

STATE OF TEXAS

COUNTY OF BEXAR

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**SECOND AMENDMENT TO
AGREEMENT TO USE
FUNDS OF THE
CITY OF SAN ANTONIO**

FOR VALUE RECEIVED, the receipt and sufficiency of which is acknowledged, this Second Amendment to Agreement to Use Funds of the City of San Antonio (the “**Second Amendment**”) is entered into by and between the CITY OF SAN ANTONIO, a home-rule municipality, situated within Bexar County, Texas (hereinafter called “**CITY**”), acting by and through its City Manager or designee, pursuant to Ordinance No. _____ passed and approved on _____ and the Hemisfair Park Area Redevelopment Corporation, (hereinafter referred to as “**HPARC**”), a Texas Local Government Corporation under as defined under Chapter 431 of Texas Transportation Code. The CITY and HPARC may separately be referred to herein as the “**Party**” and together, as the “**Parties**.”

RECITALS

WHEREAS, City and HPARC entered into an Agreement to Use Funds of the City of San Antonio (the “**Agreement**”) authorized by City of San Antonio Ordinance No. 2016-06-30-0530, passed and approved on June 30, 2016, and attached hereto as EXHIBIT A.

WHEREAS, City and HPARC entered into a First Amendment to Agreement to Use Funds of the City of San Antonio (the “**First Amendment**”) authorized by City of San Antonio Ordinance No. HPPFC 2022-04-07-0001, passed and approved on April 7, 2022, and attached hereto as EXHIBIT B.

WHEREAS, the Parties now seek to amend the terms and conditions of the Agreement and First Amendment in order to address the delivery of state sales and uses tax imposed under Tax Code Chapter 151 and hotel occupancy tax imposed under Tax Code Chapter 156 (collectively, the “**State Tax Funds**”) under Section 351.156 and Section 351.157 of the Tax Code.

NOW THEREFORE, the Parties hereby agree and amend as follows:

1. The Parties mutually agree to amend the following sections of the Agreement and First Amendment:
 - (A) Prior to the section titled **ARTICLE I. PURPOSE** of the Agreement, the following recitals will be added:

WHEREAS, HPARC and City desire that a mixed use project including a hotel and residential and retail developments be constructed (the “**Development**”) that will be generally located on parcels of land in the Hemisfair Northwest Zone Public-Private Development site bounded by Market Street and South Alamo Street in San Antonio, Bexar County, Texas, known as parcels D1, D2, D3 and D5 (the “**Development Site**”);

WHEREAS, to facilitate the Development (i) with the agreement and consent of HPARC, ZH DOWNTOWN DEVELOPMENT COMPANY, LLC, a Texas limited liability company (“**ZH Downtown**”) partially assigned the development of parcels D1 and D2 out of the Development Site to PH Hemisfair, LLC (together with its successors or assigns, the “**D1-D2 Developer**”) and (ii) HPARC entered into an Amended and Restated Development Sublease Agreement, dated June 29, 2022, with the D1-D2 Developer for the development of parcels D1-D2 to include residential, parking, and retail developments (the “**D1-D2 Development Site**”);

WHEREAS, to further facilitate the Development (i) with the agreement and consent of HPARC, ZH Downtown partially assigned the development of parcel D5 out of the Development Site to Area Real Estate, LLC (together with its successors or assigns, the “**D5 Developer**”) and (ii) HPARC entered into a stand-alone separate and distinct Amended and Restated Development Sublease Agreement, dated June 29, 2022, with the D5 Developer for the development of parcel D5 to include residential and retail developments (the “**D5 Development Site**”); and

WHEREAS, ZH Downtown retained the rights to development of parcel D3 and to further facilitate the Development (i) with the agreement and consent of HPARC, ZH Downtown partially assigned the development of parcel D3 out of the Development Site to ZH Downtown’s affiliate Zachry Park Hotel QOZB, LLC (together with its successors or assigns, the “**D3 Developer**”) and (ii) HPARC entered into a stand-alone separate and distinct Amended and Restated Development Sublease Agreement, dated June 29, 2022, with the D3 Developer (the “**D3 Sublease**”) for the development of parcel D3 to include a full service hotel (the “**D3 Development Site**”);

(B) The **ARTICLE I. PURPOSE** section of the Agreement is amended by deleting all of section 1.07 and substituting the following in its place:

1.07 HPARC shall be the legally designated representative of CITY for the purpose of collecting the rebate of the State Tax Funds pursuant to (i) Section 351.156 of the Texas Tax Code, and (ii) Section 351.157 of the Texas Tax Code derived from, generated, paid or collected by each “qualified establishment” (as that term is described by Section 351.157 of the Texas Tax Code) located on any of (w) the D1-D2 Development Site, (x) the D5 Development Site, or (y) the D3 Development Site (collectively, the “**Tax Rebates**”).

(C) The **ARTICLE IV. HPARC REQUIREMENTS** section of the agreement is further amended by deleting all of paragraph i. and j. in section 4.02 and substituting the following in its place:

i. In connection with the NW Zone P3 development, HPARC shall be the legally designated agent of the City for requesting and receiving payments of the Tax Rebates, to be used, in part, for contractual obligations related to a “qualified project” as defined in Section 351.151 of the Tax Code. As such, HPARC is authorized to take all necessary actions to inform the State Comptroller to deliver the Tax Rebates to HPARC. To the extent that such Tax Rebates are received by HPARC, CITY shall have no further obligation to seek or recover the Tax Rebates.

j. To the extent the State Comptroller does not recognize HPARC as the legal entity entitled to recover the Tax Rebates pursuant to Section 351.156 and Section 351.157 of the Tax Code, then CITY shall seek to recover the Tax Rebates. Within thirty (30) days of CITY's recovery of the Tax Rebates, CITY shall deliver all of the Tax Rebates to HPARC. Upon payment of the Tax Rebates to HPARC, CITY will have no further obligations regarding the delivery of the Tax Rebates to any third party.

2. All other terms, conditions, covenants and provisions of the Agreement and the First Amendment are hereby continued and shall remain in effect in their original form, except for the provisions expressly modified by this Second Amendment.

[Signature Page Follows]

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EXECUTED IN DUPLICATE COPIES, EACH OF WHICH SHALL HAVE THE FULL
FORCE AND EFFECT OF AN ORIGINAL, THIS THE ____ DAY OF DECEMBER, 2023.

CITY OF SAN ANTONIO

HPARC

Lori Houston
Assistant City Manager

Andres Andujar
Chief Executive Officer

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

EXHIBIT B