RR/azj
12/14/17
Item No. 41B

AN ORDINANCE 2017-12-14-1022

AUTHORIZING THE NEGOTIATION AND EXECUTION OF A TAX ABATEMENT AGREEMENT WITH UNITED SERVICES AUTOMOBILE ASSOCIATION IN AN AMOUNT NOT TO EXCEED $2,000,000.00 OR FOR A TERM OF TEN (10) YEARS, WHICHEVER COMES FIRST, FOR THE INVESTMENT OF AT LEAST $70,000,000.00 IN REAL AND PERSONAL PROPERTY IMPROVEMENTS AT 300 CONVENT STREET AND 700 NORTH ST MARY'S STREET AND THE CREATION OF 500 NEW FULL TIME JOBS.

* * * * *

WHEREAS, United Services Automobile Association (hereinafter referred to as "USAA") is involved in an economic development project that will be located within the city limits of the City that will consist of the expansion or construction of a parking garage for the purpose of enlarging its employee presence in downtown San Antonio in two downtown locations: (1) One Riverwalk Place, 700 N. St. Mary's, San Antonio, TX 78205, which currently is comprised of 262,935 sq. ft. and 375 parking spaces; and 2) Bank of America Financial Services Center, 300 Convent, San Antonio, TX 78205, which is currently comprised of 542,835 sq. ft. and includes an 870 space parking garage, both of which are owned by USAA (together 700 N. St. Mary's and 300 Convent shall be referred to as the "Downtown Properties"), which will help USAA realize its projection to create, whether via new hires or relocations of jobs from outside San Antonio, at least 1,000 net new full-time jobs in San Antonio (the "Project"); and

WHEREAS, the Project site is located within an existing Texas Enterprise Zone area and in accordance with Section 312.2011 of the Texas Tax Code designation of an area as an enterprise zone constitutes designation of the area as a reinvestment zone without further hearing or other procedural requirements; and

WHEREAS, the City Council finds that offering USAA a Tax Abatement Agreement for its real and personal property improvements is a reasonable incentive to help induce USAA to invest in the Downtown Properties and retain and create at least 1,000 full-time jobs in San Antonio; and

WHEREAS, the City Council also finds that it is in the best interest of the City to approve a Tax Abatement Agreement with USAA to induce the desired and beneficial economic development in the Texas Enterprise Zone; **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 a Tax Abatement Agreement with USAA. A copy of the Agreement, in substantially final form, is attached hereto and incorporated herein as **Exhibit A**.

SECTION 2. The City Manager or a designated representative is authorized to execute the Tax Abatement Agreement as approved in Section 1 of this Ordinance.

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SECTION 3. The effectiveness of the tax abatement is contingent upon the approval of the Houston Street Tax Increment Reinvestment Zone.

SECTION 4. This Ordinance shall be effective on and after the tenth day after passage hereof.

PASSED AND APPROVED this 14th day of December, 2017.

M A Y O R
Ron Nirenberg

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Andrew Segovia, City Attorney

Agenda Item:	**41B (in consent vote: 41A, 41B)**
Date:	12/14/2017
Time:	09:24:00 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the negotiation and execution of a Tax Abatement Agreement with United Services Automobile Association in an amount not to exceed $2 million or for a term of 10 years, whichever comes first, for the investment of at least $70 million in downtown properties located at 300 Convent Street and 700 N. St. Mary's St. and the creation of an additional 500 net new full-time jobs to San Antonio.
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
William Cruz Shaw	District 2		x				
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8				x		
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

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EXHIBIT A

STATE OF TEXAS	§	
	§	**CITY OF SAN ANTONIO**
	§	**TAX ABATEMENT AGREEMENT**
COUNTY OF BEXAR	§	**FOR REAL AND PERSONAL PROPERTY**

1. PARTIES

THIS AGREEMENT (the "Agreement") is entered into on this __ day of _____ 201_ (the "Effective Date") by and between the CITY of SAN ANTONIO, a municipal corporation, (hereinafter referred to as the "CITY"), acting by and through its City Manager under the authority of its City Council and UNITED SERVICES AUTOMOBILE ASSOCIATION, a _____ (hereinafter referred to as "USAA"), who owns the fee simple interest in the real property that is the subject of this Agreement.

2. AUTHORIZATION AND FINDINGS

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

1. The Texas Property Redevelopment and Tax Abatement Act of 1987, V.A.T.S. Tax Code, Chapter 312, as amended;

2. CITY COUNCIL RESOLUTION No. 89-07-12, dated the 15th day of February 1989, and most recently revised by Ordinance No. 2016-12-15-1003 on November 15, 2016, together which established the City of San Antonio Guidelines and Criteria for Tax Phase-In and Reinvestment Zones, (hereinafter referred to as the "Guidelines and Criteria");

3. CITY COUNCIL ORDINANCE NO. 2017-12-14-____, dated December 14, 2017, which specifically approved this Agreement and authorized execution hereof.

B. The City Council, by its approval of this Agreement, hereby finds that the terms of this Agreement abide by the Guidelines and Criteria and approving this Agreement will not have any substantial long-term adverse effect on the provision of city services or the City's tax base and the planned use of the Downtown Properties, as defined below, by USAA for the uses contemplated herein will not constitute a hazard to public safety, health or morals.

3. PROPERTY

A. USAA has a fee-simple interest in the real properties located at 700 North St. Mary's Street, San Antonio, Texas 78205 and 300 Convent Street, San Antonio, Texas, 78205 (both of which together shall be refered to as the "Downtown Properties"), legally described in Exhibit A, attached hereto and incorporated herein. The Properties are

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located within a qualifying Reinvestment Zone for the purposes of the Texas Property Redevelopment and Tax Abatement Act of 1987, V.A.T.S. Tax Code, Chapter 312.

B. USAA will control the Properties for the Term of this Agreement and intends to expand its presence at the Downtown Properties following completion of: (i) real property improvements (the "Real Property Improvements") and (ii) personal property improvements (the "Personal Property Improvements"). Following the completion of the Real Property Improvements and Personal Property Improvements, USAA will conduct Business Activities at the Downtown Properties, which are defined for the purposes of this Agreement as the activities of a Texas Department of Insurance-regulated reciprocal inter-insurance exchange and subsidiaries offering banking, investing, and insurance to people and families who serve, or served, in the United States military (the "Business Activities").

C. In order for USAA to conduct the Business Activities on the Downtown Properties, USAA shall invest in certain Real Property and Personal Property Improvements in a cumulative amount of at least SEVENTY MILLION DOLLARS AND 0 CENTS ($70,000,000.00). USAA's investment in the Downtown Properties shall be determined following the completion of the expansion or construction of a parking garage within the property boundary description attached hereto. No Personal Property Improvements shall be placed on the Properties sooner than the Effective Date of this Agreement or they shall not be counted toward the Personal Property Improvements.

D. USAA shall establish separate tax accounts with the Bexar Appraisal District for the Real Property Improvements and the Personal Property Improvements, and provide these tax account numbers and the related entity information to the CITY. The information from such accounts shall be used to determine the value of USAA's investment in the Downtown Properties. In the event Bexar Appraisal District will not segregate the Real Property Improvements and the underlying land value into a separate tax accounts, then the respective value of the Real Property Improvements and the underlying land value shall be apportioned for purposes of this Agreement based on the respective tax value of the Real Property Improvements and the underlying land value.

4. **USAA'S REPRESENTATIONS**

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

B. USAA represents that there is no litigation pending against USAA for any violations under the Occupational Safety and Health Act ("OSHA") in Bexar County.

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5. **USAA'S OBLIGATIONS**

In order for USAA to take advantage of the tax abatement offered by the CITY, USAA will be required to fulfill all of the obligations set forth within this Article 5.

A. In addition to all other obligations and/or duties imposed on USAA by any other incentive agreements it has entered into with the State of Texas, Bexar County and/or the City of San Antonio, if any, USAA is required to:

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

2) invest, or cause to be invested, approximately SEVENTY MILLION DOLLARS AND 0 CENTS ($70,000,000.00) in Real Property Improvements and Personal Property Improvements by _____, 20__; and

(3) Use the Downtown Properties for the Business Activities as described in this Agreement;

(4) Prior to the fifth (5th) anniversary of this Agreement, USAA shall have created 1,500 net new Full-Time Jobs to San Antonio in accordance with Exhibit B (the "Hiring Schedule");

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

B. USAA covenants and agrees to pay its employees performing the Business Activities at the Downtown Properties an annual salary, excluding benefits and bonuses, of at least FIFTY THOUSAND DOLLARS AND 0 CENTS ($50,000.00) which exceeds the City's effective "living wage" as determined by the City Council in its Tax Abatement Guidelines.

In order to be eligible for a Tax Abatement Agreement, one hundred percent (100%) of USAA's new and existing employees at the Downtown Properties must earn no less than a "living wage" throughout the Term of this Agreement. This wage is based on the poverty level for a family of four, as determined annually by the U.S. Department of Health and Human Services. As of January 19, 2017, the "living wage" is ELEVEN DOLLARS AND EIGHTY-THREE CENTS ($11.83) per hour.

In addition to the "living wage" requirement, after one year of initiating full operations at the Downtown Properties, but not more than two years after execution of this Agreement, at least SEVENTY-PERCENT (70%) of all new and existing employees, with at least one year of full employment with USAA at the Downtown Properties, must earn a cash wage at or exceeding the annual San Antonio Metropolitan Statistical Area (MSA) Median Hourly Wage for All Industries for the most recent year available. This wage is

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compiled by the Bureau of Labor Statistics Occupational Employment Survey and published annually by the Texas Workforce Commission. This wage is updated annually, and for 2017, the current applicable wage is SIXTEEN DOLLARS AND TWENTY-NINE CENTS ($16.29) per hour.

C. For the purposes of this Agreement, a "Full-Time Job" shall constitute the performance by one individual the amount of two thousand eighty (2,080) straight-time paid hours in a fiscal year.

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

E. USAA covenants and agrees that it shall conduct its Business Activities (as defined in Article 3, Paragraph A) at the Downtown Properties in accordance with all applicable federal, state and local laws.

F. Any construction USAA performs or causes to be performed at the Downtown Properties shall be in accordance with all applicable federal, state and local laws including, but not limited to, Texas Commission on Environmental Quality regulations, Bexar County and City of San Antonio laws, Building Codes and ordinances, Historic Preservation and any other applicable design ordinances, flood, subdivision, building, electrical, plumbing, fire and life safety codes and regulations, current and as amended.

G. Except as provided herein, USAA covenants and agrees that it shall use the Properties only to conduct its Business Activities. Without additional consent or approval by the City Council, a parent, subsidiary or affiliate organization of USAA or new entity created as a result of a merger, acquisition, or other corporate restructure or reorganization of USAA, or any component thereof (hereinafter "Related Organization") may occupy and use the Downtown Properties for such Related Organization's normal business activities, so long as such business activities are the same or comparable to the Business Activities of USAA under this Agreement. To be eligible for the tax abatement as provided in this Agreement, such Related Organization must agree in writing to fully comply with all applicable terms of this Agreement. Except as authorized above, USAA covenants and agrees not to change the principal use of the Downtown Properties without prior approval by the City Council, as evidenced in a duly approved ordinance.

H. USAA covenants and agrees that it shall maintain the Downtown Properties and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the negligence, intentional act or misconduct of USAA excepted.

I. USAA covenants and agrees that, upon five (5) business days prior notice received by it from the CITY, USAA shall allow designated representatives of the CITY access to the Properties during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. This inspection is independent of CITY'S police powers to inspect for purposes of assuring compliance with applicable

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City Codes and Ordinances. The CITY's access to USAA's books and records will be limited to information needed to verify that USAA is and has been conducting Business Activities, and to verify the number of full-time employees at the Properties; provided, however, that the CITY shall not have the ability to obtain copies of USAA's records or remove any information or documents from USAA's files. Should any good faith dispute or question arise as to the validity of the data provided, the CITY reserves the right to require USAA to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of USAA. CITY representatives may be accompanied by USAA representatives and such inspections shall be conducted in such a manner as to (a) not unreasonably interfere with the operation of the Properties; and (b) comply with USAA's reasonable security requirements.

J. During the Term of this Agreement, USAA covenants and agrees to furnish each year, as applicable, the Chief Appraiser of Bexar Appraisal District with information outlined in Chapter 22, V.A.T.S. Tax Code, as amended, as may be necessary for the tax phase-in and for appraisal purposes.

K. Twice a year, USAA covenants and agrees to provide the CITY's Director of its Economic Development Department or designated representative with a certification from an officer of USAA attesting to the number of full-time jobs relocated, created and/or retained at the Downtown Properties, as well as wages paid to such employees by USAA. USAA shall also submit this information to the CITY upon request, as deemed necessary at the sole discretion of the CITY, during the Term of this Agreement. The information provided shall be on the forms set forth in, or substantially similar to the forms set forth in, Exhibit "C" (attached hereto and incorporated herein), as amended.

L. USAA covenants and agrees to notify CITY in writing at least 30 days prior to any transfer or sub-lease of USAA's Downtown Properties during the Term. Nothing contained herein or in this Agreement shall limit USAA's rights to sell, transfer, lease, assign, sublease, mortgage, pledge or otherwise encumber all or any portion of the Properties. Failure to provide the required notification under this Article 5, Paragraph O may render USAA subject to the termination and recapture provisions under Article 7 without benefit of the Cure Period (as defined in Article 7, Paragraph E).

M. USAA covenants and agrees to notify CITY in writing at least 30 days prior to Relocating or Ceasing its Business Activities (as defined in Article 7, Paragraphs B and C). Failure to provide the required notification under this Article 5, Paragraph P may render USAA subject to the termination and recapture provisions under Article 7 without benefit of the Cure Period (as defined in Article 7, Paragraph E).

N. If, during this Agreement USAA fails to create and retain at least the minimum number of full-time jobs required under Exhibit B of this Agreement, or USAA fails to pay at least the minimum wages required under Article 5, Paragraph B of this Agreement for a period of two (2) or more consecutive months, then the termination and recapture provisions of Article 7 of this Agreement shall apply against USAA.

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O. If, during this Agreement, USAA and/or USAA allow its ad valorem taxes due on the land, real and/or personal property or inventory and supplies to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, such failure may render USAA subject to the termination and recapture provisions under Article 7 without benefit of the Cure Period (as defined in Article 7, Paragraph E).

P. USAA agrees to establish a robust internship program with a local higher education institution (e.g. UTSA, Texas A&M, Alamo Colleges, etc.) or high school coordinated through SA Works and/or coordinate with SA Works on one of their existing programs or initiatives. This requirement includes contacting and meeting with the director of SA Works to determine the best course of action for engagement with an SA Works program. The fulfillment of this requirement is determined by SA Works and their assessment of a good faith effort of USAA to engage in a SA Works program.

Q. USAA shall provide a representative to the SA Works team for an engagement to identify available jobs in the IT Sector during calendar year 2018. USAA will make best efforts to work with Techbloc as a lead corporate partner in their Chief Technology Recruitment Officer which is partially funded by the City of San Antonio to ensure collaboration between Techbloc and SA Works in defining available middle-skills jobs and training providers.

R. Commuter Obligations: USAA must offer a written commuter benefits program for all employees which should include:
- employees excluding transit/vanpool costs from taxable income up to $255/month;
- employer provided transit or vanpool subsidy or a transit pass up to $38/month;
- employer provided transit;
- a carpool and bicycle employer subsidy;
- a telework program; or
- a compressed work week program.

6. TAX ABATEMENT

A. So long as USAA performs its Business Activities at the Properties and otherwise performs all obligations set forth in Article 5 above, the CITY shall give USAA a one hundred percent (100%) tax abatement up to two million ($2,000,000.00) or ten (10) years, whichever comes first (the "Abatement Term") for the Real and Personal Property Improvements at the Downtown Properties commencing on the earlier to occur of: (a) substantial completion of the Real Property Improvements and commencement of Business Activities; or (b)_____ __, 20__. The base year for calculating the value of the Real Property Improvements existing and located upon the Properties prior to the effective date of this Agreement shall be January 1, 2017. The "Base Year Value" of the Personal Property Improvements not covered by this Agreement shall be its assessed value (determined by the Bexar Appraisal District), as of the Base Year and prior to the execution of this Agreement. This Agreement only provides for the abatement of taxes on

the Personal Property Improvements brought onto the site after the execution of this Agreement.

B. At the commencement of the Abatement Term, USAA shall own the Downtown Properties and shall be conducting its Business Activities on a daily basis and continuously throughout the Term of this Agreement.

C. Provided that USAA has invested or caused to be invested a minimum of a cumulative SEVENTY MILLION DOLLARS AND 0 CENTS ($70,000,000) in Real Property Improvements and Personal Property Improvements as described in Article 5, Paragraph A(2) of this Agreement by _____ __, 201_, USAA has hired and retained the number of employees as specified in the Hiring Schedule, USAA pays at least the minimum wages required under Article 5, Paragraph B of this Agreement, USAA uses the Downtown Properties for its Business Activities, and USAA is otherwise in compliance with the conditions of this Agreement, then ONE HUNDRED PERCENT (100%) of the ad valorem taxes for the Real Property Improvements and Personal Property Improvements above the Base Year Value, shall be abated for the Abatement Term of this Agreement up to TWO MILLION DOLLARS AND 0 CENTS or for period of ten (10) years, whichever comes first (the "Abatement Term"). There shall be no abatement of taxes for the underlying land value, inventory, or supplies.

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

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

F. The term of this Agreement (herein, the "Term") shall commence on the Effective Date and shall continue in full force and effect unless terminated pursuant to the provisions of Article 7 for a period of sixteen (16) years which shall consist of ten (10) years of tax abatement and six (6) years of retention.

7. DEFAULT/TERMINATION/RECAPTURE

A. For purposes of this section, "Relocation" or "Relocate" shall mean USAA, or a Related Organization which has taken the place of USAA, transferring substantially all Business Activities to a location other than the Properties.

B. Should USAA subsequently Relocate (as defined in this Article 7, Paragraph A) from the Properties during the Term, unless such Relocation is caused by a Force

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Majeure, as defined in Article 8, then CITY shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation occurred. Unless USAA presents credible evidence to clearly indicate a date of Relocation, CITY's determination shall be final and conclusive.

Upon termination, any and all taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured by CITY from USAA and CITY shall be entitled to the payment of such recaptured taxes, calculated pursuant to Section 7(G), from USAA within sixty (60) calendar days from the date it notifies USAA in writing of termination of this Agreement.

C. If USAA ceases conducting Business Activities (or a substantial portion thereof) on the Properties for a continuous period of three (3) months during the Term of this Agreement for any reason, except if such cessation is caused by a Force Majeure as defined in Article 8, then the CITY shall have the right to terminate this Agreement. Said terminations shall be effective for the calendar year during which the leased premises at the Properties was no longer used for the required purposes stated herein. Unless USAA presents credible evidence to clearly indicate a date of cessation, CITY's determination of a date of cessation shall be final and conclusive.

Upon termination, any and all taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured by CITY from USAA and CITY shall be entitled to the payment of such recaptured taxes, calculated pursuant to Section 7(G) from USAA within sixty (60) calendar days from the date it notifies USAA in writing of termination.

D. If USAA or an approved Related Organization fails to hire and retain the Full-Time Jobs as described in the Hiring Schedule of this Agreement, for any given year during the Term of this Agreement, calculated by the averaging of the two most current semi-annual Employee Wage Information for Tax Abatement Request Forms, or substantially similar form, (Exhibit "D") for such calendar year of noncompliance, then for each such calendar year of noncompliance, the tax abatement shall be reduced in the following tax year by $4,000.00 per job for each job fewer than 500 qualifying net new jobs in excess of the 1,000 new new jobs.

E. During the Term, CITY may declare a default if USAA fails to comply with any of the terms of this Agreement. Should CITY determine USAA is in default under any of the terms of this Agreement; CITY will notify USAA in writing at the address below in Article 9. If said default is not cured within sixty (60) calendar days from the date of such notice (hereinafter the "Cure Period"), then CITY shall have the right to terminate this Agreement. In the event that a default by USAA cannot be cured within sixty (60) days after the date on which USAA has received notice of such default, then the CITY shall not have the ability to terminate this agreement based on such default so long as USAA has commenced to cure such default within the sixty (60) day cure period and the Parties agree that such cure is being diligently pursued to its completion. If the Agreement is terminated as a result of default, all taxes abated shall be due for the tax

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year during which the termination occurred and shall accrue without further abatements for all tax years thereafter; in addition, CITY shall have the right to recapture from USAA all previously abated property taxes under this Agreement, calculated pursuant to Section 7(G), and said taxes shall be paid by USAA within sixty (60) calendar days of receiving CITY'S written notification of recapture.

F. Other Remedies Available. Unless otherwise stated herein, CITY shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and/or recapture, if USAA defaults under the terms of this Agreement. However, such termination and/or recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which USAA may be entitled. The termination and/or recapture of taxes provided in this Article 7 are not applicable to situations involving minor changes to the description of the Properties, or changes in ownership or in management thereof, so long as USAA, a Related Organization or its CITY-approved successor or assignee continues conducting Business Activities or other authorized activities at the Properties as provided hereinabove.

G. Calculation of Taxes Subject to Recapture. If USAA fails to comply with any of the terms of Article 7, (A)-(C) or the requirements for the Hiring Schedule of this Agreement, then the CITY shall have the right to recapture from USAA a percentage of the abated taxes based on the following table:

TERM YEAR	TOTAL TAX PREVIOUSLY ABATED SHALL BE MULTIPLIED BY:
During the Abatement Term	100%
First year after expiration of Abatement Term	100%
Second year after expiration of Abatement Term	80%
Third year after expiration of Abatement Term	60%
Fourth year after expiration of Abatement Term	40%
Fifth year after expiration of Abatement Term	20%
Sixth year after expiration of Abatement Term	10%

FORMULA: The recapture formula shall be:

Total Taxes Abated	X	Applicable Percentage from above Schedule	=	Amount to be Recaptured

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

8. AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)

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

9. NOTICE

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

TO USAA:

- (Whether personally delivered or mailed):

USAA Real Estate Company
Attn: Mr. Len O'Donnell, President and CEO
9030 Colonade Boulevard
San Antonio, TX 78230

TO CITY:

- If mailed:

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

- If by personal or overnight delivery:

Economic Development Department

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Attn: Director
Frost Bank Tower
100 W. Houston St., 19th Floor
San Antonio, Texas 78205

10. CONDITION

This Agreement is conditioned entirely upon the approval of the San Antonio City Council, as evidenced by duly approved Ordinance Number 2017-12-14-____, dated December 14, 2017.

11. ASSIGNMENT

Except as otherwise expressly provided herein, this Agreement may be assigned or otherwise transferred only with City Council's prior approval (which approval shall not be unreasonably withheld), as reflected in a duly adopted ordinance. USAA must submit a written request to CITY for approval of the proposed assignment or other transfer at least thirty (30) days prior to the effective date of the assignment or transfer of any part of its leasehold interest in the leased premises in the Properties; however, no City Council consent is required for an assignment or transfer to a parent of USAA, a subsidiary of USAA, an affiliate entity of USAA, or to any new entity created as a result of a merger, acquisition or other corporate restructure or reorganization of USAA or a related organization. However, USAA shall give CITY prior written notice of all assignments or other transfers that do not require City Council consent, as required under Article 5, Paragraph I. All future assignees shall be bound by all terms and/or provisions and representations of this Agreement.

12. GENERAL PROVISIONS

A. None of the property improvements described in this Agreement are financed by tax increment bonds.

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

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

13. SEVERABILITY

In the event any section, subsection, paragraph, subparagraph, sentence, phrase or work herein is held invalid, illegal or unenforceable, the balance of this Agreement shall stand, shall be

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

14. ESTOPPEL CERTIFICATE

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

15. OWNER STANDING

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

16. APPLICABLE LAW

This Agreement shall be construed under the laws of the State of Texas and is performable in Bexar County, Texas, the location of the Properties.

17. CONFLICTS OF INTEREST.

USAA warrants and undertakes that no council member, employee or agent of CITY will receive from or give to any director, employee or agent of USAA any commission, fee, rebate, or any gift or entertainment of significant cost or value in connection with this Agreement except as expressly provided for in the Agreement. USAA shall promptly notify CITY any breach of this Section and any consideration received as a result of such breach shall be paid over or credited to USAA, without prejudice to the right of USAA to seek compensation or claim damages or any other rights that USAA may have under applicable law.

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18. **DUPLICATE ORIGINALS**

This Agreement may be executed in two duplicate originals, with a duplicate original going to each party.

EXECUTED and **AGREED** to as of the ___ day of _____, 2017 (the "Effective Date").

CITY OF SAN ANTONIO,

a Texas Municipal Corporation

_____

Sheryl L. Sculley
CITY MANAGER

UNITED SERVICES AUTOMOBILE ASSOCIATION,
a _____ corporation

_____

Name:
Title:

ATTEST:

_____

Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY

EXHIBIT A: Property Description

EXHIBIT B: Hiring Schedule

EXHIBIT C: Employee Benefits

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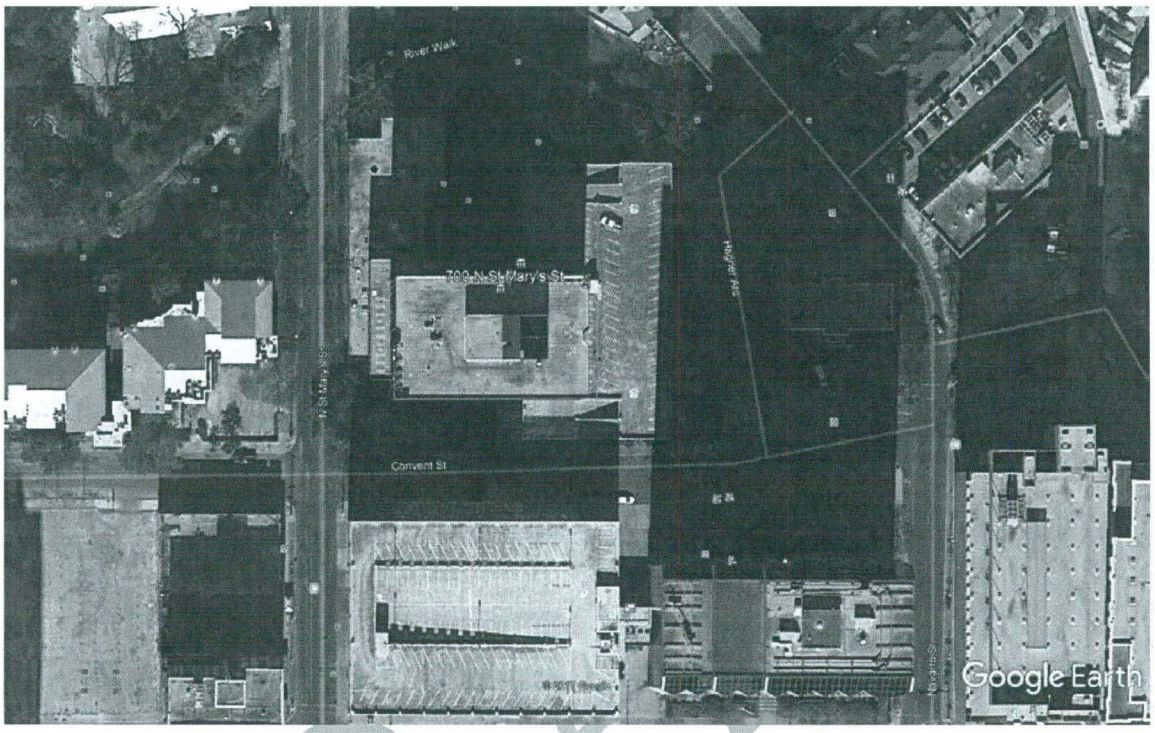
EXHIBIT D: Monitoring Form

DRAFT

EXHIBIT A: PROPERTY DESCRIPTION

70 North St. Marys



300 Convent

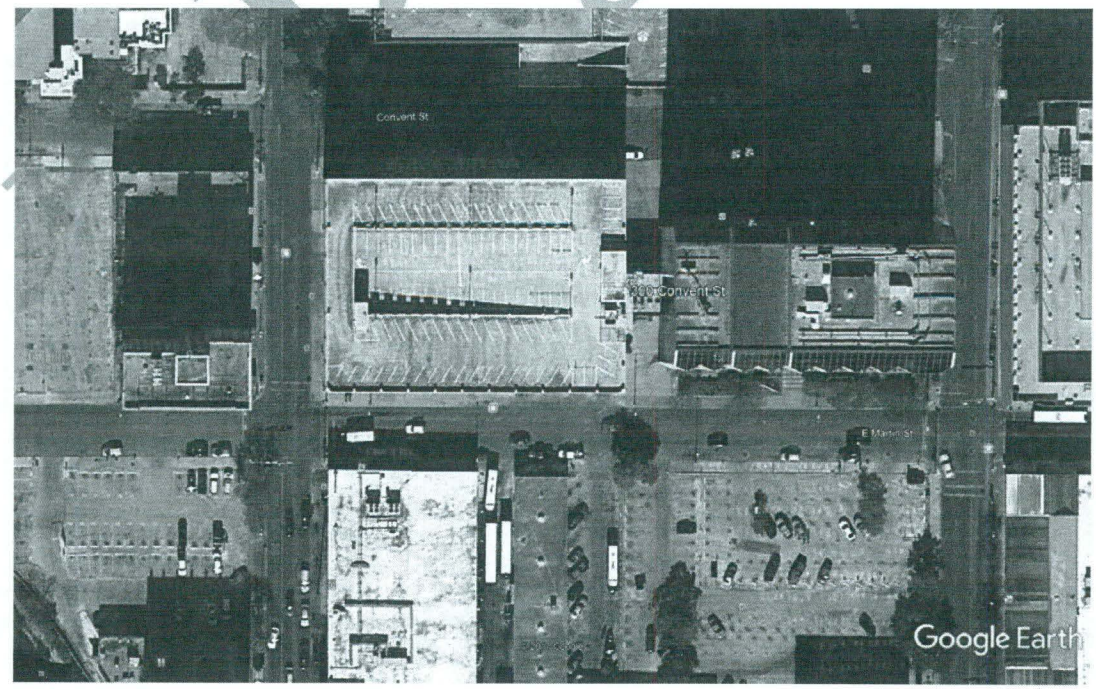


EXHIBIT B: HIRING SCHEDULE

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EMPLOYMENT C: EMPLOYER BENEFITS

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EXHIBIT D: MONITORING FORM

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