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RESOLUTION NO. EZDC 2020-11-12-0001R

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

APPROVING AND AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE *INDENTURE OF TRUST BETWEEN THE CORPORATION AND U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, WHICH AUTHORIZED THE ISSUANCE OF 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*

* * * * *

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 (the "**Series 2013A Bonds**"); and

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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 (the "**Series 2013B Bonds**"); and

WHEREAS, the Series 2013 Bonds were issued pursuant to the provisions of an *Indenture of Trust*, dated as of November 1, 2013 (the "**Indenture**"), between the Issuer and **U.S. BANK NATIONAL ASSOCIATION**, as Trustee (the "**Trustee**"); and

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

WHEREAS, all Series 2013 Bonds 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 "**Bank**"); and

WHEREAS, all Series 2013 Bonds initially were issued in the form of Index Rate Bonds to bear interest at a LIBOR Index Rate from their date of initial delivery through the last day of the Initial Period, which is December 1, 2020; and

WHEREAS, pursuant to Section 2.02(g) of the Indenture, the Bank has notified the Borrower in writing that, effective on December 2, 2020 (which is a Conversion Date under the Indenture), all Series 2013 Bonds shall be converted to an Adjusted Index Rate Period and shall bear interest from such Conversion Date through the new Bank Purchase Date (described in the following recital) at an Adjusted LIBOR Index Rate; and

WHEREAS, in connection with such conversion to an Adjusted Index Rate Period described in the preceding, the Bank has further notified the Borrower that during such Adjusted Index Rate Period the Bank Purchase Date shall be December 1, 2022 (which automatically may be extended to December 1, 2023 at the option of the Borrower), and that the Market Agent has determined that (i) the Adjusted Applicable Factor shall be 82.84%, and (ii) the Adjusted Spread shall be 2.00%; and

WHEREAS, the Bank and the Borrower have determined that, with the pending possible termination of the use of the LIBOR Index as an available or reliable interest rate index recognized by worldwide financial markets to serve as the basis to determine market interest rates, it is necessary to amend the Indenture to provide for the ability to, in the future, substitute LIBOR Index for another interest rate index; and

WHEREAS, Section 9.01 of the 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*

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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, the Borrower and the Bank have requested the Issuer and the Trustee to enter into a "*First Amendment to Indenture of Trust*" in substantially the form attached hereto as *Exhibit A* (the "***First Amendment to the Original Indenture***") to accomplish the purposes set forth above; and

WHEREAS, the First Amendment to the Original Indenture is being entered into in accordance with the provisions of Section 9.01 of the Indenture, and the execution thereof by the Trustee and the acceptance thereof by the Company are intended to evidence the Trustee's and the Company's acceptance and approval of the First Amendment to the Original Indenture as required by Section 9.01 of the Indenture;

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. APPROVAL OF FIRST AMENDMENT TO THE ORIGINAL INDENTURE. The Board hereby approves the First Amendment to the Original 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 First Amendment to the Original Indenture, and the Secretary or any Assistant Secretary is authorized and directed, for and on behalf of the Issuer, to attest the First Amendment to the Original 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 First Amendment to the Original Indenture shall be binding upon the Issuer in accordance with the terms and provisions thereof.

SECTION 2. 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 First Amendment to the Original Indenture from the form presented to and approved by the Board, such approval to be evidenced by the execution of the First Amendment to the Original Indenture, provided that such changes are not inconsistent with this Resolution.

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SECTION 3. AUTHORIZATION TO APPROVE ADDITIONAL ACTIONS AND DOCUMENTS. All officers, employees, agents and representatives of the Issuer and its 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 of this Resolution.

SECTION 4. 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 5. 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 12TH DAY OF NOVEMBER, 2020.

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

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EXHIBIT A

FORM OF FIRST AMENDMENT TO INDENTURE OF TRUST

FIRST AMENDMENT TO INDENTURE OF TRUST

THIS FIRST AMENDMENT TO INDENTURE OF TRUST, dated as of December 2, 2020 (this "First Amendment"), is made and entered into by and between the **CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION** (the "Issuer"), a nonprofit industrial development corporation organized and existing under the Constitution and the laws of the State of Texas (the "State"), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as trustee, and its successors and assignees in trust (the "Trustee"), for the purpose of amending that certain *Indenture of Trust*, dated as of November 1, 2013, by and between the Issuer and the Trustee (the "Original Indenture"). Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in Section 1.01 of the Original Indenture.

WITNESSETH:

WHEREAS, the Issuer is a nonprofit local government corporation organized and existing under the laws of the State of Texas, particularly Subchapter D of Chapter 431, Texas Transportation Code, as amended (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 and the Trustee entered into the Original Indenture, at the request of **ALAMO NATIONAL BUILDING DEVELOPMENT, LP**, a Missouri limited partnership (the "Borrower"), for the purpose of authorizing the issuance by the Issuer of its \$21,900,000 *Contract Revenue Empowerment Zone Refunding Bonds (Drury Southwest Hotel Project), Series 2013A* (the "Series 2013A Bonds"), and its \$18,000,000 *Contract Revenue Empowerment Zone Refunding Bonds (Drury Southwest Hotel Project), Series 2013B* (the "Series 2013B Bonds" and collectively with the Series 2013A Bonds, the "Bonds"), which were purchased by U.S. Bank, National Association (referred to herein and in the Original Indenture as the "Bank") in order to refund and refinance certain then outstanding obligations that were issued by the Issuer for the benefit of the Borrower; and

WHEREAS, the Borrower and the Bank desire to revise certain provisions in the Original Indenture primarily for the purpose of incorporating into the Indenture modifications to the interest rate provisions resulting from the expected termination of LIBOR as an interest rate index recognized worldwide in the financial markets; and

WHEREAS, Section 9.01 of the Original Indenture provides that the Original 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, the Issuer and the Trustee are entering into this First Amendment at the request of the Borrower and the Bank to accomplish the purposes set forth above; and

WHEREAS, this First Amendment is being entered into in accordance with the provisions of Section 9.01 of the Original Indenture, and the execution hereof by the Trustee and the acceptance hereof by the Borrower and the Bank are intended to evidence the Trustee's and the Borrower's acceptance and approval of this First Amendment as required by Section 9.01 of the Original Indenture;

NOW THEREFORE, the Issuer and the Trustee hereby agree as follows:

Section 1. Amendment of Certain Definition Contained in Section 1.01 of the Original Indenture.

As of the Effective Date (as defined in Section 7 below), the following defined term as set forth in Section 1.01 of the Original Indenture is hereby amended in its entirety to read as follows:

"LIBOR Index" means, for any day, (i) prior to the occurrence of a LIBOR Termination, the greater of (a) 0.50%, and (b) the London interbank offered rate for U.S. dollar deposits for a one-month period, as reported on Reuters Screen LIBOR01 Page or any successor thereto, which shall be that one-month LIBOR rate in effect two New York Banking Days prior to the LIBOR Index Reset Date, adjusted for any reserve requirement and any subsequent costs arising from a change in government regulation, such rate to be reset monthly on each LIBOR Index Reset Date, and (ii) after the occurrence of a LIBOR Termination, the rate determined by application of Section 2.02(h) of this Indenture.

Section 2. Addition of Defined Terms to Section 1.01 of the Original Indenture. As of the Effective Date, the following defined terms shall be added to Section 1.01 of the Original Indenture:

"LIBOR Termination" means (a) the LIBOR Index is no longer available or reliable, (b) the LIBOR Index is not being quoted or published, (c) any relevant regulator, administrator, agency or authority has announced that the LIBOR Index will no longer be published or is no longer representative, (d) any circumstance exists such that the LIBOR Index has become impracticable, unrepresentative, unavailable or ceased to exist, (e) similar transactions are being documented with a replacement rate for the LIBOR Index, (f) other transactions relating to the Bonds are being documented with a replacement rate for the LIBOR Index, (g) final regulations are expected to be enacted that would cause the replacement of the LIBOR Index Rate or Adjusted LIBOR Index Rate as contemplated herein to no longer be clearly permitted without triggering a deemed exchange under Treasury

Regulation §1.1001-3, or (h) the LIBOR Index no longer can reasonably be expected to measure contemporaneous variations in the costs of newly borrowed funds in United States Dollars.

"*Treasury Regulation Safe Harbors*" means the requirements of Proposed Treasury Regulation §1.1001-6(b)(2)(ii) or successor provisions, satisfaction of which ensures that a replacement interest rate on the Bonds that is otherwise a "qualified rate" when substituted for the LIBOR Index results in a substantially equivalent fair market value of the Bonds, as required under Proposed Treasury Regulation §1.1001-6(b)(2)(i) or successor provision.

Section 3. Amendment to Section 2.02 of the Original Indenture. Section 2.02 of the Original Indenture is hereby amended by adding a new subsection (h) thereunder, which shall read in its entirety as follows:

(h) LIBOR Replacement.

(i) Notwithstanding anything herein to the contrary, if the Bank determines (which determination shall be conclusive in the absence of manifest error) that a LIBOR Termination has occurred, then:

(A) the Bank may, in its discretion, replace the LIBOR Index Rate or Adjusted LIBOR Index Rate with a substantially economically equivalent replacement rate (which may include a successor index and a spread adjustment and may be multiplied by a factor determined by the Bank), taking into consideration any selection or recommendation of a replacement rate by any relevant agency or authority and evolving or prevailing market conventions, which replacement rate is generally a rate, the variations of the value of which can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds in U.S. Dollars and is a multiple of a "qualified floating rate" as defined in Treasury Regulation §1.1275-5 or successor provision plus a fixed spread (the "*Replacement Rate*") and shall provide the Issuer with written notice of such Replacement Rate (the "*Replacement Notice*");

(B) if the Bank receives either (1) written evidence satisfactory to the Bank that one or more of the Treasury Regulation Safe Harbors have been satisfied with respect to the replacement of the LIBOR Index Rate or Adjusted LIBOR Index Rate with the Replacement Rate or (2) an opinion of Bond Counsel in form and substance satisfactory to the Bank that the replacement of the LIBOR Index Rate or Adjusted LIBOR Index Rate with the Replacement Rate does not and will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds then in either case:

(I) the Replacement Rate shall replace the LIBOR Index Rate or Adjusted LIBOR Index Rate on the Bonds under this Indenture] on the effective date for the Replacement Rate specified in the Replacement Notice (the “*Replacement Date*”), and the Replacement Rate shall be subject to further adjustments as described in this Indenture, if any, and if the Replacement Rate determined pursuant to this Section 2.02(h)(i) shall be less than zero, such Replacement Rate shall be deemed to be zero for the purposes of this Indenture; and

(II) and, if necessary, as of the Replacement Date the Bank and the Issuer shall enter into an amendment to this Indenture to replace the LIBOR Index Rate or Adjusted LIBOR Index Rate with the Replacement Rate and make such other related changes to this Indenture as the Bank may reasonably determine are applicable and necessary (including technical, administrative or operational changes appropriate to reflect the adoption and implementation of the Replacement Rate).

(C) For purposes of (A) above, a Replacement Rate shall be deemed to be substantially economically equivalent to the LIBOR Index Rate or Adjusted LIBOR Index Rate if either:

(I) the historic average of the LIBOR Index Rate or Adjusted LIBOR Index Rate does not differ by more than 25 basis points from the historic average of the Replacement Rate, taking into account any spread or other adjustment to the rate. For this purpose, an historic average may be determined by any reasonable method that takes into account every instance of the relevant rate published during a continuous period beginning no earlier than 10 years before the substitution of the Replacement Rate for the LIBOR Index Rate or Adjusted LIBOR Index Rate and ending no earlier than three months before the substitution of the Replacement Rate for the LIBOR Index Rate or Adjusted LIBOR Index Rate. For purposes of this safe harbor, the historic average must be determined for both rates using the same method and historical data from the same timeframes and must be determined in good faith by the parties with the goal of making the fair market value of the debt instrument after the substitution substantially equivalent to the fair market value of the debt instrument or non-debt contract before the substitution; or

(II) if the Bank and the Issuer are not related (within the meaning of section 267(b) or section 707(b)(1)) and the parties determine, based on bona fide, arm's length negotiations between the parties, that the fair market value of the Bonds before the substitution is substantially equivalent to the fair market value after the alteration or modification. If the Bank and the Issuer are not related and both the Bank and the Issuer agree to the Replacement Rate (including any multiplier and spread) then they will be deemed to have determined the Replacement Rate based on bona fide arm's length negotiations.

(ii) If a LIBOR Termination occurs, until a Replacement Rate replaces the LIBOR Index Rate or Adjusted LIBOR Index Rate in accordance with Section 2.02(h)(i), the Bonds shall bear interest at a rate equal to the **Federal Funds Rate** multiplied by a factor and increased by a spread (the "**Fallback Rate**") each selected by the Bank in order to produce an interest rate on the Bonds that the Bank believes approximates the LIBOR Index Rate or Adjusted LIBOR Index Rate. If the Fallback Rate determined pursuant to this Section 2.02(h)(ii) shall be less than zero, such Fallback Rate shall be deemed to be zero for the purposes of this Indenture. The Bonds shall automatically adjust to bear interest at the **Taxable Rate** (grossing up the Fallback Rate) unless the Bank receives on the date the LIBOR Index Rate or Adjusted LIBOR Index Rate is substituted with the Fallback Rate either (1) written evidence satisfactory to the Bank that the Fallback Rate is a qualified floating rate as defined in Treasury Regulation §1.1275-5 and one or more of the Treasury Regulation Safe Harbors have been satisfied with respect to the replacement of the LIBOR Index Rate or Adjusted LIBOR Index Rate with the Fallback Rate or (2) an opinion of Bond Counsel in form and substance satisfactory to the Bank that the replacement of the LIBOR Index Rate or Adjusted LIBOR Index Rate with the Fallback Rate does not and will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(iii) Any determination, decision or election that may be made by the Bank pursuant to this Section 2.02(h), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in the Bank's sole discretion and without consent from the Issuer, except, in each case, as expressly required pursuant to this Section 2.02(h).

Section 4. No Other Amendments Intended. Other than as specifically set forth herein, no other amendments to the Original Indenture are intended, and the Original Indenture remains in full force and effect except as amended herein.

Section 5. Execution in Counterparts. This First Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6. Governing Law. This Amendment shall be governed by and interpreted in accordance with Section 9.08 of the Original Indenture.

Section 7. Effective Date. This Amendment shall be effective on and as of the date of this Amendment (the "Effective Date").

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IN WITNESS WHEREOF, the parties hereto have caused this *First Amendment to Indenture of Trust* to be executed, sealed and delivered in their names and on their behalf by their respective duly authorized representatives, all as of the day and year first above written.

**CITY OF SAN ANTONIO INDUSTRIAL
DEVELOPMENT AUTHORITY**

By: _____
Ron Nirenberg
President, Board of Directors

(SEAL)

ATTEST:

Tina J. Flores
Secretary

U.S. BANK NATIONAL ASSOCIATION, as
Trustee

By: _____
Title: _____

ACCEPTED AND AGREED TO:

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: Dennis J. Vollink
Title: President

U.S. BANK, NATIONAL ASSOCIATION, as the
Bank

By: _____

Title: _____

Acceptance page to the First Amendment to 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

