

ORDINANCE 2020-04-02-0226

APPROVING A SECOND AMENDMENT TO THE WALZEM ROAD REDEVELOPMENT MASTER ECONOMIC INCENTIVE AGREEMENT AMONG THE CITY OF WINDCREST, THE WINDCREST ECONOMIC DEVELOPMENT CORPORATION, BEXAR COUNTY, THE CITY OF SAN ANTONIO AND RACKSPACE US, INC d/b/a RACKSPACE HOSTING TO REMOVE CERTAIN OBLIGATIONS FROM THE CITY OF WINDCREST AND TO PROVIDE RACKSPACE WITH THE ABILITY TO DEVELOP OR CAUSE TO BE DEVELOPED TRACTS IN PROXIMITY TO THE RACKSPACE CAMPUS.

* * * * *

WHEREAS, on August 2, 2007, City Council approved the Walzem Road Redevelopment Project Master Economic Incentive Agreement ("MEIA") among the City of Windcrest, the Windcrest Economic Development Corporation (EDC), Bexar County, Rackspace US, Inc. and the Windcrest Economic Development Company, LLC. to incentivize Rackspace to relocate its corporate headquarters to the City of Windcrest and expand its full-time workforce from 1,200 employees to 2,900 employees; and

WHEREAS, in June of 2012, the Parties agreed to amend the MEIA to remove Windcrest Economic Development Company, LLC from the agreement due to its failure to redevelop adjacent property as contemplated in the MEIA; and

WHEREAS, Rackspace is proposing to undertake the redevelopment, either by contracting for the development or soliciting for the development, which could result in an increase in sales tax, of which the City would share a portion of in accordance with the Boundary Change Agreement;
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 Second Amendment to the Walzem Road Redevelopment Master Economic Incentive Agreement (the "Second Amendment") among the City of Windcrest, the Windcrest Economic Development Corporation, Bexar County, the City of San Antonio and Rackspace, U.S., Inc.

SECTION 2. The City Manager or his designee is authorized to execute the Second Amendment and, upon the concurrence of the City Attorney, any other ancillary documents necessary to effectuate this ordinance. A copy of the Second Amendment, in substantially final form, is attached to this Ordinance as **Exhibit A**. The final Second Amendment shall be filed with this Ordinance upon execution.

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



City of San Antonio

City Council

April 02, 2020

Item: 13

Enactment Number:

File Number: 20-2634

2020-04-02-0226

Ordinance amending the Walzem Road Redevelopment Project Master Economic Incentive Agreement among the City of Windcrest, the Windcrest Economic Development Corporation, Bexar County, and Rackspace. [Carlos J. Contreras III, Assistant City Manager; Alejandra Lopez, Director, Economic Development]

Councilmember John Courage made a motion to adopt. Councilmember Rebecca Viagran seconded the motion. The motion passed by the following vote:

Aye: 10 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia,
Cabello Havrda, Sandoval, Pelaez, Courage and Perry

Absent: 1 Gonzales

RR
04/02/20
Item No. 13

EXHIBIT A

**FIRST AMENDMENT
TO
CITY ECONOMIC DEVELOPMENT GRANT AGREEMENT**

THIS FIRST AMENDMENT TO CITY ECONOMIC DEVELOPMENT GRANT AGREEMENT is hereby made and entered into effective as of January _____, 2020 (the "Effective Date") by and between the CITY OF WINDCREST, TEXAS (the "City of Windcrest"), and RACKSPACE US, INC., a Delaware corporation ("Rackspace"). The City of Windcrest and Rackspace may hereinafter be referred to collectively as the "Parties" and each separately as a "Party."

RECITALS

WHEREAS, the Parties entered into that one certain City Economic Development Grant Agreement effective August 2, 2007 pursuant to Chapter 380 of the Local Government Code (the "Grant Agreement") (terms used but not otherwise defined or specified herein having the meanings set forth in the Grant Agreement); and

WHEREAS, the Parties and 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") are entering into that one certain Second Amended and Restated Rackspace US, Inc. Redevelopment Project Master Economic Incentives Agreement of even date herewith (the "Second A&R MEIA") (the recitals set forth in the Second A&R MEIA being herein incorporated by reference); and

WHEREAS, the Parties wish to amend the Grant Agreement in connection with entering into the Second A&R MEIA, as set forth herein.

AGREEMENTS

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

1. Certain Definitions. The Grant Agreement is hereby amended such that the terms Leased Property, Real Property Improvements and Personal Property Improvements have the meanings in the Grant Agreement as are set forth in the Second A&R MEIA.
2. Clarifications and Amendments. The Grant Agreement is hereby clarified and amended as follows:
 - a. Relevant Property Taxes. The reimbursements to Rackspace set forth in Section 5.1 for property taxes paid by Rackspace are with respect to property taxes on the Leased Property, Real Property Improvements and Personal Property

Improvements during the Exemption Period (as defined in the Second A&R MEIA).

- b. PILOT Payments. Rackspace reimbursements under the Grant Agreement will not apply with respect to (i) payments to North East Independent School District, (ii) PILOT Payments (as defined in the Second A&R MEIA) made under the terms of the Second A&R MEIA, or (iii) payments made pursuant to the Second A&R MEIA as a result of a Cessation of Business Activities at the Site Property after the expiration of the Exemption Period (as such terms are defined in the Second A&R MEIA).
3. Termination of Limitations on Certain Economic Development Grants and Arrangements. The first sentence of Section 5.3 of the Grant Agreement (concerning limitations on the City of Windcrest entering into certain economic development grants and certain other economic development arrangements) is hereby deleted.
4. Updating of Addresses. The addresses set forth in Section 8.4 of the Grant Agreement are hereby revised as follows:

Rackspace:	General Counsel One Fanatical Place San Antonio, Texas 78218 Fax: (210) 312-4848
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With a copy to:	Manager of Real Estate Services One Fanatical Place San Antonio, Texas 78218 Fax: (210) 312-4848
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With a copy to:	Mr. Andrew Sherwood Dykema Gossett PLLC 112 East Pecan, Suite 1800 San Antonio, Texas 78205 Fax: (866) 789-0180
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City: Mayor of Windcrest
City Hall
8601 Midcrown
Windcrest, Texas 78239
Fax: (210) 655-8776

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

With a copy to: Mr. Ryan Henry
Law Offices of Ryan Henry, PLLC.
1019 Central Parkway North, Suite
108
San Antonio, Texas 78232

[Signatures and Acknowledgments Begin on Following Page]

WHEREFORE, the Parties hereto have executed this First Amendment and, as of the Effective Date, have agreed to the terms and conditions stated above.

CITY OF WINDCREST, TEXAS

By: _____

Name: Dan Reese

Title: Mayor

By: _____

Name: Rafael Castillo, Jr.

Title: City Manager

APPROVED AS TO FORM:

Michael A. Morell, Special Counsel
City of Windcrest

RACKSPACE US, INC.

By: _____

Name: _____

Title: _____

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

January ____, 2020

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**SECOND AMENDED AND RESTATED
RACKSPACE US, INC. REDEVELOPMENT PROJECT**

MASTER ECONOMIC INCENTIVES AGREEMENT

THIS SECOND AMENDED AND RESTATED RACKSPACE US, INC. REDEVELOPMENT PROJECT MASTER ECONOMIC INCENTIVES AGREEMENT is hereby made and entered into effective as of January _____, 2020 (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" and each separately as a "Party."

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

WHEREAS, the Parties amended and restated the Original MEIA pursuant to that certain AMENDED AND RESTATED RACKSPACE US, INC. REDEVELOPMENT PROJECT MASTER ECONOMIC INCENTIVES AGREEMENT, dated July 24, 2012 (the "Original A&R 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

WHEREAS, the Parties desire to enter into this Agreement and agree that this Agreement shall supersede the Original A&R 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 Type B corporation created pursuant to the authority of the Development Corporation Act, as amended, Texas Local Government Code § 501.001 *et seq.* (the “EDC Act”); and

WHEREAS, it has been determined that Section 505.158 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 501.054 of the EDC Act and Chapter 20 and Chapter 22 of the Texas Business Organizations Code (the “Nonprofit Corporation Law”) 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 501.054 of the EDC Act and pursuant to the Nonprofit Corporation Law, 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 into a corporate headquarters for Rackspace; and

WHEREAS, pursuant to the EDC Act, the Windcrest EDC acquired the Leased Property using funds from rent received from Rackspace and leased it to Rackspace under a paid-up lease; and

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

WHEREAS, the City of Windcrest and the Windcrest EDC have determined that granting the economic incentives in accordance with this Agreement will: (i) further the objectives of the City of Windcrest and the Windcrest EDC; (ii) benefit the City of Windcrest and its inhabitants; and (iii) promote new or expanded business development in the City of Windcrest.

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 "Administrative Fee" has the meaning provided in Section 3.2(b) of this Agreement.

Section 1.2 "Agreement" means this Second Amended and Restated Rackspace US, Inc. Redevelopment Project Master Economic Incentives Agreement, and any addenda or amendments to this Agreement agreed to by the Parties in accordance with the terms hereof.

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

Section 1.4 "Annual Property Tax Benefit" has the meaning provided in Section 2.3(a) of this Agreement.

Section 1.5 "Assurance Fee" has the meaning provided in Section 3.2(c) of this Agreement.

Section 1.6 "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.

Section 1.7 "Boundary Change Date" has the meaning provided in Section 10.4 of this Agreement.

Section 1.8 "Business Activities" means (i) the operation by Rackspace at the Site Property of an information technology services business, including acting as the U.S. corporate headquarters for such business, (ii) the business operations of any Qualified Assignee or Related Organization located at the Site Property, and (iii) the business operations of a Site Occupant at the Site Property.

Section 1.9 "Cessation of Business Activities" has the meaning provided in Section 2.2(a) of this Agreement.

Section 1.10 "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, as amended by that certain First Amendment to City Economic Development Grant Agreement dated effective as of the Effective

Date, and as further amended from time to time, and containing the terms and provisions of Section 3.9 of this Agreement.

Section 1.11 "City of San Antonio" has the meaning provided in the preamble to this Agreement.

Section 1.12 "City of Windcrest" has the meaning provided in the preamble to this Agreement.

Section 1.13 "County" has the meaning provided in the preamble to this Agreement.

Section 1.14 "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 3.10 of this Agreement.

Section 1.15 "CPI" means the All Items Consumer Price Index for All Urban Consumers (CPI-U) for the South region, 1982-84=100, published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics of the United States Department of Labor ceases to exist or to publish statistics concerning the purchasing power of the consumer dollar, then any successor index intended by the federal authority publishing such successor index to replace such Consumer Price Index shall replace CPI for the purposes of this Agreement.

Section 1.16 "CPI Adjustment Date" has the meaning provided in Section 2.1(b) of this Agreement.

Section 1.17 "CPI Adjustment Factor" has the meaning provided in Section 2.1(b) of this Agreement.

Section 1.18 "Cure Period" has the meaning provided in Section 2.5(b) of this Agreement.

Section 1.19 "Defaulting Party" has the meaning provided in Section 13.20 of this Agreement.

Section 1.20 "Development Parcels" has the meaning provided in Section 3.7(d)(ii) of this Agreement.

Section 1.21 "Development Parcel Prohibited Uses" means those uses set forth on the attached Exhibit G.

Section 1.22 "Development RFP Process" has the meaning provided in Section 3.7(d) of this Agreement.

Section 1.23 "EDC Act" has the meaning provided in the Recitals to this Agreement.

Section 1.24 “Effective Date” has the meaning provided in the preamble to this Agreement.

Section 1.25 “Eisenhower Development Tract” means the property described in Exhibit B.

Section 1.26 “Employment Commitment” has the meaning provided in Section 2.1(a) of this Agreement.

Section 1.27 “Employment Commitment Certification” has the meaning provided in Section 2.9 of this Agreement.

Section 1.28 “Exemption Period” means the period from January 1, 2009, through September 30, 2037.

Section 1.29 “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 1.30 “Government Entities” has the meaning provided in Section 13.18 of this Agreement.

Section 1.31 “Individual Parcel” means a portion of the Leased Property to be transferred to Rackspace or its designee.

Section 1.32 “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, said land being more particularly described in Exhibit C and all Real Property Improvements related thereto. Further, the Leased Property shall be deemed to be automatically modified to reflect any boundary changes due to (a) the construction and dedication of Racker Road (as hereinafter provided in Section 5.1) or (b) the purchase by Rackspace of any fee simple interest in the Leased Property pursuant to the exercise of its purchase options under the terms of the Mall Lease and/or this Agreement, which will then no longer be included in the definition of Leased Property.

Section 1.33 “Mall Lease” means that certain Ground 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 by that certain First Amendment to Ground Lease Agreement dated effective August 31, 2007, that certain Second Amendment to Ground Lease Agreement dated effective December 1, 2008, and that certain Third Amendment to Ground Lease Agreement dated effective as of the Effective Date, and as further amended from time to time.

Section 1.34 “Mall Lease Personal Property” means (i) all tangible personal property, mechanical systems, fixtures, equipment and machinery of any kind owned by Windcrest EDC and located on or attached to, or used solely in connection with the Leased Property or improvements situated thereon; (ii) all access, air, water, riparian, development, utility, and solar

rights owned by Windcrest EDC appurtenant to the Leased Property; (iii) site plans, surveys, plans and specifications, marketing materials and floor plans owned by Windcrest EDC in Windcrest EDC's possession which relate directly to the Leased Property; (iv) Windcrest EDC's interest in all licenses and permits issued in connection with the construction and operation of the Leased Property; and (v) Windcrest EDC's interest in rights to receive or install water, wastewater, electricity, gas, telephone, telecommunications (including cable television, Internet ISDN lines, etc.), drainage, or other utilities or services.

Section 1.35 "Minimum Median Payroll Level" has the meaning provided in Section 2.1(b) of this Agreement.

Section 1.36 "NEISD" has the meaning provided in Section 2.2(b) of this Agreement.

Section 1.37 "NEISD Debt Service PILOT Payment" has the meaning provided in Section 3.4 of this Agreement.

Section 1.38 "NEISD Loss" has the meaning provided in Section 2.3(a) of this Agreement.

Section 1.39 "Nondefaulting Party" has the meaning provided in Section 13.20 of this Agreement.

Section 1.40 "Nonprofit Corporation Law" has the meaning provided in the Recitals to this Agreement.

Section 1.41 "Original A&R MEIA" has the meaning provided in the Recitals to this Agreement.

Section 1.42 "Original MEIA" has the meaning provided in the Recitals to this Agreement.

Section 1.43 "Original MEIA Effective Date" means August 2, 2007.

Section 1.44 "Owned Site Property" means the real property formerly leased to Rackspace under the Mall Lease and subsequently purchased in fee simple by Rackspace pursuant to one or more purchase options set forth in the Mall Lease and/or this Agreement, regardless of whether Rackspace has retained fee simple ownership of such real property or transferred such real property to any other Person.

Section 1.45 "Partial Releases" has the meaning provided in Section 3.7(b) of this Agreement.

Section 1.46 "Parties" has the meaning provided in the preamble to this Agreement.

Section 1.47 "Person" shall be broadly interpreted to include, without limitation, any corporation, company, partnership, other entity or individual.

Section 1.48 “Personal Property Improvements” means the tangible personal property for use at the Leased Property, including that, if any, leased by Rackspace from the Windcrest EDC.

Section 1.49 “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, including (i) a payment described in Sections 2.2(b), 2.2(c), 2.3(a), 2.3(e), 2.5, 2.6 and 3.4, and (ii) any payment in lieu of the ad valorem property taxes that would otherwise be assessed for a given tax year against the Rackspace HQ 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 HQ 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 HQ Property (or any other 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 3.3 below. For purposes of clarification, the parties acknowledge that it shall not be necessary to determine the appraised value of the Rackspace HQ Property (or any other property) in calculating the payments described in Sections 2.2(c), 2.6 or 3.4 (regardless of whether such payments are characterized as PILOT Payments).

If the Bexar Appraisal District takes steps to determine the appraised value for property tax purposes of the Rackspace HQ Property or to determine the qualification of the Rackspace HQ 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 HQ Property, including for filing and management of any necessary protests or appeals.

Section 1.50 “Qualified Appraisers” has the meaning provided in Section 3.3(b) of this Agreement.

Section 1.51 “Qualified Assignee” means any Person (other than a Related Organization) that (a) has assumed all of Rackspace’s obligations under this Agreement and the Mall Lease (if such lease is still in effect); and (b) (i) (A) is a company whose equity securities are publicly traded on the New York Stock Exchange, NASDAQ or another nationally recognized stock exchange in the United States with status and prestige comparable to that of the New York Stock Exchange or the Nasdaq Stock Market as of the Effective Date, (B) has consolidated net revenues of at least \$1 billion, or (C) is reasonably expected to generate, on a pro forma basis, Texas sales tax revenue in an amount equal to or greater than twice the Assurance Fee; or (ii) is otherwise approved by the City of Windcrest, such approval not to be unreasonably withheld, conditioned, or delayed.

Section 1.52 “Qualifying Employees” means those full-time employees of all Site Occupants with a designated job location at the Site Property who, as a group, have a median total annual payroll (salary and bonus) of not less than the Minimum Median Payroll Level. For the avoidance of doubt, Rackspace shall be permitted to include in the calculation of Qualifying

Employees any full-time employees of any other Site Occupant to whom it sells, subleases or otherwise transfers any Individual Parcel(s), provided, that (i) the job location of such employee is at the Property Site and (ii) the inclusion of such employee would not cause the median total annual payroll (salary and bonus) of the group of employees included in such calculation to be less than Minimum Median Payroll Level.

Section 1.53 “Rackspace” has the meaning provided in the preamble to this Agreement and its permitted successors and assigns as contemplated by Section 13.8.

Section 1.54 “Rackspace HQ Property” means the Leased Property (including the Real Property Improvements) and the Personal Property Improvements (and any taxable leasehold or other possessory interest in the property) located in Bexar County, Texas that are from time to time owned by the Windcrest Economic Development Corporation and leased to Rackspace under the Mall Lease or this Agreement. The property that constitutes the Rackspace HQ Property may vary from time to time due to such factors as what property has been removed from the Mall Lease pursuant to Section 3.7.

Section 1.55 “Rackspace HQ Property Appraised Value” has the meaning provided in Section 3.4 of this Agreement.

Section 1.56 “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 for use at the Leased Property.

Section 1.57 “Related Organization” 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; or (c) is a successor by merger or other business combination with Rackspace, including, without limitation, a purchaser of all or substantially all of the assets of Rackspace, such that substantially all of the business assets of Rackspace remain in the merged, combined or purchasing entity.

Section 1.58 “Sales Tax Credits” has the meaning provided in Section 3.2(c) of this Agreement.

Section 1.59 “Sales Tax Commitment” has the meaning provided in Section 2.4 of this Agreement.

Section 1.60 “Section 505.161 of the EDC Act” shall mean Section 505.161 of the EDC Act and any other statute that enables the Rackspace HQ Property to be exempt from ad valorem property taxation.

Section 1.61 “Site Property” means, collectively, the Owned Site Property and the Leased Property.

Section 1.62 “Site Occupant” means (i) Rackspace, and (ii) any other Person to whom Rackspace or Rackspace’s direct or remote transferees and lessees with respect to owned or leased interests in all or the portion of any of the Site Property may lease, sublease, transfer or convey all

or the portion of any of the Site Property, including, for the avoidance of doubt, any Person to whom Rackspace may sell one or more Development Parcels, and such Person's direct and/or remote transferees, lessees and sublessees with respect to owned or leased interests in all or the portion of any of the Site Property.

Section 1.63 "State" has the meaning provided in the Recitals to this Agreement.

Section 1.64 "Taxing Units" has the meaning provided in Section 2.2(b) of this Agreement.

Section 1.65 "Title Company" has the meaning provided in Section 3.7(a) of this Agreement.

Section 1.66 "Windcrest Development Site" means the property described on Exhibit H.

Section 1.67 "Windcrest EDC" has the meaning provided in the preamble to this Agreement.

Section 1.68 "Windcrest Site Property Sales Tax" has the meaning provided in Section 3.2(c) of this Agreement.

ARTICLE 2

RACKSPACE COMMITMENT AND RECAPTURE

Section 2.1 Employment Commitment.

(a) The Parties agree that Rackspace has met or exceeded the employment commitment requirements as set forth in the Original A&R MEIA through December 31, 2019. From and after December 31, 2019 and continuing through the end of the Exemption Period, Rackspace agrees to cause to be maintained no fewer than 1774 Qualifying Employees (the "Employment Commitment") throughout the Exemption Period (the number of such employees being calculated as set forth in Section 2.9).

(b) The "Minimum Median Payroll Level" means \$61,000.00, subject to periodic adjustment as follows. On each of December 31, 2024, December 31, 2029, and December 31, 2034 (each such date, a "CPI Adjustment Date") the Minimum Median Payroll Level will be recalculated by multiplying \$61,000.00 by the CPI Adjustment Factor. The "CPI Adjustment Factor" means a fraction the numerator of which is the most current CPI available as of the relevant CPI Adjustment Date and the denominator of which shall be the most current CPI available as of December 9, 2019 (which index is 247.423). Once adjusted, the adjustment shall stay in effect until the next CPI Adjustment Date.

Section 2.2 Continuous Business Activities Requirement.

(a) If all or substantially all Business Activities of Rackspace 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 (other than a Force Majeure or as contemplated by below), 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, and, if expressly stated in the notice of termination, upon such termination Rackspace will be conclusively deemed to have irrevocably exercised its option under the Mall Lease to purchase the Leased Property for \$1.00. Notwithstanding the foregoing, a Cessation of Business Activities shall be deemed not to have occurred if prior to (but not more than six months prior to (in the case of clause (i) below) and not more than fifteen months prior to (in the case of clause (ii) below)) the commencement of, or during, the three (3) month period of inactivity or substantial inactivity that would otherwise constitute the occurrence of such Cessation of Business Activities, Rackspace has or had assigned this Agreement and the Mall Lease (if such lease still is in effect) to a Qualified Assignee or a Related Organization described in Section 1.57(c) (i.e. a successor by merger or other business combination with Rackspace), in either case, who has committed to satisfy the Employment Commitment (i) within three (3) months after its assumption of this Agreement and the Mall Lease (if such lease is still in effect) if such Qualified Assignee or Related Organization intends to continue the business of Rackspace, or (ii) if such Qualified Assignee or Related Organization does not intend to continue the business of Rackspace, within twelve (12) months after its assumption of this Agreement and the Mall Lease (if such lease is still in effect), and in each case described in clauses (i) and (ii) above, such Qualified Assignee or Related Organization satisfies the Employment Commitment within the applicable three-month or twelve-month period; provided, however that such three-month or twelve-month period, as the case may be, shall be automatically extended on a day-for-day basis for each day Business Activities of such Qualified Assignee or Related Organization have not resumed as a result of repairs or improvements being made to the Leased Property so long as such repairs or improvements are being diligently pursued.

(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 (on its own behalf and on behalf of Alamo Community College District, San Antonio River Authority, University Health System and Bexar Co. Rd. & Flood District) and North East Independent School District (“NEISD”) (hereafter referred to collectively as the “Taxing Units” and each individually as a “Taxing Unit”) against all the real property that was part of the Rackspace HQ Property at any time during the calendar year in which the Cessation of Business Activities occurred for such year (as if the property had not been exempt from property taxes for such year) shall be paid as a PILOT Payment by Rackspace to the City of Windcrest; provided, however, that to the extent an NEISD Debt Service PILOT Payment has been made by Rackspace pursuant to Section 3.4 for such calendar year, the amount of such Section 3.4 PILOT Payment will be credited against the amount of the PILOT payment owed by Rackspace pursuant to this Section 2.2(b).

(c) (i) In addition to the PILOT Payment under Section 2.2(b), upon a termination under Section 2.2(a), Rackspace will make a PILOT Payment to the City of Windcrest according to the following schedule:

<u>If the Termination Date occurs:</u>	<u>PILOT Payment Amount is to be:</u>
From the Effective Date through December 31, 2024	\$9,000,000
In the 2025 calendar year:	\$8,100,000
In the 2026 calendar year:	\$7,200,000
In the 2027 calendar year:	\$6,300,000
In the 2028 calendar year:	\$5,400,000
In the 2029 calendar year through 2032:	\$4,500,000
In the 2033 calendar year:	\$7,200,000
In the 2034 calendar year:	\$8,400,000
In the 2035 calendar year:	\$9,600,000
In the 2036 calendar year:	\$10,800,000
From January 1, 2037 through the end of the Exemption Period:	\$12,000,000

(ii) A credit is to be given for any ad valorem taxes assessed against real property (but not PILOT Payments) actually paid by Rackspace with respect to the Rackspace HQ Property since the Effective Date and before such termination to the extent not reimbursed to Rackspace pursuant to the City Economic Development Grant Agreement or the County Economic Development Grant Agreement. The City of Windcrest shall pay to the County the County's portion of such PILOT Payment collected pursuant to this Section 2.2(c) (including the portions for the other Taxing Units for which the County collects, other than the City of Windcrest and NEISD if the County collects for them as well) and shall pay to NEISD its portion of such PILOT Payment, with such portions being based respectively on the proportion of the then current real property tax rate of the County collected pursuant to this Section 2.2(c) (including the taxing rates of the other Taxing Units for which the County collects), and the then current real property tax rate of NEISD, to the then current total real property tax rate for all Taxing Units. Payment to the County will be deemed to be payment to the other Taxing Units for which the County collects as to their portions of any payment.

(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 with respect thereto, and upon such termination Rackspace will be conclusively deemed to have irrevocably exercised its option under the Mall Lease to purchase the Leased Property or such portion of the Leased Property for \$1.00.

Section 2.3 Failure to Meet Employment Commitment: Employee Count. (a) If Rackspace fails to satisfy the Employment Commitment during any calendar year in the Exemption Period, then for each such calendar year of noncompliance, Rackspace shall pay the City of Windcrest a PILOT Payment calculated by multiplying (x) the Annual Property Tax Benefit, by (y) the same percentage as the deficiency in the Employment Commitment, and the City of Windcrest shall distribute such PILOT Payments to the appropriate Taxing Units. In

addition, Rackspace shall pay a PILOT payment for such year for NEISD, with the NEISD amount being calculated using the methodology set forth below, provided that, to the extent NEISD Debt Service PILOT Payments were made by Rackspace pursuant to Section 3.4 for such year, the amount of such Section 3.4 PILOT Payment will be credited against the amount of the PILOT payment owed by Rackspace with respect to NEISD pursuant to this Section 2.3. For purposes hereof, the "Annual Property Tax Benefit" shall mean the property taxes that would have been assessed against all the real property that was part of the Rackspace HQ Property at any time during the applicable year by the City of Windcrest or Bexar County (on its own behalf and on behalf of Alamo Community College District, San Antonio River Authority, University Health System and Bexar Co. Rd. & Flood District) for such year as if such real property was not property tax exempt. The PILOT payment for such year to be made to NEISD (or its foundation, at the City of Windcrest's discretion) upon a termination under this Section 2.3 shall be calculated by multiplying (x) the NEISD Loss (as defined below), by (y) the same percentage as the deficiency in the Employment Commitment for such year. The "NEISD Loss" for a given year will be the amount required to offset the net amount of actual tax revenue and state aid loss to the NEISD for the given year resulting from the tax-exempt nature of the Rackspace HQ Property, in light of the Texas school finance laws, and taking into consideration any NEISD Debt Service PILOT Payments made by Rackspace pursuant to Section 3.4 (but without double-subtracting such amounts in determining the NEISD PILOT Payment amount). 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.

(b) For example, if there are 1597 Qualifying Employees for a given year (e.g. 90% of Rackspace's Employment Commitment), Rackspace shall be required to pay (i) a PILOT Payment in the amount of 10% of the Annual Property Tax Benefit, and (ii) a PILOT Payment in the amount of 10% of the amount calculated using the methodology set forth in Section 2.3(a) for payment to NEISD with respect to such year.

(c) Since the Employment Commitment requires that the median total annual payroll of the employees credited to meet the Employment Commitment be not less than the Minimum Median Payroll Level for a given year, when calculating the compliance with the Employment Commitment for a given year 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 the Minimum Median Payroll Level for that given year.

(d) If the number of Qualifying Employees drops below 50% of the amount required to comply with the Employment Commitment for any given year, at the option of the City of Windcrest, the City of Windcrest may terminate this Agreement at any time during the six-month period after the end of such year, and, if expressly stated in the notice of termination, upon such

termination Rackspace will be conclusively deemed to have irrevocably exercised its option under the Mall Lease to purchase the Leased Property for \$1.00.

(e) Upon said termination, (i) a PILOT Payment equal to the Annual Property Tax Benefit for the calendar year in which the termination occurs shall be calculated as set forth in Section 2.2(b) and paid to the City of Windcrest; (ii) a PILOT Payment equal to the property taxes that would have been assessed against all the real property that was part of the Rackspace HQ Property at any time during the applicable year by NEISD for such year as if such real property was not property tax exempt; and (iii) a PILOT Payment shall be paid to the City of Windcrest, calculated as set forth at Section 2.2(c)(i) and incorporating the credit as provided in Section 2.2(c)(ii). The City of Windcrest shall pay the portions of any such PILOT Payment due to other Taxing Units within thirty (30) days after its receipt of such PILOT Payment.

(f) If the failure to create and retain at least 887 Qualifying Employees 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, and upon such termination Rackspace will be conclusively deemed to have irrevocably exercised its option under the Mall Lease to purchase the Leased Property or such portion of the Leased Property for \$1.00.

Section 2.4 Sales Tax Sourcing. During the Exemption Period, Rackspace shall source to the City of Windcrest all local sales taxes on taxable sales by Rackspace sourced to the State of Texas, except to the extent local sales taxes are required to be sourced to another local taxing jurisdiction pursuant to applicable law (including, without limitation, any rule, regulation, judicial interpretation or decree having the effect of law) (the "Sales Tax Commitment").

Section 2.5 Certain Defaults. (a) During the Exemption Period, the City of Windcrest may declare a default if (i) Rackspace fails to comply with any of the conditions set forth in Section 2.1 (but only below the 50% requirement as set forth in Section 2.3) or Section 2.2, or (ii) Rackspace has defaulted in the payment of any amount due from Rackspace under the terms of this Agreement. In the event of such default, 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, and, if expressly stated in the notice of termination, upon such termination Rackspace will be conclusively deemed to have irrevocably exercised its option under the Mall Lease to purchase the Leased Property for \$1.00. 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 2.5, the Taxing Units shall be entitled to any PILOT Payments already then owing and 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 property taxes assessed against real property (but not PILOT Payments) Rackspace has paid to the Taxing Units with

respect to the Rackspace HQ Property prior to such termination (to the extent not reimbursed to Rackspace pursuant to the City Economic Development Grant Agreement or the County Economic Development Grant Agreement).

(b) In addition to the foregoing, if either the City of Windcrest or Rackspace believes the other is in default under any of the terms set forth in this Agreement it may notify the other of the nature of the breach as provided in Section 13.5. The party receiving notice of default shall have ninety (90) calendar days from the date such notice is received to cure the default (the "Cure Period"). If the default has not been cured by that date this Agreement may be terminated by the non-defaulting party (i.e., City of Windcrest or Rackspace, as the case may be) after giving ten (10) calendar days written notice, and with respect to such a termination by the City of Windcrest, upon such termination Rackspace will be conclusively deemed to have irrevocably exercised its option under the Mall Lease to purchase the Leased Property for \$1.00 if expressly stated in the notice of termination from the City of Windcrest, and with respect to such a termination by Rackspace, upon such termination Rackspace will be conclusively deemed to have irrevocably exercised its option under the Mall Lease to purchase the Leased Property for \$1.00. Such non-defaulting party shall have the option, to be exercised reasonably and in good faith, to extend the Cure Period if such 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.

Section 2.6 Post-Exemption Period Claw-Back. (a) If the Exemption Period expires and there is a Cessation of Business Activities at the Site Property (other than as a result of a Force Majeure) during the five-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 as follows:

<u>If the Cessation of Business Activities occurs:</u>	<u>Payment amount is to be:</u>
From October 1, 2037 through September 30, 2038	\$5,400,000
From October 1, 2038 through September 30, 2039	\$4,800,000
From October 1, 2039 through September 30, 2040	\$4,200,000
From October 1, 2040 through September 30, 2041	\$3,600,000
From October 1, 2041 through September 30, 2042	\$3,000,000
After October 1, 2042	None

(b) Any such payment shall be made to the City of Windcrest, and the City of Windcrest shall pay to the County the County's portion (including the portions for the other Taxing Units for which the County collects, other than the City of Windcrest and NEISD if the County collects for them as well) of such payment and shall pay to NEISD its portion of such payment, with such portions being based respectively on the proportion of the then current real property tax rate of the County (including the taxing rates of the other Taxing Units for which the County collects, other than the City of Windcrest and NEISD if the County collects for them as well), and the then current real property tax rate of NEISD, to the then current total real property tax rate for all Taxing Units.

(c) Any payment under this Section 2.6 shall be paid by Rackspace to the City of Windcrest within ninety (90) calendar days from the date the City of Windcrest notifies Rackspace that such payment is owing. The City of Windcrest shall pay the portions of such payment due to other governmental entities within thirty (30) days after its receipt of such payment.

Section 2.7 Liquidated Damages. 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 2.1 through 2.6 hereof, or the other events resulting in a PILOT Payment being owing thereunder, 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 2.1 through 2.6 hereof, or the other events resulting in a PILOT Payment being owing thereunder, 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 2.1 through 2.6 hereof, or the other events resulting in a PILOT Payment being owing thereunder, 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 Appropriate Action to Enforce Obligations. 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 Method of Calculation for Employment Commitment. Rackspace shall calculate the number of Qualifying Employees and the median salary of such Qualifying Employees as of December 31 of each year using the state of employment as of that date. Rackspace shall certify such numbers to the City of Windcrest and deliver such compliance certification on the form (i) delivered to the State of Texas pursuant to Texas Government Code Section 481.078 and the Texas Enterprise Fund Agreement reporting requirements with a statement that the "Qualified Created Jobs" set forth in such form all constitute "Qualified Employees" under the terms of this Agreement, and that as of December 31 of the year of such report, Rackspace has caused to be maintained at least the number of Qualifying Employees described as "Qualified Created Jobs" in such report or (ii) otherwise reasonably acceptable to the City of Windcrest (the "Employment Commitment Certification"). Rackspace shall deliver the Employment Commitment Certification to the City of Windcrest not later than June 30 of the following year. If Rackspace fails to timely deliver such Employment Commitment Certification for a given year and such failure continues for more than sixty (60) days after the City of Windcrest

gives Rackspace written notice of such failure, then the City of Windcrest shall have the right, at Rackspace's cost and expense, to cause its auditor to audit Rackspace's books and records which make up part of or relate to the calculations with respect to compliance with the Employment Commitment, for the sole purpose of determining compliance or non-compliance with the Employment Commitment. Rackspace shall collect and maintain for five (5) years after the last day of a given year records of salary and bonus information for employees included in determining the Qualifying Employees for such year. In addition to the audit rights set forth above, regardless of the timely delivery of Employment Commitment Certifications by Rackspace, the City of Windcrest shall, at its expense, have the right to cause its auditor to audit Rackspace's books and records which make up part of or relate to the calculations relating to compliance with the Employment Commitment for a given year within five (5) years after the last day of such year, for the sole purpose of determining compliance or non-compliance with the Employment Commitment for such year; *provided, however*, that if Rackspace is not in compliance with the Employment Commitment for such year and the audit reveals that the certification for that year provided by Rackspace as to the number of Qualifying Employees was overstated by more than five percent (5%), then Rackspace shall reimburse the City of Windcrest for any such auditing expense upon written demand.

ARTICLE 3

LEASED PROPERTY REDEVELOPMENT

Section 3.1 Mall Lease. 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 1.32, the Windcrest EDC and Rackspace will amend the Mall Lease from time to time to reflect those changes.

Section 3.2 Investment by Rackspace; Administrative Fee; Assurance Fee. (a) 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 HQ Property.

(b) Administrative Fee. Within thirty (30) days after the Effective Date, Rackspace shall pay to the City of Windcrest a payment in the amount of \$160,179.00, which amount reflects the actual out-of-pocket expenses incurred by the City of Windcrest in connection with the administration of this Agreement from 2012 to 2019 and upon payment of such amount, all obligations of Rackspace with respect to the payment of administrative fees for 2019 and any prior year shall be deemed to be paid in full. For 2020 and each calendar year thereafter during the Exemption Period (to be prorated for any partial calendar year), Rackspace shall pay to the City of Windcrest an administrative fee of \$50,000 per year to compensate the City of Windcrest for its costs incurred in connection with the administration of this Agreement ("Administrative Fee"); provided, however, the Administrative Fee for a given year shall be reduced (to an amount not less than zero) by an amount equal to 50% of the amount by which the Windcrest Site Property Sales Tax for such year is greater than \$1,400,000.

(c) Assurance Fee. Rackspace shall pay to the City of Windcrest an annual assurance fee during the Exemption Period (to be prorated for any partial calendar year) in the amount of \$700,000 ("Assurance Fee") as assurance to the City of Windcrest of adequate benefit to the City of Windcrest for entering into this Agreement; provided, however, the Assurance Fee shall be reduced (to an amount not less than zero) by an amount equal to fifty-percent (50%) of (i) the total amount of local sales taxes sourced by the Site Occupants to the City of Windcrest during the preceding calendar year ("Windcrest Site Property Sales Tax"); and (ii) the total amount of local sales taxes on taxable sales by Rackspace in the State of Texas that under applicable law as of the date of this Agreement could have been sourced to the City of Windcrest, but which are required to be sourced to another local taxing jurisdiction pursuant to a change in applicable law (including any rule, regulation, judicial interpretation, agency interpretation or decree having the effect of law) occurring after the date of this Agreement (collectively, the "Sales Tax Credits").

(d) Invoicing and Payment. The City of Windcrest shall use its commercially reasonable efforts to provide Rackspace an invoice for the Assurance Fee and the Administrative Fee (and showing the calculations thereof after giving effect to the Sales Tax Credits) no later than March 30th of each calendar year. Rackspace shall pay all undisputed amounts within thirty (30) days after receipt thereof. In the event there is a good faith dispute as to the calculation of the Sales Tax Credits, the Assurance Fee or the Administrative Fee, the City of Windcrest and Rackspace will work in good faith to resolve any such disputes.

Section 3.3 Distribution of PILOT Payments: Appraisal of Property. (a) Any PILOT Payments payable hereunder shall be paid to the City of Windcrest (or other entity designated by the City of Windcrest) for distribution to each Taxing Unit as appropriate consistent with this Agreement. Unless a different date is otherwise specified hereunder, these payments will be due by February 28th of the year following the tax year for which they are being paid. 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.

(b) In the event the Bexar Appraisal District does not determine an appraised value for property tax purposes for the Rackspace HQ Property for a particular year, then the appraised value for property tax purposes for such year will be determined in the following manner. Rackspace will obtain an appraisal for the Rackspace HQ Property for such year for property tax purposes from a real estate appraiser designated as a Member of the Appraisal Institute to appraise the Real Property, and if the Rackspace HQ Property includes more than a de minimis amount of tangible personal property, 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 that year for purposes of this Agreement, including (without limitation) this Section 3.3, except as may otherwise be provided in Section 3.4 with respect to the NEISD Debt Service PILOT Payments. 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 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 Qualified Appraisers shall be guided by the definitions contained in Section 1.49.

Section 3.4 NEISD Debt Service PILOT Payments. During the Lease Term, Rackspace agrees to make additional PILOT Payments (each an “NEISD Debt Service PILOT Payment” and collectively the “NEISD Debt Service 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 was made on or before February 28, 2008 and was equal to the debt service portion (as defined in Texas Education Code Section 45.001(a)(2) or its successor provision) of the taxes that the NEISD would have assessed for the 2007 tax year against the Rackspace HQ Property, if it was not exempt from property taxes, based on the Rackspace HQ Property’s 2007 tax year appraised value as determined by the Bexar Appraisal District (the “Rackspace HQ Property Appraised Value”); 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 Rackspace HQ Property Appraised Value 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 3.5 Reserved.

Section 3.6 Ownership of Leased Property and Resulting Tax Exemption. All additions to the Rackspace HQ Property (which, by its definition, only includes property owned by the Windcrest Economic Development Corporation and leased to Rackspace or its assignees, tenants or subtenants) will also be subject to ownership by the Windcrest EDC and shall therefore be subject to property tax exemption under the EDC Act for the Exemption Period and shall also be subject to the PILOT Payments and the appraisal process provided herein.

Section 3.7 Purchase Options; Development; Cooperation in Further Economic Development. (a) Option to Re-Acquire Site. At any time during the term of this Agreement, and at Rackspace’s option in its sole discretion, Rackspace may terminate the Mall Lease as to the entire Leased Property 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 or such other title company as Rackspace may designate (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 and bill of sale (heretofore executed by the Windcrest EDC and delivered to Alamo Title Company in escrow, or if such deed or bill of sale cannot be located, a new special warranty deed and, if requested, bill of sale, as applicable, in the same form as the deed and bill of sale attached as Exhibit E-1 and Exhibit E-2 to the Mall Lease, respectively, which new deed and/or bill of sale Windcrest EDC will execute and acknowledge within 21 days after receipt of such notice of termination and a written notice that the previously escrowed deed and/or bill of sale cannot be located) conveying the Leased Property and all Mall Lease Personal Property to Rackspace in consideration of the prepaid lease payments under the Mall Lease and an additional \$1.00 cash.

(b) Partial Releases of Parcels. In addition to the option set forth in subsection (a) above, at any time and from time to time during the term of this Agreement, and at Rackspace's option, Rackspace may terminate the Mall Lease as to one or more Individual Parcels by written notice thereof to the Windcrest EDC and a copy to the Title Company. Within twenty-one (21) days after receiving such notice of termination, Windcrest EDC shall deliver to the Title Company, with instructions to record in the Official Public Records of Bexar County, Texas upon receipt of written instructions from Rackspace to do so, one or more special warranty deeds and bills of sale, as applicable, each in substantially the same form as the special warranty deed and bill of sale referred to in subsection (a) above, conveying the Individual Parcel(s) designated in the notice and all improvements thereto and all Mall Lease Personal Property related thereto to Rackspace (the "Partial Releases") in consideration of the portion of the prepaid lease payments under the Mall Lease reasonably allocable to such Individual Parcel(s) and an additional \$1.00 cash, provided that such deed is not to be so recorded unless and until any applicable platting requirements of general applicability of any governmental entity are complied with at Rackspace's cost prior to such filing such that such filing is lawful. Any such platting is to be performed by Rackspace with Windcrest EDC's cooperation (without cost or liability to Windcrest EDC). Any such deed delivered by Windcrest EDC to such title company will not be effective to transfer title from Windcrest EDC to Rackspace until such recordation, and until such recordation Rackspace may elect to direct the Title Company to void and destroy such deed. The Windcrest EDC acknowledges that any material delay in executing and delivering such Partial Releases may result in material damages to Rackspace (including the inability to sell or transfer the applicable the Individual Parcels as contemplated hereby), and as such acknowledges and agrees that if it fails to deliver the Partial Releases within such 21-day period, in addition to any other right or remedy hereunder, Rackspace shall have the right to seek injunctive relief without the posting of bond, and to withhold any amounts owing hereunder for so long as such default on the party of Windcrest EDC is continuing. If such default continues for more than ninety (90) days, the Administrative Fee shall be deemed to be waived for five (5) years, or if the remaining term of this Agreement is less than five (5) years, the remainder of the term of this Agreement.

(c) Platting. Rackspace will cause the Individual Parcel(s) to be separately platted or replatted in compliance with applicable law at the cost and expense of Rackspace prior to the delivery and/or recordation of such special warranty deed, and Windcrest EDC shall reasonably cooperate with Rackspace (without cost to Windcrest EDC and without incurring any material liability or obligations) in executing any such plat or replat necessitated by the subdivision as a result of the conveyance of such Individual Parcel(s) pursuant to this Section 3.7.

(d) Development RFP Process. (i) Within three (3) months after the Effective Date, Rackspace shall initiate a process (the "Development RFP Process") of solicitation of real estate developers for proposals to purchase and develop the Development Parcels as a comprehensive commercial real estate development. Rackspace will involve a representative of the Windcrest EDC in such process to the extent Rackspace can reasonably do so (but this does not include internal Rackspace meetings that Rackspace wishes to maintain as confidential internal communications), will seek input from the Windcrest EDC on the terms of the Development RFP Process, and will share with the Windcrest EDC any qualifying proposals received by Rackspace (to the extent such proposals are not confidential, but in this regard, Rackspace will include a

provision in its solicitation for proposals that the proposal may be disclosed to the Windcrest EDC with any proprietary or company financial information redacted); provided, however, that all aspects of the Development RFP Process, including the terms for development, which developers are included in the Development RFP Process, the identification of the Development Parcels (subject to the requirements in the definition of Development Parcels set forth herein) and the process for selecting a developer shall be at the sole discretion of Rackspace. Rackspace shall have the right to modify the Development RFP Process at any time consistent with this Agreement and the right not to proceed with the selection of a developer or the comprehensive development of the Development Parcel, in all such cases within the sole discretion of Rackspace. Any developer that contracts with Rackspace through the Development RFP Process to purchase and develop the Development Parcels shall not be impeded by the City of Windcrest or the Windcrest EDC from developing such Development Parcels consistent with applicable law (including zoning regulations, platting requirements, code compliance and other development requirements generally applicable to the developer and the development of the Development Parcels) and no requirements or approvals on such development shall be imposed by the City of Windcrest, other than such requirements and approvals as are generally required by applicable law for any development of the Development Parcels. If any such laws give the City of Windcrest discretion in granting approvals, such approval shall not be withheld so long as the developer and the proposed development comply with zoning regulations, platting requirements, code compliance and other development requirements generally applicable to the developer and the development of the Development Parcels and with the terms of this Agreement regarding the Development Parcel Prohibited Uses. Rackspace acknowledges that it does not have the authority to grant, or to bind the City of Windcrest or the Windcrest EDC to the granting of, any economic or development incentives that may be available to a developer of the Development Parcel, and Rackspace shall direct any developer seeking any such incentives to communicate directly with the Windcrest EDC.

(ii) Development Parcels. “Development Parcels” means those portions of the Leased Property identified by Rackspace, in its sole discretion (except as provided below in this subsection), as being suitable for immediate development and not currently occupied by a Site Occupant or reserved for future use by a Site Occupant. A specific description (or descriptions, if presented as alternates) of the Development Parcels will be determined by Rackspace in consultation with its advisors as part of the Development RFP Process (defined in Section 3.7(d)(i) above); provided, however, that the Development Parcel(s) shall include, at a minimum, a substantial portion of all Leased Property that is not, as of the Effective Date, within the footprint of an existing building or utilized for parking, vehicular or pedestrian access or other purposes ancillary to the foregoing, and in any event will include not less than the parcels described in Exhibit D hereto.

(e) Development of Individual Parcels Outside of Development RFP Process. As to Individual Parcels not part of the Development Parcel, and if a developer is not selected to develop the Development Parcels through the Development RFP Process, as to the Development Parcel, Rackspace agrees to (i) give due consideration to any economic development opportunities (including with respect to potential purchasers and developers of Individual Parcels) that the Windcrest EDC may from time to time present to Rackspace and (ii) inform the Windcrest EDC

of prospective sales of Individual Parcels (to the extent such prospective sales are not confidential); provided that the any election to sell or not to sell any Individual Parcel shall be in Rackspace's sole discretion.

(f) Parcel Sales to be Subject to Restrictions on Prohibited Use. In connection with any sale of any Individual Parcel, including all or any portion of a Development Parcel, to a third-party, Rackspace shall impose use restrictions on the conveyed Individual Parcel, which shall include at a minimum the Development Parcel Prohibited Uses.

(g) Cooperation. Without agreeing to waive or vary the requirements of generally applicable development ordinances and regulations (such as zoning regulations, platting requirements, code compliance and other development requirements generally applicable to the development of the Development Parcels), the City of Windcrest and Windcrest EDC agree to reasonably cooperate with Rackspace (without cost or liability to the City of Windcrest or Windcrest EDC) in connection with the development of the Site Property, including, without limitation, the granting by Windcrest EDC of easements over and across the Leased Property as needed for such development.

(g) Independent Consideration for Options. The Parties hereby acknowledge and agree that Rackspace's options under this Section 3.7 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.

Section 3.8 Sales & Use Tax on Materials Incorporated into Improvements. The Windcrest EDC will work with Rackspace so that materials incorporated into improvements to the Rackspace HQ Property will be exempt from sales and use taxes to the extent allowed by applicable law. 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.

Section 3.9 City Economic Development Grant Agreement. The City of Windcrest and Rackspace 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 the EDC Act does not apply or exempt the Rackspace HQ Property from property taxes (other than by reason of a termination of this Agreement pursuant to the terms of this Agreement or the termination of the Mall Lease by Rackspace pursuant to the terms of the Mall Lease), the City of Windcrest would 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, and less any payments to the City of San Antonio described in Section 10.4) to reimburse Rackspace for any property taxes it must pay on the Rackspace HQ Property during the Exemption Period as a result of such determination. 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 Rackspace HQ Property as a result of such determination, 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. In regard to the foregoing, in the event it is so determined the EDC Act does not apply or exempt the Rackspace HQ Property from property taxes such that property taxes must be paid on the Leased Property, Rackspace will pay property taxes on the Rackspace HQ Property in accordance with the terms of the Mall Lease, with reimbursement as provided in the City Economic Development Grant Agreement and the County Economic Development Grant Agreement.

Section 3.10 County Economic Development Grant Agreement: County Requirements. As its sole obligation under this Agreement, the County 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 the EDC Act does not apply or exempt the Rackspace HQ Property from property taxes, the County will make a grant to Rackspace of the property taxes the County collects in the Annexed Area for each tax year (less the amount of property taxes the County collected in the Annexed Area for the 2006 tax year) 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 terms of this Agreement shall be Rackspace's sole recourse against the County in the event that the Rackspace HQ Property 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 Property 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 Property 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 HQ 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 HQ Property, seventy percent (70%) of all new and existing Rackspace employees at the Rackspace HQ 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).

Section 3.11 Property Tax Exemption. The Parties agree to use their best efforts to support and defend the validity of the ad valorem tax exemption under Section 505.161 of the EDC Act for the Rackspace HQ 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 3.12 Effect of Lack of Property Tax Exemption. Rackspace shall owe no PILOT Payment under this Agreement in excess of any payments received by Rackspace under the City Economic Development Grant Agreement and the County Economic Development Grant Agreement for any tax year during the Exemption Period in which the Rackspace HQ 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 HQ Property during the Exemption Period, Rackspace shall be entitled to a credit in the amount of the property tax payments, less any payments received by Rackspace under the City Economic Development Grant Agreement and the County Economic Development Grant Agreement, against any PILOT Payments made pursuant to this Agreement for the benefit of such Taxing Unit.

ARTICLE 4

RESERVED

ARTICLE 5

RACKER ROAD CONSTRUCTION

Section 5.1 Ring Road.

(a) The Windsor Park Mall ring road has been renamed and has been renovated by the City of Windcrest at its sole cost and expense substantially in accordance with the plans set forth on Exhibit H to the Original A&R MEIA, and Rackspace agrees that it has accepted such renovations and the City of Windcrest has no further obligations in this regard, except as set forth below in this Section 5.1.

(b) Timing of Dedication. In connection with the Development RFP Process, Rackspace will determine, in its reasonable discretion, whether relocation at the cost of Rackspace of roads currently internal to the Site Property and contemplated to ultimately be dedicated to the public, but not yet so dedicated (said roads being described or depicted in Exhibit E), would facilitate development of the Site Property. If relocation is desirable, Rackspace will consult with the City of Windcrest to determine the precise location of such roads, and upon completion of the development plans in connection with the Development RFP Process, or if it is determined that relocation of such roads is not necessary, Rackspace shall dedicate such roads to the City of Windcrest within a reasonable time thereafter. Upon the dedication of such roads (which dedication will, in the case of portions of such roads relocated by Rackspace, be subject to generally applicable public road construction regulations concerning construction standards,

completion or security for completion, warranty for defective work, etc.), the City of Windcrest will be responsible for all maintenance and upkeep, including landscaping which is part of the dedicated road.

ARTICLE 6

WALZEM INTERCHANGE

Section 6.1 Renaming of Walzem Road. The City of Windcrest has used 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, and Rackspace agrees that the City of Windcrest has no further obligations in this regard.

Section 6.2 IH 35 Signage. The City of Windcrest has used its best efforts to cause TXDOT to install overhead signage on IH 35 denoting Racker Road as part of the Walzem Road signage, and Rackspace agrees that the City of Windcrest has no further obligations in this regard.

ARTICLE 7

UTILITIES

Section 7.1 Undergrounding of Utilities. The Parties have heretofore used their best efforts to cause CPS Energy to underground all utilities along Walzem Road from IH 35 to the end of the Leased Property, and no further efforts are required of the Parties in connection therewith.

ARTICLE 8

RESERVED

ARTICLE 9

RESERVED

ARTICLE 10

BOUNDARY CHANGE AND TAX SPLIT

Section 10.1 Release and Annexation of Annexed Area. 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.

Section 10.2 Representations. 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 Disclaimer of Warranties. 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 Sections 10.2 (a) and (b), the City of San Antonio is in no way warranting or guaranteeing the legal effectiveness of such documents.

Section 10.3 Minimum Payments to the City of San Antonio. 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 to the City of San Antonio annually on the Annexed Area at the time of execution of the Original MEIA) for a period of thirty (30) years. For a period of thirty (30) years after the Original MEIA 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 3.9.

Section 10.4 Sharing of Tax Revenue on the Annexed Area. 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 3.9 of this Agreement, including possible distribution to Rackspace as part of the City of Windcrest's Chapter 380 economic development grant to Rackspace.

(b) For those years when Rackspace HQ Property leased by the Windcrest EDC to Rackspace are exempt from property taxes under 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 Rackspace HQ Property leased by the Windcrest EDC to Rackspace are exempt from property taxes under 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 3.3.

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

Section 10.5 King Arthur & Ray Bon Streets: Consultation with City of San Antonio. 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 Leased Property, 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.

ARTICLE 11

SECURITY PROVISIONS

Section 11.1 Continuation of "Mutual Aid" Agreement. The City of Windcrest will continue its existing "mutual aid" agreement with the City of San Antonio.

Section 11.2 Police Patrols. 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.

ARTICLE 12

BOND FINANCING

Section 12.1 No General Obligation Bonds. 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.

Section 12.2 Agreement to Subordinate Fee Title to Mortgage to Secure Bonds. 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 2.7 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.

ARTICLE 13

MISCELLANEOUS

Section 13.1 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 13.2 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 13.3 Venue. Venue for any litigation under this Agreement shall be in Bexar County, Texas.

Section 13.4 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 13.5 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:

Mr. Joe Gonzales
District Attorney
Justice Center, 5th Floor
300 Dolorosa
San Antonio, Texas 78205
Fax: (210) 335-2151

City of San Antonio, Texas:

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

With a copy to:

Mr. Erik Walsh
San Antonio City Manager
City Hall Office
P.O. Box 839966
San Antonio, Texas 78283-3966
Fax: (210) 207-4217

With a copy to:

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

City of Windcrest, Texas:

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

With a copy to:

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

With a copy to:

Mr. Ryan Henry
Law Offices of Ryan Henry, PLLC.
1019 Central Parkway North, Suite 108
San Antonio, Texas 78232

Windcrest Economic Development
Corporation:

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

With a copy to:

Mr. Ryan Henry
Law Offices of Ryan Henry, PLLC.
1019 Central Parkway North, Suite 108
San Antonio, Texas 78232

Rackspace US, Inc.:

General Counsel
One Fanatical Place
San Antonio, Texas 78218
Fax: (210) 312-4848

With a copy to:

Manager of Real Estate Services
One Fanatical Place
San Antonio, Texas 78218
Fax: (210) 312-4848

With a copy to:

Mr. Andrew Sherwood
Dykema Gossett PLLC
112 East Pecan, Suite 1800
San Antonio, Texas 78205
Fax: (866) 789-0180

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 13.6 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 13.7 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 Leased Property.

Section 13.8 Assignment. This Agreement is not assignable without consent of the City of Windcrest except to a Related Organization or a Qualified Assignee. Upon the written assumption by a Related Organization or a Qualified Assignee of all the obligations of Rackspace set forth in this Agreement, Rackspace shall be relieved of all such obligations and all references herein to rights and obligations of Rackspace shall be deemed to refer to rights and obligations of the Related Organization or the Qualified Assignee, as the case may be.

Section 13.9 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 appropriative action to the extent necessary to allow performance hereunder or with respect to a substitute incentive of equivalent economic value.

Section 13.10 Further Assurances. The Parties agree to do all things and take all actions required, consistent with and subject to this Agreement, to give effect to the transactions and purposes contemplated by this Agreement, including, without limitation, the obtaining, negotiation, execution and delivery of all necessary or desirable agreements, filings, consents, authorizations, approvals, licenses or deeds.

Section 13.11 Section Titles and Headings: Interpretation. The Section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein).

Section 13.12 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 13.13 Term of Agreement. Subject to the parties rights to terminate this Agreement as set forth herein, the term of this Agreement shall commence on the Effective Date and continue in effect through the date which is thirty-one (31) years after the Original MEIA Effective Date; provided, however, that obligations which by their nature are intended to survive the expiration or termination of this Agreement shall survive.

Section 13.14 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 13.15 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 13.16 Recitals. The Recitals above are hereby incorporated into this Agreement for any and all purposes.

Section 13.17 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 13.18 RACKSPACE INDEMNITY. 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 THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING RACKSPACE OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

Section 13.19 RACKSPACE AGREEMENT TO DEFEND. 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 THEIR 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.

Section 13.20 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.

[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:

LUCY ADAME-CLARK
County Clerk

APPROVED AS TO LEGAL FORM:

JOE GONZALES
Criminal District Attorney
Bexar County, Texas

By: _____

APPROVED AS TO FINANCIAL CONTENT:

LEO S. CALDERA, CIA, CGAP,
County Auditor

DAVID SMITH,
County Manager

APPROVED:

DAVID MARQUEZ,
Executive Director of Economic Development

CITY OF SAN ANTONIO, TEXAS

By: _____

Name: Erik Walsh

Title: City Manager

ATTESTED TO BY:

_____, City Clerk

APPROVED AS TO FORM:

Andrew Segovia, City Attorney

City of San Antonio

CITY OF WINDCREST, TEXAS

By: _____
Name: Dan Reese
Title: Mayor

By: _____
Name: Rafael Castillo, Jr.
Title: City Manager

APPROVED AS TO FORM:

_____ Michael A. Morell, Special Counsel
City of Windcrest

WINDCREST ECONOMIC DEVELOPMENT
CORPORATION

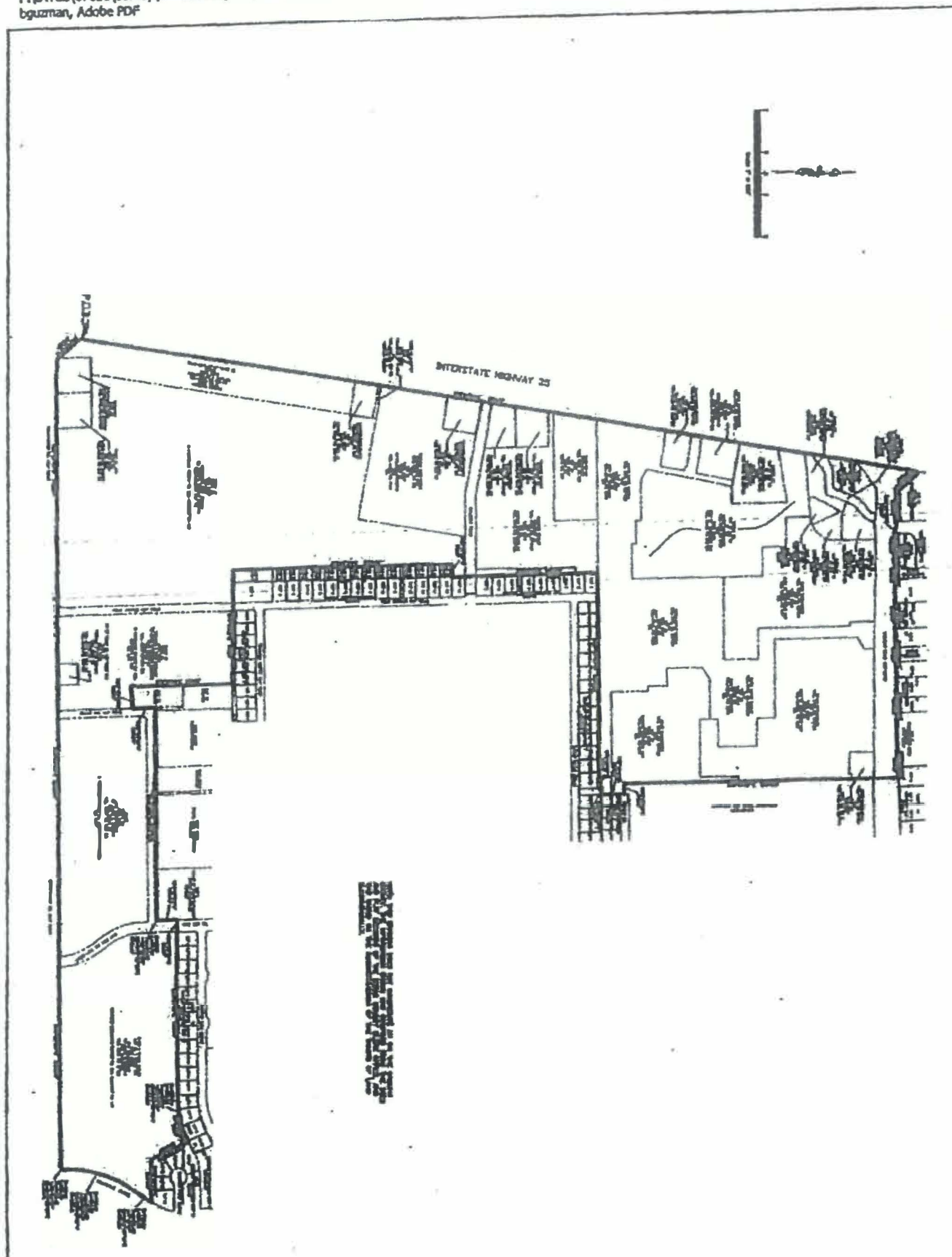
By: _____
Name:
Title: Duly Authorized Representative

RACKSPACE US, INC.

By: _____
Name: _____
Title: _____

EXHIBIT A

Annexed Area



Date: 05/22/07
Job No. 07031
229.131 acres
City of Windcrest
Annexation Boundary

LEGAL DESCRIPTION OF 229.131 ACRES OF LAND
DESCRIBING 229.131 ACRES OF LAND, MORE OR LESS, SITUATED IN THE GERTRUDE RODRIGUEZ SURVEY NO. 132, ABSTRACT NO. 610, BEXAR COUNTY, TEXAS, CONSISTING OF THE FOLLOWING TRACTS OF LAND AS DESCRIBED IN THE BEXAR COUNTY CLERK'S OFFICE AND REFERENCED IN BEXAR COUNTY APPRAISAL DISTRICT: A 21.846 ACRE TRACT OF LAND, DESCRIBED IN VOLUME 6060, PAGE 12 OFFICIAL PUBLIC RECORDS OF SAID COUNTY, KNOWN AS P-10B, 5.16 ACRES & P-10C, 16.667 ACRES, BLK 14 N.C.B. 15783, NFP PARTNERSHIP, ACCORDING TO SAID APPRAISAL DISTRICT, A 16.285 ACRE TRACT OF LAND, DESCRIBED IN VOLUME 6290, PAGE 1126 OFFICIAL PUBLIC RECORDS OF SAID COUNTY, KNOWN AS P-10C, 15.724 ACRES, N.C.B. 15821, JAMES C. NIEMANN TRUSTEE FOR NFP PARTNERSHIP, ACCORDING TO SAID APPRAISAL DISTRICT, A 16.285 ACRE TRACT OF LAND, TRACT NO. 4 DESCRIBED IN VOLUME 8017, PAGE 508, OFFICIAL PUBLIC RECORDS OF SAID COUNTY, KNOWN AS TRACT 17, N.C.B. 12190, 9.415 ACRES, VIRGINIA & FRED NIEMANN, ACCORDING TO SAID APPRAISAL DISTRICT, A 0.3587 ACRE TRACT OF LAND, DESCRIBED IN VOLUME 6039, PAGE 545, OFFICIAL PUBLIC RECORDS OF SAID COUNTY, KNOWN AS PT. OF TRACT 17 ARB TRACT 17B, N.C.B. 12190, 0.273 ACRE, VIRGINIA & FRED NIEMANN, ACCORDING TO SAID APPRAISAL DISTRICT, A 62.411 ACRE TRACT OF LAND DESCRIBED IN VOLUME 6697, PAGE 546, OFFICIAL PUBLIC RECORDS OF SAID COUNTY, KNOWN AS PART OF TRACT 13, N.C.B. 12190, 51.353 ACRES, JAMES C. NIEMANN, ACCORDING TO SAID APPRAISAL DISTRICT, ALSO KNOWN AS TRACT 17A, N.C.B. 12190, 2.262 ACRES, VIRGINIA & FRED NIEMANN, ACCORDING TO SAID APPRAISAL DISTRICT, A 0.995 ACRE TRACT OF LAND, DESCRIBED IN VOLUME 5555, PAGE 586, OFFICIAL PUBLIC RECORDS OF SAID COUNTY, KNOWN AS TRACT 18, N.C.B. 12190, 1.0 ACRE, LARRY NIEMANN TRUSTEE, ACCORDING TO SAID APPRAISAL DISTRICT, A 0.881 ACRE TRACT OF LAND, DESCRIBED IN VOLUME 5555, PAGE 578, OFFICIAL PUBLIC RECORDS OF SAID COUNTY, KNOWN AS TRACT 19, N.C.B. 12190, 0.826 ACRE, LARRY NIEMANN TRUSTEE, ACCORDING TO SAID APPRAISAL DISTRICT, A 10.74 ACRE TRACT OF LAND, TRACT NO. 2 DESCRIBED IN VOLUME 8017, PAGE 508 DEED RECORDS OF SAID COUNTY, KNOWN AS TRACT 20 & PART OF TRACT 13, N.C.B. 12190, 7.25 ACRES, VIRGINIA NIEMANN, ACCORDING TO SAID APPRAISAL DISTRICT, A 0.659 ACRE TRACT OF LAND, CONVEYED TO BERNARD T. SIFT JR., DESCRIBED IN VOLUME 7262, PAGE 240 OFFICIAL PUBLIC RECORDS OF SAID COUNTY, BEING LOT 43, N.C.B. 12190, WINDSOR PARK SOUTH SUBDIVISION UNIT 1A, RECORDED IN VOLUME 9537, PAGE 203 PLAT RECORDS OF SAID COUNTY,

A 0.09 ACRE TRACT OF LAND OUT OF THE ABOVE MENTIONED 10.74 ACRE TRACT OF LAND, KNOWN AS PART OF TRACT 13, N.C.B. 12190, 0.09 ACRE, VIRGINIA NIEMANN, ACCORDING TO SAID APPRAISAL DISTRICT, A 11.547 ACRE TRACT OF LAND, CONTAINING A 10.470 ACRE TRACT, LOT 41, AND A 0.917 ACRE TRACT, LOT 40, OF THE WINDSOR PARK SOUTH SUBDIVISION UNIT 1 RECORDED IN VOLUME 9525, PAGE 170 PLAT RECORDS OF SAID COUNTY, (LOT 41, N.C.B. 12190, CONVEYED TO AT HOLDING-NOVEMBER, LLC., 10.47ACRES, DESCRIBED IN VOLUME 10172, PAGE 1968, OFFICIAL PUBLIC RECORDS OF SAID COUNTY), (LOT 40, N.C.B. 12190, VIRGINIA NIEMANN, VOLUME 6697, PAGE 538 DEED RECORDS OF SAID COUNTY), A 11.5178 ACRE TRACT OF LAND, CONTAINING A 1.0000 ACRE TRACT-LOT 47, A 1.0000 ACRE TRACT-LOT 48, A 9.5178 ACRE TRACT-LOT 49, N.C.B. 12190 OF THE WINDSOR SQUARE WAL-MART III RECORDED IN VOLUME 9560, PAGE 80 PLAT RECORDS OF SAID COUNTY, (LOTS 47, 48, 49, CONVEYED TO GIGANTE FLEA MARKET LP, DESCRIBED IN VOLUME 11001, PAGE 1363 OFFICIAL PUBLIC RECORDS OF SAID COUNTY), A 3.753 ACRE TRACT OF LAND, BEING LOT 36 N.C.B. 12190, OF THE TOY R US SUBDIVISION RECORDED IN VOLUME 9520, PAGE 187 PLAT RECORDS OF SAID COUNTY, KNOWN AS LOT 36 N.C.B. 12190, 3.753 ACRES, TOYS "R" US INC, ACCORDING TO SAID APPRAISAL DISTRICT, A 24.313 ACRE TRACT OF LAND CONVEYED TO THE CITY OF WINDCREST EDC, DESCRIBED IN VOLUME 12721, PAGE 2244 OFFICIAL PUBLIC RECORDS OF SAID COUNTY, BEING LOT 44, OF THE SIMON APPLE GARDEN RECORDED IN VOLUME 9551, PAGES 187-188 PLAT RECORDS OF SAID COUNTY, A 0.777 ACRE TRACT OF LAND CONVEYED TO MONTE MAC NO. 2 DESCRIBED IN VOLUME 8630, PAGE 1604 OFFICIAL PUBLIC RECORDS OF SAID COUNTY, BEING LOT 45 OF THE SIMON APPLE GARDEN RECORDED IN VOLUME 9551, PAGE 188 PLAT RECORDS OF SAID COUNTY, A 1.188 ACRE TRACT OF LAND, CONVEYED TO DICKER- WARMINGTON PROPERTIES, DESCRIBED IN VOLUME 8630, PAGE 1600 OFFICIAL RECORDS OF SAID COUNTY, BEING LOT 46, N.C.B. 12190, OF THE SIMON APPLE GARDEN VOLUME 9551, PAGE 188 PLAT RECORDS OF SAID COUNTY, A 2.6424 ACRE TRACT OF LAND, CONVEYED TO HUNTER ROAD PROPERTIES INC., DESCRIBED IN VOLUME 10005, PAGE 100 OFFICIAL PUBLIC RECORDS OF SAID COUNTY, BEING OUT OF LOT 24 OF THE SIMON SUBDIVISION RECORDED IN VOLUME 7800, PAGE 9-13 PLAT RECORDS OF SAID COUNTY, A 11.5384 ACRE TRACT OF LAND, CONVEYED TO THE CITY OF WINDCREST EDC, DESCRIBED IN VOLUME 12703, PAGE 299 OFFICIAL PUBLIC RECORDS OF SAID COUNTY, BEING OUT OF LOT 24, N.C.B. 12190, OF THE SIMON SUBDIVISION RECORDED IN VOLUME 7800, PAGE 9-13 PLAT RECORDS OF SAID COUNTY, ALL OF THAT RESUBDIVISION PLAT OF SIMON SUBDIVISION RECORDED IN VOLUME 7800, PAGE 187, CONTAINING LOT 23, A 50 FOOT DRAINAGE EASEMENT, AND LOT 30, A 11.088 ACRE TRACT OF LAND, CONVEYED TO THE CITY OF WINDCREST EDC, DESCRIBED IN VOLUME 12639, PAGE 597 OFFICIAL PUBLIC RECORDS OF SAID COUNTY, BEING LOT 25, N.C.B. 12190, SIMON SUBDIVISION RECORDED IN VOLUME 9522, PAGE 105-106 PLAT RECORDS OF SAID COUNTY,

A 13.745 ACRE TRACT OF LAND, CONVEYED TO THE CITY OF WINDCREST EDC, DESCRIBED IN VOLUME 12639, PAGE 1596 OFFICIAL PUBLIC RECORDS OF SAID COUNTY, BEING LOT 38, N.C.B. 12190, SIMON SUBDIVISION RECORDED IN VOLUME 9522, PAGE 105-106 PLAT RECORDS OF SAID COUNTY, A 0.544 ACRE TRACT OF LAND, CONVEYED TO MONTE MAC NO. 2 DESCRIBED IN VOLUME 8630, PAGE 1604 OFFICIAL PUBLIC RECORDS OF SAID COUNTY, BEING LOT 39, N.C.B. 12190, OF THE SIMON SUBDIVISION RECORDED IN VOLUME 9522, PAGE 108 PLAT RECORDS OF SAID COUNTY, A 8.093 ACRE TRACT OF LAND, CONVEYED TO THE CITY OF WINDCREST EDC, DESCRIBED IN VOLUME 12639, PAGE 1569 OFFICIAL RECORDS OF SAID COUNTY, BEING LOT 37, N.C.B. 12190 OF THE SIMON SUBDIVISION RECORDED IN VOLUME 9522, PAGE 108 PLAT RECORDS OF SAID COUNTY, TOGETHER WITH THE ABOVE MENTIONED TRACTS OF LAND THE FOLLOWING ROADS ARE TO BE INCLUDED IN THIS DESCRIPTION- RAY BON DRIVE APPROXIMATELY 750.466 LINEAR FEET NORTH OF EISENHAUER ROAD, EXCALIBUR APPROXIMATELY 1257.073 LINEAR FEET WEST OF RAY BON ROAD, FRATT ROAD APPROXIMATELY 562.442 LINEAR FEET NORTH OF EISENHAUER ROAD, KING ARTHUR APPROXIMATELY 1053.031 LINEAR FEET NORTH OF EISENHAUER ROAD, GALAHAD ROAD 1048.983 LINEAR FEET EAST OF INTERSTATE HIGHWAY 35, WALZEM ROAD 1858.845 LINEAR FEET EAST OF INTERSTATE HIGHWAY 35, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at a point on the East right-of-way line of Interstate Highway 35 & the northeast cut back of Eisenhower Road for the southwest corner of said 10.74 acre tract;

THENCE along the East right-of-way line of Interstate Highway 35 N10°11'06"E, a distance of 5111.43 feet to a point for northern most corner of this tract herein described and being the northeast cut back of Walzem Road, for the southwest corner of K-JO Subdivision recorded in Volume 9570, Page 186 Plat Records of said county;

THENCE along the north right-of-way line of Walzem Road (Variable Width) and including approximately 1858.845 Linear Feet of said road east of Interstate Highway 35 the following calls: S39°55'03"E, a distance of 151.56 feet, S89°49'16"E, a distance of 239.02 feet, S69°27'56"E, a distance of 29.38 feet, S89°57'19"E, a distance of 167.90 feet, N89°13'31"E, a distance of 151.98 feet, N89°15'33"E, a distance of 343.97 feet, N89°17'24"E, a distance of 136.00 feet, N89°14'22"E, a distance of 496.88 feet, N88°17'25"E, a distance of 166.71 feet to a point for the northeast corner of this tract herein described and being in the south line of Lot 4, Block 65 of the Windcrest Unit 18 recorded in Volume 6200, Page 212 Plat Records of said county;

THENCE crossing Walzem Road in a southwesterly direction with the common line of Roosevelt High School Subdivision recorded in Volume 9566, Page 132-133 Plat Records of said county and said Lots 39, 38, 37 of the Simon Subdivision S00°00'23"W, a distance of 1664.95 feet to a point for an interior corner of this tract herein described;

THENCE N89°48'06"E, a distance of 63.83 feet to a point for a corner of this tract herein described;

THENCE in a southeasterly direction along the common line of Camelot Subdivision Unit 4 recorded in Volume 6500, Page 191 Plat Records of said county, and said Lot 37, of the Simon Subdivision, Lot 44, of said Simon Apple Subdivision, S00°10'06"E, a distance of 149.97 feet to a point in the south line of said Camelot Subdivision Unit 4;

THENCE S89°41'15"W, a distance of 39.97 feet to a point for an interior corner of this tract herein described;

THENCE S00°03'37"E, a distance of 15.94 feet to a point of for a corner of this tract herein described;

THENCE in a westerly direction along the common line of said Lot 44, of the Simon Apple Garden, and Camelot Subdivision Unit 7 recorded in Volume 6500, Page 144 Plat Records of said county S89°45'28"W, a distance of 1281.92 feet to a point for an interior corner of this tract herein described and being northwest corner of Camelot Subdivision Unit 5A recorded in Volume 6500, Page 16 Plat Records of said county;

THENCE in a southeasterly direction S00°17'10"E, a distance of 864.82 feet along east line of said Windsor Square Wal-Mart III and the west line of said Camelot Subdivision Unit 5A to the southwest corner of Lot 16, Block 8, for a corner of this tract herein described;

THENCE S89°50'34"W, a distance of 75.00 feet to a point for an interior corner of this tract herein described and being the northwest corner of a called 0.126 acre tract described in Volume 1916, Page 130 Official Public Records of said county;

THENCE crossing the remaining portion of said 64.411 acre tract, and being the west line of the following tracts of land: 0.126 acre tract previously mentioned, a 0.126 acre tract recorded in Volume 9196, Page 210, a 0.126 acre tract recorded in Volume 11455, Page 583, a 0.126 acre tract recorded in Volume 9196, Page 194, a 0.127 acre tract recorded in Volume 9196, Page 186, a 0.131 acre tract recorded in Volume 9196, Page 178, a 0.131 acre tract recorded in Volume 9196, Page 162, a 0.131 acre tract recorded in volume 9196, Page 170, a 0.131 acre tract recorded in Volume 9196, Page 154, a 0.131 acre tract recorded in Volume 9196, Page 146, a 0.131 acre tract recorded in Volume 9196, Page 138, a 0.147 acre tract recorded in Volume 9196, Page 122, a 0.147 acre tract recorded in Volume 10724, Page 709, a 0.398 acre tract and a 0.138 acre tract recorded in Volume 9388, Page 2016, S00°07'38"E, a distance of 13115.48 feet to a point for an interior corner of this tract herein described and being the southwest corner of said 0.398 acre tract Official Public Records of said county;

THENCE in a southeasterly direction continuing across said 64.411 acre tract and the north line of said 16.285 acre tract S89°51'18"E, a distance of 681.11 feet to a point for a corner of this tract herein described;

THENCE in a southeasterly direction along the common line of said 16.285 acre tract and the west line of Lot 32 & Lot 33 of the Missionary Church Subdivision recorded in Volume 9515, Page 50 Plat Records of said county, S00°12'30"E, a distance of 600.00 feet to a point for an interior corner of this tract herein described;

THENCE in a easterly direction along south line of said Lot 33 of the Missionary Church Subdivision N89°49'30"E, a distance of 130.00 feet to a point for a corner of this tract herein described in the west right-of-way line of Fratt Road (50'-55' R.O.W.);

THENCE in a northerly direction along the east line of above mentioned Lot 33, N00°44'40"W, a distance of 134.32 to a point for the intersection of the west line of Fratt Road and the north line of Excalibur;

THENCE in a northeasterly direction along the north right-of-way line of Excalibur (50'-55' R.O.W.) and along the south line of the following tracts: a 3.131 acre tract of land recorded in Volume 12629, Page 1456, a 1.680 acre tract recorded in Volume 10249, Page 841, a 4.947 acre tract recorded in Volume 7442, Page 1598 Official Public records of said county, a 2.783 acre tract known as Lot 2 of the Gospel Hall Subdivision recorded in Volume 9558, Page 182 Plat Records of said county, a 2.7225 acre tract known as Lot 1 of the Prince of Peace Lutheran Church Subdivision recorded in Volume 6200, Page 37 Plat Records of said county, N89°46'19"E, a distance of 1257.25 feet to a point and the beginning of a curve to the left;

THENCE 23.52 feet along the arc of said curve to the left, having a radius of 15.00 feet, a central angle of 89°50'23", whose chord bears N44°52'46"E, a distance of 21.18 feet to a point;

THENCE N00°02'26"W, a distance of 108.96 feet to a point on the east line of said Lot 1 of the Prince of Peace Lutheran Church Subdivision and the west line of Ray Bon (60' R.O.W.), for a corner of this tract herein described;

THENCE crossing said Ray Bon Drive N89°57'34"E, a distance of 72.57 feet to a point and being the northwest corner of said 21.846 acre tract;

THENCE in a northeasterly direction along the north line of said 21.846 acre tract and the south line of Camelot Subdivision Unit 14 recorded in Volume 5970, Page 27 Plat Records of said county, and Camelot Subdivision Unit 8 recorded in Volume 5870, Page 23-24 Plat Records of said county, N89°54'30"E, a distance of 990.40 feet to a point for the beginning of a curve to the left;

THENCE 189.20 feet along the arc of said curve to the left, having a radius of 487.84 feet, a central angle of 22°13'16", whose chord bears N78°47'52"E, a distance of 188.02 feet to a point for an angle point and being the northeast corner of said 21.846 acre tract and the northwest corner of Camelot Subdivision Unit 13 recorded in Volume 6100, Page 49 Plat Records of said county;

THENCE in a southeasterly direction along the common line of said 21.846 acre tract and said Camelot Subdivision Unit 13, S22°28'06"E, a distance of 239.55 feet to a point for an angle point;

THENCE along the south line of said Camelot Subdivision Unit 13, N89°49'55"E, a distance of 247.43 feet to a point for the beginning of a curve to the right on the west right-of-way line of Midcrown Drive;

THENCE along the east line of said 21.846 acre tract and the west line of Midcrown Drive the following three curves: 112.66 feet along the arc of said curve to the right, having a radius of 700.00 feet a central angle of 09°13'17", whose chord bears S33°59'31"W, a distance of 112.54 feet to a point for the beginning of a reverse curve to the left, and continuing along said curve to the left with a arc length of 454.03 feet, a radius of 700.00 feet, a central angle of 37°09'46", whose chord bears S17°48'51"W, a distance of 446.11 feet to a point for the beginning of a reverse curve to the right, and continuing along said curve to the right with a arc length of 39.68 feet, a radius of 25.00 feet, a central angle of 90°56'02", whose chord bears S44°09'52"W, a distance of 35.64 feet to a point on the north right-of-way line of Eisenhower Road;

THENCE along the north right-of-way line of Eisenhower Road and the south line of said 21.846 acre tract, said 16.285 acre tract, said 0.358 acre tract, said 16.285 acre tract, said 62.411 acre tract, said 0.995 acre tract, said 0.881 acre tract, said 10.74 acre tract, the following calls;

S89°37'59"W, a distance of 1144.74 feet to a point;

S89°44'25"W, a distance of 2193.34 feet to a point;

S89°59'40"W, a distance of 1460.54 feet to a point;

N40°01'16"W, a distance of 186.27 feet to the POINT OF BEGINNING and containing 229.131 acres of land more or less.

This description does not constitute an on the ground survey. The information referenced above was compiled from the Deed and Plat Records of the Bexar County Clerk Office, and was based on the reconstruction of said tracts of land electronically.

EXHIBIT B

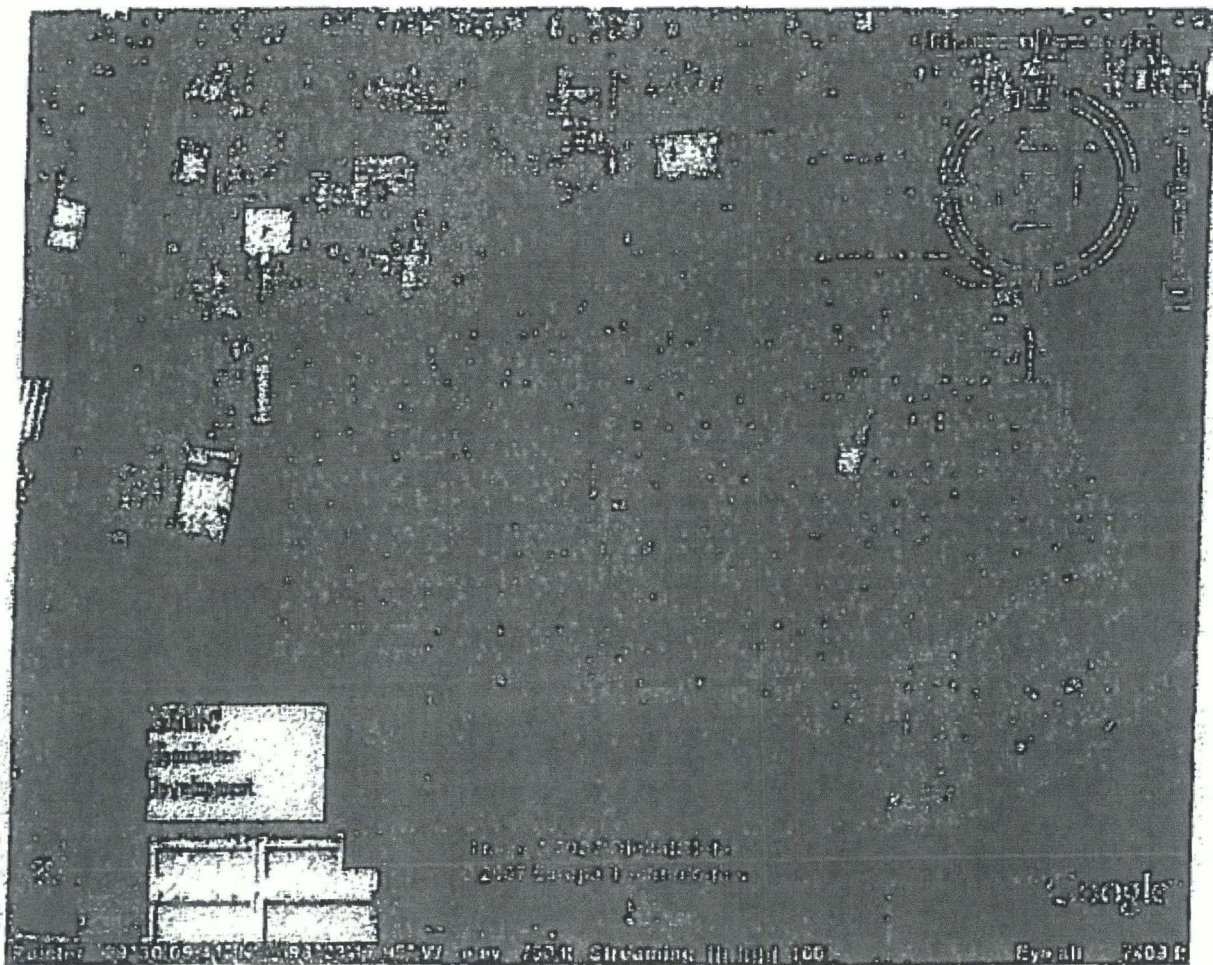
Eisenhauer Development Tract

Date: 07/09/2007
Job No. 07031
114.838 acres

LEGAL DESCRIPTION OF A 114.838 ACRES OF LAND

DESCRIBING 114.838 ACRES OF LAND MORE OR LESS, SITUATED IN THE GERTRUDE RODRIGUEZ SURVEY NO. 132, ABSTRACT NO. 610, BEXAR COUNTY, TEXAS, CONSISTING OF THE FOLLOWING TRACTS OF LAND AS DESCRIBED IN THE BEXAR COUNTY DEED RECORDS AND REFERENCED IN BEXAR COUNTY APPRAISAL DISTRICT: A CALLED 21.846 ACRE TRACT OF LAND, DESCRIBED IN VOLUME 6060, PAGE 12 OFFICIAL PUBLIC RECORDS OF SAID COUNTY, KNOWN AS P-10B, 5.16 ACRES & P-10C, 16.667 ACRES, BLK 14 N.C.B 15783, NFP PARTNERSHIP, ACCORDING TO SAID APPRAISAL DISTRICT, A CALLED 16.285 ACRE TRACT OF LAND, DESCRIBED IN VOLUME 6290, PAGE 1126 OFFICIAL PUBLIC RECORDS OF SAID COUNTY, KNOWN AS P-10C, 15.724 ACRES, N.C.B. 15821, JAMES C. NIEMANN TRUSTEE FOR NFP PARTNERSHIP, ACCORDING TO SAID APPRAISAL DISTRICT, A CALLED 12.3 ACRE TRACT OF LAND, TRACT NO. 4 DESCRIBED IN VOLUME 8017, PAGE 508, OFFICIAL PUBLIC RECORDS OF SAID COUNTY, LESS A 0.358 ACRE TRACT VOLUME 8017, PAGE 508 (O.P.R.), KNOWN AS TRACT 17, N.C.B. 12190, 9.415 ACRES, VIRGINIA & FRED NIEMANN, ACCORDING TO SAID APPRAISAL DISTRICT, A CALLED 0.358 ACRE TRACT OF LAND, DESCRIBED IN VOLUME 6039, PAGE 545, OFFICIAL PUBLIC RECORDS OF SAID COUNTY, KNOWN AS PT. OF TRACT 17 ARB TRACT 17B, N.C.B. 12190, 0.273 ACRE, VIRGINIA & FRED NIEMANN, ACCORDING TO SAID APPRAISAL DISTRICT, THE REMAINING PORTION OF A CALLED 62.411 ACRE TRACT OF LAND DESCRIBED IN VOLUME 6697, PAGE 546, OFFICIAL PUBLIC RECORDS OF SAID COUNTY, KNOWN AS PART OF TRACT 13, N.C.B. 12190, 51.353 ACRES, JAMES C. NIEMANN, ACCORDING TO SAID APPRAISAL DISTRICT, ALSO KNOWN AS TRACT 17A, N.C.B. 12190, 2.262 ACRES, VIRGINIA & FRED NIEMANN, ACCORDING TO SAID APPRAISAL DISTRICT, A CALLED 0.995 ACRE TRACT OF LAND, DESCRIBED IN VOLUME 5555, PAGE 586, OFFICIAL PUBLIC RECORDS OF SAID COUNTY, KNOWN AS TRACT 18, N.C.B. 12190, 1.0 ACRE, LARRY NIEMANN TRUSTEE, ACCORDING TO SAID APPRAISAL DISTRICT, A CALLED 0.881 ACRE TRACT OF LAND, DESCRIBED IN VOLUME 5555, PAGE 578, OFFICIAL PUBLIC RECORDS OF SAID COUNTY, KNOWN AS TRACT 19, N.C.B. 12190, 0.826 ACRE, LARRY NIEMANN TRUSTEE, ACCORDING TO SAID APPRAISAL DISTRICT, THE REMAINING PORTION OF A CALLED 10.74 ACRE TRACT OF LAND, TRACT NO. 2 DESCRIBED IN VOLUME 8017, PAGE 508 DEED RECORDS OF SAID COUNTY, KNOWN AS TRACT 20 & PART OF TRACT 13, N.C.B. 12190, 7.250 ACRES, VIRGINIA NIEMANN, ACCORDING TO SAID APPRAISAL DISTRICT, A CALLED 0.659 ACRE TRACT OF LAND, CONVEYED TO BERNARD T. SIFT JR., DESCRIBED IN VOLUME 7262, PAGE 240 OFFICIAL PUBLIC RECORDS OF SAID COUNTY, BEING LOT 43, N.C.B. 12190, WINDSOR PARK SOUTH SUBDIVISION UNIT 1A, RECORDED IN VOLUME 9537, PAGE 203 PLAT RECORDS OF SAID COUNTY, A 0.09 ACRE TRACT OF LAND OUT OF THE ABOVE MENTIONED 10.74 ACRE TRACT OF LAND, KNOWN AS PART OF TRACT 13, N.C.B. 12190, 0.09 ACRE, VIRGINIA NIEMANN,

ACCORDING TO SAID APPRAISAL DISTRICT, AND A CALLED 0.917 ACRE TRACT, LOT 40, OF THE WINDSOR PARK SOUTH SUBDIVISION UNIT 1 RECORDED IN VOLUME 9525, PAGE 170 PLAT RECORDS OF SAID COUNTY, (LOT 40, N.C.B. 12190, VIRGINIA NIEMANN, VOLUME 6697, PAGE 538 DEED RECORDS OF SAID COUNTY), LESS AND EXCEPT A 0.74 ACRE TO THE CITY OF SAN ANTONIO, DESCRIBED IN VOLUME 6784, PAGE 1470 OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS, A 0.128 ACRE TO THE CITY OF SAN ANTONIO, DESCRIBED IN VOLUME 6784, PAGE 1480 OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS, A 0.124 ACRE TO THE CITY OF SAN ANTONIO, DESCRIBED IN VOLUME 6784, PAGE 1480 OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS, A 0.012 ACRE TO THE CITY OF SAN ANTONIO, DESCRIBED IN VOLUME 6784, PAGE 1475 OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS, A 0.072 ACRE TO THE CITY OF SAN ANTONIO, DESCRIBED IN VOLUME 6784, PAGE 1475 OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS, A 0.054 ACRE TO THE CITY OF SAN ANTONIO, DESCRIBED IN VOLUME 6784, PAGE 1460 OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS.



Latitude: 33.500941 Longitude: 101.323745 Zoom: 15.0 Streaming: 100% EyeAlt: 7403 ft

EXHIBIT C
Leased Property
Legal Description

BEGINNING at a 3/4" iron rod found in the east line of Interstate Highway (IH) 35/ Loop 410 (R.O.W. Varies), also being the southwest corner of said Lot 44, and being the northwest corner of Lot 36, of the Replat of Toys "R" Us Subdivision, recorded in Volume 9520, Page 187, (D.P.R.E.C.T.), for the southwest corner and POINT OF BEGINNING hereof, from which a 4" Texas Department of Transportation (TxDOT) brass disk monument found in the east line of said IH 35/ Loop 410 at station 1882+00 and offset right 213.20', bears S09°56'18"W, a distance of 454.36 feet;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 437.50 feet to 1/2-inch iron rod found for an angle point hereof, same being the southwest corner of Lot 45 of said Replat Establishing Simon Apple Garden;

THENCE, leaving the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 45, the following five (5) courses and distances:

- 1) S80°21'18"E, a distance of 217.15 feet to a PK nail found for an angle point hereof, same being the southwest corner of said Lot 45, and a southeast corner of said Lot 44;
- 2) N10°05'00"E, a distance of 147.36 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
- 3) N80°16'37"W, a distance of 22.47 feet to a 1/2-inch iron rod found for an angle point hereof, same being an angle point for said Lots 44 and 45;
- 4) N09°43'58"E, a distance of 9.05 feet to a 1/2-inch iron rod found for an angle point hereof, same being a northeast corner for said Lot 45, also being an angle point for said Lot 44;
- 5) N80°08'26"W, a distance of 195.02 feet to a 1/2-inch iron rod found for an angle point hereof, same being the northwest corner of said Lot 45, also being an angle point of said Lot 44, same being a point in the east line of said IH 35/ Loop 410;

THENCE, with the east line of said IH 35/ Loop 410, same being the west line of said Lot 44, N09°56'18"E, a distance of 64.23 feet to a 1/2-inch iron rod with "Vickery" cap found for an angle point hereof, same being the southwest corner of Lot 46 of said Replat Establishing Simon Apple Garden, also being an angle point for said Lot 44;

THENCE, leaving the east line of said IH35/ Loop 410, same being the west line of said Lot 44, with the common line between said Lots 44 and 46, S80°07'28"E, a distance of 225.13 feet to a 1/2-inch iron found for an angle point hereof, same being the southeast corner of said Lot 46, also being an angle point for said Lot 44;

THENCE, continuing with the common line between said Lots 44 and 46, N09°36'34"E, a distance of 230.05 feet to a 1/2-inch iron rod found for an angle point hereof, same being the northeast corner of said Lot 46, same being an angle point for said Lot 44;

THENCE, crossing through said Lot 24, S80°02'51"E, a distance of 37.96 feet to a PK nail found for an angle point hereof, same being an angle point for said 11.5384 acre tract, also being an angle point for said Lot 44;

THENCE, continuing through said Lot 24, with a north line of said 11.5384 acre tract, N89°43'32"E, a distance of 103.11 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a west line of said 11.5384 acre tract, N00°36'38"E, a distance of 327.41 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, said point lies within said Lot 24;

THENCE, continuing through said Lot 24, with a south line of said 11.5384 acre tract, N80°48'25"W, a distance of 311.55 feet to a PK nail found for an angle point hereof, same being an angle point of said 11.5384 acre tract, and being a point in the west line of said Lot 24, also being a point in the east line of said IH35/ Loop 410;

THENCE, with the west line of said Lot 24, same being the east line of said IH 35/ Loop 410, N09°56'18"E, a distance of 54.60 feet to a 1/2-inch iron rod with "Docket & Assoc," cap set for a northwest corner hereof, same being a northwest corner of said Lot 24, and the southwest corner of Lot 22 of the Simon Subdivision recorded in Volume 7300, Page 69, (D.P.R.B.C.T.);

THENCE, with the south line of said Lot 22, and the north line of said Lot 24, N85°26'50"E, a distance of 381.62 feet to a PK nail with "Brown" shiner found for a point of curvature (P.C.) hereof, same being a P.C. for said Lot 22, also being a northwest corner and P.C. of said Lot 25;

THENCE, continuing with the southeast line of said Lot 22, and with the northwest line of said Lot 25, along a curve to the left, whose radius is 159.75 feet, whose delta is 85°23'33", at an arc length of 238.09 feet, and overall chord which bears N42°47'06"E, a distance 216.66 feet to a 1/2-inch iron rod with

"Vickery" aluminum cap found for a point of tangency (P.T.) hereof, same being a P.T. for said Lots 22 and 25;

THENCE, continuing with the west line of said Lot 22, and the east line of said Lot 25, N00°05'45"E, a distance of 249.80 to a 1/2-inch iron rod with "Vickery" cap found for a northwest corner hereof, same being a northwest corner of said Lot 25, and a northeast corner of said Lot 22, same being a point in the south line of Walzem Road/ Farm to Market (FM) 1976 (R.O.W. Varies);

THENCE, with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 23, N89°47'19"E, a distance of 112.39 feet to a Mag nail with "Brown" shiner found for an angle point hereof, same being an angle point for said Lot 25, also being an angle point for said Walzem Road/ FM 1976, from which a 4" Texas Department of Transportation (TxDOT) brass disk monument found bears, S76°06'59"W, a distance of 1.29 feet;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, and the north line of said Lot 25, S08°27'18"E, a distance of 120.88 feet to a Mag nail with "Doucet" washer set for an angle point hereof;

THENCE, leaving the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 25, passing through said Lot 25 the next four (4) courses and distances:

- 1) S00°17'20"E, distance of 268.51 feet to a Mag nail with "Doucet" washer set for an angle point hereof;
- 2) Along a curve to the right, whose radius is 921.48 feet, whose delta is 01°33'47", whose arc length is 25.14 feet, and whose chord bears N77°14'29"E, a distance of 25.14 feet to a Mag nail with "Doucet" washer set for a point of reverse curvature (P.R.C.) hereof;
- 3) Along a curve to the left, whose radius is 750.00 feet, whose delta is 09°26'18", whose arc length is 123.55 feet, and whose chord bears N73°18'14"E, a distance of 123.41 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;
- 4) Along a curve to the left, whose radius is 2010.40 feet, whose delta is 03°54'26", whose arc length is 137.10 feet, and whose chord bears N65°37'52"E, a distance of 137.07 feet to a Mag nail with "Doucet" washer set for a point of compound curvature (P.C.C.) hereof;

THENCE, continuing through said Lot 25, and in part through said Lot 44, along a curve to the left, whose radius is 300.00 feet, whose delta is $10^{\circ}19'44''$, at an arc length of 14.77 feet passing the corner line between said Lots 25 and 44, for an overall arc length of 90.14 feet, and whose overall chord bears $N69^{\circ}30'47''E$, a distance of 90.02 feet to a flag nail with "Dowcor" washer set for a P.R.C. hereof, said point lies within said Lot 44;

THENCE, continuing in part through said Lot 44, and through said Lot 38, along a curve to the right, whose radius is 500.00 feet, whose delta is $11^{\circ}52'41''$, at an arc length of 3.44 feet passing the common line between said Lots 44 and 38, for an overall arc length of 103.66 feet, and whose overall chord bears $N60^{\circ}17'16''E$, a distance of 103.47 feet to a flag nail with "Dowcor" washer set for a P.T. hereof, said point lies in said Lot 38;

THENCE, continuing through said Lot 38, $N16^{\circ}51'51''W$, a distance of 69.10 feet to a PK nail with "Browns" shiner found for an angle point hereof, same being a point in the south line of said Walzem Road/ FM 1976, also being the northern most northwest corner of said Lot 38, and the northeast corner of said Lot 44;

THENCE, with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, $N89^{\circ}44'36''E$, a distance of 592.04 feet to a 1/2-inch iron rod with "Victory" aluminum cap found for an angle point hereof, same being an angle point in the south line of said Walzem Road/ FM 1976, and an angle point in the north line of said Lot 38;

THENCE, continuing with the south line of said Walzem Road/ FM 1976, same being the north line of said Lot 38, $N88^{\circ}28'51''E$, a distance of 17.99 feet to a "X" cut in concrete for the northern most northeast corner hereof, same being the northern most northeast corner of said Lot 38, also being the northwest corner of Lot 39 of said Replat of Subdivision Plat of Simon Subdivision;

THENCE, leaving the south line of said Walzem Road/ FM 1976, with the common line between said Lots 38 and 39 the following four (4) courses and distances:

- 1) $S00^{\circ}16'05''E$, a distance of 151.24 feet to a 1/2-inch iron rod with "Victory" aluminum cap found for an angle point hereof, same being the southwest corner of said Lot 39, and an angle point for said Lot 38;
- 2) $N89^{\circ}45'07''E$, a distance of 131.79 feet to a 1/2-inch iron rod found for an angle point hereof, same being a southeast corner of said Lot 39, also being an angle point for said Lot 38;
- 3) $N00^{\circ}14'38''W$, a distance of 18.06 feet to a 1/2-inch iron rod with "Victory" cap found for an angle point hereof, same being an angle point for said Lots 38 and 39;

- 4) N89°37'31"E, a distance of 27.57 feet to a PK nail found for the eastern most northeast corner hereof, same being the eastern most southeast corner for said Lot 39, and the eastern most northeast corner of said Lot 38, also being a point in the west line of Lot 2, Block 1 of the Replat and Subdivision Plat Establishing Roosevelt High School Subdivision recorded in Volume 9566, Page 132, (D.P.R.B.C.T.);

THENCE, in part with the east line of Lot 38 and in part with the east line of Lot 37, both of said Replat of Simon Subdivision, and with the west line of Lot 2 of said Roosevelt High School, S00°13'42"E, at a distance of 685.73 feet passing the northeast corner of Lot 37, and being the southeast corner of Lot 38, for a total distance of 1379.71 feet to a PK Nail with "Brown" washer found for an interior ell corner hereof, said point is also an interior ell corner of said Lot 37, and being the southwest corner of said Lot 2;

THENCE, with a north line of said Lot 37, and in part with the south line of said Lot 2, N89°35'15"E, a distance of 63.93 feet to a PK with Shiner found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 37;

THENCE, in part with an east line of said Lot 37, and in part with an east line of Lot 44 of said Replat Establishing Simon Apple Garden, S00°31'25"E, a distance of 145.30 feet to a 1/2" iron rod found for a southeast corner hereof, said point is also a southeast corner of said Lot 44 and being the northwest corner of Lot 12, Block 10 of Camelot Subdivision Unit 7, recorded in Volume 6500, Page 144 (D.P.R.B.C.T.), and being a point in the east line of a 40' City Public Service Board Easement as shown on said plat;

THENCE, with the south line of said Lot 44, and the north line of said 40' City Service Board Easement, S89°43'01"W, a distance of 39.73 feet to a 1/2" iron rod found for an interior ell corner hereof, said point is also a point on the west line of said 40' City Public Service Board Easement, and being an interior ell corner of said Lot 44;

THENCE, with the west line of said 40' City Public Service Board Easement, and a west line of said Lot 44, S00°56'32"W, a distance of 15.88 feet to a 1/2" iron rod found for an exterior ell corner hereof, said point is also an exterior ell corner of said Lot 44, and being the northeast corner of Lot 13 of said Camelot Subdivision;

THENCE, in part with the north line of Lots 13-26, Block "D" of said Camelot Subdivision, and in part with the north line of Lot 9, Block "B", of Camelot Subdivision Unit 5A, recorded in Volume 6500, Page 16 (D.P.R.B.C.T.), and in part with the north line of Lot 49 of Windsor Square Wal-Mart III recorded in Volume 9560, Page 80 (D.P.R.B.C.T.), and in part with the north line of Lot 36 of said Toys "R" Us, 589°11'43"W, a distance of 2280.44 feet to the POINT OF BEGINNING and containing 66.9915 Acre (2,918,150 sq. ft.) of land, more or less.

EXHIBIT D
Minimum Development Parcels



- Developer RFP to include at a minimum the parcels highlighted here

EXHIBIT E
Roads to Be Dedicated

EXHIBIT F

Form of Employment Commitment Certification

[Reserved]

EXHIBIT G

Development Parcel Prohibited Uses

The following physical uses are not be permitted on the Site Property: heavy industrial use or residential use of any kind (whether or not classified as a permitted use under a commercial or office zoning designation), and the following specified uses (and any other use having substantially the same characteristics as the specified uses), but for the avoidance of doubt, not including internet activity on servers and the like not physically taking place at the Site Property:

Specific Use
Bail Bond Agency
Gun Shop
Headshop
Pawn Shop
Payday Loan Office
Sexually-Oriented Businesses

EXHIBIT H

Windcrest Development Site

