

AN ORDINANCE **2010-01-21-0030**

AUTHORIZING THE NEGOTIATION OF TERMS AND CONDITIONS OF A TAX ABATEMENT AGREEMENT WITH NATIONWIDE MUTUAL INSURANCE COMPANY TO EXEMPT ONE HUNDRED PERCENT (100%) OF AD VALOREM TAXES FOR A PERIOD OF TEN (10) YEARS ON PERSONAL PROPERTY IMPROVEMENTS MADE WITHIN THE NATIONWIDE MUTUAL INSURANCE COMPANY REINVESTMENT ZONE.

* * * * *

WHEREAS, Nationwide Mutual Insurance Company (hereinafter referred to as “Nationwide”), a national insurance provider with \$23 billion in annual revenues and a profit of approximately \$2 billion in 2008, operates three office facilities in San Antonio which employ approximately 932 employees; and

WHEREAS, Nationwide has chosen San Antonio as the site for consolidation and expansion of its national operations, where it will invest approximately \$89 million to construct a 300,000 square foot corporate campus facility (the “Campus”)that will house 1,770 jobs; and

WHEREAS, prior to undertaking the expansion, Nationwide has identified a facility located at 5859 Farinon Drive, San Antonio, Texas, 78249, to office its employees until such time as the Campus is completed; and

WHEREAS, as an incentive to establish the Campus in San Antonio and reinvest \$89 million in the property, the City has offered Nationwide a 10-year, 100% tax abatement on personal property improvements made within the Nationwide Mutual Insurance Company Reinvestment Zone, as more particularly described in Attachment I; and

WHEREAS, in accordance with the City of San Antonio and Bexar County Joint Tax Phase-In Guidelines (the “Guidelines”) the project is eligible for an abatement term of up to ten (10) years at 100%; and

WHEREAS, the City Council finds that offering Nationwide a Tax Abatement Agreement with for its personal property improvements is a reasonable incentive to help induce Nationwide to consolidate and expand its operations 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 Nationwide to induce the desired and beneficial economic development in the area; **NOW THEREFORE:**

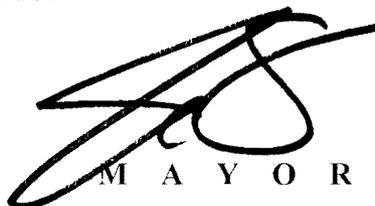
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Council authorizes the negotiation of terms and conditions of a Tax Abatement Agreement with Nationwide Mutual Insurance Company, which Agreement shall grant a one hundred percent (100%), ten (10) year abatement of ad valorem taxes on personal property improvements made by Nationwide in the Nationwide Mutual Insurance Company Reinvestment Zone. 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 an Agreement as approved in Section 2. The final Agreement shall be filed with this ordinance upon execution.

SECTION 3. This ordinance shall be effective on and after the tenth day after passage hereof.

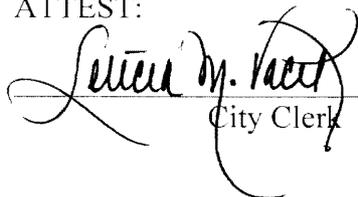
PASSED AND APPROVED this 21st day of January 2010.



M A Y O R

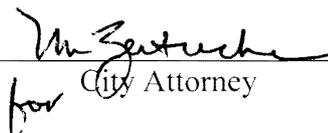
JULIÁN CASTRO

ATTEST:



City Clerk

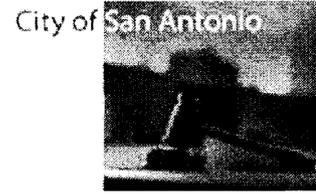
APPROVED AS TO FORM:



for City Attorney



Request for
COUNCIL
ACTION



Agenda Voting Results - 6B

Name:	6A, 6B, 6C						
Date:	01/21/2010						
Time:	11:44:40 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a Tax Abatement Agreement with Nationwide Mutual Insurance Company for a Phase I consolidation and expansion of existing operations.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
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			x	
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

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

3. **PROPERTY**

A. NATIONWIDE owns a leasehold interest in real property located at 5859 Farinon Drive, San Antonio, TX 78249 (the "Property"), legally described in Exhibit A, attached hereto and incorporated herein. The Property is within the Nationwide Mutual Insurance Company Reinvestment Zone, designated by City Ordinance No. 2010-01-21-_____ for the purposes of the Texas Property Redevelopment and Tax Abatement Act of 1987, V.A.T.S. Tax Code, Chapter 312.

B. NATIONWIDE, an insurance and financial services company, shall conduct business operations on the Property that meet the definition of qualifying business activities as more fully set forth and defined in the Guidelines and Criteria ("Business Activities"). NATIONWIDE will conduct, on the Property, its Business Activities or the normal Business Activities of a Related Organization, as defined in Article 5, Paragraph I, for the term of this Agreement.

C. NATIONWIDE is investing approximately THREE MILLION DOLLARS (\$3,000,000) in new tangible personal property ("Personal Property Improvements") to be located on the Property and used for NATIONWIDE's Business Activities. The Personal Property Improvements shall not be placed on the Property sooner than the effective date of this Agreement.

D. NATIONWIDE shall establish a separate tax account for the Personal Property Improvements, to include inventory and supplies related to this new personal property investment, with the Bexar Appraisal District and provide these tax account numbers to the CITY.

4. **NATIONWIDE'S REPRESENTATIONS**

A. Without any independent inquiry or investigation, NATIONWIDE represents that it has no knowledge that any interest in the Property is presently owned, held or leased by a member of the San Antonio City Council, Zoning Commission, Planning Commission, the City's Economic Development Department, or any other City officer or employee. NATIONWIDE further represents that it shall not knowingly sell, lease or otherwise convey such an interest to a member of the San Antonio City Council, the Zoning Commission, the Planning Commission, the City's International and Economic Development Department or any other City officer or employee, as long as this Agreement remains in effect.

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

5. **OBLIGATIONS OF NATIONWIDE**

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

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

2) invest, or cause to be invested, approximately THREE MILLION DOLLARS (\$3,000,000) in the Personal Property Improvements for the Property by January 1, 2011; and

(3) shall hire a minimum of EIGHT HUNDRED AND THIRTY EIGHT (838) new full-time employees and retain NINE HUNDRED AND THIRTY TWO (932) existing jobs in San Antonio for a cumulative total of ONE THOUSAND SEVEN HUNDRED AND SEVENTY (1,770) full-time jobs created under this Agreement as follows:

1. In Calendar Year 2010, NATIONWIDE shall retain NINE HUNDRED AND THIRTY TWO (932) jobs and create an additional THREE HUNDRED AND FIFTY (350) jobs for a cumulative total of ONE THOUSAND TWO HUNDRED AND EIGHTY TWO (1,282) jobs.

2. In Calendar Year 2011, NATIONWIDE shall retain ONE THOUSAND TWO HUNDRED AND EIGHTY TWO (1,282) jobs and create an additional ONE HUNDRED AND SIXTY ONE (161) jobs for a cumulative total of ONE THOUSAND FOUR HUNDRED AND FORTY THREE (1,443) jobs.

3. In Calendar Year 2012, NATIONWIDE shall retain ONE THOUSAND FOUR HUNDRED AND FORTY THREE (1,443) jobs and create an additional ONE HUNDRED SIXTY ONE (161) jobs for a cumulative total of ONE THOUSAND SIX HUNDRED AND FOUR (1,604) jobs.

4. In Calendar Year 2013, NATIONWIDE shall retain ONE THOUSAND SIX HUNDRED AND FOUR (1,604) jobs and create an additional ONE HUNDRED AND SIXTY SIX (166) jobs for a cumulative total of ONE THOUSAND SEVEN HUNDRED AND SEVENTY JOBS (1,770).

(4) shall occupy and use the Property for its Business Activities; and

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

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

C. A Full-Time Job, for the purposes of this Agreement, shall be equivalent to two thousand fifteen (2,015) straight-time paid hours in a fiscal year. {Note: The Nationwide workday is 7 hours and 45 minutes for a full-time position which works out to 2,015 hours instead of the traditional 2,080.}

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

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

F. NATIONWIDE also covenants and agrees that it shall conduct its Business Activities (as defined in Article 3, Paragraph A) on the Property substantially in accordance with all applicable federal, state and local laws.

G. NATIONWIDE is under no obligation to undertake any real property improvements under this Agreement,, however should it elect to make any real property improvements to the Property those improvements shall be made in accordance with all applicable federal, state and local laws including, but not limited to, Texas Commission on Environmental Quality regulations, Bexar County and City of San Antonio laws, Building Codes and ordinances, Historic Preservation and Urban Design ordinances, flood, subdivision, building, electrical, plumbing, fire and life safety codes and regulations, current and as amended. NATIONWIDE'S obligations under this paragraph are not applicable to real property improvements made by NATIONWIDE'S landlord or any other third-party not under direct contract with NATIONWIDE.

I. Except as provided herein, NATIONWIDE covenants and agrees that it shall use the Property only to conduct its Business Activities. Without additional consent or approval by the City Council, a parent, subsidiary or affiliate organization of NATIONWIDE or new entity created as a result of a merger, acquisition, or other corporate restructure or reorganization of NATIONWIDE, or any component thereof (hereinafter "Related Organization") may occupy and use the Property for such Related Organization's normal business activities, so long as such business activities are those of an insurance or financial services company, similar or comparable to the Business

Activities of NATIONWIDE on the Property. To be eligible for tax abatements as provided in this Agreement, such Related Organization must agree in writing to fully comply with all applicable terms of this Agreement. Except as authorized above, NATIONWIDE covenants and agrees not to change Nationwide's principal use of the Property without prior approval by the City Council, which approval shall not be unreasonably withheld or delayed, as evidenced in a duly approved ordinance.

J. To the extent that such repair and maintenance obligations have not been assumed by the landlord pursuant to a duly executed lease for the Property, NATIONWIDE covenants and agrees that it shall maintain the Property and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the gross negligence, intentional act or misconduct of NATIONWIDE excepted. Compliance with the maintenance obligations imposed herein shall be presumed if NATIONWIDE follows its normal and customary maintenance procedures and schedules for its other leased facilities or if substantially similar obligations are imposed upon the landlord pursuant to a duly executed lease for the Property.

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

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

M. NATIONWIDE covenants and agrees that it shall provide the CITY's Director of International and Economic Development with a semi-annual certification from an officer of NATIONWIDE attesting to the number of full-time new jobs created and retained jobs by NATIONWIDE, as well as wages paid by NATIONWIDE on the Property. NATIONWIDE shall also submit this information to the CITY upon request, as deemed necessary at the sole discretion of the CITY, during the Term of this Agreement. The information provided shall be on the forms set forth in, or substantially similar to the forms set forth in, Exhibit "C" (attached hereto and incorporated herein), as amended.

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

O. NATIONWIDE covenants and agrees to notify CITY in writing at least 30 days prior to any sale, transfer or sub-lease of the Property during the Term. CITY shall not unreasonably withhold approval of any requests for Assignment of this Agreement by NATIONWIDE under Article 11 and any new purchaser or transferee requesting Assignment shall be bound by same. Failure to provide the required notification under this Article 5, Paragraph O may render NATIONWIDE subject to the termination and recapture provisions under Article 7. This provision does not grant the CITY the right to pre-approve, disapprove or prohibit any sale, transfer or sub-lease of the Property during the Term; rather it creates a notification requirement and further addresses requests for Assignment of the Agreement, and consequences for failing to meet the notification requirement.

P. CITY acknowledges NATIONWIDE's intent to relocate its Business Activities during the term of this Agreement from the Zone to a newly created Tax Abatement Reinvestment Zone within the city limits of the City of San Antonio. Such intent has been acknowledged and supported by the CITY through the passage of Resolution _____, passed and approved on January 21, 2010, attached hereto as Exhibit D. Any Relocation for this purpose shall not be deemed a breach of this Agreement for any purpose.

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

Q. If, during this Agreement NATIONWIDE fails to create and retain at least the minimum number of full-time jobs required under Article 5, Paragraph A of this Agreement, or NATIONWIDE fails to pay at least the minimum wages required under Article 5, Paragraph B of this Agreement for a period of three (3) or more consecutive months, then the termination and recapture provisions of Article 7 of this Agreement shall apply against NATIONWIDE.

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

6. TAX ABATEMENT

A. The tax abatement period (the "Term") for the Personal Property Improvements shall be 10 years beginning on January 1, 2011. The base year for calculating the value of personal property existing and located upon the Property prior to the effective date of this Agreement shall be January 1, 2010. The "Base Year Value" of the personal property not covered by this Agreement shall be its assessed value (determined by the Bexar Appraisal District), as of the Base Year. This Agreement only provides for the abatement of taxes on tangible personal property brought onto the site after the execution of this Agreement.

B. At the commencement of the Term, NATIONWIDE shall own, have an interest in or otherwise control the Property and shall be conducting its Business Activities on a daily basis.

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

D. NATIONWIDE acknowledges and agrees that the Base Year Value of the Property and the tax levy based on said Base Year Value of the Property in the Zone shall not decrease, but taxes may increase and that the amount of property taxes paid by NATIONWIDE to the CITY attributable to the Property during the Term shall not be less

than the amount of taxes attributable to the Property paid to the CITY for the base year tax year, if any, except in the event of casualty or condemnation of the Property in the Zone.

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

7. DEFAULT/TERMINATION/RECAPTURE

A. For purposes of this section, "Relocation" or "Relocate" shall mean NATIONWIDE or a Related Organization which has taken the place of NATIONWIDE, transferring Business Activities to a location outside of the Zone with the exception of transferring Business Activities to another approved tax abatement reinvestment zone created by the City as contemplated under City of San Antonio Resolution _____, attached hereto as Exhibit D.

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

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

C. If NATIONWIDE occupies and uses the Property for its Business Activities and subsequently ceases conducting Business Activities (or a substantial portion thereof) within the Zone, unless it continues Business Activities in a newly created tax abatement zone as contemplated by City of San Antonio Resolution _____, for a continuous period of three (3) months during the Term of this Agreement for any reason, except if such cessation is caused by a Force Majeure as defined in Article 8, then the CITY shall have the right to terminate this Agreement. Said terminations shall be effective for the calendar year during which the Property was no longer used for the required purposes stated herein. Unless NATIONWIDE presents credible evidence to clearly indicate a date of cessation, CITY's determination of a date of cessation shall be final and conclusive.

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

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

Upon termination, any and all taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured by CITY and CITY shall be entitled to the payment of such recaptured taxes within sixty (60) calendar days from the date it notifies NATIONWIDE in writing of such termination unless the termination is subject to a good faith dispute, in which case payment of the recaptured taxes may be delayed until the dispute is resolved.

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

F. Other Remedies Available. CITY's right to termination of this Agreement and/or recapture of previously abated taxes shall be the CITY's sole and exclusive remedy in the event of a NATIONWIDE default. However, such termination and/or recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which NATIONWIDE may be entitled. The termination and/or recapture of taxes provided in this Article 7 are not applicable

to situations involving minor changes to the description of the Property, or changes in ownership or in management thereof, so long as NATIONWIDE, its parent, subsidiary, affiliate or its CITY-approved successor or assignee continues conducting Business Activities or other authorized activities thereon as provided hereinabove.

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

TERM YEAR	TOTAL TAX PREVIOUSLY ABATED SHALL BE MULTIPLIED BY:
1-10	100%
11-12	80%
13	60%
14	40%
15	20%
16	10%

FORMULA: The recapture formula shall be:

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

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

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

For purposes of this section, "Force Majeure" is defined as an act of God, a natural disaster or an act of war (including terrorism). It also includes explosion, fire or other casualty or accident which is not the result of gross negligence, an intentional act or misconduct on the part of NATIONWIDE. In addition to relief expressly granted in this Agreement, CITY may grant relief from performance of this Agreement if NATIONWIDE 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 NATIONWIDE. To obtain release based upon this Article 8, NATIONWIDE 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 NATIONWIDE:

- (Whether personally delivered or mailed):

Attn: _____

TO CITY:

- If mailed:

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

- If by personal or overnight delivery:

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

10. **CONDITION**

This Agreement is conditioned entirely upon the approval of the San Antonio City Council, as evidenced by duly approved Ordinance Number 2011-01-21-_____, dated January 21, 2010.

11. ASSIGNMENT

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

12. GENERAL PROVISIONS

A. None of the Personal 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. NATIONWIDE acknowledges that City Council approval is required for any and all of these actions.

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

13. SEVERABILITY

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

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

14. ESTOPPEL CERTIFICATE

Any party hereto may request an estoppel certificate related to this project (hereafter referred to as "Certificate") from another party hereto so long as the Certificate is requested in connection with a bona fide business purpose. The Certificate, which if requested, will be addressed to a subsequent purchaser or assignee of NATIONWIDE or other party designated by NATIONWIDE 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

NATIONWIDE, 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 NATIONWIDE shall be entitled to intervene in said litigation.

16. APPLICABLE LAW

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

17. TRIPLICATE ORIGINALS

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

Signatures appear on next page.

WITNESS OUR HANDS, EFFECTIVE as of _____, 2010:

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to City Ordinance Number 2010-01-21-____, dated January 21, 2010, and NATIONWIDE MUTUAL INSURANCE COMPANY pursuant to the authority of its _____.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

**NATIONWIDE MUTUAL
INSURANCE COMPANY,**
A _____

Sheryl L. Sculley
CITY MANAGER

By:
Title:

ATTEST:

ATTEST:

Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

Michael Bernard
CITY ATTORNEY

EXHIBIT A: PROPERTY DESCRIPTION

EXHIBIT B: EMPLOYEE BENEFITS

EXHIBIT C: NUMBER OF JOBS AND WAGE INFORMATION FORM

EXHIBIT D: CITY OF SAN ANTONIO RESOLUTION # _____