

AN ORDINANCE **2010-02-11-0108**

**AUTHORIZING A TAX ABATEMENT AGREEMENT WITH COPT SAN ANTONIO, L.P. AN AFFILIATE OF CORPORATE OFFICE PROPERTIES TRUST (COPT) TO EXEMPT ONE HUNDRED PERCENT (100%) OF AD VALOREM TAXATION FOR A SIX (6) YEAR PERIOD ON REAL PROPERTY IMPROVEMENTS.**

\* \* \* \* \*

**WHEREAS**, COPT is a real estate investment company and contractor for the federal government who is the owner of real property in San Antonio; and

**WHEREAS**, recent efforts have resulted in the decision to construct a multi-million dollar data center (the "Project") on said property that would result in the creation of 30 full-time jobs and other ancillary economic benefits for the City of San Antonio (the "City"); and,

**WHEREAS**, in accordance with the City of San Antonio and Bexar County Joint Tax Abatement Guidelines and Criteria (the "Guidelines and Criteria"), the City offered COPT a 6-year, 100% abatement of ad valorem real property taxes as an incentive to invest in the property; and

**WHEREAS**, the City Council finds that the Project furthers the objectives of the City in promoting the development of local business interests and job creation; and

**WHEREAS**, City Council also finds that approving a Tax Abatement Agreement consistent with the Guidelines and Criteria is a reasonable incentive to induce COPT to undertake the Project and that the Project will result in desired and beneficial economic development in the area; **NOW THEREFORE:**

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

**SECTION 1:** The City Council authorizes the negotiation of terms and conditions of a Tax Abatement Agreement with COPT San Antonio, L.P., granting a one hundred percent (100%) tax abatement of ad valorem taxes on real property improvements for a six (6) year period to COPT San Antonio L.P. A copy of the Agreement, in substantially final form, is attached hereto and incorporated herein as Exhibit "A".

**SECTION 2:** The City Manager or a designated representative is authorized to execute a Tax Abatement Agreement as approved in Section 1 upon the completion of negotiations provided said Agreement meets the City of San Antonio Guidelines and Criteria for Tax Abatement. The final Agreement shall be filed with this ordinance upon execution.

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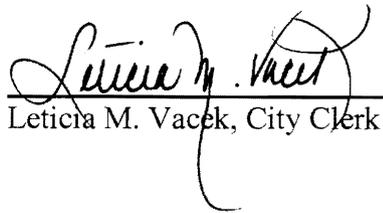
**SECTION 3:** This ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage hereof.

**PASSED and APPROVED** this 11th day of February, 2010.



M A Y O R  
Julián Castro

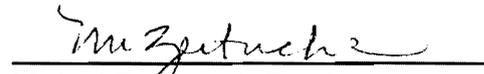
**ATTEST:**



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Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

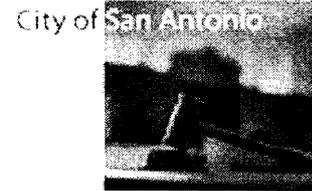


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for Michael D. Bernard, City Attorney



Request for  
**COUNCIL**  
ACTION



**Agenda Voting Results - 5B**

<b>Name:</b>	5A, 5B						
<b>Date:</b>	02/11/2010						
<b>Time:</b>	10:31:07 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a Tax Abatement Agreement with Corporate Office Properties Trust (COPT) abating 100% of ad valorem taxes for 6 years on new real property improvements in the COPT Reinvestment Zone.						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x			x	
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

# **EXHIBIT A**

STATE OF TEXAS

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§  
§  
§

**CITY OF SAN ANTONIO  
TAX ABATEMENT AGREEMENT  
FOR REAL AND PERSONAL PROPERTY**

COUNTY OF BEXAR

**1. PARTIES**

THIS AGREEMENT (the "Agreement") is entered into on this \_\_\_ day of \_\_\_\_\_ 2010, by and between COPT SAN ANTONIO, L.P. (hereinafter referred to as "COPT"), holding a fee simple ownership interest in the real property described herein and as owner of personal property located, or to be located, on said real property, and the City of San Antonio, a municipal corporation, (hereinafter referred to as the "CITY"), acting by and through its City Manager under the authority of its City Council.

**2. AUTHORIZATION AND FINDINGS**

A. This Agreement is entered into pursuant to the following authorities:

1. The Texas Property Redevelopment and Tax Abatement Act of 1987, V.A.T.S. Tax Code, Chapter 312, as amended;
2. CITY COUNCIL RESOLUTION No. 89-07-12, dated the 15th day of February 1989, and most recently revised by Ordinance No. 2008-12-11-1169 on December 11, 2008, together which established the City of San Antonio Guidelines and Criteria for Tax Phase-In and Reinvestment Zones, (hereinafter referred to as the "Guidelines and Criteria");
3. CITY COUNCIL ORDINANCE NO. 2010-\_\_-\_\_-\_\_\_\_, dated \_\_\_\_\_, 2010, which designated the COPT Reinvestment Zone (the "Zone"); and
4. CITY COUNCIL ORDINANCE NO. 2010-\_\_-\_\_-\_\_\_\_, dated \_\_\_\_\_, 2010, which specifically approves this Agreement and authorizes execution hereof.

B. The City Council, by its approval of this Agreement, hereby finds that the terms of this Agreement are within the Guidelines and Criteria and the approval of this Agreement will not have any substantial long-term adverse effect on the provision of city services or the City's tax base. The City Council also finds that the planned use of the Property (defined below) inside the Zone by COPT does not constitute a hazard to public safety, health or morals.

C. The City Council, by its approval of this Agreement, hereby finds that the terms of this Agreement are substantially similar to any tax abatement agreement offered to COPT by Bexar County.

3. **PROPERTY**

A. COPT owns a fee simple interest in real property located at 7700 and 7700-1 Portranco Road, San Antonio, TX 78245 (the "Property"), legally described in Exhibit A, attached hereto and incorporated herein. The Property is within the COPT Reinvestment Zone, designated by City Ordinance No. 2010-\_\_ - \_\_ - \_\_ for the purposes of the Texas Property Redevelopment and Tax Abatement Act of 1987, V.A.T.S. Tax Code, Chapter 312.

B. COPT, or its tenant(s) shall cause to be conducted on the Property, the business operations of a data center directly related to federal government activities ("Business Activities"). COPT shall cause the Business Activities or the normal Business Activities of any tenant(s) or Related Organization of any tenant(s), as defined in Article 5, Paragraph I, to be conducted on the Property for the entire term of this Agreement.

C. COPT together with its tenant(s) have invested approximately FIFTY MILLION DOLLARS (\$50,000,000.00) in Real Property Improvements on the Property that will be used for COPT's Business Activities. The Real Property Improvements shall not be made prior to the effective date of this Agreement.

D. COPT shall establish a separate tax account for the Real Property Improvements with the Bexar Appraisal District and provide these tax account numbers to the CITY.

4. **COPT'S REPRESENTATIONS**

A. COPT represents that it has no knowledge that any interest in the Property is presently owned, held or leased by a member of the San Antonio City Council, Zoning Commission, Planning Commission, the City's Economic Development Department, or any other City officer or employee. COPT further represents that it shall not knowingly sell, lease or otherwise convey such an interest to a member of the San Antonio City Council, the Zoning Commission, the Planning Commission, the City's International and Economic Development Department or any other City officer or employee, as long as this Agreement remains in effect.

B. COPT represents that at the time of the execution of this Agreement there is no litigation pending against COPT for any violations under the Occupational Safety and Health Act ("OSHA").

5. **OBLIGATIONS OF COPT**

A. In addition to the obligations and duties imposed on COPT by other incentive agreements it has entered into with the State of Texas, Bexar County or the City of San Antonio, COPT or a Related Organization of COPT shall:

1) own, hold an interest in or otherwise control the Property that is the subject of this Agreement; and

2) invest, or cause to be invested, approximately FIFTY MILLION DOLLARS (\$50,000,000) in Real Property Improvements by \_\_\_\_\_, 201\_ ; and

(3) shall hire a minimum of THIRTY (30) new full-time employees by \_\_\_\_\_, 20\_\_

(4) shall cause the Property to be occupied and used for its Business Activities; and

(5) shall comply with all other applicable terms of this Agreement.

B. COPT covenants and agrees that it shall pay one hundred percent (100%) of its new and existing employees the City's effective prevailing "living" wage as determined by the City Council in its Tax Abatement Guidelines, which is TEN DOLLARS AND 60 CENTS (\$10.60) per hour. After one year of installing the personal property improvements, seventy percent (70%) of all new and existing employees must earn at least TWELVE DOLLARS AND SEVENTY-SIX CENTS (\$12.76) per hour.

C. A Full-Time Job, for the purposes of this Agreement, shall be equivalent to two thousand fifteen (2,015) straight-time paid hours in a fiscal year.

D. COPT covenants and agrees that it shall offer all of its non-temporary full-time employees employed on the Property substantially similar employee benefits as those employee benefits offered to similarly situated employees of COPT in the State of Texas.

E. COPT covenants and agrees that it shall substantially comply with all applicable federal and state laws governing the employment relationship between employers and employees.

F. COPT also covenants and agrees that Business Activities (as defined in Article 3, Paragraph B) shall be conducted on the Property substantially in accordance with all applicable federal, state and local laws.

G. COPT shall make any Real Property Improvements to the Property in accordance with all applicable federal, state and local laws including, but not limited to, Texas Commission on Environmental Quality regulations, Bexar County and City of San Antonio laws, Building Codes and ordinances, Historic Preservation and Urban Design ordinances, flood, subdivision, building, electrical, plumbing, fire and life safety codes and regulations, current and as amended.

I. Except as provided herein, COPT covenants and agrees that it or its tenant(s) or Related Organizations thereof shall use the Property only to conduct the Business

Activities. Without additional consent or approval by the City Council, a parent, subsidiary or affiliate organization of COPT or its tenant(s) or new entity created as a result of a merger, acquisition, or other corporate restructure or reorganization of COPT, or any component thereof or its tenant(s) or any component thereof (hereinafter "Related Organization") may own the Property for such Related Organization's normal business activities, so long as such business activities are substantially similar to the Business Activities of COPT as defined in this Agreement. To be eligible for tax abatements as provided in this Agreement, such Related Organization must agree in writing to fully comply with all applicable terms of this Agreement. Except as authorized above, COPT covenants and agrees not to change COPT's principal use of the Property without prior approval by the City Council, which approval shall not be unreasonably withheld or delayed, as evidenced in a duly approved ordinance.

J. COPT covenants and agrees that it shall maintain the Property and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the gross negligence, intentional act or misconduct of COPT excepted. Compliance with the maintenance obligations imposed herein shall be presumed if COPT follows its normal and customary maintenance procedures and schedules for its other facilities.

K. Upon five (5) business days prior written notice to COPT by CITY, COPT covenants and agrees that they shall allow designated representatives of the CITY access to the Property during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. Such inspection shall occur no more often than twice within a 12 month period unless the City obtains evidence that COPT is not in compliance with the terms and conditions of the Agreement. This inspection is independent of CITY'S police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances. The CITY's access to COPT's books and records will be strictly limited to information needed to verify the number of full-time employees at the Facility and that wages paid to these employees meet the minimum requirements of this Agreement. Any information that is not required by law to be made public shall be kept confidential by CITY. COPT shall not be obligated to disclose any confidential information that is otherwise prohibited by any applicable law to disclose or to disclose any information about any tenant(s) of the Property. Should any good faith dispute or question arise as to the validity of the data provided, the CITY reserves the right to require COPT to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of COPT and once submitted, will not be subject to further dispute by the CITY. CITY representatives shall be accompanied by COPT representatives at all times during any such inspections and such inspections shall be conducted in such a manner as to (a) not unreasonably interfere with the operation of the Property or COPT's Business Activities; and (b) comply with COPT's and the tenants of COPT security requirements.

L. During the term of this Agreement, COPT covenants and agrees to furnish each year, as applicable, the Chief Appraiser of Bexar Appraisal District with information

outlined in Chapter 22, V.A.T.S. Tax Code, as amended, as may be necessary for the tax phase-in and for appraisal purposes.

M. COPT covenants and agrees that it shall provide the CITY's Director of International and Economic Development with a semi-annual certification from an officer of COPT attesting to the number of full-time new jobs created and retained jobs by COPT, as well as that the wages paid by COPT to COPT's employees at the Property meet the minimum requirements of this Agreement. COPT shall not be required to certify to any (nor shall any tenant be required to certify) as to the employees of any tenant(s) at the Property. COPT shall also submit this information to the CITY upon request, as deemed necessary at the sole discretion of the CITY, during the Term of this Agreement. The information provided shall be on the forms set forth in, or substantially similar to the forms set forth in, Exhibit "C" (attached hereto and incorporated herein), as amended.

N. COPT covenants and agrees to make a good faith effort to hire local employees to fulfill its requirements under Article 5, Paragraph A. "Local" is defined, for the purposes of this Paragraph, as an employee whose principal residence is located within the city limits of the City of San Antonio or within the county limits of Bexar County. Additionally, and in accordance with the requirements of the Guidelines and Criteria, COPT agrees to fill not less than TWENTY-FIVE PERCENT (25%) of all new jobs with employees who reside in Bexar County.

O. COPT covenants and agrees to notify CITY in writing at least 30 days prior to any proposed sale or transfer of the Property during the Term. Failure to provide the required notification under this Article 5, Paragraph O may render COPT subject to the termination and recapture provisions under Article 7. This provision does not grant the CITY the right to pre-approve, disapprove or prohibit any sale, transfer of the Property during the Term; rather it creates a notification requirement and further addresses requests for Assignment of the Agreement, and consequences for failing to meet the notification requirement. No notification to or approvals of the CITY shall be required for any lease or sublease of the Property.

P. COPT covenants and agrees to notify CITY in writing at least 30 days prior to Relocating its Business Activities outside of the City of San Antonio or to an area within the City of San Antonio that has not been subsequently designated a tax increment reinvestment zone or Ceasing its Business Activities (as defined in Article 7, Paragraphs B and C). Failure to provide the required notification under this Article 5, Paragraph P may render COPT subject to the termination and recapture provisions under Article 7 without benefit of the Cure Period (as defined in Article 7, Paragraph E).

Q. If, during this Agreement COPT fails to create and retain at least the minimum number of full-time jobs required under this Agreement, or fails to pay at least the minimum wages required under this Agreement for a period of three (3) or more consecutive months, then the termination and recapture provisions of Article 7 of this Agreement may apply against COPT.

R. If, during this Agreement, COPT allows its ad valorem taxes due on the land, real and personal property or inventory and supplies to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, or is in default with any loan which has been made by a City-sponsored entity the San Antonio Development Agency, South Texas Business Fund, City of San Antonio Industrial Development Authority or any other City-sponsored loan/grant/bond program, then the termination and recapture provisions of Article 7 of this Agreement may apply.

## 6. TAX ABATEMENT

A. The tax abatement period (the "Term") for the Real Property Improvements shall be six (6) years beginning on \_\_\_\_\_, 201\_. The base year for calculating the value of the Real Property shall be January 1, 2010. The "Base Year Value" of the Real Property not covered under this Agreement shall be its assessed value (determined by the Bexar Appraisal District), as of the Base Year. This Agreement only provides for the abatement of taxes on Real Property Improvements made to the Property after the execution of this Agreement.

B. At the commencement of the Term, COPT shall own, have an interest in or otherwise control the Property and it's the Business Activities shall be conducted on a daily basis.

C. Provided that COPT has invested in Real Property Improvements as described in Article 3, Paragraph A of this Agreement by the date provided in Article 5, subparagraph A.(2), COPT has hired and retained the number of employees specified in Article 5, Paragraph A of this Agreement, COPT pays at least the minimum wages required under Article 5, Paragraph B of this Agreement, COPT uses the Property for its Business Activities, and COPT is otherwise in compliance with the conditions of this Agreement, then ONE HUNDRED-PERCENT (100%) of the ad valorem taxes for the Real Property Improvements, above the Base Year Value, shall be abated for six-years of this Agreement. There shall be no abatement of taxes for the underlying land value or any personal property improvements.

D. COPT acknowledges and agrees that the Base Year Value of the Property and the tax levy based on said Base Year Value of the Property in the Zone shall not decrease, but taxes may increase and that the amount of property taxes paid by COPT to the CITY attributable to the Property during the Term shall not be less than the amount of taxes attributable to the Property paid to the CITY for the base year tax year, if any, except in the event of casualty or condemnation of the Property in the Zone.

E. COPT shall have the right to protest appraisals of the Property, real or personal, or any portion thereof, over and above the Base Year Value as applicable.

## 7. DEFAULT/TERMINATION/RECAPTURE

A. For purposes of this section, "Relocation" or "Relocate" shall mean COPT or a Related Organization which has taken the place of COPT, transferring Business Activities to a location outside of the Zone.

B. Should the Property be occupied and used the Property for the Business Activities and such Business Activities subsequently Relocates (as defined in this Article 7, Paragraph A) during the Term, unless such Relocation is caused by a Force Majeure, as defined in Article 8, then CITY shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation occurred. Unless COPT presents credible evidence to clearly indicate a date of Relocation, CITY's determination shall be final and conclusive.

Upon termination, any and all taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured by CITY and CITY shall be entitled to the payment of such recaptured taxes within sixty (60) calendar days from the date it notifies COPT in writing of termination.

C. If the Property is occupied and used for the Business Activities and the Business Activities are subsequently ceased within the Zone, for a continuous period of three (3) months during the Term of this Agreement for any reason, except if such cessation is caused by a Force Majeure as defined in Article 8, then the CITY shall have the right to terminate this Agreement. Said terminations shall be effective for the calendar year during which the Property was no longer used for the required purposes stated herein. Unless COPT presents credible evidence to clearly indicate a date of cessation, CITY's determination of a date of cessation shall be final and conclusive.

Upon termination, any and all taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured by CITY and CITY shall be entitled to the payment of such recaptured taxes within sixty (60) calendar days from the date it notifies COPT in writing of termination.

D. If COPT, a Related Organization or City-approved assignee fails to hire and retain the minimum number of permanent full-time employees as required in Article 5, Paragraph A above, calculated by the averaging of the two most current semi-annual Employee Wage Information for Tax Phase-In Request Forms, or substantially similar form, (Exhibit "E") for such calendar year of noncompliance, then for each such calendar year of noncompliance, the tax abatement shall be reduced in the following tax year by the same percentage as the deficiency in the number of employees. For example, if COPT hires and retains ninety percent (90%) of the minimum number of full-time employees in a given year, COPT shall be entitled to ninety percent (90%) of the ad valorem personal property tax abatement for the Property for that following year, subject to a floor of fifty percent (50%). Should COPT fail to hire and retain at least fifty percent (50%) of the minimum number of full-time employees in a given year then, at the option of CITY, this failure may be grounds for termination of this Agreement. Said termination shall be effective for the calendar year during which the number of permanent full-time employees stated herein have not been hired or retained as required.

Upon termination, any and all taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured by CITY and CITY shall be entitled to the payment of such recaptured taxes within sixty (60) calendar days from the date it notifies COPT in writing of such termination.

E. During the Term, CITY may declare a default if COPT fails to substantially comply with any of the material terms of this Agreement. Should CITY determine COPT is in default under any of the terms of this Agreement, CITY will notify COPT in writing at the address below in Article 9. If said default is not cured within sixty (60) calendar days from the date of such notice (hereinafter the "Cure Period"), then CITY shall have the right to terminate this Agreement. CITY may, in its sole discretion, extend the Cure Period if COPT commences the cure within the Cure Period and COPT is diligently pursuing such cure. If the Agreement is terminated as a result of default, all taxes abated shall be due for the tax year during which the termination occurred and shall accrue without further abatements for all tax years thereafter; in addition, CITY shall have the right to recapture from COPT all previously abated real property taxes under this Agreement and said taxes shall be paid by COPT within sixty (60) calendar days of receiving CITY'S written notification of recapture, unless such termination is the subject of a good faith dispute, in which case payment of the recaptured taxes may be delayed until the dispute is resolved.

F. Other Remedies Available. CITY's right to terminate this Agreement and/or recapture previously abated taxes shall be the CITY's sole and exclusive remedy in the event of a COPT default. However, such termination and/or recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which COPT may be entitled. The termination and/or recapture of taxes provided in this Article 7 are not applicable to situations involving minor changes to the description of the Property, or changes in ownership or in management thereof, so long as COPT, its parent, subsidiary, affiliate or its CITY-approved successor or assignee continues to own the Property and Business Activities or other authorized activities thereon as provided hereinabove continue to be conducted at the Property.

G. Calculation of Taxes Subject to Recapture. If COPT fails to comply with any of the terms of this Agreement including, but not limited to, those pertaining to this Article 7 then, after the expiration of any applicable Cure Period, the City Council shall have the right to recapture from COPT a percentage of the abated real property taxes based on the following table:

TERM YEAR	TOTAL TAX PREVIOUSLY ABATED SHALL BE MULTIPLIED BY:
1-6	100%
7-8	80%

9	60%
10	40%
11	20%
12	10%

FORMULA: The recapture formula shall be:

$$\begin{array}{rcccl} & & \text{Applicable Percentage} & & \text{Amount to be} \\ \text{Total Taxes Abated} & \times & \text{from above Schedule} & = & \text{Recaptured} \end{array}$$

CITY shall recalculate the amount of recapture pertaining to each tax year utilizing the above formula. A bill for each year will then be sent to COPT.

**8. AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)**

For purposes of this section, “Force Majeure” is defined as an act of God, a natural disaster or an act of war (including terrorism). It also includes explosion, fire or other casualty or accident which is not the result of gross negligence, an intentional act or misconduct on the part of COPT. In addition to relief expressly granted in this Agreement, CITY may grant relief from performance of this Agreement if COPT is prevented from compliance and performance by an event of Force Majeure. The burden of proof for the need for such relief shall rest upon COPT. To obtain release based upon this Article 8, COPT must file a written request with the CITY’S International and Economic Development Department for processing to City Council for a decision, authorized by a duly approved Ordinance.

**9. NOTICE**

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective upon its deposit into the custody of the United States Postal Service or such nationally recognized delivery service as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO COPT:

- (Whether personally delivered or mailed):

COPT San Antonio, L.P.  
Attn: Charles M. Fiala  
6711 Columbia Gateway Drive, Suite 300  
Columbia, MD 21046

With a required copy to:

COPT San Antonio, L.P.  
Attn: General Counsel  
6711 Columbia Gateway Drive, Suite 300  
Columbia, MD 21046

TO CITY:

- If mailed:

Economic Development Department  
Attn: Director  
P.O. Box 839966  
San Antonio, Texas 78283-3966

- If by personal or overnight delivery:

Economic Development Department  
Attn: Director  
City Hall, 4th Floor  
Military Plaza  
San Antonio, Texas 78205

10. **CONDITION**

This Agreement is conditioned entirely upon the approval of the San Antonio City Council, as evidenced by duly approved Ordinance Number 2010-\_\_-\_\_-\_\_\_\_\_, dated \_\_\_\_\_, 2010.

11. **ASSIGNMENT**

Except as otherwise expressly provided herein, this Agreement may be assigned or otherwise transferred only with City Council's prior approval (which approval shall not be unreasonably withheld, conditioned or delayed), as reflected in a duly adopted ordinance. COPT must submit a written request to CITY for approval of the proposed assignment or other transfer at least thirty (30) days prior to the effective date of the assignment or transfer of any part of this Agreement ; however, no City Council consent is required for an assignment or transfer to a parent of COPT, a subsidiary of COPT, an affiliate entity of COPT, or to any new entity created as a result of a merger, acquisition or other corporate restructure or reorganization of COPT. However, COPT shall give CITY prior written notice of all assignments or other transfers that do

not require City Council consent, as required under Article 5, Paragraph P. All future assignees shall be bound by all terms and/or provisions and representations of this Agreement.

## 12. GENERAL PROVISIONS

A. None of the Real Property Improvements described in this Agreement are financed by tax increment bonds.

B. This Agreement is entered into subject to the rights of the holders of outstanding bonds of the CITY related to this project. No bonds for which the CITY is liable have been used to finance this project.

C. No amendment, modification, or alteration of the terms hereof shall be binding unless in writing dated subsequent to the date of this Agreement and duly authorized by both parties. COPT acknowledges that City Council approval is required for any and all of these actions.

D. COPT understands and agrees that if COPT is a “business” and if the City’s contribution under this Agreement is a “public subsidy” as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80 (R) HB 1196), then COPT is required to refund money, pursuant to 80(R) HB 1196, COPT has received from City through this Agreement, in the event of a conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.

## 13. SEVERABILITY

In the event any section, subsection, paragraph, subparagraph, sentence, phrase or work herein is held invalid, illegal or unenforceable, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase or word. In such event there shall be substituted for such deleted provisions a provision as similar as possible in terms and in effect to such deleted provision that is valid, legal and enforceable. This Agreement constitutes the entire Agreement between the parties hereto relating to the subject matter contained herein and supersedes all prior, oral or written agreements, commitments or understandings with respect to the matters provided for herein.

## 14. ESTOPPEL CERTIFICATE

Any party hereto may request an estoppel certificate related to this project (hereafter referred to as “Certificate”) from another party hereto so long as the Certificate is requested in connection with a bona fide business purpose. The Certificate, which if requested, will be addressed to a subsequent purchaser or assignee of COPT or other party designated by COPT which shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default, if such is the case, the remaining Term of this Agreement, the levels of tax abatement in effect, and such other matters reasonably requested by the party(ies) to receive the Certificate.

15. **OWNER STANDING**

COPT, as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions, or City Council actions authorizing same, and COPT shall be entitled to intervene in said litigation.

16. **APPLICABLE LAW**

This Agreement shall be construed under the laws of the State of Texas and is enforceable in any state or federal court of competent jurisdiction .

17. **TRIPPLICATE ORIGINALS**

This Agreement shall be executed in three triplicate originals, with an original going to each party and one to the City Clerk of the City of San Antonio.

*Signatures appear on next page.*

**WITNESS OUR HANDS, EFFECTIVE as of \_\_\_\_\_, 2010:**

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to City Ordinance Number 2010-01-21-\_\_\_\_, dated January 21, 2010, and COPT San Antonio L.P. pursuant to the authority of its \_\_\_\_\_.

**CITY OF SAN ANTONIO,**  
a Texas Municipal Corporation

COPT SAN ANTONIO L.P.  
a \_\_\_\_\_

\_\_\_\_\_  
Sheryl Sculley  
CITY MANAGER

\_\_\_\_\_  
By: Roger A. Waesche, Jr.  
Title: Executive Vice President and  
Chief Operating Officer

ATTEST:

ATTEST:

\_\_\_\_\_  
Leticia Vacek  
CITY CLERK

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Bernard  
CITY ATTORNEY

EXHIBIT A: PROPERTY DESCRIPTION

EXHIBIT B: EMPLOYEE BENEFITS

EXHIBIT C: NUMBER OF JOBS AND WAGE INFORMATION FORM