

## TAX AGREEMENT

BY AND AMONG

**CITY OF SAN ANTONIO, TEXAS  
EMPOWERMENT ZONE DEVELOPMENT CORPORATION,**  
as Issuer,

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee,

**ALAMO NATIONAL BUILDING DEVELOPMENT PARTNERSHIP, LP,**  
as Owner,

**ALAMO NATIONAL BUILDING DEVELOPMENT, LP,**  
as Borrower,

and

**DRURY HOTELS COMPANY, LLC**  
as Operator

RELATING TO

**\$21,900,000**  
**CITY OF SAN ANTONIO, TEXAS**  
**EMPOWERMENT ZONE DEVELOPMENT CORPORATION**  
**CONTRACT REVENUE EMPOWERMENT ZONE REFUNDING BONDS**  
**(DRURY SOUTHWEST HOTEL PROJECT), SERIES 2013A**

and

**\$18,000,000**  
**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

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## TAX AGREEMENT

**THIS TAX AGREEMENT** (this "*Agreement*" or this "*Tax Agreement*") dated as of November 1, 2013, is by and among the following parties:

**CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION**, a Texas nonprofit local government corporation (together with its successors and assigns, the "*Issuer*"),

**U.S. BANK NATIONAL ASSOCIATION**, a national banking association, in its capacity as trustee under the hereinafter defined Indenture (together with any successor trustee under the Indenture, the "*Trustee*"),

**ALAMO NATIONAL BUILDING DEVELOPMENT PARTNERSHIP, LP**, a Texas limited partnership (together with its permitted successors and assigns, the "*Owner*") composed of **ALAMO NATIONAL MANAGEMENT, LLC**, a Texas limited liability company, as the general partner, and **DRURY SOUTHWEST ALAMO DEVELOPMENT, LP**, a Delaware limited partnership, as a limited partner,

**ALAMO NATIONAL BUILDING DEVELOPMENT, LP**, a Missouri limited partnership (together with its permitted successors and assigns, the "*Borrower*" and master landlord) composed of **ALAMO NATIONAL BUILDING MANAGEMENT, LP**, a Missouri limited partnership, as the general partner, and **DSW ALAMO MANAGEMENT, LLC**, a Delaware limited liability company, as a limited partner, and

**DRURY HOTELS COMPANY, LLC**, a Nevada limited liability company (together with its permitted successors and assigns, the "*Operator*"), and

### WITNESSETH:

**WHEREAS**, the Issuer is a nonprofit local government corporation created by the City of San Antonio, Texas (the "*City*") and existing under Subchapter D of Chapter 431, Texas Transportation Code, as amended (the "*Act*"), 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**, pursuant to the Act, the Issuer is authorized to issue one or more series of its revenue bonds and to loan the proceeds thereof to finance the design, development, construction, equipping, furnishing and opening of the Project; and

**WHEREAS**, the Borrower has requested the assistance of the Issuer in financing certain hotel and related facilities constituting the Project (as hereinafter defined), and, as a condition to

such financial assistance, the Borrower has agreed to enter into this Tax Agreement, setting forth certain restrictions with respect to the Project; and

**WHEREAS**, the Issuer already has assisted the Borrower in financing the Project by previously issuing (i) \$21,900,000 in principal amount of bonds entitled **CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION CONTRACT REVENUE EMPOWERMENT ZONE BONDS (DRURY SOUTHWEST HOTEL PROJECT), SERIES 2005** (the "**Series 2005 Bonds**"), and (ii) \$18,000,000 in principal amount of bonds entitled **CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION CONTRACT REVENUE EMPOWERMENT ZONE BONDS (DRURY SOUTHWEST HOTEL PROJECT), SERIES 2007** (the "**Series 2007 Bonds**"), and together with the Series 2005 Bonds, the "**Refunded Bonds**"; each a "**Prior Bond Issue**"; and

**WHEREAS**, the Owner owns fee simple title to the Project and has leased the Project to the Borrower for an initial term of 50 years pursuant to a "Ground Lease" between the Owner and the Borrower; and

**WHEREAS**, the Borrower was responsible for the renovation and redevelopment of the Project; and

**WHEREAS**, the Borrower has caused the Project to be managed and operated by the Operator pursuant to the "Operating Agreement" (as defined in Section 1 below); and

**WHEREAS**, the Issuer has determined to provide additional assistance in the refinancing of the Project by issuing **CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION CONTRACT REVENUE EMPOWERMENT ZONE REFUNDING BONDS, SERIES 2013A** in the aggregate principal amount of \$21,900,000 (the "**Series 2013A Bonds**"), and making a loan to the Borrower of such principal amount, upon the terms and conditions set forth in the Loan Agreement (as hereinafter defined) in order to provide funds to refund the outstanding Series 2005 Bonds; and

**WHEREAS**, similarly, the Issuer has determined to provide additional assistance in the refinancing of the Project by issuing **CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION CONTRACT REVENUE EMPOWERMENT ZONE REFUNDING BONDS, SERIES 2013B** in the aggregate principal amount of \$18,000,000 (the "**Series 2013B Bonds**"), and making a loan to the Borrower of such principal amount, upon the terms and conditions set forth in the Loan Agreement (as hereinafter defined) in order to provide funds to refund the outstanding Series 2007 Bonds; and

**WHEREAS**, the Series 2013A Bonds and the Series 2013B Bonds are referred to collectively herein as the "**Bonds**"; and

**WHEREAS**, in order for interest on the Bonds to be excluded from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "**Code**"), and the income tax regulations (including temporary, proposed and final regulations) and rulings with respect to the Code, and in order to comply with the requirements of the Act, relating to the Bonds, the use and operation of the Project must be restricted in certain respects; and

**WHEREAS**, the Issuer, the Trustee, the Owner, the Borrower and the Operator have determined to enter into this Tax Agreement in order to set forth certain terms and conditions relating to the acquisition, construction, equipping and operation of the Project and in order to ensure that the Project will be acquired, constructed, equipped, used and operated in accordance with the Code and the Act.

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Issuer, the Trustee, the Owner, the Borrower and the Operator hereby agree as follows:

**SECTION 1. DEFINITIONS AND INTERPRETATION.** In addition to terms defined above, capitalized terms shall have the respective meanings assigned to them in this Section 1 or, if not defined below, in the Indenture unless the context in which they are used clearly requires otherwise:

"**Affiliated Party**" means a partner of the Borrower, a person whose relationship with the Borrower would result in a disallowance of losses under section 267 or 707(b) of the Code or a person who, together with the Borrower, is a member of the same controlled group of corporations (as defined in section 1563(a) of the Code, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein).

"**Agreement**" or "**Tax Agreement**" means this Tax Agreement, as it may be amended from time to time.

"**Bond Counsel**" means a firm or firms of attorneys selected by the Issuer and acceptable to the Trustee whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized.

"**Bond Year**" has the meaning set forth in Section 5.07(b) of the Indenture.

"**Borrower**" means Alamo National Building Development, LP, a Missouri limited partnership, together with its permitted successors and assigns.

"**Borrower Representative**" means any Person who at the time and from time to time may be designated as such, by written certificate furnished to the Issuer and the Trustee containing the

specimen signature of such Person and signed on behalf of the Borrower by authorized representatives of the General Partner of the Borrower, which certificate may designate an alternate or alternates.

"**Compliance Monitoring Report**" means the annual certified enterprise zone facility compliance report to be respectively filed by the Borrower, the Operator, and other Principal Users, if any, with the Issuer and the Trustee pursuant to section 1.1394-1(b)(3)(iii) of the Regulations with respect to the Project, in substantially the form attached hereto as Exhibit D, or in such other form as the Issuer may reasonably prescribe.

"**Compliance Period**" means the period of compliance as defined in section 1.1394-1(b) of the Regulations, including sections 1.1394-1(b)(2) and (c) of the Regulations, that commences on the Initial Testing Date.

"**Computation Date**" means each Installment Computation Date and the Final Computation Date.

"**Empowerment Zone**" means the portion of the City designated, pursuant to section 1391(h) of the Code, by the United States Department of Housing and Urban Development as a Round III Urban Empowerment Zone.

"**Enterprise Zone Business**" has the meaning set forth in sections 1394(b)(3) and 1397C of the Code.

"**Enterprise Zone Facility**" has the meaning set forth in section 1394(b)(1) of the Code.

"**Favorable Opinion of Bond Counsel**" means an opinion of Bond Counsel, addressed to the Issuer and the Trustee, to the effect that the action to be taken will not adversely affect the excludability of interest on the Bonds from gross income for federal tax purposes, except for Bonds held by a "substantial user" or a "related person," within the meaning of the Code.

"**Final Computation Date**" means the date the last Bond is discharged.

"**Financing Documents**" means, collectively, the Indenture and the Loan Agreement.

"**General Partner of the Borrower**" means Alamo National Building Management, LP, a Missouri limited partnership, together with any permitted successors and assigns.

"**Gross Proceeds**" means any Proceeds and any Replacement Proceeds of the Bonds.

**"Indenture"** means the Indenture of Trust, dated as of November 1, 2013, by and between the Issuer and the Trustee, relating to the issuance of the Bonds, and any indenture supplemental thereto.

**"Inducement Date"** means June 24, 2004.

**"Initial Testing Date"** has the meaning set forth in section 1.1394-1(c)(4) of the Regulations.

**"Installment Computation Date"** means the last day of each Bond Year and the date on which the final payment in full of all Outstanding Bonds is made.

**"Investment"** has the meaning set forth in section 1.148-1(b) of the Regulations.

**"Investment Proceeds"** means any amounts actually or constructively received from investing Proceeds.

**"Issuance Costs"** means the items of expense relating to the authorization, sale and issuance of the Bonds, which items of expense may include, without limitation: travel expenses; printing costs; costs of reproducing documents; computer fees and expenses; filing and recording fees; initial fees and charges of the Trustee; legal fees and expenses related to drafting and negotiating all Financing Documents; fees and expenses of any consultants retained by the Issuer or the City in connection with the issuance of the Bonds; auditing fees and expenses; fees and charges of the Issuer's financial advisor and Bond Counsel; costs of credit ratings; and any other administrative or other costs of issuing such Bonds and investing the Bond proceeds.

**"Issue Price"** means "issue price" as defined in sections 1273 and 1274 of the Code, unless otherwise provided in sections 1.148-0 through 1.148-11 of the Regulations and, generally, is the aggregate initial offering price to the public (excluding bond houses, brokers and other intermediaries acting in the capacity of wholesalers or underwriters) at which a substantial amount of each maturity of Bonds is sold.

**"Loan"** means the loan to be made to the Borrower pursuant to the Loan Agreement.

**"Loan Agreement"** means the Loan Agreement of even date herewith between the Issuer and the Borrower relating to the Bonds, as it may be amended, modified, supplemented or restated from time to time to the extent permitted by the Indenture.

**"Net Proceeds"** means any Net Sale Proceeds, Investment Proceeds and Transferred Proceeds of the Bonds.

**"Net Sale Proceeds"** means the Sale Proceeds of the Bonds less any such proceeds deposited into a Reasonably Required Reserve or Replacement Fund under section 148(d) of the Code.

**"No-Arbitrage Certificate"** means the No-Arbitrage Certificate, dated the Closing Date, executed by the Issuer and based, in part, on representations of the Borrower and the Purchaser, and delivered by the Issuer with respect to the Bonds.

**"Nonpurpose Investments"** means any "investment property," within the meaning of section 148(b) of the Code, acquired with the Gross Proceeds of the Bonds.

**"Nonqualified Financial Property"** has the meaning set forth in section 1397C(e) of the Code.

**"Non-Resident Employees"** means employees of the Borrower's Enterprise Zone Business that are not residents of the Empowerment Zone.

**"Operating Agreement"** means the Management, Administrative Services, and Marketing Agreement dated as of December 31, 2012, between Borrower and Operator, and any succeeding agreement for the operation of the Project.

**"Operator"** means Drury Hotels Company, LLC, a Nevada limited liability company.

**"Owner"** means Alamo National Building Development Partnership, LP, a Texas limited partnership together with its permitted successors and assigns.

**"Person"** means any individual, entity, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

**"Principal User"** has the meaning set forth in the Code, Regulations (including section 1.1394-1(j) thereof), and the published rulings of the Internal Revenue Service, United States Department of the Treasury. Under appropriate circumstances, Principal Users may apply section 1394(b)(3)(D) of the Code relating to qualification if separately incorporated) for purposes of this Tax Agreement. For purposes of this Agreement, Borrower and Owner, as the owner of the fee title to the Project, are Principal Users.

**"Principal User Agreement"** means any agreement between the Borrower and a Principal User for use of the Project or between a Principal User and another Principal User for use of the Project, including but not limited to the "Ground Lease" between the Owner and the Borrower.



**"Proceeds"** means any Sale Proceeds, Investment Proceeds and Transferred Proceeds of the Bonds.

**"Project"** means the Project Facilities located on the Project Site. The Project is part of a larger development, the balance of which is not subject to this Agreement because it is not being financed with proceeds of the Bonds and was not originally financed with proceeds of the Series 2005 Bonds or the Series 2007 Bonds.

**"Project Costs"** means, to the extent authorized by the Act, any and all costs incurred by the Borrower with respect to the acquisition of a leasehold, construction, rehabilitation and equipping, as the case may be, of the Project, as more specifically described in the Prior Tax Documents (as defined below).

**"Project Facilities"** means only the hotel and related amenities and Riverwalk improvements constructed with proceeds of the Series 2005 Bonds and the Series 2007 Bonds (which are being refinanced with proceeds of the Bonds) and located on the Project Site, as more specifically and respectively described and set forth in Exhibit B hereto and (to the extent not inconsistent) in such Prior Tax Letter of Representation and Tax Agreement relating to the Series 2005 Bonds and the Series 2007 Bonds, respectively (collectively, the **"Prior Tax Documents"**).

**"Project Site"** means the parcel or parcels of real property described in the Prior Tax Documents.

**"Purchaser"** means U.S. Bank National Association.

**"Qualified Business"** has the meaning set forth in section 1397C(d) of the Code.

**"Qualified Project Costs"** means the Project Costs incurred no earlier than 60 days prior to the Inducement Date (or which are qualifying preliminary expenditures) and no earlier than three years prior to the date reimbursed with Proceeds, but in no event shall such costs have been incurred with respect to a portion of the Project that is placed in service, within the meaning of Section 1.150-2 of the Regulations, earlier than 18 months prior to the date the related costs are reimbursed with proceeds of the applicable Refunded Bonds; provided that such costs are chargeable to a capital account with respect to the Project for Federal income tax, or would be so chargeable either with a proper election by the Borrower or but for the proper election by the Borrower to deduct those amounts. Qualified Project Costs do not include Issuance Costs.

**"Qualified Zone Property"** has the meaning set forth in sections 1394(b)(2) and 1397D of the Code.

**"Reasonably Required Reserve or Replacement Fund"** means any fund described in section 148(d) of the Code, provided that the amount thereof allocable to the Bonds invested at a Yield materially higher than the Yield on the Bonds does not exceed 10% of the proceeds of the Bonds, within the meaning of section 148(d) of the Code, and does not exceed the size limitations in section 1.148-2(f)(2)(ii) of the Regulations.

**"Rebate Amount"** has the meaning ascribed in section 1.148-3(b) of the Regulations and generally means the excess as of any date of the future value of all receipts on Nonpurpose Investments over the future value of all payments on Nonpurpose Investments, all as determined in accordance with section 1.148-3 of the Regulations. In the case of any Spending Exception Issue, the "Rebate Amount" as of any Computation Date shall be limited to the "Rebate Amount" attributable to any Reasonably Required Reserve or Replacement Fund.

**"Regulations"** means the applicable proposed, temporary or final Income Tax Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

**"Replacement Proceeds"** has the meaning set forth in Section 1.148-1(c) of the Regulations.

**"Resident Employees"** means employees of the respective Enterprise Zone Business that are residents of the Empowerment Zone.

**"Resident Employee Certification"** means a certification by a Resident Employee meeting the requirements of Section 2(i)(ii) of this Agreement in substantially the form attached hereto as Exhibit C, or in such other form as the Issuer may reasonably prescribe.

**"Sale Proceeds"** means any amounts actually or constructively received from the sale (or other disposition) of any Bond, including amounts used to pay underwriters' discount or compensation and accrued interest other than pre-issuance accrued interest. Sale Proceeds also include amounts derived from the sale of a right that is associated with any Bond and that is described in Section 1.148-4 of the Regulations.

**"Spending Exception Issue"** means any issue of Bonds that meets the applicable exception set forth in section 1.148-7 of the Regulations.

**"Startup Period"** means, in accordance with section 1394(b)(3)(C)(I) of the Code, the period before the first taxable year beginning more than two years after the later of the date of issuance of each Prior Bond Issue, or the date the Project is first placed in service after such issuance (or, if earlier, the date which is three years after the date of issuance of such Prior Bond Issue).

"**Stated Maturity**," when used with respect to the Loan or the Bonds or any installment of interest thereon, means any date specified in the Loan Agreement or the Bonds as a fixed date on which the principal of the Loan or the Bonds or a portion thereof or such installment of interest is due and payable.

"**Tax Letter of Representation**" means the Tax Letter of Representation relating to the Bonds, dated the Closing Date, executed by the Borrower and addressed to the Issuer and Bond Counsel.

"**Testing Period**" means the first three taxable years beginning after the Startup Period.

"**Transferred Proceeds**" means, with respect to any portion of the Bonds that is a refunding issue, proceeds that have ceased to be proceeds of a refunded issue and are transferred proceeds of the refunding issue by reason of Section 1.148-9 of the Regulations.

"**Yield**" means yield as determined in accordance with section 148 of the Code and Section 1.148-4 of the Regulations, and generally, is the yield which when used in computing the present worth of all payments of principal and interest to be paid on an obligation produces an amount equal to the Issue Price of such obligation.

Unless the context clearly requires otherwise, as used in this Tax Agreement, words of the masculine, feminine or neuter gender shall be construed to include each other gender, and words of the singular number shall be construed to include the plural number, and vice versa. This Tax Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The defined terms used in the preamble and recitals of this Tax Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all defined terms shall be determined by reference to this Section 1, notwithstanding any contrary definition in the preamble or recitals hereof. The titles and headings of the sections of this Tax Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Tax Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

**SECTION 1A. REFUNDING OF PRIOR BOND ISSUES.** The Borrower hereby represents, as of the date hereof, covenants and agrees as follows:

(a) All of the representations made by the Borrower in the applicable Prior Tax Letters of Representation and Prior Tax Agreements that were made in connection with the issuance of the Series 2005 Bonds and the Series 2007 Bonds remain accurate and complete as of the date hereof.

(b) The Borrower will not take or omit to take, as is applicable, any action if such action or omission would in any way cause the Proceeds of the Bonds to be applied in a manner contrary to the requirements of the Indenture, the Loan Agreement or this Tax Agreement. The Borrower acknowledges that such requirements have been designed for the purpose of ensuring compliance with the provisions of the Act or the Code applicable to the Borrower and the Project.

(c) The Bonds are currently refunding the Prior Bond Issues and will be treated as designated for purposes of Section 1394(f)(2) because each series of Bonds does not exceed the outstanding amount of the applicable Prior Bond Issues and the Refunded Bond Issues will be redeemed within 90 days of the date hereof.

**SECTION 2. TAX-EXEMPT STATUS OF THE BONDS.** The Borrower shall not take any action or omit to take any action required of it which, if taken or omitted, respectively, would adversely affect the excludability of interest on the Bonds from the gross income of the holders of the Bonds, as defined in section 61 of the Code, for Federal income tax purposes, except for Bonds held by a "substantial user" or "related person." With the intent not to limit the generality of the foregoing, the Borrower covenants and agrees that prior to the final maturity of the Bonds, unless it has received and filed with the Issuer and Trustee a Favorable Opinion of Bond Counsel to the effect that failure to comply with any such covenant or agreement, in whole or in part, will not adversely affect the excludability of interest paid or payable on the Bonds gross income for Federal income tax purposes except for Bonds held by a "substantial user" or "related person" thereto as provided in section 147(a) of the Code:

(a) The Borrower's use of the Net Proceeds of the Bonds will at all times satisfy the following requirements:

(i) At least 95 percent of the Net Proceeds of the Bonds will be used to pay Qualified Project Costs that are costs of an "enterprise zone facility" (within the meaning of section 1394(b) of the Code), all of which costs were, when paid, properly chargeable to the Project's capital account or would have been so chargeable either with a proper election by the Borrower or but for a proper election by the Borrower to deduct such amounts.

(ii) No portion of the Net Proceeds of each Prior Bond Issue have been used, directly or indirectly, for the acquisition of land or an interest therein to be used for farming purposes.

(iii) No more than two percent of the Sale Proceeds of the Bonds will finance the Issuance Costs.

(iv) The Borrower has not used nor will it use or permit the use of any Net Proceeds of the Bonds or any Refunded Bonds or any income from the investment

thereof to provide any airplane, skybox, or other private luxury box, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(b) The Borrower will not take any action or omit to take any action required of it with respect to the Gross Proceeds of the Bonds which, if taken or omitted, respectively, would cause any Bond to be classified as an "arbitrage bond" within the meaning of section 148 of the Code.

(c) Except as provided in the Financing Documents, the Borrower shall not pledge or otherwise encumber, or permit the pledge or encumbrance of, any money, investment, or investment property as security for payment of any amounts due under the Loan Agreement relating to the Bonds, shall not establish any segregated reserve or similar fund for such purpose, and shall not prepay any such amounts in advance of the redemption date of an equal principal amount of Bonds, unless prior to taking any action described in this subsection (c), the Borrower has obtained and delivered to the Trustee a Favorable Opinion of Bond Counsel.

(d) The Borrower shall not, at any time prior to the final maturity of the Bonds, direct the Trustee to invest Gross Proceeds of the Bonds in any Investment (or to use Gross Proceeds to replace money so invested), if as a result of such investment the Yield of all Investments acquired with Gross Proceeds (or with money replaced thereby) on or prior to the date of such investment exceeds the Yield of the Bonds, except as permitted by section 148 of the Code or as provided in the No-Arbitrage Certificate.

(e) Except to the extent permitted by section 149(b) of the Code, neither the Issuer nor any Principal User shall take or omit to take any action which would cause the Bonds to be "federally guaranteed" within the meaning of section 149(b) of the Code.

(f) (i) Unless the Borrower delivers a Favorable Opinion of Bond Counsel, the Borrower shall cause to be delivered, to the Trustee, within 25 days after each Computation Date:

(A) a statement of the Rebate Amount as of such Computation Date; and

(B) (1) if such Computation Date is an Installment Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to at least 90% of the Rebate Amount as of such Installment Computation Date, less any "previous rebate payments" made to the United States (as that term is used in the Regulations), or (2) if such Computation Date is the Final Computation Date, an amount that, together with any amount

then held for the credit of the Rebate Fund, is equal to the Rebate Amount as of such Final Computation Date, less any "previous rebate payments" made to the United States (as that term is used in the Regulations); and

(C) an Internal Revenue Service Form 8038-T properly and completed as of such Computation Date.

The foregoing notwithstanding, the Borrower shall not be required to deliver the foregoing to the Trustee if the Borrower certifies that the Bonds are excepted from the requirements of section 148(f) of the Code and delivers to the Trustee a Favorable Opinion of Bond Counsel that the Bonds are excepted from the requirement of section 148(f) of the Code.

(ii) If the Borrower shall discover or be notified as of any date:

(A) that any amount required to be paid to the United States pursuant to this Section and Sections 5.12 and 7.07 of the Indenture has not been paid as required; or

(B) that any payment paid to the United States pursuant to this Section and Sections 5.12 and 7.07 of the Indenture shall have failed to satisfy any requirement of Section 1.148-3 of the Regulations (whether or not such failure shall be due to any default by the Borrower or the Trustee),

then the Borrower shall:

(X) deliver to the Trustee (for deposit to the Rebate Fund) and instruct the Trustee to pay to the United States from the Rebate Fund (I) the Rebate Amount that the Borrower failed to pay, plus any interest, specified in the Regulations, if such correction payment is delivered to and received by the Trustee within 175 days after such discovery or notice, or (II) if such correction payment is not delivered to and received by the Trustee within 175 day after such discovery or notice, the amount determined in accordance with clause (I) of this subparagraph (X) plus the 100 percent penalty required by the Regulations; and

(Y) deliver to the Trustee an Internal Revenue Service Form 8038-T properly completed as of such date.

(iii) The Borrower shall retain all of its accounting records relating to the funds established under the Indenture and all calculations made in preparing the statements described in this Section for at least six years after the date the last Bond is discharged.

(iv) The Borrower agrees to pay all of the fees and expenses of the rebate analyst, which may be Bond Counsel or a certified public accountant, and any other necessary consultant employed by the Borrower or the Trustee in connection with computing the Rebate Amount.

(g) The Borrower covenants and agrees that each Prior Bond Issue complied with the limitation of section 149(g)(3)(A)(ii) of the Code, and represents that each such Prior Bond Issue did not constitute a hedge bond, within the meaning of the Code.

(h) The Project has been and it will continue to be operated as an "enterprise zone facility" within the meaning of section 1394(b) of the Code at all times required by the Code and Regulations to the end that the interest on the Bonds and any Refunded Bonds are excluded from gross income for federal income tax purposes. In particular, the Borrower, the Operator, and any other Principal User pursuant to the respective Principal User Agreement, each represents, covenants and agrees as follows:

(i) At all times required by the Code and Regulations, subject to the limitations during the Startup Period, the Operator and any other Principal User have been an Enterprise Zone Business.

(ii) At all times required by the Code and Regulations, the Borrower, the Operator, and any other Principal User will continue to be an Enterprise Zone Business;

(iii) At all times required by the Code and Regulations, at least 35 percent (35%) of the employees of the respective Enterprise Zone Business of the Borrower, the Operator, and any other Principal User have been and will continue to be Resident Employees.

(iv) At all times required by the Code and Regulations, the Project has qualified as, and it will continue to qualify as, Qualified Zone Property the Principal Users of which are the Borrower, the Operator, and any Principal User;

(v) At all times required by the Code and Regulations, the Project has consisted and will continue to consist of Qualified Zone Property to which section 168 of the Code applies (or would apply but for section 179 of the Code) and that (A) was acquired by the Owner by purchase and leased to the Borrower after the date on which the designation of the Empowerment Zone took effect, (B) the original use of

which in the Empowerment Zone commenced with the Owner and the Borrower, and (C) substantially all of the use of which has been and will continue to be in the Empowerment Zone and has been and will continue to be in the active conduct of the respective Enterprise Zone Business in the Empowerment Zone of the Borrower, the Operator, and any other Principal User;

(vi) At all times required by the Code and Regulations, each of the Borrower, the Operator, and any other Principal User, has been and will continue to be a corporation or partnership that is an Enterprise Zone Business. In furtherance thereof, (A) every trade or business of the Borrower, the Operator and any other Principal User, will be the active conduct of a respective Qualified Business within the Empowerment Zone, (B) at least 50 percent of the total gross income of the Borrower, the Operator (after applying section 1394(b)(3)(D) of the Code relating to qualification if separately incorporated), and other Principal Users, if any, will be derived from the active conduct of such respective business, (C) a substantial portion of the use of the tangible property of the Borrower, the Operator (after applying section 1394(b)(3)(D) of the Code relating to qualification if separately incorporated), and other Principal Users, if any (whether owned or leased), is within the Empowerment Zone, (D) a substantial portion of the intangible property of the Borrower will be used in the active conduct of such respective business, (E) a substantial portion of the services performed for the Borrower, the Operator (after applying section 1394(b)(3)(D) of the Code relating to qualification if separately incorporated), and other Principal Users, if any, by its respective employees will be performed in the Empowerment Zone, (F) at least 35 percent (35%) of the respective employees of the Borrower, the Operator, and any other Principal User will be residents of the Empowerment Zone, (G) less than five percent of the average of the aggregate unadjusted bases of the respective property of the Borrower, the Operator (after applying section 1394(b)(3)(D) of the Code relating to qualification if separately incorporated), and other Principal Users of the Project, if any, will be attributable to collectibles (as defined in section 408(m)(2) of the Code) other than collectibles that are held primarily for sale to customers in the ordinary course of such respective business, and (H) less than five percent of the average of the aggregate unadjusted bases of the respective property of the Borrower, the Operator, and any other Principal User, will be attributable to Nonqualified Financial Property.

(vii) The respective trade or business of the Borrower, the Operator, and any other Principal Users of the Project is neither (A) a trade or business consisting of the operation of a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises nor (B) a trade or business the principal activity of which is farming.



(viii) The land refinanced with proceeds of the Bonds is functionally related and subordinate to the Qualified Zone Property constituting the Project.

(ix) More than one-half of the units in the Project have been, are and will continue to be available for use on a transient basis.

(x) The Borrower, the Operator, and any other Principal User will in good faith attempt to comply with the requirements of sections 1394(a) and (b) of the Code relating to bonds that provide Enterprise Zone Facilities throughout the Compliance Period.

(xi) Each of the Borrower, the Operator, and any other Principal User will correct any respective failure to meet the requirements of sections 1394(a) and (b) of the Code relating to Enterprise Zone Facilities within one-year after the failure is first discovered.

For purposes of this Agreement, any application of section 1394(b)(3)(D) of the Code relating to qualification if separately incorporated by the Operator and any other Principal User must, in accordance with section 1.1394-1(k) of the Regulations, allocate the income and activities thereof using a reasonable allocation method. The Operator and any other Principal User must also maintain evidence of such allocations sufficient to establish compliance with the requirements applicable to an Enterprise Zone Business.

(i) Each of the Borrower, the Operator and any other Principal User, pursuant to the respective Principal User Agreement, represents, covenants and agrees, continuously during the Start-up Period, Testing Period, Compliance Period, and any other periods required by the Code and Regulations as follows:

(i) The Borrower, the Operator, and any other Principal User will respectively maintain complete and accurate records pertaining to respective Resident Employees and file all documents as required by this Agreement, including Resident Employee Certifications and Compliance Monitoring Reports. As the Project is being refinanced with proceeds of the Bonds, the parties to this Tax Agreement hereby agree and acknowledge that the forms Resident Employee Certification and Compliance Monitoring Report attached hereto as Exhibit C and Exhibit D, respectively, may be used to satisfy the requirements of the applicable Sections of this Agreement.

(ii) The Borrower, the Operator, and any other Principal User may rely on a certification, signed under penalties of perjury by the respective employees, provided (A) the certification provides the respective employer the address of the employee's principal residence, (B) the employee is required by the certification to notify the respective employer of a change of the employee's principal residence,

and (C) the respective employer has no actual knowledge that the principal residence set forth in the certification is not the employee's principal residence.

(iii) The Borrower, the Operator, and any other Principal User will respectively obtain a Resident Employee Certification from each respective Resident Employee at least annually after such employee's initial employment or as otherwise directed by the Issuer in writing.

(j) The Borrower further covenants and agrees to prepare and submit to the Trustee, no more than 60 days prior to the later of the date on which no Bonds are outstanding or the last day of the Compliance Period a certificate setting forth the date on which the Compliance Period will end, which certificate shall be in recordable form. The Trustee shall execute and record (or return to the Borrower for recording) such certificate, subject to verification of the termination date by Bond Counsel. The Issuer need not affirmatively consent to the termination of the covenants.

(k) Anything in this Agreement to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that the Issuer and the Trustee may rely conclusively on the truth and accuracy of any certificate, opinion, notice, representation or instrument made or provided by the Borrower in order to establish the existence of any fact or statement of affairs solely within the knowledge of the Borrower, and which is required to be noticed, represented or certified by the Borrower hereunder or in connection with any filings, representations or certifications required to be made by the Borrower in connection with the issuance and delivery of the Bonds.

(l) The Borrower, the Operator and any other Principal User will certify that \_\_\_\_\_ is the date on which 35 percent (35%) of the employees of the respective Enterprise Zone Business of the Borrower, the Operator and other Principal Users, if any, have been Resident Employees.

(m) The Owner covenants that no portion of the Project has been sold or otherwise disposed of and that no portion of the Project will be sold or otherwise disposed of, and the Borrower covenants that its leasehold interest in the Project has not been sold or disposed of and that it will not be sold or otherwise disposed of, unless the Owner or the Borrower, respectively, obtains and delivers to the Issuer and Trustee a Favorable Opinion of Bond Counsel.

(n) The Borrower covenants that, prior to any partial or complete deliberate failure of the Enterprise Zone Business and Qualified Zone Property requirements by the Borrower, the Operator and any other Principal User will obtain and deliver to the Issuer and Trustee a Favorable Opinion of Bond Counsel. The Operator and any other Principal User will not undertake a partial or complete deliberate failure of the Enterprise Zone Business

and Qualified Zone Property requirements without respectively obtaining the prior written consent of the Borrower.

(o) The Borrower covenants that the Principal User Agreements, if any, will require the respective Principal User to operate the respective portion of the Project as an Enterprise Zone Facility within the meaning of the Code and Regulations and comply with the applicable provisions of Sections 2 and 4 of this Agreement.

**SECTION 3. MODIFICATION OF TAX COVENANTS.** Anything contained in this Agreement or the Indenture to the contrary notwithstanding, the Issuer, the Trustee and the Borrower hereby agree, upon the written request of one of the parties hereto, to amend this Agreement and, if appropriate, the Indenture and the Loan Agreement, to the extent required, in the opinion of Bond Counsel, in order for interest on the Bonds, except for Bonds held by a "substantial user" or "related person" thereto within the meaning of section 147(a) of the Code, to remain excludable from gross income for Federal income tax purposes. The party requesting such amendment shall notify the other parties to this Agreement in writing of the proposed amendment and send a copy of such requested amendment to Bond Counsel. After review of such proposed amendment, Bond Counsel shall render to the Borrower, the Trustee and the Issuer a Favorable Opinion of Bond Counsel. The Borrower shall pay all necessary fees and expenses incurred with respect to such amendment, including necessary attorney's fees and expenses incurred by Bond Counsel in rendering such opinion. The Borrower, the Issuer and, where applicable, the Trustee pursuant to written instructions from the Issuer, shall execute and deliver and, if applicable, the Borrower shall file of record, the amendment.

**SECTION 4. ENTERPRISE ZONE FACILITY.** The Issuer, the Owner and the Borrower hereby recognize and declare their understanding and intent that the Project is to be owned, managed and operated as an "enterprise zone facility," as such term is defined in section 1394(b) of the Code, in compliance with applicable restrictions and limitations as provided in the Code and Regulations. Toward that end, the Borrower hereby, the Operator and any other Principal User pursuant the respective Principal User Agreement, each represents, covenants and agrees as follows:

(a) The Borrower, the Operator and any other Principal User will respectively obtain or cause to be obtained a Resident Employee Certification from each Resident Employee not later than the date of such employee's initial employment by the respective employer and to maintain a file of all such Resident Employee Certifications, together with all supporting documentation, for a period of not less than three years following the retirement of the Bonds;

(b) The Borrower, the Operator and any other Principal User will respectively obtain or cause to be obtained from each Resident Employee, at the time of employment, a written certification, acknowledgment and acceptance that (i) all statements made in the Resident Employee Certification submitted by such employee are accurate, (ii) the employee residency requirements of this Agreement and the Loan Agreement are substantial and material obligations of employment in the Project, (iii) such employee will comply promptly

with all requests for information with respect to such requirements from the Borrower, the Operator any other Principal User, the Trustee and the Issuer, and (iv) failure to provide accurate information in the Resident Employee Certification or refusal to comply with a request for information with respect thereto will constitute a violation of a substantial obligation of the employment of such employee in the Project;

(c) The Borrower, the Operator and any other Principal User will respectively cause to be prepared and submitted to the Issuer thirty (30) days after the Initial Testing Date of the Compliance Period, and thereafter by the thirtieth calendar day of either each January following a calendar year during the Compliance Period or the month following the final month of the Compliance Period, a certified Compliance Monitoring Report for the previous complete or partial calendar year; and

(d) The Borrower, the Operator and any other Principal User will, to the extent legally permissible, respectively permit any duly authorized representative of the Issuer or the Trustee (without any obligation to do so) to inspect the books and records of the Borrower, the Operator and any other Principal User pertaining to the Project or the Resident Employees, including but not limited to employees files, during regular business hours and to make copies therefrom if so desired.

**SECTION 5. [RESERVED]**

**SECTION 6. CONSIDERATION.** The Issuer has issued the Bonds to provide funds to make the Loan to finance the portion of the Project financed with proceeds of the Bonds, all for the purpose, among others, of inducing the Owner and the Borrower to refinance the acquisition, construction, equipping and operation of the Project. In consideration of the issuance of the Bonds by the Issuer, the Owner and the Borrower have entered into this Tax Agreement and has agreed to restrict the uses to which the portion of the Project refinanced with proceeds of the Bonds can be put on the terms and conditions set forth herein.

**SECTION 7. RELIANCE.** The Issuer, the Trustee, the Owner and the Borrower hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Bonds, and in the excludability from gross income for purposes of Federal income taxation of the interest on the Bonds. In performing their duties and obligations hereunder, the Owner, the Borrower, the Operator, the Issuer and the Trustee may rely upon statements and certificates of the Resident Employees. In addition, the Issuer, the Owner, the Borrower, the Operator and the Trustee may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer, the Owner, the Borrower, the Operator or the Trustee hereunder in good faith and in conformity with such opinion. In determining whether any default by the Owner, the Borrower or the Operator exists under this Tax Agreement, the Trustee shall not be required to conduct any investigation into or review of the operations or records of the Owner, the Borrower or the Operator and may rely on any written report, notice or certificate delivered to the Trustee by any Person retained to review the Owner's, the Borrower's or the Operator's compliance with this

Tax Agreement or by the Owner, the Borrower, the Operator or the Issuer with respect to the occurrence or absence of a default unless it has actual knowledge that the report, notice or certificate is erroneous or misleading.

**SECTION 8. PROJECT IN EMPOWERMENT ZONE.** The Owner and the Borrower hereby represent that the Project is located entirely within the Empowerment Zone.

**SECTION 9. SALE OR TRANSFER OF THE PROJECT.** The Owner covenants and agrees not to sell, transfer or otherwise dispose of the Project, and the Borrower covenants and agrees not to sell, transfer or otherwise dispose of its leasehold interest in the Project, prior to the expiration of the Compliance Period without (i) complying with any applicable provisions of the Loan Documents and (ii) obtaining the prior written consent of the Issuer. Such consent of the Issuer shall not be unreasonably withheld or delayed and shall be given if (1) there is delivered to the Trustee and the Issuer a written Opinion of Counsel reasonably satisfactory to the Trustee and the Issuer, addressed to the Trustee and the Issuer, concluding that the transferee has duly assumed all of the rights and obligations of the Owner or the Borrower, as applicable, under this Agreement and that each of the documents executed by the transferee in connection therewith has been duly authorized, executed and delivered by the transferee and is a valid and enforceable obligation of the transferee, subject to customary qualifications, (2) the Issuer receives a Favorable Opinion of Bond Counsel, which opinion shall be furnished at the expense of the Owner, the Borrower or the transferee, (3) the proposed purchaser or assignee executes any document reasonably requested by the Issuer with respect to assuming the obligations of the Owner or the Borrower under this Agreement, and (4) the Issuer shall not have any reasonable reason to believe that the purchaser or assignee is incapable, financially or otherwise, of complying with, or may be unwilling to comply with, the terms of all agreements and instruments binding on such proposed purchaser or assignee relating to the Project, including but not limited to this Agreement. The Owner and the Borrower hereby expressly stipulate and agree that any sale, transfer or other disposition of the Project or their respective interest in the Project in violation of this subsection shall be ineffective to relieve the Owner and the Borrower of their respective obligations under this Agreement. Upon any sale, transfer or other disposition of the Project in compliance with this Agreement, the Owner or Borrower so selling, transferring or otherwise disposing of the Project or its interest in the Project shall have no further liability for obligations under this Agreement arising after the date of such disposition. The foregoing notwithstanding, the duties and obligations of the Owner and the Borrower as set forth in this Agreement with respect to matters arising prior to the date of such sale, transfer or other disposition shall not terminate upon the sale, transfer or other disposition of the Project. The foregoing restrictions on transfer shall not apply to foreclosures, deeds in lieu of foreclosure, transfer by exercise of the power of sale or other similar transfer.

**SECTION 10. TERM.** This Tax Agreement and all and each of the provisions hereof shall become effective upon its execution and delivery, shall remain in full force and effect for the periods provided herein and, except as otherwise provided in this Section, shall terminate in its entirety on the date that no Bonds are outstanding, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Bonds, discharge of the Loan, termination of the

Loan Agreement and defeasance or termination of the Indenture, if necessary to satisfy the minimum compliance period requirements in section 1.1394-1(c)(3) of the Regulations.

Upon the termination of the terms of this Tax Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Tax Agreement in accordance with its terms. All reasonable costs, including fees and expenses of the Issuer and the Trustee, incurred in connection with the termination of this Tax Agreement shall be paid by the Borrower and its successors in interest.

**SECTION 11. COVENANTS TO RUN WITH THE LAND.** The Owner and Borrower hereby subject the Project (including the portion of the Project Site on which the Project is located) to the covenants, reservations and restrictions set forth in this Tax Agreement. The Issuer, the Owner and the Borrower hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's and the Borrower's successors in title to the Project, as applicable; provided, however, that upon the termination of this Agreement said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments.

No breach of any of the provisions of this Tax Agreement shall impair, defeat or render invalid the lien of any mortgage, deed of trust or like encumbrance made in good faith and for value encumbering the Project or any portion thereof.

**SECTION 12. BURDEN AND BENEFIT.** The Issuer, the Owner and the Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Owner's and the Borrower's legal interest in the Project, as applicable, is rendered less valuable thereby. The Issuer, the Owner and the Borrower hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by the general public and the Resident Employees, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Bonds were issued.

**SECTION 13. UNIFORMITY; COMMON PLAN.** The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project.

**SECTION 14. DEFAULT; ENFORCEMENT.** If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in this Tax Agreement, and if such default remains uncured for a period of 60 days after written notice thereof shall have been given by the Issuer or the Trustee to the Borrower in accordance with the Loan Agreement, then the Trustee, acting on its own behalf or on behalf of the Issuer, provided that an authorized representative of the Trustee actually knows of such default, shall declare an "Event of

Default" to have occurred hereunder; provided, further, however, that, if the default stated in the notice is of such a nature that it cannot be corrected within 60 days, such default shall not constitute an Event of Default hereunder so long as the Borrower institutes corrective action within said 60 days and diligently pursues such action until the default is corrected unless in the opinion of Bond Counsel, the failure to cure said default within 60 days will adversely affect the tax-exempt status of interest on the Bonds. Notwithstanding anything to the contrary, the Issuer shall and the Trustee accept a cure from any partner of the Borrower. "Actual knowledge" means the fact of knowing without a duty to investigate.

Following the declaration of an Event of Default hereunder, the Trustee, subject to being indemnified to its satisfaction with respect to the costs and expenses of any proceeding, or the Issuer, subject to the provisions of the Intercreditor Agreement, may, at its option, take any one or more of the following steps:

- (a) by mandamus or other suit, action or proceeding for specific performance, including injunctive relief, require the Borrower to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee hereunder;
- (b) have access to and inspect, examine and make copies of all of the books and records of the Borrower pertaining to the Project; and
- (c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Borrower hereunder.

The Borrower hereby agrees that specific enforcement of the Borrower's agreements contained herein is the only means by which the Issuer and the Trustee may obtain the benefits of such agreements made by the Borrower herein, and the Borrower therefore agrees to the imposition of the remedy of specific performance against it in the case of any Event of Default by the Borrower hereunder.

All rights and remedies herein given or granted to the Issuer and the Trustee are cumulative, nonexclusive and in addition to any and all rights and remedies that the Issuer and the Trustee may have or may be given by reason of any law, statute, ordinance, document or otherwise. Notwithstanding the availability of the remedy of specific performance provided for in this Section, promptly upon determining that a violation of this Tax Agreement has occurred, the Issuer shall, to the extent that it has actual knowledge thereof, give written notice to the Trustee that a violation of this Tax Agreement has occurred.

**SECTION 15. THE TRUSTEE.** The Trustee shall act as specifically provided herein and in the Indenture and no implied covenants shall be read into this Indenture against the Trustee, with respect to the declaration of an Event of Default or the exercise of remedies hereunder. Subject to the right of the Trustee to be indemnified as provided in the Indenture, the Trustee shall act as the agent of and on behalf of the Issuer when requested in writing by the Issuer to do so, and any act

required to be performed by the Issuer as herein provided shall be deemed taken if such act is performed by the Trustee. The Trustee is entering into this Tax Agreement solely in its capacity as Trustee under the Indenture, and the duties, powers, rights and obligations of the Trustee in acting hereunder shall be subject to the provisions of the Indenture, including, without limitation, the provisions of Article X thereof, which are incorporated by reference herein. The incorporated provisions of the Indenture are intended to survive the retirement of the Bonds, discharge of the Loan, termination of the Loan Agreement and defeasance or termination of the Indenture. The Trustee's rights, duties, powers and obligations hereunder are governed in their entirety by the terms and provisions of this Agreement and the Indenture.

The Trustee shall have no duty or obligation to monitor, or be liable or responsible for monitoring compliance by either the Issuer or the Borrower of their respective obligations hereunder, except to receive the certificates and reports to determine if on their face they comply with the terms thereof. The Trustee shall not be liable or responsible for any method of calculation, calculation, or determination which may be required in connection with or for the purpose of complying with section 148 of the Code or any successor statute or any regulation, ruling, or other judicial or administrative interpretation thereof, including without limitation, the method of calculation, or the calculation of amounts required to be paid to the United States of America or the determination of the maximum amount which may be invested in Nonpurpose Investments having a Yield higher than the Yield on the Bonds, in connection with any such investments. The Trustee shall have no duty or obligation to monitor, or be liable or responsible for monitoring, the compliance by the Borrower of any of the requirements of section 148 of the Code or any applicable Regulation, ruling, or the judicial or administrative interpretation thereof. It is acknowledged and agreed that the sole obligation of the Trustee is to perform its specific obligations hereunder and, in regard to the investment of moneys deposited in the funds created under the Indenture, to invest such moneys so deposited pursuant to the written instructions as provided in the Indenture and herein in the specific investments identified by the Borrower or, in the absence of such identification, to make investments as otherwise provided in the Indenture.

**SECTION 16. RECORDING AND FILING.** The Borrower shall cause this Tax Agreement, and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of Bexar County, Texas and in such other places as the Issuer or the Trustee may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording. This Agreement is subject to and subordinate to all matters of record as of the date hereof.

**SECTION 17. REIMBURSEMENT OF EXPENSES.** Notwithstanding any prepayment of the Loan and notwithstanding a discharge of the Indenture, throughout the term of this Tax Agreement, the Borrower shall continue to pay to the Issuer and the Trustee reimbursement for all fees and expenses actually incurred thereby required to be paid to the Issuer and the Trustee by the Borrower pursuant to the Loan Agreement.

**SECTION 18. GOVERNING LAW.** This Tax Agreement shall be governed by the laws of the State of Texas (other than in respect of conflicts of laws).



**SECTION 19. AMENDMENTS.** Subject to the provisions of Section 3 hereof, this Tax Agreement shall be amended only by a written instrument executed by the parties hereto, or their successors in title and duly recorded in the real property records of Bexar County, Texas, and only upon receipt by the Issuer, the Trustee and the Borrower of a Favorable Opinion of Bond Counsel regarding such amendment.

**SECTION 20. NOTICES.** Any notice required to be given hereunder to the Issuer, the Trustee or the Borrower shall be given in the manner and to the address as set forth in the Loan Agreement.

**SECTION 21. SEVERABILITY.** If any provision of this Tax Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

**SECTION 22. MULTIPLE COUNTERPARTS.** This Tax Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

**SECTION 23. LIABILITY OF OPERATOR.** The Operator is entering into this Tax Agreement with the commitment to use its best efforts to comply with the provisions hereof. Absent gross negligence or wilful misconduct on the part of the Operator, to the extent the Operator fails to comply with its obligations set forth in this Tax Agreement and does not correct any such failure in the manner and within the period of time permitted by this Tax Agreement, the Borrower shall have the right to replace the Operator as the operator of the Project, notwithstanding any provisions of the Operating Agreement to the contrary. The Borrower shall have no other recourse against the Operator for any such failure.

*[Execution and acknowledgment pages follow]*

*IN WITNESS WHEREOF*, the Issuer, the Trustee and the Borrower have executed this Tax Agreement by duly authorized representatives, all as of the date first above written.

**CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE  
DEVELOPMENT CORPORATION, as Issuer**

By \_\_\_\_\_  
Name: Julián Castro  
Title: President

**U.S. BANK NATIONAL ASSOCIATION, as Trustee**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ALAMO NATIONAL BUILDING DEVELOPMENT, LP**

By: **ALAMO NATIONAL BUILDING MANAGEMENT, LP**, its general partner

By: **DSW ALAMO MANAGEMENT, LLC**, its general partner

By: **DRURY SOUTHWEST, INC.**, its manager

By: \_\_\_\_\_  
Dennis J. Vollink, President

**DRURY HOTELS COMPANY, LLC, as Operator**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ALAMO NATIONAL BUILDING DEVELOPMENT  
PARTNERSHIP, L.P.**

By: **ALAMO NATIONAL MANAGEMENT, LLC**, a general partner

By: **DRURY SOUTHWEST ALAMO DEVELOPMENT, L.P.**, its  
manager

By: **DSW ALAMO MANAGEMENT, LLC**, a general partner

By: **DRURY SOUTHWEST, INC.**, its manager

By: \_\_\_\_\_  
Dennis J. Vollink, President

ACKNOWLEDGMENT

STATE OF TEXAS

§

§

COUNTY OF BEXAR

§

This instrument was acknowledged before me on November \_\_\_\_, 2013, by Julián Castro, as President of the **CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION**, on behalf of such corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public Signature

My Commission expires:

(Personalized Seal)

ACKNOWLEDGMENT

STATE OF TEXAS

§

§

COUNTY OF \_\_\_\_\_

§

This instrument was acknowledged before me on \_\_\_\_\_, 2013, by \_\_\_\_\_, an authorized signatory of **U.S. BANK NATIONAL ASSOCIATION**, as Trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public Signature

My Commission expires:

(Personalized Seal)

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_

§

§

COUNTY OF \_\_\_\_\_

§

This instrument was acknowledged before me on \_\_\_\_\_, 2013, by \_\_\_\_\_, as \_\_\_\_\_ and acting on behalf of *Drury Southwest, Inc.*, a Texas corporation, which is the manager of *DSW Alamo Management, LLC*, a Delaware limited liability company, which is the general partner of *Alamo National Building Management, LP*, a Missouri limited partnership, which is the general partner of **ALAMO NATIONAL BUILDING DEVELOPMENT, LP**, a Missouri limited partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public Signature

My Commission expires:

(Personalized Seal)

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_

§

§

COUNTY OF \_\_\_\_\_

§

This instrument was acknowledged before me on \_\_\_\_\_, 2013, by \_\_\_\_\_, as \_\_\_\_\_ and acting on behalf of *Drury Southwest, Inc.*, a Texas corporation, which is the manager of *DSW Alamo Management, LLC*, a Delaware limited liability company, which is a general partner of *Drury Southwest Alamo Development, LP*, a Delaware limited partnership, which is the manager of *Alamo National Management, LLC*, a Texas limited liability company, which is the general partner of **ALAMO NATIONAL BUILDING DEVELOPMENT PARTNERSHIP, LP**, a Missouri limited partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public Signature

My Commission expires:

(Personalized Seal)

ACKNOWLEDGMENT

STATE OF TEXAS

§

§

COUNTY OF \_\_\_\_\_

§

This instrument was acknowledged before me on \_\_\_\_\_, 2013, by \_\_\_\_\_, an authorized signatory of Drury Hotels Company, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public Signature

My Commission expires:

(Personalized Seal)



**EXHIBIT A**

**METES AND BOUNDS DESCRIPTIONS**

## **EXHIBIT B**

### **PROJECT AND OWNER**

**Borrower:** Alamo National Building Development, LP, a Missouri limited partnership.

**Project:** The overall project that the Bonds are refinancing a portion of consists of the renovation and redevelopment of the Alamo National Bank Building and related parking facilities (located on the west side of St. Mary's Street between Commerce Street and Market Street in the City's downtown area) into a new hotel which has been completed and includes approximately ~~390~~67 guest rooms and related hotel amenities and parking facilities and improvements along the Riverwalk. The portion of the overall larger project constituting the "Project Facilities" as the term is used in this Tax Agreement is the construction, renovation, furnishing and equipment of approximately ~~390~~67 hotel rooms. The Project Facilities was originally financed, in part, with proceeds of the Series 2005 Bonds and the Series 2007 Bonds, and the Bonds are being issued to refinance the Project Facilities at the request of the Borrower. Costs of the overall project related to the construction or renovation, furnishing and equipping of meeting rooms, restaurants, and the parking facilities was financed with funds other than proceeds of the Series 2005 Bonds and the Series 2007 Bonds.

**EXHIBIT C**

**RESIDENT EMPLOYEE CERTIFICATION**

**\$39,900,000**

**CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION  
CONTRACT REVENUE EMPOWERMENT ZONE REFUNDING BONDS  
(DRURY SOUTHWEST HOTEL PROJECT), SERIES 2013**

**VERIFICATION OF RESIDENCE**

1. I, the undersigned, being first duly sworn, state, under the penalties of perjury, that I have read and answered fully and truthfully each of the following questions.

2. What is the address of your principal residence?

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3. Do you hereby agree to notify your employer of any change in your principal residence set forth above?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

4. I acknowledge that all of the above information is relevant to the status under federal income tax law of the interest on bonds issued to finance construction of the hotel for which application for employment is being made. I hereby consent to the disclosure of such information to the issuer of such bonds, the holders of such bonds, any trustee acting on their behalf and any authorized agent of the United States Treasury Department or Internal Revenue Service.

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

Subscribed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public of the State of Texas

(Notary Seal)

FOR COMPLETION BY BORROWER FOR BORROWER'S EMPLOYEE:

The Borrower has no actual knowledge that the principal residence set forth in the foregoing resident employee certification is not the subject employee's principal residence.

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

**ALAMO NATIONAL BUILDING DEVELOPMENT, LP**

By: **ALAMO NATIONAL BUILDING MANAGEMENT, LP**, its general partner

By: **DSW ALAMO MANAGEMENT, LLC**, its general partner

By: **DRURY SOUTHWEST, INC.**, its manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FOR COMPLETION BY PROJECT OPERATOR FOR PROJECT OPERATOR'S EMPLOYEE:

The Operator has no actual knowledge that the principal residence set forth in the foregoing resident employee certification is not the subject employee's principal residence.

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

**DRURY HOTELS COMPANY, LLC**

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

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

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

FOR COMPLETION BY PROJECT PRINCIPAL USER FOR PRINCIPAL USER'S EMPLOYEE:

\_\_\_\_\_, as a Principal User, has no actual knowledge that the principal residence set forth in the foregoing resident employee certification is not the subject employee's principal residence.

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

[PRINCIPAL USER]

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

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

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

**EXHIBIT D**

**ENTERPRISE ZONE FACILITY  
COMPLIANCE MONITORING REPORT  
(BORROWER)**

TO: City of San Antonio, Texas Empowerment Zone Development Corporation  
City Hall, 100 Military Plaza, 4<sup>th</sup> Floor  
San Antonio, Texas 78205  
Attention: Executive Director

U.S. Bank National Association, as Trustee  
EX-TX-DCRE  
14241 Dallas Parkway, Suite 490  
Dallas, Texas 75254  
Attn: Corporate Trust Services

**\$21,900,000**

**CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION  
CONTRACT REVENUE EMPOWERMENT ZONE REFUNDING BONDS  
(DRURY SOUTHWEST HOTEL PROJECT), SERIES 2013A**

AND

**\$18,000,000**

**CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION  
CONTRACT REVENUE EMPOWERMENT ZONE REFUNDING BONDS  
(DRURY SOUTHWEST HOTEL PROJECT), SERIES 2013B**

\_\_\_\_\_ (the "**Borrower**"), hereby represents and warrants that:

1. A review of the activities of the Borrower during the period of \_\_\_\_ through \_\_\_\_ and of then Borrower's performance under the respective Tax Agreement has been made under the supervision of the undersigned.
2. The Borrower owns the "Project" described in the Tax Agreements (the "**Project**").
3. The Project, which was originally financed, in part, with proceeds of certain *Contract Revenue Empowerment Zone Bonds (Drury Southwest Hotel Project), Series 2005* (the "**Series 2005 Bonds**") and *Contract Revenue Empowerment Zone Bonds (Drury Southwest Hotel Project), Series 2007* (the "**Series 2007 Bonds**") issued by the *City of San Antonio, Texas Empowerment Zone Development Corporation* (the "**Issuer**") at the request of the Borrower, was refinanced, in substantial part, as a result of the loan of the proceeds of the above-referenced bonds (the "**Bonds**").



4. The Borrower is familiar with the provisions of (1) the Tax Agreement (the "***Tax Agreement***"), dated as of November 1, 2013, among the Borrower, the Issuer, and U.S. Bank National Association, as Trustee (the "***Trustee***"); and (2) the Loan Agreement, dated as of November 1, 2013, among the Borrower and the Issuer (the "***Loan Agreement***"). The Tax Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Bonds. Hereinafter, unless otherwise expressly provided herein or unless the context requires otherwise, the capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Tax Agreement.
  
5. With respect to the Series 2005 Bonds, the Testing Period for the Project financed therewith commenced on \_\_\_\_\_, 200\_, and ended on \_\_\_\_\_, 200\_. The Initial Testing Date for the Project financed therewith was \_\_\_\_\_, 200\_, and, except as provided in sections 1.1394-1(b)(2) and (c) of the Regulations, the Compliance Period for the Project financed therewith will end on the greater of the remainder of the period during which the Empowerment Zone's designation is in effect under section 1391 of the Code and the period that ends on the weighted average maturity date of the Series 2005 Bonds or the Bonds, if later.
  
6. With respect to the Series 2007 Bonds, the Testing Period for the Project financed therewith commenced on \_\_\_\_\_, 200\_, and ended on \_\_\_\_\_, 200\_. The Initial Testing Date for the Project financed therewith was \_\_\_\_\_, 200\_, and, except as provided in sections 1.1394-1(b)(2) and (c) of the Regulations, the Compliance Period for the Project financed therewith will end on the greater of the remainder of the period during which the Empowerment Zone's designation is in effect under section 1391 of the Code and the period that ends on the weighted average maturity date of the Series 2007 Bonds or the Bonds, if later.
  
7. As of the date of this Certificate, the following percentages of the employees of the Borrower's Enterprise Zone Business are Resident Employees and Non-Resident Employees:  
  
Resident Employees: \_\_\_\_\_ percent  
  
Non-Resident Employees: \_\_\_\_\_ percent
  
8. At no time since the date of filing of the last Compliance Monitoring Report has less than 35% of the employees of the Borrower's Enterprise Zone Business been Resident Employees. For purposes of the foregoing, the Borrower has treated \_\_\_\_\_ employees as Empowerment Zone residents in accordance with section 1.1394-1(e)(2) of the Regulations (providing zone residency for certain employee residents that move out of the zone). The Borrower has used the following reasonable method for determining the resident employee percentages set forth above:  
  
\_\_\_\_\_ Per-Employee Fraction Method in accordance with section 1.1394-1(e)(3)(ii)(A) of the Regulations

\_\_\_\_\_ Employee Actual Work Hour Fraction Method in accordance with section 1.1394-1(e)(3)(ii)(B) of the Regulations

9. To the best knowledge of the undersigned, after appropriate due inquiry, (a) the Borrower has in good faith monitored its compliance with the provisions of the Code applicable to the Bonds, Enterprise Zone Facilities, Enterprise Zone Businesses and Enterprise Zone Property, including the Project, (b) the Borrower is not now and has not been in default under the terms of the Tax Agreements and (c) no Determination of Taxability has occurred with respect to the Bonds, except as follows:
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10. The Borrower has not transferred any interest in the Project since the date of submission of the Compliance Monitoring Report last submitted to the Issuer with respect to the Project, except as follows:
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**ALAMO NATIONAL BUILDING DEVELOPMENT, LP**

By: **ALAMO NATIONAL BUILDING MANAGEMENT, LP**, its general partner

By: **DSW ALAMO MANAGEMENT, LLC**, its general partner

By: **DRURY SOUTHWEST, INC.**, its manager

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

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

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

**ENTERPRISE ZONE FACILITY  
COMPLIANCE MONITORING REPORT  
(OPERATOR)**

TO: City of San Antonio, Texas Empowerment Zone Development Corporation  
City Hall, 100 Military Plaza, 4<sup>th</sup> Floor  
San Antonio, Texas 78205  
Attention: Executive Director

U.S. Bank National Association  
EX-TX-DCRE  
14241 Dallas Parkway, Suite 490  
Dallas, Texas 75254  
Attn: Corporate Trust Services

**\$39,900,000**

**CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION  
CONTRACT REVENUE EMPOWERMENT ZONE BONDS  
(DRURY SOUTHWEST HOTEL PROJECT), SERIES 2007**

\_\_\_\_\_ (the "**Operator**"), hereby represents and warrants that:

1. A review of the activities of the Operator during the period of \_\_\_\_ through \_\_\_\_ and of then Operator's performance under the respective Tax Agreement has been made under the supervision of the undersigned.
2. The Operator operates the "Project" described in the Tax Agreements (the "**Project**") for National Building Development, L.P., a Missouri limited partnership (the "**Borrower**").
3. The Project, which was originally financed, in part, with proceeds of certain *Contract Revenue Empowerment Zone Bonds (Drury Southwest Hotel Project), Series 2005* (the "**Series 2005 Bonds**") and *Contract Revenue Empowerment Zone Bonds (Drury Southwest Hotel Project), Series 2007* (the "**Series 2007 Bonds**") issued by the *City of San Antonio, Texas Empowerment Zone Development Corporation* (the "**Issuer**") at the request of the Borrower , was refinanced, in substantial part, as a result of the loan of the proceeds of the above-referenced bonds (the "**Bonds**").
4. The Operator is familiar with the provisions of (1) the Tax Agreement.s (the "**Tax Agreement**"), dated as of November 1, 2013, among the Borrower, the Issuer, and U.S. Bank National Association, as Trustee (the "**Trustee**"); and (2) the Loan Agreement, dated as of November 1, 2013, among the Borrower and the Issuer (the "**Loan Agreement**"). The Tax Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Bonds. Hereinafter, unless otherwise

expressly provided herein or unless the context requires otherwise, the capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Tax Agreement.

5. With respect to the Series 2005 Bonds, the Testing Period for the Project financed therewith commenced on \_\_\_\_\_, 200\_, and ended on \_\_\_\_\_, 200\_. The Initial Testing Date for the Project financed therewith was \_\_\_\_\_, 200\_, and, except as provided in sections 1.1394-1(b)(2) and (c) of the Regulations, the Compliance Period for the Project financed therewith will end on the greater of the remainder of the period during which the Empowerment Zone's designation is in effect under section 1391 of the Code and the period that ends on the weighted average maturity date of the Series 2005 Bonds or the Bonds, if later.

6. With respect to the Series 2007 Bonds, the Testing Period for the Project financed therewith commenced on \_\_\_\_\_, 200\_, and ended on \_\_\_\_\_, 200\_. The Initial Testing Date for the Project financed therewith was \_\_\_\_\_, 200\_, and, except as provided in sections 1.1394-1(b)(2) and (c) of the Regulations, the Compliance Period for the Project financed therewith will end on the greater of the remainder of the period during which the Empowerment Zone's designation is in effect under section 1391 of the Code and the period that ends on the weighted average maturity date of the Series 2007 Bonds or the Bonds, if later.

7. As of the date of this Certificate, the following percentages of the employees of the Operator's Enterprise Zone Business are Resident Employees and Non-Resident Employees:

Resident Employees: \_\_\_\_\_ percent

Non-Resident Employees: \_\_\_\_\_ percent

8. At no time since the date of filing of the last Compliance Monitoring Report has less than 35% of the employees of the Operator's Enterprise Zone Business been Resident Employees. For purposes of the foregoing, the Operator has treated \_\_\_\_\_ employees as Empowerment Zone residents in accordance with section 1.1394-1(e)(2) of the Regulations (providing zone residency for certain employee residents that move out of the zone). The Operator has used the following reasonable method for determining the resident employee percentages set forth above:

\_\_\_\_\_ Per-Employee Fraction Method in accordance with section 1.1394-1(e)(3)(ii)(A) of the Regulations

\_\_\_\_\_ Employee Actual Work Hour Fraction Method in accordance with section 1.1394-1(e)(3)(ii)(B) of the Regulations

9. To the best knowledge of the undersigned, after appropriate due inquiry, (a) the Operator has in good faith monitored its compliance with the provisions of the Code applicable to the Bonds, Enterprise Zone Facilities, Enterprise Zone Businesses and Enterprise Zone Property, including the Project.

**DRURY HOTELS COMPANY, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ENTERPRISE ZONE FACILITY  
COMPLIANCE MONITORING REPORT  
(PRINCIPAL USER)**

TO: City of San Antonio, Texas Empowerment Zone Development Corporation  
City Hall, 100 Military Plaza, 4<sup>th</sup> Floor  
San Antonio, Texas 78205  
Attention: Executive Director

U.S. Bank National Association  
EX-TX-DCRE  
14241 Dallas Parkway, Suite 490  
Dallas, Texas 75254  
Attn: Corporate Trust Services

**\$39,900,000**

**CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION  
CONTRACT REVENUE EMPOWERMENT ZONE REFUNDING BONDS  
(DRURY SOUTHWEST HOTEL PROJECT), SERIES 2013**

\_\_\_\_\_ (the "**Principal User**"), hereby represents and warrants that:

1. A review of the activities of the Principal User during the period of \_\_\_\_\_ through \_\_\_\_\_ and of the Principal User's performance under the respective Tax Agreement has been made under the supervision of the undersigned.
2. The "Project" described in the Tax Agreements (the "**Project**"), which is the subject of this Report, is owned by Alamo National Building Development Partnership, L.P., a Texas limited partnership, and is leased, pursuant to a long-term ground lease, to Alamo National Building Development, L.P., a Missouri limited partnership (referred to herein as the "**Borrower**").
3. The Project, which was originally financed, in part, with proceeds of certain *Contract Revenue Empowerment Zone Bonds (Drury Southwest Hotel Project), Series 2005* (the "**Series 2005 Bonds**") and *Contract Revenue Empowerment Zone Bonds (Drury Southwest Hotel Project), Series 2007* (the "**Series 2007 Bonds**") issued by the *City of San Antonio, Texas Empowerment Zone Development Corporation* (the "**Issuer**") at the request of the Borrower, was refinanced, in substantial part, as a result of the loan of the proceeds of the above-referenced bonds (the "**Bonds**").
4. The Principal User is familiar with the provisions of (1) the Tax Agreement (the "**Tax Agreement**"), dated as of November 1, 2013, among the Borrower, the Issuer, and U.S. Bank National Association, as Trustee (the "**Trustee**"); and (2) the Loan Agreement, dated as of November 1, 2013, among the Borrower and the Issuer (the "**Loan Agreement**"). The Tax Agreement was executed, delivered, and recorded against the

Project in connection with the issuance of the Bonds. Hereinafter, unless otherwise expressly provided herein or unless the context requires otherwise, the capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Tax Agreement.

5. With respect to the Series 2005 Bonds, the Testing Period for the Project financed therewith commenced on \_\_\_\_\_, 200\_, and ended on \_\_\_\_\_, 200\_. The Initial Testing Date for the Project financed therewith was \_\_\_\_\_, 200\_, and, except as provided in sections 1.1394-1(b)(2) and (c) of the Regulations, the Compliance Period for the Project financed therewith will end on the greater of the remainder of the period during which the Empowerment Zone's designation is in effect under section 1391 of the Code and the period that ends on the weighted average maturity date of the Series 2005 Bonds or the Bonds, if later.
6. With respect to the Series 2007 Bonds, the Testing Period for the Project financed therewith commenced on \_\_\_\_\_, 200\_, and ended on \_\_\_\_\_, 200\_. The Initial Testing Date for the Project financed therewith was \_\_\_\_\_, 200\_, and, except as provided in sections 1.1394-1(b)(2) and (c) of the Regulations, the Compliance Period for the Project financed therewith will end on the greater of the remainder of the period during which the Empowerment Zone's designation is in effect under section 1391 of the Code and the period that ends on the weighted average maturity date of the Series 2007 Bonds or the Bonds, if later.
7. As of the date of this Certificate, the following percentages of the employees of the Principal User's Enterprise Zone Business are Resident Employees and Non-Resident Employees:

Resident Employees: \_\_\_\_\_ percent

Non-Resident Employees: \_\_\_\_\_ percent

8. At no time since the date of filing of the last Compliance Monitoring Report has less than 35% of the employees of the Principal User's Enterprise Zone Business been Resident Employees. For purposes of the foregoing, the Principal User has treated \_\_\_\_\_ employees as Empowerment Zone residents in accordance with section 1.1394-1(e)(2) of the Regulations (providing zone residency for certain employee residents that move out of the zone). The Principal User has used the following reasonable method for determining the resident employee percentages set forth above:

\_\_\_\_\_ Per-Employee Fraction Method in accordance with section 1.1394-1(e)(3)(ii)(A) of the Regulations

\_\_\_\_\_ Employee Actual Work Hour Fraction Method in accordance with section 1.1394-1(e)(3)(ii)(B) of the Regulations

9. To the best knowledge of the undersigned, after appropriate due inquiry, (a) the Principal User has in good faith monitored its compliance with the provisions of the Code applicable to the Bonds, Enterprise Zone Facilities, Enterprise Zone Businesses and Enterprise Zone Property, including the Project.

[PRINCIPAL USER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_