall be paid a minimum wage, not including benefits, of at least nine dollars and ninety-three cents (\$9.93) per hour (or a salary that satisfies that requirement). Rackspace further agrees that within one (1) year of the commencement of Business Activities at the Rackspace Corporate Headquarters Property, seventy percent (70%) of all new and existing Rackspace employees at the Rackspace Corporate Headquarters Property shall be paid a minimum wage, not including benefits, of at least eleven dollars and forty-five cents (\$11.45) per hour (or a salary that satisfies that requirement). Subject to meeting the requirements of such statute, Bexar County shall grant Rackspace a one hundred percent (100%) property tax abatement for at least ten (10) years under Tax Code Chapter 312, with a base year of 2007.

Section 3.13 The commitment by Rackspace is subject to the granting by the Bexar Appraisal District of the initial property tax exemption for the Leased Property under Section 4B(k) of the EDC Act. The Parties agree to use their best efforts to support and defend the validity of the ad valorem tax exemption under Section 4B(K) of the EDC Act for the Rackspace Corporate Headquarters Property, provided that the Parties shall not be required to incur other than nominal expenses in their best efforts, and provided further that all reasonable and necessary expenses incurred by Rackspace in its best efforts to support and defend the validity of the ad valorem tax exemption shall be added to the amount of the grants under the City Economic Grant Agreement as if they were ad valorem taxes paid.

Section 3.14 Rackspace shall owe no PILOT Payment under this Agreement for any tax year in which the Rackspace Corporate Headquarters Property is not exempt from property taxation and it is required to pay property taxes for that tax year. If Rackspace is required to pay ad valorem property taxes to any taxing unit in connection with the Rackspace Corporate Headquarters Property, Rackspace shall be entitled to a credit in the amount of the property tax payments against any PILOT Payments made pursuant to this Agreement for the benefit of such taxing units.

Section 3.15 Subject to meeting the requirements of such statute, the City of Windcrest shall grant Rackspace and Windcrest EDC a one hundred percent (100%) property tax abatement for at least ten (10) years under Tax Code Chapter 312, with a base year of 2007.

ARTICLE 4

RESERVED

ARTICLE 5

RACKER ROAD CONSTRUCTION

Section 5.1 The Windsor Park Mall ring road will be renamed Racker Road and will be renovated by the City of Windcrest at its sole cost and expense in accordance with the plans set forth on Exhibit "H." The budget for the ring road construction is approximately \$2.84 million. After the road work is complete the road will be dedicated to the City of Windcrest which will be responsible for all maintenance and upkeep, including landscaping which is part of the dedicated road.

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ARTICLE 6

WALZEM INTERCHANGE

Section 6.1 The City of Windcrest will use its best efforts to cause Walzem Road to be renamed Rackspace Boulevard/Walzem Road and for the signage to be changed on IH 35 at TXDOT's expense and in a manner that will not change the official mailing addresses located on Walzem Road.

Deleted: If the City of Windcrest does not maintain the road or landscaping as and when reasonably necessary, Rackspace may exercise self-help do so and the City of Windcrest shall reimburse Rackspace for its out of pocket costs immediately upon receipt of an invoice therefor.

Section 6.2 Reserved.

Section 6.3 Reserved.

Section 6.4 The City of Windcrest will use its best efforts to cause TXDOT to install overhead signage on IH 35 denoting Racker Road as part of the Walzem Road signage.

ARTICLE 7

UTILITIES

Section 7.1 The Parties will use their best efforts to cause CPS Energy to underground all utilities along Walzem Road from IH 35 to the end of the Leased Property within 30 months of the Effective Date, provided, however, that Rackspace shall not be required to incur other than nominal expenses in the exercise of such best efforts.

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Section 7.2 Reserved.

ARTICLE 8

WALZEM ROAD

Section 8.1 The City of Windcrest will complete work to irrigate the landscaped, raised median area on Walzem Road no later than December 31, 2012.

Section 8.2 Reserved.

ARTICLE 9

RESERVED

ARTICLE 10

BOUNDARY CHANGE AND TAX SPLIT

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Section 10.1 The Boundary Change Agreement contains specific terms under which the City of San Antonio agreed to release the Annexed Area from its jurisdiction and allow for the City of Windcrest to accept and annex the Annexed Area into the municipal limits of the City of Windcrest.

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Section 10.2 As partial consideration to the City of San Antonio for entering into the Boundary Change Agreement, the City of Windcrest and the Windcrest EDC hereby represent to the City of San Antonio and the other Parties that as of the Effective Date:

- (a) They have executed an agreement with Rackspace to locate at the Leased Property.
- (b) They have the concurrence, with regard to the Boundary Change Agreement, of NEISD, Alamo Community College District, and the Bexar Appraisal District.

The City of San Antonio hereby represents to the other Parties that as of the Effective Date all of the foregoing consideration for entering into the Boundary Change Agreement has been received.

Section 10.2.1 The City of Windcrest, the Windcrest EDC, and the City of San Antonio acknowledge that while the City of San Antonio is relying upon the documentation presented under Section 10.2 (a) and (b), the City of San Antonio is in no way warranting or guaranteeing the legal effectiveness of such documents.

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Section 10.2.2 Reserved.

Section 10.3 The City of San Antonio entered into the Boundary Change Agreement upon the representation that the City of San Antonio will receive not less than \$137,968 annually (the amount of property taxes being paid on the Annexed Area at the time of execution of this Agreement) for a period of ~~thirty (30)~~ years. For a period of ~~thirty (30)~~ years after the Effective Date, Rackspace shall pay to the City of San Antonio the amount of any shortfall of the actual amount paid to the City of San Antonio in property and sales tax revenue or PILOT Payments in a given calendar year compared to \$137,968. The City of Windcrest shall give Rackspace written notice of any amounts owed by Rackspace under this Section 10.3 by no later than March 31 of each year (including for years for which no such amounts are owed), and Rackspace shall pay such amount, if any, to the City of San Antonio on or before June 15 of that year. Any payments by Rackspace under this Section 10.3 shall be subject to reimbursement under Section 3.11.

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Section 10.4 The Boundary Change Agreement provides for an effective date of October 2, 2007 (the "Boundary Change Date") for the Annexed Area. The Boundary Change Agreement also provides for the sharing of future tax revenue on the Annexed Area for the next ~~thirty (30)~~ years from the Boundary Change Date as follows:

(a) The City of San Antonio and the City of Windcrest shall each receive fifty percent (50%) of the local sales taxes due to the City of Windcrest and distributed by the State Comptroller for taxable Business Activities conducted on the Annexed Area; provided, however, that the fifty percent (50%) of all such local sales taxes to be retained by the City of Windcrest under such agreement shall be subject to the terms of Section 3.11 of this Agreement, including possible distribution to Rackspace as part of the City of Windcrest's Chapter 380 economic development grant to Rackspace.

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(b) For those years when the Leased Property, Real Property Improvements and Personal Property Improvements are exempt from property taxes under Section 4B(k) of the EDC Act, the City of San Antonio and the City of Windcrest will each receive fifty percent (50%) of all property and sales taxes resulting from the Annexed Area.

(c) For those years when the Leased Property, Real Property Improvements and Personal Property Improvements are exempt from property taxes under Section 4B(k) of the EDC Act and Rackspace makes a PILOT Payment as may be required under this Agreement (whether made before or after the Exemption Period or under Sections 2.2 through 2.7 of this Agreement), the City of San Antonio and the City of Windcrest shall each receive fifty percent (50%) of the city portion of the Rackspace PILOT Payment on the Leased Property determined at the City of Windcrest tax rate with the real and personal property valuation to be determined in Section 3.5.

(d) In the event that the Windcrest EDC has or acquires the right to sell the Leased Property, and then sells the Leased Property, the City of San Antonio and City of Windcrest shall each receive fifty percent (50%) of the profit from the sale of the Leased Property after the payment of all liens,

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encumbrances and claims against the Leased Property and all other unreimbursed expenses the Windcrest EDC has incurred regarding the Leased Property.

Section 10.5 The City of Windcrest agrees that King Arthur and Ray Bon Streets will remain public streets in the Annexed Area to provide access to the Camelot Subdivision from Eisenhower Road, and that the speed limit for such streets shall remain ~~thirty (30)~~ miles per hour unless the City of San Antonio and the City of Windcrest mutually agree otherwise. Windcrest EDC agrees to consult with the City of San Antonio prior to taking any actions regarding this Agreement that would adversely affect the City of San Antonio's interest in the Project, provided that no additional consultation shall be required for the Windcrest EDC to take actions that the Windcrest EDC is directed or specifically authorized to take under this Agreement.

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ARTICLE 11

SECURITY PROVISIONS

Section 11.1 Reserved.

Section 11.2 The City of Windcrest will continue its existing "mutual aid" agreement with the City of San Antonio.

Section 11.3 ~~The~~ City of Windcrest ~~Police Department~~ will provide routine patrols (at least ~~eight (8)~~ per ~~eight (8)~~ hour shift) for the perimeter of the buildings in the Leased Property.

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Section 11.4 Reserved.

ARTICLE 12

BOND FINANCING

Section 12.1 If Rackspace requests that the City of Windcrest issue bonds, any such bonds shall: (a) be payable from lease payments on the Mall Lease received by the Windcrest EDC; (b) not be a liability of ~~the~~ City of Windcrest, the City of San Antonio or the County and no general fund, property taxes or sales taxes will be pledged; and (c) be issued solely on the credit of Rackspace.

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Section 12.2 The Windcrest EDC will subordinate its fee interest in the Leased Property to the bond holders, provided that upon any foreclosure or deed in lieu of foreclosure, the Leased Property will be subject to property taxes and the recapture provisions of Sections 2.2 through 2.6 of this Agreement or the City Economic Development Grant Agreement or the County Economic Development Grant Agreement, as applicable, continue to apply to Rackspace after the foreclosure or deed in lieu of foreclosure, and provided further that under the subordination agreement, the City of Windcrest will be given a ~~ninety (90)~~ day notice and cure period to pay the outstanding debt and to maintain ownership of the Leased Property.

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ARTICLE 13

MISCELLANEOUS

Section 13.1 Reserved.

Section 13.2 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

Section 13.3 Governing Law. The governing law of this Agreement shall be the law of the State of Texas, without giving effect to any choice-of-law standards that may require the application of the laws of another jurisdiction.

Section 13.4 Venue. Venue for any litigation under this Agreement shall be in Bexar County, Texas.

Section 13.5 Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In the event any such provision is held to be invalid, illegal or unenforceable, the parties hereto shall make their best efforts to agree on a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

Section 13.6 Notices. All communications and notices expressly provided herein shall be sent, by registered first class mail, postage prepaid, by a nationally recognized overnight courier for delivery on the following business day or by facsimile (with such facsimile to be confirmed promptly in writing sent by mail or overnight courier as aforesaid), as follows, unless and until changed as described below:

County of Bexar, Texas:

County Judge Nelson W. Wolff
Bexar County Courthouse
100 Dolorosa, Suite 120
San Antonio, Texas 78205
Fax: (210) 335-2926

With a copy to:

Ms. Susan D. Reed
District Attorney
Justice Center, 5th Floor
300 Dolorosa
San Antonio, Texas 78205
Fax: (210) 335-2151

City of San Antonio, Texas:

Mayor Julian Castro
City Hall Office
P.O. Box 839966
San Antonio, Texas 78283-3966
Fax: (210) 207-4168

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With a copy to:

Ms. Sheryl L. Sculley
San Antonio City Manager
City Hall Office
P.O. Box 839966
San Antonio, Texas 78283-3966
Fax: (210) 207-4217

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With a copy to:

Mr. Michael Bernard
City Attorney
100 Military Plaza
San Antonio, Texas 78205
Fax: (210) 207-4004

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City of Windcrest, Texas:

Mayor of Windcrest
City Hall
8601 Midcrown
Windcrest, Texas 78239
Fax: (210) 655-8776

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With a copy to:

City Administrator
8601 Midcrown
Windcrest, Texas 78239
Fax: (210) 655-8776

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With a copy to:

Scott Farrimond, Esq.
Farrimond Castillo & Bresnahan, P.C.
130 East Travis Street, Suite 350
San Antonio, Texas 78205
Facsimile: (210) 231-0004

Windcrest Economic Development Corporation:

Director of Economic Development
8601 Midcrown
Windcrest, Texas 78239
Fax: (210) 655-8776

Deleted: 2

With a copy to: Scott Farrimond, Esq.
Farrimond Castillo & Bresnahan, P.C.
130 East Travis Street, Suite 350
San Antonio, Texas 78205
Facsimile: (210) 231-0004

Rackspace US, Inc.: General Counsel
5000 Walzem Road
San Antonio, Texas 78218
Fax: (210) 312-4848

With a copy to: Manager of Real Estate Services
5000 Walzem Road
San Antonio, Texas 78218
Fax: (210) 312-4848

With a copy to: Mr. Stephen L. Golden, Esq.
300 Convent Street, Suite 2650
San Antonio, Texas 78205
Fax: (210) 745-3737

However, if a recipient listed above provides written notice to all other recipients, by registered or certified mail, of a change in their address or contact information, that information (and any subsequent changes of which the recipient gives such notice) controls.

Section 13.7 Cost and Expenses. Each Party agrees to pay its own costs incurred in connection with the project proposal, including attorneys' fees and all costs and expenses incurred in connection with the preparation of any studies or reports, surveys or approvals, this Agreement or otherwise.

Section 13.8 Press Releases. The Parties agree to cooperate fully to coordinate with each other and the State in connection with all press releases and publications concerning the Project.

Section 13.9 Assignment. This Agreement is not assignable without consent of the City of Windcrest except to a Related Organization.

Section 13.10 Further Actions; Equivalent Incentives. In the event that provisions of the Constitution and laws of the State of Texas limit the ability of a Party to perform its functions hereunder in any way, then such Party (and, if necessary, other applicable or appropriate Parties, without additional cost or liability to such other Parties that is not offset by new and additional sources of revenue or funds that arise in connection with such limitation) shall work with Rackspace to identify and provide Rackspace with a substitute incentive of equivalent economic value, and to

the extent necessary, such Parties will make a good faith effort to seek and obtain appropriate legislation or other appropriate action to the extent necessary to allow performance hereunder or with respect to a substitute incentive of equivalent economic value.

Section 13.11 Further Assurances. The Parties agree to do all things and take all actions required, consistent with and subject to this Agreement, to establish the Project, including, without limitation, the obtaining, negotiation, execution and delivery of all necessary or desirable agreements, filings, consents, authorizations, approvals, licenses or deeds.

Section 13.12 Section Titles and Headings. The Section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

Section 13.13 Survival of Representations and Warranties. The representations, warranties and covenants made by each of the Parties hereto and contained herein shall survive the performance of any obligations to which such representations, warranties and covenants relate.

Section 13.14 Term of Agreement. The term of this Agreement shall commence on the Effective Date and continue in effect through the earlier to occur of the date upon which Rackspace, a Related Organization, or an approved assignee, shall cease to operate the Project or the date which is thirty-one (31) years after the Effective Date.

Section 13.15 Binding Effect. This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of the Parties and their successors and assigns and all other state agencies and any other agencies, departments, divisions, governmental entities, public corporations and other entities which shall be successors to each of the Parties or which shall succeed to or become obligated to perform or become bound by any of the covenants, agreements or obligations hereunder of each of the Parties which are parties hereto.

Section 13.16 Cooperation in Event of Dispute. In the event of a dispute concerning this Agreement or the Parties' obligations hereunder, the Parties shall endeavor in good faith to settle the dispute through negotiation. If the dispute cannot be resolved through negotiation, or another mutually agreeable dispute resolution process, the Parties agree to submit the matter in dispute to mediation. Written notice of the intent to submit a matter to mediation shall be given by the party requesting the same. Only one mediator (selected jointly by the Parties to the dispute) shall be used to mediate the outcome. Such mediation shall be held in San Antonio, Texas or if the parties agree upon another location, that other location.

Section 13.17 Recitals. The Recitals above are hereby incorporated into this Agreement for any and all purposes.

Section 13.18 Merger. This document constitutes the final entire agreement between the Parties and supersedes any and all oral or written agreements relating to the subject matter of this

Agreement, except for the other agreements expressly contemplated to be entered into under this Agreement.

Section 13.19 RACKSPACE COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS THE CITY OF WINDCREST, THE CITY OF SAN ANTONIO AND BEXAR COUNTY (THE "GOVERNMENT ENTITIES") AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE GOVERNMENT ENTITIES, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE GOVERNMENT ENTITIES, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO RACKSPACE'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF RACKSPACE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT, CONTRACTOR OR SUBCONTRACTOR OF RACKSPACE, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE GOVERNMENT ENTITIES UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW, PROVIDED, HOWEVER, THAT THIS INDEMNITY IS NOT INTENDED TO EFFECT THE EXEMPTIONS, GRANTS AND OTHER ECONOMIC INCENTIVES GIVEN TO OR FOR THE BENEFIT OF RACKSPACE HEREUNDER, EVEN IF THE SAME COME AT A COST, LOSS, OR EXPENSE TO ANY OF THE GOVERNMENT ENTITIES. RACKSPACE SHALL PROMPTLY ADVISE THE GOVERNMENT ENTITIES IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE GOVERNMENT ENTITIES OR RACKSPACE KNOWN TO RACKSPACE RELATED TO OR ARISING OUT OF RACKSPACE'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT RACKSPACE'S COST. THE GOVERNMENT ENTITIES SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING RACKSPACE OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

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Section 13.20 RACKSPACE FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF THE GOVERNMENT ENTITIES AND IN THE NAME OF THE GOVERNMENT ENTITIES, ANY CLAIM OR LITIGATION BROUGHT AGAINST THE GOVERNMENT ENTITIES AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES, IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE. RACKSPACE'S OBLIGATIONS UNDER THIS SUBSECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

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Section 13.21 Reserved.

Section 13.22 Reserved.

Section 13.23 Attorney Fees and Expenses. In the event that a Party (the “Defaulting Party”) should default under any of the provisions of this Agreement and another Party (the “Nondefaulting Party”) should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the Defaulting Party, the Defaulting Party agrees to pay to the Nondefaulting Party reasonable fees of such attorneys and such other expenses so incurred by the Nondefaulting Party.

Section 13.24 Reserved.

[Signatures and Acknowledgments Begin on Following Page]

WHEREFORE, the Parties hereto have executed this Agreement and, as of the Effective Date, have agreed to the terms and conditions stated above that apply to them.

COUNTY OF BEXAR

By: _____
NELSON W. WOLFF,
County Judge

ATTEST:

GERARD RICKHOFF
County Clerk

APPROVED AS TO LEGAL FORM:

SUSAN D. REED
Criminal District Attorney
Bexar County, Texas

By: _____
LARRY ROBERSON,
Assistant Criminal District Attorney
Civil Section

APPROVED AS TO FINANCIAL CONTENT:

TOMMY J. TOMPKINS,
County Auditor

DAVID SMITH,
Executive Director of Planning/Budget Officer Planning
and Resource Management Dept.

APPROVED:

DAVID MARQUEZ,
Executive Director of Economic Development

By: _____
Name: Sheryl L. Sculley
Title: City Manager

ATTESTED TO BY:

_____, City Clerk

APPROVED AS TO FORM:

Michael Bernard, City Attorney
City of San Antonio

CITY OF WINDCREST, TEXAS

By: _____
Name: Alan Baxter
Title: Mayor

By: _____
Name: Raphael Castillo
Title: City Administrator

APPROVED AS TO FORM:

Scott Farrimond, Special Counsel
City of Windcrest

WINDCREST ECONOMIC DEVELOPMENT
CORPORATION

By: _____
Name:
Title: Duly Authorized Representative

RACKSPACE US, INC.

By: _____
Name: _____
Title: _____

EXHIBIT A
Annexed Area

EXHIBIT B

Boundary Change Agreement

**Deleted: Eisenhower Development
Tract**

EXHIBIT C

Eisenhauer Development Tract,

Deleted: Leased Property
Legal Description

EXHIBIT D

Deleted: Firestone Tract

Leased Property

Legal Description

EXHIBIT E

Firestone Tract

Legal Description

**Deleted: Windcrest Development Site
Map**

EXHIBIT F

Mall Lease

Deleted: Racker Road Construction Plans

EXHIBIT G

Windercrest Development Site Map

EXHIBIT H

Deleted: Mall Lease

Racker Road Construction Plans,