

MPH  
05/05/22  
Item #21

**RESOLUTION NO. EZDC 2022-05-05-0001R**

**A RESOLUTION OF THE  
CITY OF SAN ANTONIO, TEXAS  
EMPOWERMENT ZONE DEVELOPMENT CORPORATION**

**APPROVING AN AMENDED AND RESTATED INDENTURE OF TRUST AND A FIRST AMENDMENT TO LOAN AGREEMENT RELATING TO THE OUTSTANDING CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION CONTRACT REVENUE EMPOWERMENT ZONE REFUNDING BONDS (DRURY SOUTHWEST HOTEL PROJECT), SERIES 2013A AND SERIES 2013B, PRIMARILY FOR THE PURPOSE OF MODIFYING THE INTEREST RATE FORMULA RELATED TO SUCH BONDS; PROVIDING FOR THE TRANSFER OF OWNERSHIP OF SUCH BONDS FROM U.S. BANK NATIONAL ASSOCIATION TO UMB BANK, N.A.; APPOINTING UMB BANK, N.A. TO SERVE AS THE SUCCESSOR TRUSTEE UNDER THE INDENTURE; AND APPROVING OTHER RELATED MATTERS**

\* \* \* \* \*

**WHEREAS**, the CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION (the "**Issuer**") is a nonprofit local government corporation created and existing under the laws of the State of Texas, including particularly Subchapter D of Chapter 431, Texas Transportation Code (the "**Act**"), to act on behalf of the CITY OF SAN ANTONIO, TEXAS (the "**City**") for the purpose of "*aiding and acting on behalf of the City to accomplish certain governmental purposes of the City, to wit: the administration of various federal tax incentives relating to the Empowerment Zone designated within the City, including but not limited to the issuance of empowerment zone facility bonds on behalf of qualified businesses within the Empowerment Zone, at the request of the City Council of the City*"; and

**WHEREAS**, the Issuer, acting on behalf of the City, issued and has outstanding the following series of "Empowerment Zone Bonds" (collectively, the "**Series 2013 Bonds**"), which were issued for the benefit of ALAMO NATIONAL BUILDING DEVELOPMENT, LP, a Missouri limited partnership (the "**Borrower**") in connection with the Borrower's acquisition and renovation of the former Alamo National Bank Building into a "Drury Hotel":

**CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION CONTRACT REVENUE EMPOWERMENT ZONE REFUNDING BONDS (DRURY SOUTHWEST HOTEL PROJECT), SERIES 2013A**, dated as of November 1, 2013, and currently outstanding in the aggregate principal amount of \$21,900,000; and

**CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION CONTRACT REVENUE EMPOWERMENT ZONE REFUNDING BONDS (DRURY SOUTHWEST HOTEL PROJECT), SERIES 2013B**, dated as of November 1, 2013, and currently outstanding in the aggregate principal amount of \$18,000,000; and

**WHEREAS**, the Series 2013 Bonds were issued pursuant to the provisions of an *Indenture of Trust*, dated as of November 1, 2013, between the Issuer and **U.S. BANK NATIONAL ASSOCIATION**, as Trustee (the "**Original Trustee**"), which was amended by the *First Amendment to Indenture of Trust*, dated as of the December 2, 2020, between the Issuer and the Original Trustee (collectively, the "**Original Indenture**"); and

**WHEREAS**, all capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Original Indenture; and

**WHEREAS**, Section 2.04 of the Original Indenture provides that " . . . *Index Rate Bonds may be transferred to another purchaser (other than an Affiliate of the [Original] Bank) if (i) written notice of such transfer, together with addresses and related information with respect to such purchaser is delivered to the Trustee by such transferor and (ii) such purchaser shall have delivered to the Trustee and the transferor a Purchaser Letter in the form attached hereto as Exhibit B executed by a duly authorized officer of such purchaser; provided that each such purchaser (other than an Affiliate of the [Original] Bank) shall constitute a commercial bank organized under the laws of the United States, or any state thereof, or any other country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of any such country, and, in any such case, having a combined capital and surplus, determined as of the date of any transfer pursuant to this Section, of not less than \$5,000,000,000.*"; and

**WHEREAS**, all Series 2013 Bonds currently are owned and held by U.S. Bank National Association in its capacity as a commercial lending institution (referred to herein in such capacity as the "**Original Bank**"); however, the Borrower and the Original Bank have agreed to transfer ownership of the Series 2013 Bonds to *UMB Bank, N.A.* (which is a commercial bank organized under the laws of the United States), as permitted by Section 2.04 of the Original Indenture, and, immediately upon such transfer of the Series 2013 Bonds, for UMB Bank, N.A. to serve as the Trustee, Paying Agent, Bond Registrar, and Tender Agent relating to the Series 2013 Bonds; and



**WHEREAS**, UMB Bank, N.A. has agreed to assume ownership of the Series 2013 Bonds and serve as the successor Trustee under the Original Indenture and, immediately thereafter, to serve as the successor Trustee, Paying Agent, Bond Registrar, and Tender Agent under the *Amended and Restated Indenture of Trust* being approved by this Resolution (the "**Amended and Restated Indenture**"), and UMB Bank, N.A. has executed and delivered to the Original Trustee the Purchase Letter required pursuant to Section 2.04 of the Original Indenture; and

**WHEREAS**, Section 8.01(C) of the Original Indenture provides that "[t]he Trustee may at any time resign by giving written notice of such resignation to the Borrower and the Issuer and by giving the Bondholders notice of such resignation by mail at the addresses shown on the registration books maintained by the Trustee. Upon receiving such notice of resignation, the Issuer shall promptly appoint (at the direction of the Borrower so long as no Loan Default Event is then existing under Section 7.1(a), (b), (c) or (d) of the Loan Agreement) a successor Trustee by an instrument in writing. . . ."

**WHEREAS**, as permitted by Section 8.01(C) of the Original Indenture, the Original Trustee has given to the Borrower, the Issuer and the Bondholders written notice of its desire to resign as the Trustee under the Original Indenture in accordance with the requirements of such Section, and Borrower has given written direction to the Issuer to appoint UMB Bank, N.A. as the successor Trustee under the Original Indenture; accordingly, the Board of Directors of the Issuer (the "**Board**") deems it necessary and appropriate to appoint UMB Bank, N.A., to serve as the successor Trustee under the Original Indenture and, subsequently, under the Amended and Restated Indenture, as well as the successor Paying Agent, Bond Registrar, and Tender Agent; and

**WHEREAS**, in recognition of the fact that the ability to use LIBOR as a world-wide index on which to base certain interest rates in certain debt financings (including with respect to the Series 2013 Bonds) will cease in the near future, the Borrower and UMB Bank, N.A. as the new "Bank" relating to the Series 2013 Bonds desire to substitute the "LIBOR Index" referenced and used in the Original Indenture and substitute in its place the "SOFR Index" (as defined in Section 1.01 herein) and to delete all references and provisions relating to LIBOR contained in the Original Indenture and substitute in their place appropriate terms relating to the SOFR Index; and

**WHEREAS**, Section 9.01 of the Original Indenture provides that the "*Indenture and the rights and obligations of the Issuer and of the Holders of the Bonds and of the Trustee may be modified or amended from time to time and at any time by an indenture or indentures supplemental hereto, which the Issuer and the Trustee may enter into when the written consent of the Holders of sixty-six and two-thirds percent (66-2/3%) in aggregate principal amount of all Bonds then Outstanding shall have been filed with the Trustee*"; provided, however, "[n]o such Supplemental Indenture shall . . . change the method of computing the rate of interest thereon . . . without . . . the consent of the Holders of all of the Bonds then Outstanding"; and

**WHEREAS**, in satisfaction of Section 9.01 of the Original Indenture, UMB Bank, N.A. (which will be the Holder of all Bonds upon the transfer and assignment of such Bonds by the Original Bondholder) has consented to changing the method of computing the rate of interest on the Series 2013 Bonds as set forth in the Amended and Restated Indenture being approved by this Resolution; and

**WHEREAS**, the Amended and Restated Indenture being approved by this Resolution shall be entered into by the Issuer and the Trustee in accordance with the provisions of Section 9.01 of the Original Indenture as a full and complete amendment and restatement of the Original Indenture at the request of the Borrower and UMB Bank, N.A. to accomplish the purposes set forth above, and the execution hereof by the Trustee and the acceptance hereof by the Borrower and UMB Bank, N.A. are intended to evidence the Trustee's and the Borrower's acceptance and approval of the Amended and Restated Indenture as required by Section 9.01 of the Original Indenture; and

**WHEREAS**, in addition to requesting the Issuer approve a full amendment and restatement of the Original Indenture, the Borrower and UMB Bank, N.A. have requested the Issuer enter into a "First Amendment to Loan Agreement" in substantially the form attached hereto as Exhibit B (the "**First Amendment to Loan Agreement**") primarily for the purpose of acknowledging that UMB Bank, N.A. shall be replacing U.S. Bank National Association as the Bondholder of the Series 2013 Bonds and shall be the financial institution that will serve as the "Bank" under the terms of the Amended and Restated Indenture and the Loan Agreement; and

**WHEREAS**, the First Amendment to Loan Agreement is being entered into in accordance with the provisions of Section 9.05 of the Original Indenture, which requires that the "Trustee" must give its prior written consent to any amendment, change modification, or alteration of the Loan Agreement; and

**WHEREAS**, in satisfaction of Section 9.05 of the Original Indenture, the First Amendment to Loan Agreement being approved by this Resolution may only be executed and delivered by the Issuer if the Trustee executes the "Trustee Consent" incorporated on the signature page of the First Amendment to Loan Agreement; and

**WHEREAS**, it is hereby officially found and determined that the meeting at which this Resolution was adopted was open to the public and public notice of the time, place, and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code; and

**THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION THAT:**



**SECTION 1. APPOINTMENT OF UMB BANK, N.A., AS SUCCESSOR TRUSTEE.** In satisfaction of Section 8.01(C) of the Original Indenture, the Board hereby appoints UMB, N.A. to serve as the successor Trustee to the Original Trustee. Such appointment shall become effective immediately upon the transfer and delivery of the Series 2013 Bonds to UMB Bank, N.A., as described in the Recitals of this Resolution.

**SECTION 2. APPROVAL OF AMENDED AND RESTATED INDENTURE.** The Board hereby approves the Amended and Restated Indenture in substantially the form attached hereto as Exhibit A, and the President or Vice President of the Issuer is hereby authorized and directed, for and on behalf of the Issuer, to date, sign, and otherwise execute the Amended and Restated Indenture and the Secretary or any Assistant Secretary is authorized and directed, for and on behalf of the Issuer, to attest the Amended and Restated Indenture, and such officers are hereby authorized to deliver such document to the other parties and signatories thereto. Upon execution by the parties thereto and delivery thereof, the Amended and Restated Indenture shall be binding upon the Issuer in accordance with the terms and provisions thereof.

**SECTION 3. APPROVAL OF FIRST AMENDMENT TO LOAN AGREEMENT.** The Board hereby approves the First Amendment to Loan Agreement in substantially the form attached hereto as Exhibit B, and the President or Vice President of the Issuer is hereby authorized and directed, for and on behalf of the Issuer, to date, sign, and otherwise execute such First Amendment and the Secretary or any Assistant Secretary is authorized and directed, for and on behalf of the Issuer, to attest such First Amendment, and such officers are hereby authorized to deliver such document to the other parties and signatories thereto. Upon execution by the parties thereto and delivery thereof, the First Amendment to Loan Agreement shall be binding upon the Issuer in accordance with the terms and provisions thereof.

**SECTION 4. AUTHORIZATION TO APPROVE CHANGES.** The President, Vice President, and Secretary of the Board of the Issuer are hereby authorized to approve any changes made to the Amended and Restated Indenture and the First Amendment to Loan Agreement from the forms presented to and approved by the Board, such approval to be evidenced by the execution of such documents by an authorized representative of the Issuer, provided that such changes are not inconsistent with this Resolution.

**SECTION 5. AUTHORIZATION TO APPROVE ADDITIONAL ACTIONS AND DOCUMENTS.** All officers, employees, agents and representatives of the Issuer and the Board (including but not limited to the President, Vice President, Secretary, any Assistant Secretary, Treasurer and Executive Director of the Issuer) shall be and are hereby expressly authorized, empowered and directed from time to time, and at any time, to do and perform all such acts and things, and to execute and deliver in the name and under the official seal and on behalf of the Issuer all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions

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of this Resolution (including but not limited to (i) a *Tri-Partite Agreement* by and among the Issuer, the Original Trustee and the Successor Trustee to further evidence the appointment of UMB Bank, N.A. as the successor Trustee to the Original Trustee under the Indenture, and (ii) a *First Amendment to Tax Agreement* among various parties (including the Issuer) primarily to update certain provisions of the original Tax Agreement to conform to changes in federal law relating to the residency requirements of employees of the Drury Hotel to which the Borrower must comply).

**SECTION 6. INCORPORATION OF RECITALS.** The Board hereby finds that the statements set forth in the recitals of this Resolution are true and correct, and the Board hereby incorporates such recitals as a part of this Resolution.

**SECTION 7. EFFECTIVE DATE.** This Resolution shall become effective immediately upon its adoption.

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***PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF THE CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION THIS 5<sup>TH</sup> DAY OF MAY, 2022.***

  
\_\_\_\_\_  
President, Board of Directors

Attest:

  
\_\_\_\_\_  
Secretary, Board of Directors

(Seal)



Signature Page to the Issuer's Resolution Approving an Amendment to the Indenture of Trust  
Relating to the City of San Antonio, Texas Empowerment Zone Development Corporation  
Contract Revenue Empowerment Zone Refunding Bonds  
(Drury Southwest Hotel Project), Series 2013A and Series 2013B





## City of San Antonio

### City Council Meeting May 5, 2022

21.

#### **EZDC 2022-05-05-0001R**

Resolution of the City of San Antonio, Texas Empowerment Zone Development Corporation approving an Amended and Restated Indenture of Trust and a First Amendment to Loan Agreement relating to the outstanding City of San Antonio, Texas Empowerment Zone Development Corporation Contract Revenue Empowerment Zone Refunding Bonds (Drury Southwest Hotel Project), Series 2013A and Series 2013B, primarily for the purpose of modifying the interest rate formula related to such Bonds; providing for the transfer of ownership of such Bonds from U.S. Bank National Association to UMB Bank, N.A.; consenting to UMB Bank, N.A. to serve as the successor Trustee under the Indenture; and approving other related matters. [Ben Gorzell, Jr., Chief Financial Officer; Troy Elliott, Deputy Chief Financial Officer]

Councilmember Viagran moved to Approve on the Consent Agenda. Councilmember Rocha Garcia seconded the motion. The motion carried by the following vote:

**Aye:** Nirenberg, Bravo, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo, Cabello  
Havrda, Sandoval, Pelaez, Courage, Perry



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**EXHIBIT A**

**FORM OF AMENDED AND RESTATED INDENTURE**

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**EXHIBIT B**

**FORM OF FIRST AMENDMENT TO LOAN AGREEMENT**



## CERTIFICATE FOR RESOLUTION

I, the undersigned Secretary of the CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION (the "**Corporation**"), hereby certify as follows:

1. The Board of Directors of the Corporation (the "**Board of Directors**") convened in Special Meeting on May 5, 2022 at the designated meeting place (the "**Meeting**"), and the roll was called of the duly constituted officers and members of the Board of Directors, to wit:

Ron Nirenberg, President  
Mario Bravo, Director  
Jalen McKee-Rodriguez, Director  
Phyllis Viagran, Director  
Dr. Adriana Rocha Garcia, Director  
Teri Castillo, Director

Melissa Cabello Havrda, Director  
Ana Sandoval, Director  
Manny Peláez, Director  
John Courage, Director  
Clayton Perry, Director

all of the officers and members of the Board of Directors were present, except the following absentees:       NONE      . Whereupon, among other business, the following was transacted at the Meeting: a written

### RESOLUTION NO. EZDC 2022-05-05-0001R

**RESOLUTION APPROVING AN AMENDED AND RESTATED INDENTURE OF TRUST AND A FIRST AMENDMENT TO LOAN AGREEMENT RELATING TO THE OUTSTANDING CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION CONTRACT REVENUE EMPOWERMENT ZONE REFUNDING BONDS (DRURY SOUTHWEST HOTEL PROJECT), SERIES 2013A AND SERIES 2013B, PRIMARILY FOR THE PURPOSE OF MODIFYING THE INTEREST RATE FORMULA RELATED TO SUCH BONDS; PROVIDING FOR THE TRANSFER OF OWNERSHIP OF SUCH BONDS FROM U.S. BANK NATIONAL ASSOCIATION TO UMB BANK, N.A.; APPOINTING UMB BANK, N.A. TO SERVE AS THE SUCCESSOR TRUSTEE UNDER THE INDENTURE; AND APPROVING OTHER RELATED MATTERS**

(the "**Resolution**") was duly introduced for the consideration of the Board of Directors. It was then duly moved and seconded that the Resolution be passed on first reading and, after due discussion, said motion carrying with it the adoption of the Resolution, prevailed and carried by the following vote:

AYES: 11 NOES: 0 ABSTENTIONS: 0

2. A true, full and correct copy of the Resolution adopted at the Meeting described in the above and foregoing paragraph is attached to and follows this Certificate; the Resolution has been duly recorded in the Board of Directors's minutes of the Meeting; the above and foregoing paragraph is a true, full and correct excerpt from the Board of Directors's minutes of the Meeting pertaining to the passage of the Resolution; the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of the Board of Directors as indicated therein; each of the officers and members of the Board of Directors was duly and sufficiently notified officially and personally, in advance, of the time, place and purpose of the Meeting, and that the Resolution would be introduced and considered for passage at the Meeting, and each of said officers and members consented, in advance, to the holding of the Meeting for such purpose, and that the Meeting was open to the public and public notice of the time, place and purpose of the Meeting was given, all as required by Chapter 551, Texas Government Code.

SIGNED AND SEALED the 5<sup>th</sup> day of May, 2022.



Daphne Rasca Sette  
Secretary  
City of San Antonio, Texas  
Empowerment Zone Development Corporation