

AN ORDINANCE 2009-09-17-0742

**AUTHORIZING A TWO-YEAR LEASE FROM USAA REAL ESTATE COMPANY FOR THE COUNCIL DISTRICT 8 CONSTITUENT OFFICE, LOCATED AT 9830 COLONNADE BLVD., SUITE 460 FOR AN ANNUAL RENTAL FEE OF \$24,053.40 FOR THE FIRST YEAR AND \$25,682.16 DURING THE SECOND YEAR.**

\* \* \* \* \*

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

**SECTION 1.** The City Manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the City a lease agreement substantially in the form of **Attachment I**, which is incorporated by reference for all purposes as if fully set forth. The City Manager and designee, severally, should take all other actions reasonably necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing and delivering all ancillary instruments and agreements conducive to effectuating the transaction.

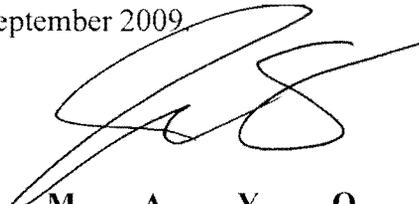
**SECTION 2.** Funding for this ordinance is contingent upon approval of the FY 2010 Budget for Fund 11001000, Cost Center 108020001, General Ledger 5206010.

**SECTION 3:** If approved by council, payment not to exceed the budgeted amount of \$24,053.40 is authorized to USAA Real Estate Company and should be encumbered with a purchase order.

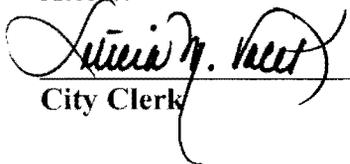
**SECTION 4:** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This ordinance becomes effective 10 days after passage unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

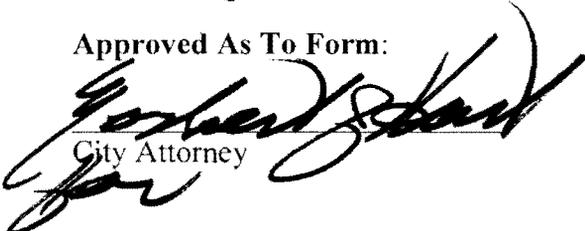
**PASSED AND APPROVED** this 17th day of September 2009.

  
M A Y O R  
**JULIÁN CASTRO**

Attest:

  
City Clerk

Approved As To Form:

  
City Attorney

<b>Agenda Item:</b>	17 ( in consent vote: 9, 10, 11, 12, 14, 15, 16, 17, 19, 20, 21, 22A, 22B, 22C, 22D, 25, 26, 27, 29, 30, 31 )						
<b>Date:</b>	09/17/2009						
<b>Time:</b>	10:28:28 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a two-year lease from USAA Real Estate Company for the Council District 8 constituent office, located at 9830 Colonnade Blvd., Suite 460 for an annual rental fee of \$24,053.40 for the first year and \$25,682.16 during the second year. [Penny Post oak Ferguson, Assistant City Manager; Mike Frisbie, Director, Capital Improvements Management Services]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				x
John G. Clamp	District 10		x				

# Attachment I

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## Lease Agreement (Council District No. 8 Constituent Office)

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This Lease Agreement ("Lease") is entered into by and between Landlord (identified below) and the City of San Antonio, a Texas municipal corporation (Tenant), pursuant to the Authorizing Ordinance.

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#### 1. Information.

**Effective Date:** The effective date of the Authorizing Ordinance

**Authorizing Ordinance:**

**Landlord:** USAA Real Estate Company

**Landlord's Address:** 9830 Colonnade Blvd., Suite 600, San Antonio, Texas  
78230-2239 (Attention: VP Portfolio Management and

Attention: VP Real Estate Counsel)

**Premises:** Approximately 1,303 rentable square feet identified on Exhibit A and consisting of Suite 460 in the Colonnade Center Building ("Building"), 9830 Colonnade Blvd., San Antonio, Bexar County, Texas 78230-2239

**City Council District:** 8

**Commencement Date:** October 1, 2009

**Initial Term:** 2 years

**Address for Payment:** USAA Real Estate Company, 9830 Colonnade Blvd., Suite 600, San Antonio, Texas 78230-2239 (Attention: Accounting)

**Pre-Commencement Work:** Repaint Premises with building-standard paint, clean the carpet, and remove the wall-mounted phone board and associated exposed conduit.

**Asbestos Survey Deadline:** 30 days before the Commencement Date

## 2. Premises Use/Parking.

2.01. **Use of Premises.** The Premises are as identified above and are to be used for a City of San Antonio City Council member constituent office for the district indicated above. Use of the Premises for personal business or political campaigning is prohibited. The building in which the Premises are located is referred to in this lease as the "Building." The land on which the Building is located is further described on Exhibit B.

2.02. **Parking.** Parking at the Premises is unassigned and will remain so during any occupancy under this Lease. Tenant has the non-exclusive right to use five (5) spaces in the parking areas designated by Landlord for the tenants, and their guests and invitees, to use in common at the Building ("Parking Facilities").

## 3. Granting Clause.

3.01. **Grant.** Landlord leases to Tenant, and Tenant takes from Landlord, the Premises, to have and to hold the Premises for the Term(s) of this agreement, unless sooner terminated as herein provided, to be continuously used and occupied by Tenant, only for permitted use(s).

3.02. **Acceptance of Premises.** Tenant has inspected the Premises, through its District Council Member and members of his staff, and accepts the Premises in an "as-is" condition, after completion of the Pre-Commencement Work, and Landlord neither makes nor has made any representations or warranties, express or implied, with respect to the quality, suitability or fitness thereof of the Premises, or the condition or repair thereof.

3.03 **Rules and Regulations.** Tenant shall at all times abide by and observe the Rules and Regulations set forth in **Exhibit C** and any amendments thereto that may reasonably be promulgated from time to time by Landlord for the operation and maintenance of the Building and the land on which the Building is located (“Property”) and the Rules and Regulations shall be deemed to be covenants of the Lease to be performed and/or observed by Tenant. If there is any inconsistency between this Lease (other than **Exhibit C**) and the then current Rules and Regulations, this Lease shall govern

#### 4. Initial Term/Renewal Option.

4.01. **Initial Term.** The initial term of this Lease is as indicated above.

4.02. **Termination Without Cause.** Tenant may terminate this Lease for any reason during any term by giving 30 days’ advance written notice to Landlord. If Tenant terminates, Tenant will not be liable to Landlord hereunder for any matters arising out of or relating to the period after termination and surrender of the Premises in accordance with Section 20. On advance notice to Tenant, Landlord will have the right to show the Premises to other prospective tenants during the 30-day period.

4.03. **Renewal Option.** Tenant may, at its option, renew and extend this lease for one 2-year renewal term by delivering written notice of intent to do so to Landlord. Tenant must deliver the notice not less than 60 days before expiration of the Term. The Renewal Term must be approved by future ordinance of the San Antonio City Council. The Renewal Term will be governed by this Lease, except rent will be:

October 2011 through September 2012	\$2,280.25 monthly
October 2012 through September 2013	\$2,433.35 monthly

#### 5. Services.

5.01. **Full Service Lease.** Landlord must, at Landlord’s sole cost and expense, pay all monthly charges for utility services, as necessary, including but not limited to, electric, water, and sewer. Tenant must pay for any telephone, cable, satellite, or other television services, and connections for security service, if used by Tenant.

5.02. **After-Hours HVAC.** Despite the foregoing, Tenant must pay Landlord \$35 an hour for HVAC service used other than from 7:00 A.M. to 6:00 P.M. on weekdays and 8:00 A.M. to 1:00 P.M. on Saturdays.

5.03. **Repair and Maintenance.** Landlord must repair and maintain, in condition acceptable to Tenant for its intended office space purposes, the entire exterior and interior of the Premises, including, but not limited to the exterior roof, foundation, load bearing walls, and other structural members/elements of the Premises and of the Building in which the Premises are located, as well as the exterior and interior (i) plumbing system and fixtures, (ii) electrical systems and fixtures, (iii) ceiling and walls, (iv) windows and doors, (v) HVAC, (vi) the Parking Facilities, (vii) landscaping and (viii) Common Areas of the Premises and of the Building if any, and (ix) all other portions of the exterior and interior of the Premises, not otherwise detailed herein, including a trash receptacle for use by Tenant; provided, however, Tenant shall bear the cost of any repair and maintenance necessitated by the negligence or willful misconduct of Tenant or its agents, employees or invitees. Tenant waives all rights to make repairs

at the expense of Landlord, to deduct the cost of such repairs from any payment owed to Landlord under this Lease, or to claim a lien under §91.004(b) of the Texas Property Code. Subject to Landlord's express obligations set forth in this Section, Tenant, at its expense, shall maintain the Premises in good condition and repair, reasonable wear and tear and casualty governed by Section 13. Tenant's obligation shall include without limitation the obligation to maintain and repair all (i) interior walls; (ii) floor coverings; (iii) ceilings; (iv) doors; (v) entrances to the Premises; (vi) supplemental HVAC systems within the Premises; and (vii) private restrooms and kitchens, including hot water heaters, plumbing and similar facilities serving Tenant exclusively.

5.04. **Janitorial Service.** Landlord must provide janitorial service not less than five days a week.

## **6. Rent/Security Deposit.**

6.01. **Rent.** Rent is due on the first of each month, in the following amounts:

October 2009 through September 2010	\$2,004.45 monthly
October 2010 through September 2011	\$2,140.18 monthly

6.02. **Security Deposit.** Tenant will not pay a security deposit.

6.03. **Place of Payment.** Tenant will mail all payments to the Address for Payment.

6.04. **Grace Period.** Tenant has a 10 day grace period past the due date before any payment owing hereunder is considered delinquent.

## **7. Landlord Obligations.**

7.01. Before the Commencement Date, Landlord must complete all Precommencement Work.

7.02. Landlord must comply with the San Antonio City Charter, City Code, City and County ordinances, federal and state laws (collectively "Code") and confirms that the Premises, following completion of the improvements and the Building will be, and will continue to be during any occupancy governed in whole or in part by this instrument (1) in good and satisfactory condition, and (2) in compliance with Title III of the Americans with Disabilities Act and all applicable regulations thereunder, including any restroom located within the Premises. Further, occupancy by Tenant is also subject to, and contingent upon, the following, unless otherwise satisfied by Landlord, as indicated herein:

**(1) Asbestos Survey.** Not later than Asbestos Survey Deadline, Landlord must provide Tenant an asbestos survey of the Premises and the Building in which the Premises is located, in accordance with the provisions of § 6-293 of the City Code of the City of San Antonio, Texas.

**(2) Mold.** If Tenant delivers notice to Landlord of the possible presence of mold in the Premises, Landlord must inspect within three business days from receipt of the notice. Landlord must report the findings to Tenant within thirty business days from the date of the inspection. If mold is present, Landlord may,

at its election, remediate the Premises. If Landlord does not remediate, then Tenant may elect to terminate this Lease with three calendar days' written notice. Landlord will notify Tenant of Landlord's election to remediate or not at the same time as Landlord reports its findings to Tenant.

#### **8. Landlord's Access to Premises.**

If a representative of Tenant is present and accompanies Landlord or its representative, Landlord may, upon 24 hours' notice, enter on the Premises during Tenant's business hours for the purposes of abating nuisances, protecting or inspecting the Premises, or making repairs, additions, or alterations. Under the same conditions, Landlord or his representative may further enter the Premises for the purpose of exhibiting them to prospective purchasers or, within 180 days before expiration of a term of this Lease, to prospective tenants. Further, Landlord may, without notice or Tenant's presence, enter the Premises for emergency purposes, such as, but not limited to, curing of plumbing or electrical problems.

#### **9. Transfer of Landlord's Interest.**

Landlord may (1) mortgage or (2) sell or otherwise transfer, in whole or in part, its interest in the real property and Building, including the Premises, located thereon (collectively as "Property") with the following conditions:

**a. Transfer of Landlord's Interest.** Landlord must notify Tenant of any transfer of the Premises, the name and address of the transferee, and the date, if any, that Tenant is to start tendering payments to the transferee.

**b. Attornment.** Tenant will attorn to the mortgage holder or transferee in exchange for the mortgage holder's or transferee's written recognition of Tenant's right to remain in peaceful possession of the Premises under the Lease, subject to Tenant not being in default under the Lease. There is currently no mortgage holder with a lien on the Property; provided, however, Landlord will use commercially reasonable efforts to secure a subordination, non-disturbance and attornment agreement from any future mortgage holder protecting Tenant from Landlord's default thereunder.

**c. Estoppel Certificate.** Tenant will furnish from time to time, within 30 days after receipt of a written request from Landlord or Landlord's mortgagee, a statement certifying, if applicable and to the extent true, the following: (i) Tenant is in possession of the Premises; (ii) the Premises are acceptable; (iii) the Lease is in full force and effect, (iv) the Lease is unmodified; (v) Tenant claims no present charge, lien, or claim of offset against rent; (vi) the rent is paid for the current month but is not prepaid for more than one month and will not be prepaid for more than one month in advance; (vii) Landlord is not in default under the Lease; and (viii) such other matters as may be reasonably required by Landlord or Landlord's mortgagee. Such statements may be executed by the City Manager or the manager's designee without City Council approval.

#### **10. Assignment or Sublease.**

Tenant will not assign or sublease the Premises, or any part thereof without first obtaining Landlord's prior written consent. Landlord's consent must not to be

unreasonably withheld. Landlord need not consent to occupancy by a successor officeholder of Tenant.

## **11. Alterations and Additions/Signage.**

11.01. **Alterations And Additions.** Tenant will not permit, make, or allow to be made, any alterations or physical additions in or to the Premises without the prior written consent of Landlord, which consent must not be unreasonably withheld, but may be conditioned upon (i) prior approval of the plans and specifications and contractor(s); (ii) supervision by Landlord's representative; (iii) delivery to Landlord of written and unconditional waivers of mechanic's and materialmen's liens as to the Property for all work, labor and services to be performed and materials to be furnished; and (iv) delivery of permits, certificates of occupancy, "as-built" plans, and equipment manuals. Tenant may, at its own expense, install an alarm/security system without Landlord's prior written consent, but subject to Landlord's approval of the plans and specifications for such installation and the contractor. Tenant may direct the installer of such system to enter the Premises on or before the Commencement Date for the purpose of installation. Tenant shall peaceably surrender the Premises to Landlord on the expiration of the Term or earlier termination of this Lease, in broom-clean condition and in as good condition as when Tenant took possession, including, , within 15 days after the expiration of the Term or earlier termination of this Lease, remove from the Premises all of its furniture, fixtures, equipment, trade fixtures, furnishings, and other personal property, including any partitions, alarm/security systems, the sign installed by Tenant on the Property as contemplated under Section 11.02, or other items not the property of Landlord. If Tenant damages the Premises in removing such items, Tenant will restore the Premises to its condition prior to such removal, save and except for normal wear and tear, and subject to appropriation of funds by the San Antonio City Council for such restoration. Tenant's obligation to observe and perform its obligations under this Section 11.01 will survive the expiration or other termination of this Lease. Tenant may place pictures and decorations on the interior walls and doors without Landlord's prior written consent.

11.02. **Signs.** Tenant may place a sign identifying the Premises and the officeholder occupying the Premises on the Property in a location mutually acceptable to Landlord and Tenant. Landlord shall provide, at Tenant's expense, a listing on the directory in the lobby of the Building listing all Building tenants. Landlord also shall, at Tenant's expense, place the suite number and/or Tenant name on or in the immediate vicinity of the entry door to the Premises, using Building-standard sign material and lettering.

## **12. Quiet Enjoyment.**

Subject to the terms of this Lease, Tenant will and may peacefully and quietly have, hold, and enjoy the Premises. Landlord agrees to use commercially reasonable efforts to protect Tenant from unreasonable interference or disturbance by other tenants or third persons.

## **13. Destruction Of Premises.**

13.01. **Destruction Of Less Than 25% Of Premises.** If less than 25% of the Premises is destroyed or otherwise made untenable in whole or in part by fire, other casualty, or for any other reason, Landlord will use commercially reasonable efforts to (1) commence the repair of the Premises to the condition it was in prior to such damage

or destruction within 30 days after the partial destruction, and (2) diligently pursue the repair work in the order of priority designated by Tenant, and (3) complete such repairs within 90 days after the date of destruction. Rent for the Premises will be reduced proportionately or fully abated to the extent to which the repair operations interfere with the normal conduct of Tenant's business on the Premises. If the repairs cannot be so made within 90 days after the date of such partial destruction, then Landlord shall deliver the Restoration Notice (as defined in Section 13.03) as soon as practicable after the destruction and Tenant may terminate this Lease on 10 days' written notice to Landlord delivered after delivery of the Restoration Notice. If City's acts or omissions proximately cause the loss, Tenant will reimburse Landlord for the deductible under any applicable Landlord insurance policy, up to a maximum of \$25,000.

**13.02. Destruction Of 25% Or More Of Premises.** If 25% or more of the Premises is destroyed or otherwise made untenantable in whole or in part by fire, other casualty, or for any other reason during any occupancy under this Lease, then either Landlord or Tenant may terminate this Lease in its entirety, with 30 days prior written notice to the other party. Rent will cease to be due as of the date the Premises is partially destroyed or otherwise made untenantable in whole or in part by fire, other casualty, or any other reason. If City's acts or omissions proximately cause the loss, Tenant will reimburse Landlord for the deductible under any applicable Landlord insurance policy, up to a maximum of \$25,000.

**13.03. Landlord's Obligation To Restore Premises.** If neither party terminates pursuant to Section 13.02, then Landlord must provide written notice ("Restoration Notice") to Tenant within 30 days of such event of casualty stating a good faith estimate, certified by an independent architect or bonded general contractor, of the period of time (the "Stated Restoration Period") required for the repair and restoration of the Premises. Tenant will thereafter have the right, at its election, to terminate the Lease if either (i) the Stated Restoration Period is greater than 90 days following the event of casualty or (ii) Landlord fails to substantially complete the repair and restoration of the Premises within the Stated Restoration Period (subject to delays due to Acts of God, strikes, labor disputes, or shortages of materials or other causes which are agreed to by Tenant). Rent will abate (pro rata to the space lost) as of the date the Premises is partially destroyed or otherwise made untenantable in whole or in part by fire, other casualty, or for any other reason. If Tenant elects to terminate the Lease pursuant to Section 13.03 (i), then Tenant must deliver written notice of such termination to Landlord within 30 days after Landlord delivers the Restoration Notice. If Tenant elects to terminate the Lease pursuant to Section 13.03(ii), then Tenant must deliver written notice to Landlord of such termination prior to the earlier of the date on which Landlord substantially completes the repair and restoration and the date that is 30 days following expiration of the Stated Restoration Period.

#### **14. Insurance.**

**14.01. Landlord's Insurance Coverage.** Landlord must maintain Commercial General Liability insurance of not less than \$2,000,000 combined single limits for bodily injury and property damage; and property and casualty insurance for physical damage in an amount not less than 80% of the actual cash value of the Premises.

**14.02. Tenant's Insurance Coverage.** Tenant will provide such self-insurance as it deems advisable to insure against loss of any of its property in the Premises.

14.03 **Waiver of Subrogation.** Landlord and Tenant each waive any and all rights to recover against the other for any loss or damage to such waiving party (including deductible amounts) arising from any cause covered by property insurance carried by such party to the extent of the limits of such policy.

**15. Governmental Immunity.**

Nothing in this Contract waives governmental immunity or other defenses of Tenant under applicable law.

**16. Effect of Eminent Domain Proceedings.**

Condemnation of all or part of the Premises or of the Building entitles Tenant to terminate this Lease in its entirety, with 30 days' written notice to Landlord. If less than 50% of the Premises is condemned and Tenant elects to continue in possession, following 30 days written notice to Landlord, Tenant's monthly rental for the remainder of the then effective Term will in such case be reduced in proportion to the percentage that the Premises taken bears to the total rentable square footage of the original Premises. If 50% or more of the Premises is condemned or otherwise made untenable, either Landlord or Tenant may terminate this Lease in its entirety, and Tenant and Landlord will each be entitled to compensation for any loss arising from such condemnation. Landlord and Tenant may pursue their rights to such compensation separately, but Tenant may not pursue any claim that diminishes Landlord's award. Rental payments will be abated proportionately for any period of time in which Tenant is unable to occupy any portion of the Premises, based on the number of useable square feet therein.

**17. Default and Remedy: Tenant's Default.**

17.01. **Tenant's Events of Default; Right To Cure.** If Tenant fails to perform or observe any of the terms, provisions, conditions or covenants herein contained, other than the payment of Rent, and such failure continues for a period of 30 days after written notice specifying the default with particularity and how the same may be cured, it is an Event of Default under this lease. If Tenant fails to pay rent timely, and such failure continues for a period of 10 days after written notice thereof, it is an Event of Default under this lease.

17.02. **Landlord's Remedy.** Upon failure of Tenant to timely cure an Event of Default, Landlord may terminate this Lease on 10 days' prior written notice to Tenant or, in the case of a nonmonetary Event of Default, Landlord may cure the same at Tenant's expense. If Landlord terminates this Lease, then Landlord's remedy is limited to termination of this Lease and Tenant's liability for the payment of rent is limited to rent due as of the date that is 30 days after such termination, without acceleration of rent for the balance of the Lease. Landlord is conclusively presumed to be able to mitigate all rent damages for rent accruing 30 days after such termination by reletting the Premises.

**18. Default and Remedy: Landlord's Default.**

18.01. **Landlord's Events Of Default; Right To Cure.** It is an Event of Default if Landlord neglects or fails to perform or observe any of the terms, provisions, conditions, or covenants herein contained and if such failure continues for 30 days after written notice, which notice will specify the exact nature of the default with

particularity and how the same may be cured. Further, the occurrence of any of the following events is an Event of Default:

- a. Appointment of a receiver to take possession of Landlord's assets,
- b. Landlord's general assignment of assets for the benefit of creditors,
- c. Landlord's insolvency, and
- d. Landlord's taking or suffering action under the Bankruptcy Act, which action constitutes a breach of this Lease.

18.02. **Tenant's Remedy.** Upon the occurrence of a Landlord Event of Default, Tenant may immediately terminate this Lease by providing 30 days' prior written notice to Landlord. Tenant's remedy will be limited to termination of this Lease, and Landlord's liability for the payment of any amounts due to Tenant will be limited to amounts due as of the date of termination.

## **19. Dispute Resolution.**

19.01. Before bringing any action arising out of this agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

19.02. Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

19.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

19.04. The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

19.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

19.06. Mediator fees must be borne equally.

19.07. The parties need not mediate before going to court (1) for either party to seek emergency injunctive relief or (2) for Landlord to seek eviction of Tenant.

## **20. Holdover**

In the event that Tenant shall not immediately surrender the Premises to Landlord on the expiration of the Term or earlier termination of this Lease, Tenant shall be deemed to be a tenant-at-will pursuant to the terms and provisions of this Lease, except the daily Rent shall be twice the daily Rent in effect on the expiration of the Term or earlier termination of this Lease (computed on the basis of a 30 day month). All trade fixtures, equipment, furniture, inventory, effects and Alterations left on or in the Premises or the Property after the 15-day removal period under Section 11.01 will be deemed conclusively to have been abandoned and may be appropriated, removed, sold, stored, destroyed or otherwise disposed of by Landlord without notice to Tenant or any other person and without obligation to account for them.

## **21. Miscellaneous.**

21.01. **Representation Of Authority.** The signer of this Lease for Landlord represents and warrants that he or she has full legal authority to execute this Lease on behalf of Landlord and to bind Landlord to all of terms, conditions, provisions, and obligations herein contained.

21.02. **Foreclosure.** If the Premises are foreclosed Tenant must attorn to the purchaser and recognize such sale and such purchaser as Landlord under this Lease, if the purchaser recognizes Tenant's rights under this Lease and will agree not to disturb Tenant's possession of the Premises so long as Tenant is not in default hereunder.

21.03. **Waiver of Lien.** Landlord waives all common law and statutory liens against the property of Tenant.

21.04. **Taxes.** Landlord must pay, before delinquency, all state, city, and county taxes against the real property on which the Building, including the Premises, is located and all assessments and other fees arising out of the Premises' improvements, other than alterations performed by Tenant under Section 11.

21.05. **Applicable Law.** This Agreement is entered into in San Antonio, Bexar County, state of Texas. **The Construction Of This Agreement And The Rights, Remedies, And Obligations Arising Thereunder Shall Be Governed By The Laws Of The State Of Texas.** Provided, however, the Texas conflicts of law rules shall not be used to cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

21.06. **Severability.** If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

21.07. **Successors.** This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

21.08. **Integration.** **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

21.09. **Modification.** This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to the foregoing, any of the terms of this Agreement may be modified at any time by the party entitled to the benefit thereof, but no such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

21.10. **Third Party Beneficiaries.** This Agreement is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries hereof.

21.11. **Notices.** Any notice provided for or permitted hereunder must be in writing and delivered in person, by nationally recognized overnight courier, or by certified mail, return receipt requested. Notices to Landlord must be sent to the address specified at the beginning of this agreement. Notice to Tenant must be sent to the address set forth below. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

**Tenant Address for Notice:**

City Clerk		City Council Member, District 8
City of San Antonio		City of San Antonio
P.O. Box 839966	and	P.O. Box 839966
San Antonio, Texas 78283-3966		San Antonio, Texas 78283-3966

21.12. **Pronouns.** In construing this Agreement, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire Agreement, not to any particular provision of it.

21.13. **Captions.** Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

21.14. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

21.15. **Further Assurances.** The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this agreement

21.16. **Ambiguities Not to Be Construed against Party Who Drafted Contract.** The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this contract.

21.17. **No Special Relationship.** The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

21.18. **Administrative Agreements.** The Director of Capital Improvements Management Services ("CIMS") and the Assistant Director for Real Estate of CIMS may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this Lease and may declare Landlord defaults and pursue remedies for such defaults. This paragraph does not authorize lease amendments or renewals without council consent.

21.19. **Conflicts Between Numbers Stated Two Ways.** Whenever this lease states the same number both as a lump sum and as a calculated number (as, e.g., rent per month or costs per square foot), if the lump sum conflicts with the calculated number, the calculated number controls. If the Lease contains two calculated numbers that conflict, the calculation yielding the lower number controls.

21.20. **Incorporation of Exhibits.** All exhibits to this Lease are incorporated into it for all purposes as if fully set forth.

21.21. **Broker Commission.** Landlord recognizes Providence Commercial Real Estate Services, Inc. ("Tenant's Broker") as Tenant's broker procuring this Lease and shall pay a commission in respect of this lease pursuant to a separate agreement between Tenant's Broker and Landlord.

## **22. Prohibited Interests in Contracts.**

22.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

22.02. Landlord warrants and certifies as follows:

- (i) Landlord and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Landlord has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

22.03. Landlord acknowledges that City's reliance on the above warranties and certifications is reasonable.

**23. Appropriations.**

All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year of a term. If the City Council fails to appropriate money for this Lease in an annual City of San Antonio Budget, the City may terminate this Lease and have no further liability.

**24. Public Information.**

Landlord acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

**25. Relocation.**

At any time during the Term, Landlord shall have the option to relocate Tenant (and to enter the Premises anytime during the Term to exhibit the Premises under the terms of Section 8 to prospective tenants in connection with such relocation) at no direct cost to Tenant to space comparable to the Premises elsewhere in the Building or the Property, provided Landlord gives Tenant 60 days prior written notice. Upon relocation, such new space shall be deemed to be the "Premises". Landlord shall pay Tenant's reasonable costs for moving Tenant's furniture and equipment, installing data and phone cabling and one month's supply of stationery showing the new address.

In Witness Whereof, the parties have caused their representatives to set their hands.

**Tenant:**

**Landlord**

**City of San Antonio**, a Texas  
municipal corporation

**USAA Real Estate Company**,  
a Delaware corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
City Clerk

**Approved as to Form:**

\_\_\_\_\_  
City Attorney

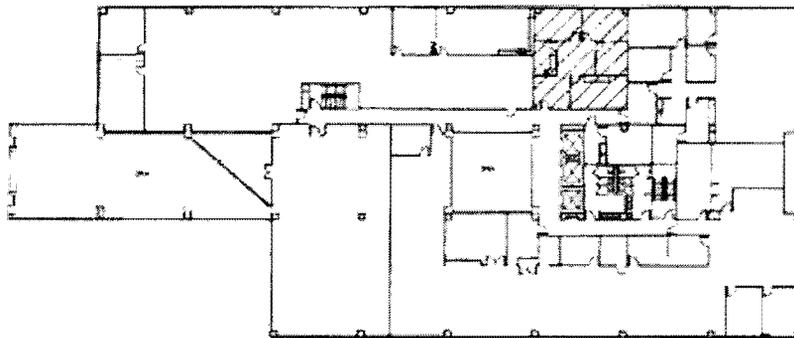
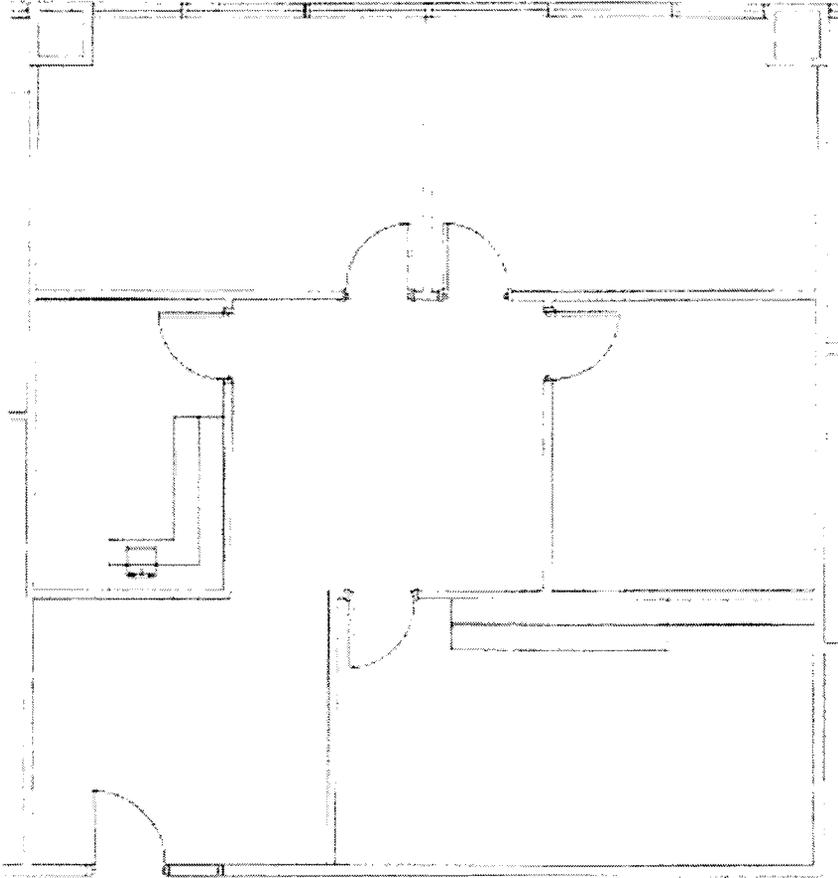
Exhibit A

# COLONNADE CENTRE

9830 COLONNADE BLVD.

SUITE 460

1,303 RSF



FLOOR A LOCATION MAP

# District 8 Constituent Office Lease Agreement

