

**DEVELOPMENT SUBLEASE AGREEMENT  
BY AND BETWEEN  
HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION  
AND  
ZH DOWNTOWN DEVELOPMENT COMPANY, LLC**

**Dated: \_\_\_\_\_, 2017**

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**EXHIBITS:**

Exhibit "A-1"	-	Legal Description of Market Street Tract
Exhibit "A-2"	-	Legal Description of South Alamo Tract
Exhibit "B"	-	Plan Approval Process
Exhibit "C"	-	Limited Guaranty
Exhibit "D"	-	Permitted Exceptions
Exhibit "E"	-	Project Timeline
Exhibit "F"	-	Certificate of Substantial Completion
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Exhibit "J"	-	Appraisal Method for Market Rate Adjustments
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Exhibit "M"	-	Memorandum of Lease
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Exhibit "O"	-	Depiction of MAE Park Facilities Area

## DEVELOPMENT SUBLEASE AGREEMENT

This **DEVELOPMENT SUBLEASE AGREEMENT** (this “*Lease*”) is entered into to be effective the \_\_\_\_\_ day of \_\_\_\_\_, 2017 (the “*Effective Date*”), by and between the **HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION**, a Texas local government corporation formed under Subchapter D of Chapter 431 of the Texas Transportation Code (“**HPARC**”), and **ZH DOWNTOWN DEVELOPMENT COMPANY, LLC** a Texas limited liability company (“*Developer*”). In consideration of the mutual covenants and agreements contained in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, HPARC and Developer agree as follows:

### RECITALS

A. The City of San Antonio (the “*City*”) passed City Ordinance 2012-11-01-0856 (the “*Ordinance*”) and, in accordance with the Ordinance, the City adopted P3 Program and the P3 Program Guidelines for the purposes of allowing the City and/or its designees to enter into public-private partnerships for the development of land for the City and/or its designees by encouraging private entity participation in various qualifying projects, sharing the risk and expense between the City and the contracting private entity and to allow the City to participate in cash flow performance by organizing public-private partnerships.

B. These public-private partnerships are documented through a comprehensive development agreement between the City and/or its designees and a private sector person or entity.

C. Through this comprehensive development agreement, the assets and professional skills of each sector (public and private) are shared to deliver a facility and/or service (e.g., planning, designing, financing, constructing, operating, maintaining, and owning) for the use of the general public.

D. The City may identify qualifying projects consisting of properties owned by the City for inclusion in the P3 Program.

E. The City established the Hemisfair Park Public Facility Corporation, a Texas non-profit public facilities corporation (“**PFC**”) to assist City in financing, refinancing or providing public facilities and other facilities directly related thereto, as requested by City, relating to the renovation, expansion, redevelopment, construction, acquisition, provisions, conveyance and leasing of land that was formerly a part of Hemisfair, a world exposition recognized by the Bureau International des Expositions (“*Hemisfair*”), and to serve as a land bank.

F. The City conveyed fee simple title to certain parcels of land in Hemisfair to PFC to further the purposes for which PFC was created.

G. The City created HPARC to manage and oversee the redevelopment and management of Hemisfair.

H. The City has identified Hemisfair as a qualifying project and has appointed HPARC to manage and oversee the redevelopment and management of Hemisfair and, as its designee, to enter into public-private partnerships for the development of the Hemisfair area. HPARC was created to achieve the City’s goal of revitalizing the Hemisfair area and creating a spectacular public space in the heart of San Antonio, complete with plazas, courtyards, green spaces, art and cultural amenities, residences and local businesses.

I. To facilitate the goals of the City, PFC, and HPARC and the corresponding development of certain parcels of land in the Hemisfair Northwest Quadrant Public Private Development (which parcels are partially the subject of this Lease), HPARC presented a request for qualifications (the “**RFQ**”) soliciting a private sector partner who can deliver to the City and HPARC an ambitious, inspiring and pragmatic plan to develop the Premises.

J. In response to the RFQ, Developer submitted a response dated August 11, 2015 for development of certain parcels of land in the Hemisfair Northwest Quadrant Public Private Development.

K. After receipt of multiple responses to the RFQ, HPARC presented a Request for Proposals (as supplemented, the “**RFP**”) seeking the provision of services by a high quality regional/national urban real estate developer to perform the services of designing, financing, contracting and operating the Improvements on the Market Street Tract and the South Alamo Tract. Any agreement for the provision of the services would ultimately be included in a comprehensive development agreement (of the form referenced in paragraph C above).

L. HPARC issued the RFP seeking assistance in achieving its goal of creating a “walkable urban district that offers recreational, cultural and educational experiences across multiple parks, arts plaza, mid-and-high-rise mixed use development.”

M. On February 23, 2016 HPARC informed Developer that, as a result of the submissions by Developer to the RFP and the RFQ, it was selected as the party with whom HPARC would enter into negotiations with for the development of the Market Street Tract and the South Alamo Tract. The development of the properties by HPARC will be accomplished, in part, through long-term leases.

N. Leases from Required Improvements (as defined below) to be built on the Market Street Tract and the South Alamo Tract will provide operational revenues to HPARC to maintain and program the civic park and open spaces within Hemisfair.

O. As part of Developer’s services, Developer will also procure development services for HPARC and currently intends to do so, in part, by (i) entering into a sublease (the “**NRP Sublease**”) with The NRP Group, LLC, or its Affiliate (“**NRP**”) pursuant to which NRP will sublease the Market Street Tract (as subleased to NRP, the “**NRP Premises**”); and (ii) entry into and performance of the Parking Garage Development Agreement by which Developer will design and develop the Parking Garage servicing the Park

P. This Lease is the comprehensive development agreement described in Paragraph C above and sets forth the terms and conditions pursuant to which Developer will provide the goods and services requested by HPARC in the RFP and the RFQ, namely, the planning, designing, financing, constructing, operating, and maintaining of mixed use buildings on the Market Street Tract and the South Alamo Tract.

Q. HPARC and Developer expressly acknowledge and agree that, in accordance with this Lease, Developer is providing goods and services directly to and for the benefit of HPARC, and the goods and services provided by Developer to HPARC directly and substantially benefit HPARC and are part of Developer’s obligations to provide buildings to be designed, financed, constructed in accordance with the agreed upon standards of HPARC and to operate and procure related goods and services directly for the benefit of HPARC and the operations it desires to activate and fund programming and further improvements in Hemisfair.

R. Without limiting the scope of the provisions of goods and services by Developer to HPARC under the terms of this Lease and the transactions contemplated by this Lease, HPARC and

Developer agree that the goods and/or services are being provided in conjunction with: (1) the improvements to be planned, designed, financed, constructed, operated and maintained by Developer under the terms of this Lease; and (2) pursuant to the transactions contemplated hereby, to provide revenue for the operations of HPARC and the Parking Garage to be designed, developed, constructed and delivered to HPARC pursuant to the terms and conditions of the Parking Garage Development Agreement.

1. **CERTAIN DEFINITIONS.**

(a) ***Affiliate*** means, of a specified Person, a Person who (a) is directly or indirectly controlling, controlled by, or under common control with, the specified Person; (b) owns directly or indirectly twenty-five percent (25%) or more of the equity or voting interests of the specified Person; (c) is a general partner, officer, director, non-financial institution trustee or fiduciary of the specified Person or of any Person described in (a) or (b); or (d) is a son, daughter, spouse, parent, sibling or in-law of the specified Person.

(b) ***Approved Plans*** means the plans and specifications for each Project Phase that will be approved by HPARC pursuant to the process described on the attached **Exhibit “B”**.

(c) ***Base Rent*** means the annual base rent to be paid by Developer to HPARC under this Lease pursuant to Section 4.

(d) ***Base Retail Rate*** means (i) until the ninth (9th) anniversary of the January Adjustment Date, \$25.00, (ii) for the calendar year commencing on the ninth (9th) anniversary of the January Adjustment Date, an amount equal to the product of (x) \$25.00 and (y) the sum of (A) one and (B) the percentage increase or decrease in CPI over the preceding five year period based on the most recent data available on the ninth (9th) anniversary of the January Adjustment Date, and (iii) for each calendar year commencing on or after the tenth (10th) anniversary of the January Adjustment Date, an amount equal to the product of (x) the Base Retail Rate in the prior calendar year and (y) the sum of (A) one and (B) the year-over-year percentage increase or decrease in CPI based on the most recent data available on the first day of such calendar year.

(e) ***Business Days*** means any weekday on which national banks may be lawfully open for business.

(f) ***City*** means the City of San Antonio, a Texas home rule municipality.

(g) ***Commence Construction*** means, with respect to each Project Phase separately, the date upon which Developer commences construction on such Project Phase. Developer will be deemed to have commenced construction on a particular Project Phase when excavation for either the Parking Garage or the building foundation on such Project Phase has commenced in good faith. Upon request from Developer, HPARC shall promptly confirm in writing that Developer has commenced construction on a Project Phase in good faith.

(h) ***Construction Commencement Date*** means June 30, 2018 subject to extension following an Excusable Delay.

(i) ***Construction Commencement Deadline*** means July 31, 2018, subject to (i) extension for Excusable Delay, (ii) extension pursuant to Section 3(k) below, (iii) or any other extension granted by HPARC in writing.

(j) “**CPI**” shall mean the Consumer Price Index for all Urban Consumers – all city average - (1982-1984 = 100) of the Bureau of Labor Statistics of the United States Department of Labor. If the Consumer Price Index ceases to use the 1982-1984 average equaling 100 as the basis of calculation, or if a material change is made in the term or number of items contained in the Consumer Price Index, or if the Consumer Price Index is altered, modified, converted or revised in any other material way, then CPI shall be adjusted to the figure that would have resulted had the change in the manner of computing the Consumer Price Index in effect at the date of this Lease not been so altered. If such Consumer Price Index shall no longer be published by said Bureau, then any substitute or successor index published by said Bureau or other governmental agency of the United States, and similarly adjusted as aforesaid, shall be used. If such Consumer Price Index (or a successor or substitute index similarly adjusted) is not available, a reliable governmental or other reputable publication selected by HPARC and approved by Developer, which approval may not be unreasonably withheld, and evaluating the information theretofore used in determining the Consumer Price Index shall be used.

(k) “**Demise Date**” has the meaning attributed to that term in Section 2(a)(2) of this Lease.

(l) “**Excluded Revenues**” are any of the following revenues received by the Collecting Parties: (i) from the sale, assignment, transfer or other disposition of any aspect of the Lease or any other of Developer’s Improvements (and any interest therein) or the financing of the Lease or Developer’s interest in the Premises or Improvements, if any, in accordance with this Lease; (ii) from any payment received by Developer in exchange for Developer’s assigning, mortgaging or otherwise transferring all or any interest of Developer in this Lease in accordance with this Lease; (iii) from any governmental tax credit, benefit or incentive such as government grants, tax abatements or exemptions, or any other current or future created governmental tax credit, benefit or incentive, (iv) any payment received from a subtenant that constitutes a bona fide direct reimbursement, in a manner consistent with customary triple net retail leases in the marketplace, for such subtenant’s pro rata share of the actual, reasonable common area maintenance expenses of the Project or such subtenant’s pro rata share of Developer’s real property tax obligation or insurance premiums provided, however, that in no event shall Excluded Revenues include any payment made by a subtenant to Developer to reimburse Developer for (a) costs and expenses incurred in connection with any financing or ground lease payments, (b) depreciation, (c) any commissions paid to brokers (d) income taxes paid by Developer, or (e) any reserves for future expenses, repairs or maintenance; (v) from or in connection with any dispute or lawsuit with any contractor, subcontractor, lender, architect, engineer, or other consultant, if for payment or collection of any sums above, inclusive, (vi) warranty claim, insurance claim, or settlement of any warranty claim or insurance claim, (vii) any revenues received under the Parking Garage Development Agreement (as that term is defined in the Parking Garage Development Agreement), and (viii) any revenues received by any other subtenants of Developer that are not occupants of the Retail Units.

(m) “**Excusable Delay**” means a delay by Developer in achieving any of the deadlines of the Project Timeline or any of the other project deadlines set forth in the Lease that reference extension due to Excusable Delay, to the extent such delay is caused by (i) a Force Majeure Event, (ii) negligence, gross negligence or willful misconduct of HPARC, City or PFC (including any Person employed thereby or any agent, contractor or subcontractor thereof), (iii) either of the Reviewing Organizations (as defined in the Hotel Compliance Ordinance) taking more than thirty (30) days from receipt of Compliance Documentation (as defined in the Hotel Compliance Ordinance) to respond to a request for the issuance of a Preliminary Certificate of Compliance or the Final Certificate of Compliance, (iv) any violation of the terms of this Lease by HPARC, whether beyond applicable notice and cure periods or otherwise or any act or omission of HPARC (including any Person employed by HPARC or of any agent, contractor or subcontractor of HPARC) that unreasonably interferes with or delays

Developer's pre-construction or construction activities but does not result from (A) the lawful exercise of HPARC's rights or obligations under this Lease, or (B) the refusal, failure or inability of Developer, a Leasehold Mortgagee or any other Person to make funds available for any purpose unless such refusal, failure or inability results from other facts or circumstances which constitute an Excusable Delay, and (v) any closure or limitation of access on, over or to S. Alamo Street or Market Street that prevents in whole, or in a material fashion, access to the Premises of Developer and its ability to reasonably perform its obligations under this Lease.

(n)     ***“Final Certificate of Compliance”*** means that certain Final Certificate of Compliance executed by the City and the San Antonio Conservation Society, and delivered to Developer, as contemplated by Ordinance 2017-\_\_\_\_\_ of the City of San Antonio.

(o)     ***“Force Majeure Event”*** has the meaning attributed to that term in Section 34 of this Lease.

(p)     ***“Full Project Rent Commencement Date”*** means the date upon which Base Rent payments have commenced for all Tracts remaining as part of the Premises, excluding any Tract that may have been excluded from the definition of the Premises through the exercise of a termination right granted hereunder to HPARC or Developer.

(q)     ***“Governmental Authority”*** means any federal, state, county, municipal or other government or any governmental or quasi-governmental subdivision, agency, department, commission, board, bureau, office or instrumentality or any of them.

(r)     ***“Gross Retail Revenues”*** means the sum of all of the following revenues received by Developer or any Affiliate or agent of Developer (collectively, the ***“Collecting Parties”***) from occupants of the Retail Units during the applicable calendar year: any and all rents or other payments by Developer from subtenants or licensees of the Retail Units, including without limitation any base rent or percentage rent, and excluding only the Excluded Revenues (as defined herein).

(s)     ***“Guarantor”*** means Zachry Hospitality, LLC.

(t)     ***“Guaranty”*** means that certain Limited Guaranty entered into by Guarantor in favor of HPARC in the form attached hereto as **Exhibit “C”**.

(u)     ***“Heritage Site Objects”*** means (1) heritage objects or materials or other evidence of human habitation (including dwellings, carvings, historical tools, or paintings) that constitute part of a protected or regulated heritage, or historical or archaeological site which is or may be protected or regulated by any Governmental Authority or historical or other society or association with the authority to regulate the use or development of the Premises, (2) burial places that have historical value which is or may be protected or regulated by any Governmental Authority or historical or other society or association with the authority to regulate the use or development of the Premises, and (3) regulated or protected archaeological sites.

(v)     ***“Hotel Restriction”*** means that certain Declaration of Restrictive Covenants made by the City and recorded in the Official Public Records of Bexar County on November 7, 2013 as Document Number 20130231717.

(w)     ***“Hotel Compliance Ordinance”*** means Ordinance 2017-\_\_\_\_\_ of the City of San Antonio.

- (x)     “*Improvements*” has the meaning ascribed to such term in Section 2(a).
- (y)     “**Hemisfair District**” means land that was formerly a part of HemisFair, a world exposition recognized by the Bureau International des Expositions.
- (z)     “**January Adjustment Date**” means the payment date for Rent occurring in January after passage of one complete calendar year following the Percentage Rent Commencement Date (e.g., if the Percentage Rent Commencement Date is February 1, 2022, then the January Adjustment Date would be January 1, 2024; if the Percentage Rent Commencement Date is January 1, 2023, then the January Adjustment Date would be January 1, 2024).
- (aa)    “**Laws**” means all laws, ordinances, rules, regulations and requirements of a Governmental Authority.
- (bb)    “**Master Lease**” means that certain Master Lease Agreement by and between the PFC, as landlord, and HPARC, as tenant, dated effective as of December 11, 2014.
- (cc)    “**Market Street Project**” means a mixed-use commercial building containing apartment units and restaurant and retail space on the ground floor, constructed to Substantial Completion on the Market Street Tract in accordance with the Approved Plans.
- (dd)    “**Market Street Retail Space**” means all portions of the Market Street Project used or intended to be used for retail or restaurant purposes, including without limitation all Retail Units and associated common area, and including all rights incidental to or necessary to the enjoyment thereof.
- (ee)    “**Market Street Tract**” means that certain approximately 2.140 acre tract of land consisting of that certain Land Bank Tract 1 and that certain Land Bank Tract 1A, all as more particularly described in **Exhibit “A-1”** attached hereto and depicted on the Site Plan. The Market Street Tract expressly excludes the area defined as the Parking Sublease Premises.
- (ff)    “**Park Facilities**” shall mean those certain to-be-developed public park improvements identified in the certain Park Facilities Memorandum.
- (gg)    “**Park Facilities Timeline**” means the development milestones for the construction of the Park Facilities set forth in the Park Facilities Memorandum.
- (hh)    “**Park Facilities Memorandum**” means a certain memorandum by which HPARC and the City and Developer evidence (i) the anticipated Park Facilities to be developed by the City in coordination with HPARC, (ii) the confirmed and anticipated sources of funds for such Park Facilities, and (iii) the anticipated timeline for construction of such Park Facilities.
- (ii)    “**Parking Garage**” means that certain parking garage to be constructed by Developer or a Developer Affiliate on behalf of the City pursuant to the Parking Garage Development Agreement.
- (jj)    “**Parking Garage Development Agreement**” means that certain Parking Garage Development Agreement and License entered into as of even date herewith between the City, HPARC and Developer relating to the development of the Parking Garage.
- (kk)    “**Parking Sublease**” means that certain Parking Sublease Agreement to be entered into as of even date herewith between the City and HPARC.

(ll) “**Parking Sublease Premises**” means the premises leased from HPARC to the City pursuant to the Parking Sublease.

(mm) “**Percentage Rent Commencement Date**” means the first day of the first calendar month commencing on or after the second anniversary of the Full Project Rent Commencement Date (e.g., if the Full Project Rent Commencement Date is November 15, 2020, then the Percentage Rent Commencement Date would be December 1, 2022; and if the Full Project Rent Commencement Date is December 1, 2020, then the Percentage Rent Commencement Date would also be December 1, 2022).

(nn) “**Permitted Exceptions**” means those matters affecting title to the Premises and described in **Exhibit “D”** hereto.

(oo) “**Person**” means any individual, corporation, partnership, limited liability company, trust or other legal entity.

(pp) “**PFC**” means the Hemisfair Park Public Facilities Corporation, a Texas non-profit public facilities corporation.

(qq) “**Preliminary Certificate of Compliance**” means that certain Preliminary Certificate of Compliance executed by the City and the San Antonio Conservation Society, and delivered to Developer, as contemplated by Ordinance 2017-\_\_\_\_ of the City of San Antonio.

(rr) “**Premises**” means the Market Street Tract and the South Alamo Tract, collectively (the “**Land**”), together with all improvements now or hereafter situated thereon, excluding the former convention center building now being demolished on the Premises, and expressly including all air and development rights above such Land but expressly excluding (A) such portions of the Premises as may be excluded from the definition thereof pursuant to the express termination rights and other provisions contained in this Lease and (B) any subterranean area and surface area included within the Parking Sublease Premises.

(ss) “**Project**” means the Market Street Project and the South Alamo Project, collectively.

(tt) “**Project Phase**” means either the Market Street Project or the South Alamo Project.

(uu) “**Projected Retail Revenue**” means, the projected Gross Retail Revenues for a calendar year (and, if applicable, any portion of a calendar year) as estimated by Developer, using commercially reasonable practices, based upon the rent roll for the Retail Units for the applicable calendar year and other information available to Developer; provided, however, that if the actual Gross Retail Revenues exceed the Projected Retail Revenue by ten percent (10%) or more for three consecutive years or by more than five percent (5%) over five consecutive years, then HPARC shall have the right to require that the Projected Retail Revenues for all future years be not less than the Gross Retail Revenue for the most recent year available unless Developer can demonstrate to HPARC’s reasonable satisfaction that there were legitimate reasons why the Gross Retail Revenues were exceeding the Projected Retail Revenues on such a routine basis.

(vv) “**Project Timeline**” means the development milestones for the construction and Substantial Completion of the Project set forth on **Exhibit “E”**, subject to extension following an Excusable Delay; provided, however, that Developer agrees upon request from HPARC, prior to the expiration of the Due Diligence Period, to supplement such Project Timeline with at least two milestones

between the Construction Commencement Date and Substantial Completion such additional milestones to be reasonably calculated based upon available information and reasonable expectations.

(ww) “**Rent Commencement Date**” is, (i) with respect to the South Alamo Project, the date that is the earlier to occur of either (A) the day on which the first temporary certificate of occupancy is issued for all or a portion of such project, or (B) August 1, 2021; and (ii) with respect to the Market Street Project, the date that is the earlier of either (A) the day on which the first temporary certificate of occupancy is issued for all or a portion of such project, or (B) August 1, 2021.

(xx) “**Retail Units**” means the “Gross Leasable Area” (as measured pursuant to the BOMA Retail Buildings: Standard Methods of Measurement published by the Building Owners and Managers Association (BOMA) International) of all retail spaces in the Project that are occupied or available for lease by third party tenants that are not Affiliates of Developer.

(yy) “**South Alamo Project**” means a hotel building containing no more than 200 hotel rooms, together with the mixed use commercial buildings depicted on the Site Plan containing retail space and office space, all constructed on the South Alamo Tract to Substantial Completion in accordance with the Approved Plans.

(zz) “**South Alamo Tract**” means that certain approximately 2.254 acre tract of land, such tract being depicted on the attached Exhibit “A-2” and comprising a portion of that certain Land Bank Tract 2 also described in Exhibit “A-2” attached hereto. The South Alamo Tract expressly excludes the area defined as the Parking Sublease Premises.

(aaa) “**Substantial Completion**” means (1) as to the Market Street Project, the first day on which (a) the construction and equipping of that Project Phase has been completed (exclusive of “punch list” items, landscaping and tenant improvement work), (b) all utilities are installed and operating for such Project Phase (excluding wireless internet and cable television), and (c) a certificate of occupancy has been lawfully issued permitting the use and occupancy of one or more tenant spaces of such Project Phase for its intended purpose; and (2) as to the South Alamo Project (a) installation of all utilities serving such space (excluding wireless internet and cable television), and (b) issuance of a certificate of completion, in substantially the form attached hereto as Exhibit “F”, has been signed and delivered by the architect for the applicable Project Phase.

(bbb) “**Thoroughfares**” means those certain pedestrian passageways, paths and walkways crossing the Premises, the locations of which are identified in preliminary fashion on the Site Plan. Within ten (10) days after the approval of the Final Plans the parties agree that attached exhibit illustrating the Thoroughfares will be updated and replaced with a final and updated exhibit describing in detail the boundaries of the Thoroughfares as depicted and set forth in the Final Plans.

(ccc) “**Tract**” means either (i) the South Alamo Tract, or (ii) the Market Street Tract.

(ddd) “**Urban Design Manual**” means that certain Urban Design Manual adopted by HPARC for the development of Hemisfair.

## 2. DEMISE; SUBLEASE.

(a) Demise.

(1) As of the Effective Date, HPARC hereby grants to Developer the access and inspection rights to the Premises described in Section 3(c), (d) and (f) of the Lease.

(2) As of the date (the “***Demise Date***”) that is the earlier of (a) the date of expiration of the Interim Use Agreement (as that term is defined in Section 3(e) of this Lease) and (b) June 1, 2018, HPARC hereby leases to Developer, and Developer hereby leases from HPARC, without the necessity or requirement of execution of any further writing by such parties, the Premises, together with all improvements on the Premises (“***Improvements***”) and all rights, easements and appurtenances that belong to the Premises, including, without limitation, all air rights above the Land subject to the conditions stated below in Section 5(a).

(b) **Master Lease and Sublease.** Notwithstanding any other provision contained in this Lease, this Lease is hereby made expressly subject and subordinate in all respects to the Master Lease. For ease and convenience, however, the term “***Lease***” is used herein to refer to this Development Sublease Agreement notwithstanding the fact that this Development Sublease Agreement is in fact a sublease. HPARC shall comply with all of its obligations under the Master Lease during and at all times during the Term of this Lease.

(c) **Recognition and Non-Disturbance.** Effective as of the date of this Lease, HPARC and Developer shall execute and HPARC shall cause PFC to execute and deliver a Recognition Agreement in recordable form, in substantially the form attached hereto as Exhibit “G” (the “***PFC Recognition Agreement***”). Effective as of the date of this Lease, HPARC and Developer shall execute and HPARC shall cause the City to execute and deliver a Recognition Agreement in recordable form, in substantially the form attached hereto as Exhibit “G-1” (the “***City Recognition Agreement***”). Furthermore, to the extent HPARC executes the NRP Recognition Agreement under Section 2(g) below, and such NRP Recognition Agreement contains terms which are in the reasonable and good faith opinion of Developer applicable hereto and materially more favorable for NRP than the terms incorporated in the City Recognition Agreement or the PFC Recognition Agreement for the benefit of the Developer, at Developer’s written request, Developer and the PFC, and the Developer and the City, shall execute respectively an updated PFC Recognition Agreement and City Recognition Agreement incorporating those same more favorable terms.

(d) **Thoroughfares.** As to each Project Phase, on the date of Substantial Completion of a Project Phase, the description of the Premises shall be deemed amended and modified to reflect the surface of the Thoroughfares being excluded as Premises hereunder and therefore not leased by the Developer. Notwithstanding the exclusion of the thoroughfare from the Premises, during the Term, and as set forth more thoroughly in that certain Thoroughfare License and Maintenance Agreement attached hereto as Exhibit “I”, (i) Developer and its respective employees, tenants, licensee, invitees, guests, visitors, successors and assigns shall be granted a non-exclusive pedestrian, bicycle or other non-motorized vehicle license and right of entry and access to the Thoroughfares for the purpose of accessing and utilizing the Projects and Premises, (ii) Developer shall be entitled to and obligated to operate, manage, equip, light, repair and maintain the Thoroughfares and all equipment and fixtures serving the same for their intended purposes and in good and usable repair, (iii) Developer shall be entitled to manage, approve and control all programming, commercial and non-commercial ventures and utilization of the Thoroughfares to the extent such uses are not merely pedestrian, bicycle or non-motorized vehicle utilization of the Thoroughfares as throughways, and (iv) Developer shall not obstruct or prohibit the use of the Thoroughfares by the public, except on a temporary basis from time to time. Prior to the Construction Commencement Date, the parties agree to fully execute in recordable form the Thoroughfare License and Maintenance Agreement in substantially the form attached hereto. If this Lease is not terminated prior thereto, within three (3) Business Days after the Full Base Rent Commencement Date the Thoroughfare Maintenance and License Agreement shall be recorded in the real property records of Bexar County, Texas.

(e) Access to the Features of the Hemisfair Park. The Premises is located adjacent to the site of the Civic Park to be developed by and maintained by the City. HPARC agrees to use any authority it may have to ensure that no boundary or structure shall be erected between the Park Facilities and the Project the intent of which is to be, or the practical effect of which is, a significant or material impediment against, visibility of, and pedestrian access to and from the Premises and the Park Facilities by the tenants, licensee, invitees, guests, and visitors of the Projects. Developer acknowledges that the City may plant trees and shrubbery in the Civic Park which may limit visibility and access to and from the Premises and agrees that such planting is not the type of impediment that HPARC would use its authority to restrict pursuant to this subsection. Notwithstanding the balance of this subsection, Developer acknowledges that from time to time temporary boundaries may be erected between the Park Facilities and the Premises for the purposes of safety and security related to special events or construction. The utilization of temporary safety or security fencing or boundaries shall not be deemed a violation of this subsection so long as (i) such fencing or boundaries are not limited in area to the boundary of the Premises only and discriminatory against the Developer and tenants, licensee, invitees, guests, and visitors of the Projects, (ii) HPARC provides prompt advance notice to Developer upon its determination that such fencing or boundaries shall be utilized, (iii) HPARC causes the party utilizing such fencing or boundaries to cooperate with Developer in the installation or erecting and removal of such boundaries to minimize in all reasonable respects the disturbance or disruption to the use of the Premises caused by such boundaries during their use, (iv) such fencing or boundaries shall be installed or erected and removed in a safe, good and workmanlike manner and in accordance with good industry practices for the type of work in question and in accordance with all applicable Laws, and (v) any such work, including the removal of such fencing or boundaries shall be commenced and completed with reasonable dispatch and removed promptly upon the conclusion of the relevant event or condition necessitating the use of such fencing or boundaries.

(f) Consent to Sublease of the Market Street Project. As of the Effective Date it is the intention of Developer to sublease the NRP Premises to NRP. Pursuant to the terms of the NRP Sublease, Developer would lease the NRP Premises to NRP, as well as certain rights and interest with respect to certain common areas and appurtenances to the NRP Premises (such NRP Premises, common areas and appurtenances to the NRP Premises, all of the rights and privileges of NRP under the NRP Sublease shall be referred to herein, collectively as "**NRP's Leasehold Interest**"). Notwithstanding any other provision contained herein, Developer agrees that under the NRP Sublease it will retain control over all operations, management and economic interest of the Market Street Retail Space either through (i) the sublease of such units back from NRP, (ii) ownership of such units through the Regime (as described below) or (iii) some other means such as reservation of such interests under the NRP Sublease. HPARC hereby approves the sublease of the NRP's Leasehold Interest to NRP without the need for the execution of any additional instrument evidencing the same so long as it provides for Developer's control of the Market Street Retail Space as provided in the preceding sentence.

(g) NRP Recognition Agreement. If NRP enters into the NRP Sublease prior to March 1, 2017, then HPARC shall enter into a recognition agreement with NRP (the "**NRP Recognition Agreement**") in a form to be reasonably agreed upon between HPARC and NRP prior to the end of the Due Diligence Period so long as (i) the NRP Sublease is materially consistent with this Lease, and (ii) the NRP Sublease provides adequately for Developer's control of the Market Street Retail Space as provided in subsection 2(f) above. HPARC shall have no obligation to execute the NRP Recognition Agreement unless and until it has had a reasonable opportunity to review the NRP Sublease it confirms such matters in its reasonable discretion. For purposes of this subsection, "**materially consistent**" shall mean, without limitation, that (a) the rights granted to NRP under the NRP Sublease are no greater than the rights granted to Developer under this Lease with respect to the Market Street Premises, and (b) the obligations assumed by NRP under the NRP Sublease are no less than the obligations assumed by Developer under this Lease with respect to the Market Street Premises. If HPARC executes a NRP Recognition

Agreement pursuant to this Section 2(g), then HPARC shall use commercially reasonable efforts to cause the PFC to execute and deliver a substantially similar recognition agreement in favor of NRP and to cause the City to execute and deliver a recognition agreement substantially similar to the one delivered to Developer.

(h) Leasehold Condominium Regime. HPARC hereby acknowledges that in connection with Developer's sublease of the Market Street Project, Developer may desire to implement a leasehold condominium regime or create a vertical subdivision of the leasehold air rights, in either event dividing the Market Street Project into exactly two units or subdivisions, one of which would be for the Market Street Retail Space and the other of which would be for the multi-family portion of the Market Street Project (in either such event, a "**Regime**"). So long as a Regime does not in any way increase the obligations of or diminish the rights of HPARC (including through any statutory or regulatory requirements required in connection with or incidental to such a Regime) or Developer can provide for a means under this Lease of fully addressing any of HPARC's concerns with respect to a Regime, HPARC agrees to cooperate with Developer in implementing the Regime and to take commercially reasonable actions requested by Developer that are necessary for Developer's proposed implementation of a Regime, including, without limitation, executing additional instrument evidencing the same, such as an appropriate condominium declaration and other instruments related to the creation and maintenance of the Regime.

(i) Parking Garage Development Agreement. If the Developer or the City elects to terminate the Parking Garage Development Agreement with respect to all or any portion of the subterranean area underlying the Premises, then such subterranean area shall automatically become a part of the Premises and Developer may, at its option, elect to construct a parking garage in such subterranean area subject to the approval of plans for such improvements pursuant to the provisions of this Lease.

### 3. **TERM.**

(a) The term of this Lease ("**Initial Term**") shall commence on the Demise Date and shall end at midnight on December 31, 2066 (the "**Expiration Date**"), unless sooner terminated or extended in accordance with the provisions of this Lease; provided, however, that certain rights and obligations shall accrue pursuant to the terms, conditions and provisions of this Lease prior to the Demise Date.

(b) Extension Options. The Term of this Lease shall be automatically extended for four (4) successive periods of ten (10) years and a final period of seven (7) years (each, an "**Extension Period**") unless Developer delivers to HPARC written notice electing not to exercise such option, such notice to be delivered to HPARC on or before the two hundred seventieth (270<sup>th</sup>) day preceding the expiration of the Initial Term or the Extension Period then in effect. References to the word "**Term**" in this Lease shall include the Initial Term and each effective Extension Period, collectively.

(c) Due Diligence Period. Developer shall have a period commencing on the Effective Date and ending at 5:00 p.m. San Antonio, Texas time on May 31, 2017 (as it may be extended pursuant to the provisions hereof or other written agreements of HPARC and Developer, the "**Due Diligence Period**") to access the Premises and inspect the Premises and perform such engineering and/or architectural examinations, including soils and environmental tests and archeological and endangered and protect species tests and investigations, as Developer may deem reasonably necessary in connection with its proposed use and/or development of the Premises; obtain, review and approve a title commitment, survey, environmental report and such other reports as Developer may desire to obtain; and to determine in Developer's sole and absolute discretion the suitability of the Premises for Developer's intended use. Notwithstanding the terms of the immediately preceding sentence, Developer shall be entitled to two (2) thirty (30) day extensions of the Due Diligence Period which may only be exercised by delivery of

written notice thereof prior to the expiration of the Due Diligence Period or then current extension of the Due Diligence Period. Developer shall have the right prior to the expiration of the Due Diligence Period, to terminate this Lease for any reason or no reason with respect to (a) the entire Premises, (b) the Market Street Tract only, or (c) the South Alamo Tract only. Upon delivery of any such termination notice, this Lease shall terminate with respect to the Premises or the applicable portion of the Premises, and neither party shall have any further rights or liabilities hereunder (respect to the Premises or the applicable portion of the Premises), except for those obligations which expressly survive termination hereof. As obligations that shall survive any termination, (A) Developer shall restore and repair the Premises or any adjacent property to the extent any damage is caused by Developer or Developer's permittees during such access; (B) the indemnities set forth in this Lease shall apply during the Due Diligence Period; (C) Developer and/or its permittees shall comply with the insurance requirements set forth in this Lease during the Due Diligence Period, as applicable, and provide evidence thereof to HPARC; and (D) upon any termination permitted under this Section 3, at HPARC's request and at no cost to HPARC or Developer (other than delivery and copying fees to be paid by HPARC) and to the extent not restricted by confidentiality or other counterparty restrictions, Developer shall deliver to HPARC copies of all third party reports, studies, or assessments relating to all tests conducted at the Premises by Developer or its permittees on an "**AS IS, WHERE IS**" basis, without recourse to Developer or its contractors or agents, and with no representation or warranty as to the accuracy or completeness of the information contained therein. During the Due Diligence Period, Developer shall give HPARC at least one (1) business day prior notice of the time, place and purpose of all such tests and shall permit a representative of HPARC access to the Premises when each such test is conducted.

Within five (5) Business Days following the Effective Date, and within five (5) Business Days of receipt by HPARC of any additional Property Information (as defined below) HPARC shall deliver or cause to be delivered to Developer, copies of any of the following that are in HPARC's actual possession: (i) any and all soils reports, environmental reports, boundary surveys, topographical surveys, as-built surveys for remaining or prior improvements on the Premises, plats and other agreements, instruments and information that affect or relate to the Premises; and (ii) all other agreements to which HPARC, City or PFC is a party, governing or in any way relating to the development, ownership or operation of the Premises, including, without limitation, all utility contracts, commitments and agreements related to the configuration, inspection, condition, development and (collectively, the "**Property Information**"), which copies will be, to HPARC's Actual Knowledge, true and complete copies thereof and the most current of each such item being delivered. To the best of HPARC's knowledge, the Property Information includes all material third party reports or documents pertinent to the Property in HPARC's possession (excluding any proprietary or confidential information pertaining to valuation or similar matters). Notwithstanding any other provision contained herein, all Property Information provided to Developer is provided on an "**AS IS, WHERE IS**" basis and with no representation or warranty as to the accuracy or completeness of the information contained therein.

(d) Access after Due Diligence Period but prior to Construction. Although Developer's Due Diligence Period expires as set forth in the immediately preceding subsection, Developer is not entitled to exclusive possession of, or to commence construction on, the Premises until the Construction Commencement Date (such period between the expiration of the Due Diligence Period and the Construction Commencement Date being the "**Interim Period**"). During the Interim Period, the Developer shall have the continued right to access and continue to inspect the Premises and perform such engineering and/or architectural examinations, including soils and environmental tests and archeological and endangered and protected species tests and investigations and Heritage Site Objects investigation, as Developer may deem reasonably necessary or desirable in connection with its proposed use and/or development of the Premises, and to obtain, review and approve a title commitment, survey, environmental report and such other reports as Developer may desire to obtain.

(e) Access to Premises by City during Interim Period. Due to the location of the Premises adjacent to the to-be-developed Park Facilities it is contemplated by the parties that the City may desire to utilize the Premises during the Interim Period for the limited purpose of vehicular parking, temporary equipment storage and parking, for materials staging and storage, or other purposes to the extent agreed in writing by the parties prior to such use. Any access to and utilization of the Premises by City during the Interim Period shall be in accordance with a written agreement between HPARC and the City (an "**Interim Use Agreement**") and Developer hereby consents to such an Interim Use Agreement, on the express condition that the agreement contains provisions which state that (i) HPARC and the City agree to not allow any Hazardous Substances to be used, generated, released, stored or disposed of on, under or about, or transported from, the Premises during the term of such Interim Use Agreement, unless such use is specifically disclosed to and approved by Developer in writing prior to such use and such use is conducted in compliance with all Hazardous Waste Laws (defined below), (ii) during the term of such Interim Use Agreement, HPARC and the City shall notify Developer in writing within five (5) Business Days after it has actual knowledge of any release or discharge of any Hazardous Substance on the Premises in violation of Hazardous Waste Laws or HPARC's receipt of any written warning, notice of inspection, notice of violation or alleged violation pursuant to any Hazardous Waste Laws; (iii) HPARC or the City shall promptly repair any damage to the Premises caused during such Interim Use Agreement that would adversely impact Developer's future development of the Premises, (iv) upon expiration of such Interim Use Agreement, HPARC or the City shall remove any equipment or materials utilized in connection with such access and shall clean up, repair and otherwise restore Premises to its prior condition, including the removal and/or remediation of any Hazardous Substances used, generated, released, stored or disposed of during the Interim Period by the City, and their respective contractors, subcontractors, agents and representatives, (v) if HPARC or the City fails to promptly commence and complete such repairs or remediation Developer shall have the right, but not the obligation, to remedy any such violation on behalf of HPARC as HPARC's agent and HPARC shall pay, upon demand, all costs incurred by Developer in remedying such violations plus interest at the Default Rate (defined below), (vi) to the extent permitted by law, HPARC shall indemnify, defend and hold Developer and its employees and agents harmless from and against any and all demands, claims, losses, costs and/or expenses incurred by Developer arising directly from the presence of HPARC, the City, and their respective contractors, subcontractors, agents and representatives on the Premises pursuant to such Interim Use Agreement, and (vii) HPARC and the City shall, within five (5) Business Days after either of them has actual knowledge of (1) discovery of Heritage Site Objects, endangered species, protected flora or fauna on the Premises which were not previously identified and disclosed to Developer, (2) discovery of any utility lines and remaining portions of improvements previously located on the Premises which were not previously identified and disclosed to Developer ((1)-(2) collectively, "**Unknown Conditions**") provide written notice of the discovery of the Unknown Conditions and a general description of such Unknown Conditions and any written documentation in the possession of either HPARC or the City pertaining to such Unknown Conditions.

(f) Environmental Assessments and Unknown Conditions.

(1) Environmental Assessment. During the Due Diligence Period, Developer shall cause to be conducted by a qualified and independent engineering firm or environmental consultancy a Phase I Environmental Assessment of the Premises and, at its election, may cause to be conducted a Phase II Environmental Site Assessment of the Premises. Prior to the expiration of the Due Diligence Period, Developer shall deliver a true and correct copy of such report or reports to HPARC and the City (any and each such report being referred to herein as an "**Initial Condition Report**"). If Developer obtained and delivered to HPARC an Initial Condition Report, then at anytime prior to the Construction Commencement Date, Developer shall be entitled to cause to be conducted by the same qualified and independent engineering firm or environmental consultancy that prepared the Initial Condition Report or reports (or if such

provider no longer exists, a substitute but similarly qualified provider), a second Phase I Environmental Assessment of the Premises and/or Phase II Environmental Site Assessment of the Premises (each an “**Updated Condition Report**”). Upon receipt of an Updated Condition Report, Developer shall deliver the same to HPARC within ten (10) Business Days. If such Updated Condition Report shows a “**New Environmental Defect**” (as defined below), Developer may elect to terminate this Lease by delivering written notice to HPARC anytime within sixty (60) days following the date such Updated Condition Report is first received by Developer. For purposes hereof, a “**New Environmental Defect**” shall be defined as only a condition that constitutes a Recognized Environmental Condition as defined in ASTM Standard E-1527-05 that is identified in the Updated Condition Report and which was not identified in the Initial Condition Report and for which the Estimated Cost of Remediation exceeds the greater of: (A) \$500,000.00 and (B) the deductible amount for which Developer is responsible under all applicable insurance policies that Developer maintains, including without limitation any insurance policy that Developer is required to maintain under the terms of this Parking Garage Development Agreement. For purposes hereof, the “**Estimated Cost of Remediation**” means (a) the highest probability estimate for the cost of remediating the applicable environmental condition, as determined by third party professionals who are not Affiliates of Developer or HPARC and who are selected by Developer with the approval of HPARC, *less* (b) the amount of any insurance claims proceeds that Developer receives under any insurance policy that Developer maintains, including without limitation any insurance policy that Developer maintained under the terms of this Parking Garage Development Agreement.

(2) **Unknown Conditions.** As a result of its activities as the Developer under the terms of the Parking Garage Development Agreement and the investigations it will conduct pursuant to this Section 3, Developer may become aware of Unknown Conditions. Developer shall deliver written notice to HPARC of the discovery of an Unknown Condition within ten (10) Business Days of such discovery. After discovery of a New Material Unknown Condition (as defined below), Developer may elect to terminate this Lease by delivering written notice to HPARC anytime within sixty (60) days following Developer’s first discovery of such New Material Unknown Condition. For purposes hereof, a “**New Material Unknown Condition**” shall be an Unknown Condition of which Developer was previously unaware that either: (i) would cause delay of more than nine (9) months in completion of the Project or (ii) increase the costs of the Project by more than \$500,000.00, based upon the highest probability estimate for the delay or cost associated with addressing the applicable condition, as determined by third party professionals who are not Affiliates of Developer or HPARC and who are selected by Developer with the approval of HPARC.

(3) **Termination.** Upon a termination due to a New Environmental Defect or an New Material Unknown Condition, the Interim Period Deposit shall be refunded to Developer and thereafter none of the Parties hereto shall have any continuing rights or obligations under this Lease or under any of the related agreements between HPARC and the parties except for such obligations that expressly survive termination hereof. As obligations that shall survive any termination, (X) to the extent legally permitted, and as required by HPARC, Developer shall restore and repair the Premises or any adjacent property to the extent any damage is caused by Developer or Developer’s permittees; (Y) the indemnities set forth in this Lease shall survive; and (Z) upon any termination permitted under this Section, at HPARC’s request and at no cost to HPARC or Developer (except for delivery or copying fees to be paid by HPARC) and to the extent not restricted by confidentiality or other counterparty restrictions.

(4) **Third Party Reports.** Developer shall deliver to HPARC copies of all third party reports, studies, or assessments relating to all tests conducted at the Premises by Developer

or its permittees on an “**AS IS, WHERE IS**” basis, without recourse to Developer or its contractors or agents, and with no representation or warranty as to the accuracy or completeness of the information contained therein.

(g) NRP Termination of Sublease of Market Street Project. Reference is hereby made to the NRP Sublease pursuant to which NRP shall be entitled to terminate the NRP Sublease on or before March 31, 2018 in the event of a failure to obtain necessary financing and for other reasons as set forth in more detail in that section of the NRP Sublease (such a termination being referred to herein as the “**NRP Opt Out**”). Developer shall provide written notice to HPARC of the occurrence of the NRP Opt Out (the “**NRP Opt Out Notice**”) and such notice shall be delivered within five (5) Business Days following Developer’s receipt of notice from NRP regarding such NRP Opt Out. Upon delivery of the NRP Opt Out Notice, Developer shall have the option, but not the obligation, of pursuing a replacement for NRP to develop the Market Street Project or of electing to develop the Market Street Project itself. Upon receipt by Developer of written notice from NRP of its exercise of the NRP Opt Out and in the event that Developer elects not to terminate the portion of the Lease pertaining to the Market Street Project, then all deadlines applicable to the commencement and completion of construction of the Market Street Project under the terms of this Lease shall be extended either (i) in accordance with a schedule to be agreed upon by Developer and HPARC in each party’s sole discretion or (ii) in the event a schedule cannot be agreed upon by Developer and HPARC, day-to-day for each day between (x) the date Developer receives written notice from NRP of its exercise of the NRP Opt Out, and (y) March 31, 2018. Any replacement developer shall satisfy the criteria set forth below in Section 15 or shall be approved in writing by HPARC.

At any time following delivery of the NRP Opt Out Notice until May 31, 2018, subject to an extension following an Excusable Delay, Developer shall also have the right of electing to terminate the portion of this Lease pertaining to the Market Street Project (a “**Market Street Project Termination**”) by delivering written notice to HPARC regarding such termination; provided, however, that if a Market Street Project Termination occurs after the expiration of the Due Diligence Period, then Developer shall be required to pay to HPARC an additional fee (the “**Market Street Project Termination Fee**”) in the amount set forth below depending upon the date notice of such Market Street Project Termination is delivered to HPARC:

<b>Date Notice of Market Street Project Termination is Received by HPARC:</b>	<b>Market Street Project Termination Fee</b>
On or before the expiration of the Due Diligence Period	No fee
Expiration of the Due Diligence Period – 8/31/17	\$300,000.00
9/1/17 – 12/31/17	\$450,000.00
1/1/18 – 5/31/18	\$575,000.00

Upon Developer’s exercise of the Market Street Project Termination and payment to HPARC of the Market Street Project Termination Fee, Developer shall continue have the right to pursue development of the South Alamo Project, all references herein to the Premises shall be deemed from that point forward to be references to only the South Alamo Tract, and the Base Rent due pursuant to this Lease shall be deemed to be only that portion of Base Rent attributable to the South Alamo Tract.

(h) **Developer Termination Following Expiration of Feasibility Period.** Developer shall have a right to terminate the Lease with respect to the South Alamo Tract at any time between the expiration of the Due Diligence Period and May 31, 2018 (a “**Zachry Termination**”) by delivery of written notice to HPARC delivered on or before May 31, 2018 (the “**Termination Deadline**”). Unless a Zachry Termination qualifies as a MAE Termination (as defined below), HPARC shall receive the Zachry Termination Fee (as defined below) from the Interim Period Deposit upon any Zachry Termination. If a Zachry Termination qualifies as a MAE Termination, then One Million Three Hundred Fifty Thousand and No/100 Dollars (\$1,350,000.00) out of the Interim Period Deposit shall be released to Developer. For purposes hereof, the “**Zachry Termination Fee**” means the sum to be delivered to HPARC from the Interim Period Deposit upon a termination of this lease pursuant to this Section 3(h) that does not qualify as a MAE Termination, such Zachry Termination Fee to be calculated depending upon the date notice of such Zachry Termination is delivered to HPARC:

<b>Date Notice of Zachry Termination is Received by HPARC:</b>	<b>Zachry Termination Fee</b>
On or before the expiration of the Due Diligence Period	No fee
Expiration of the Due Diligence Period – 8/31/17	\$700,000.00
9/1/17 – 12/31/17	\$1,000,000.00
1/1/18 – 5/31/18	\$1,350,000.00

Upon Developer’s exercise of a Zachry Termination and payment to HPARC of the Zachry Termination Fee (if applicable), Developer shall continue have the right to pursue development of the Market Street Project, all references herein to the Premises shall be deemed from that point forward to be references to only the Market Street Tract, and the Base Rent due pursuant to this Lease shall be deemed to be only that portion of Base Rent attributable to the Market Street Tract.

For purposes of this Section 3(h), the term “**MAE Termination**” shall mean a Zachry Termination exercised prior to the Termination Deadline and at a time when one or more of the following conditions is true:

1. The TED Spread (as defined below) exceeds one and one-half percent (1.5%);
2. REVPAR (as defined below) is fifteen percent (15%) less than REVPAR was at the end of the Due Diligence Period;
3. The TED Spread exceeds one and one quarter percent (1.25%) and REVPAR is ten percent (10%) less than REVPAR was at the end of the Due Diligence Period;
4. The Building Cost Index (as defined below) is ten percent (10%) greater than the Building Cost Index measured at the end of the Due Diligence Period and the REVPAR is ten percent (10%) less than the REVPAR measured at the end of the Due Diligence Period; or

5. A delay by more than 24 months in the anticipated schedule from the schedule set forth in the Park Facilities Memorandum for the construction of the Park Facilities within the area depicted on the attached Exhibit "O".
6. Developer has been unable to obtain the Preliminary Certificate of Compliance despite having (a) submitted conceptual plans to the Reviewing Organizations for an informal review prior to July 31, 2017, (b) submitted all listed Compliance Documentation, including plans that evidence compliance with the Hotel Restrictions on or before September 30, 2017, and (c) exercised commercially reasonable efforts to address the concerns of the Reviewing Organizations (as defined in the Hotel Compliance Ordinance) in order to obtain the Preliminary Certificate of Compliance; provided, however, that a Zachry Termination shall only be considered to be a MAE Termination if written notice of such termination is given by Zachry on or before December 31, 2017.
7. Developer has been unable to obtain the Final Certificate of Compliance despite having (a) obtained a Preliminary Certificate of Compliance, (b) submitted all the necessary Compliance Documentation, including final plans that substantially conform to the plans submitted in connection with such Preliminary Certificate of Compliance, and (c) exercised commercially reasonable efforts to address the concerns of the Reviewing Organizations (as defined in the Hotel Compliance Ordinance).

For purposes hereof, "***TED Spread***" means the difference on the most recent prior business day between the interest rate for 3-Month LIBOR based on US dollars and the interest rate for 3-Month US Treasury Bills.

For purposes hereof, "***REVPAR***" means the average of REVPAR (revenue per available room), during the four most recent calendar quarters for which such data has been published for the Peer Hotel Group, as determined by Smith Travel Resources in its STAR report.

For purposes hereof, "***Peer Hotel Group***" means the following hotels in downtown San Antonio, Texas: Hotel Valencia, Hotel Contessa, Mokara Hotel and Spa, and Hotel Emma.

For purposes hereof, "***Building Cost Index***" means the general 20-City National Average for the Building Cost Index published in most recent prior Monthly Construction Economics Report by Engineering News-Record.

(i) Independent Consideration. Within two (2) Business Days of the Effective Date, Developer shall pay HPARC a one-time fee of Eighteen Thousand Five Hundred Dollars (\$18,500.00) as non-refundable independent consideration for Developer's rights under this Lease (the "***Independent Consideration***").

(j) Interim Period Deposit. If Developer does not terminate this Lease during the Due Diligence Period, then on or before the dates specified below, Developer shall deposit the amount specified below with Chicago Title Company, LLC, Attn: Doug Becker acting as an escrow agent pursuant to an Escrow Agreement executed by Developer, HPARC, and Chicago Title Company (the amounts held as of the applicable date is referred to herein as the "***Interim Period Deposit***"). The Interim Period Deposit schedule is as follows:

<u>Date</u>	<u>Amount Due</u>	<u>Cumulative Interim Period Deposit</u>
The first Business Day after the expiration of the Due Diligence Period	\$1,000,000	\$1,000,000
9/1/17	\$ 450,000	\$1,450,000
1/1/18	\$ 475,000	\$1,925,000

(k) Permits. During the Interim Period, Developer shall exercise commercially reasonable efforts to obtain the permits for the Project, based on the laws and permitting regime in place as of the Effective Date (the “**Permits**”). For purposes hereof, Developer shall be deemed to have exercised commercially reasonable efforts to obtain the Permits so long as Developer (i) submits Final Plans to HPARC for approval on or before the Final Plan Submittal Deadline (as defined in **Exhibit “B”**), and (ii) submits application for the Permits to the City of San Antonio complying with all requirements under the City of San Antonio Unified Development Code subject to approved waivers or exemptions being requested, on or before June 30, 2018. Developer shall be relieved of its obligations under this Section should there be a material change in the Permits necessary for Developer to develop and operate the Projects for the Required Uses, or the process for obtaining the same, which change could reasonably be expected to increase the cost of construction of the Project by more than Five Hundred Thousand Dollars (\$500,000.00) (a “**Permitting Regime Change**”). If, despite exercising commercially reasonable efforts to obtain the Permits, Developer is unable to obtain the Permits on or before the Construction Commencement Deadline, subject to extensions for any Excusable Delays and subject to any extensions that may be granted by HPARC, then the Construction Commencement Deadline shall be extended until the earlier of (a) the Business Day after such Permits are issued or (b) the date that is one hundred twenty (120) days following the Construction Commencement Deadline prior to such extension. If, despite exercising commercially reasonable efforts to obtain the Permits, Developer is unable to obtain the Permits on or before the Construction Commencement Deadline (as may be extended), then Developer may elect to terminate this Lease by written notice to HPARC delivered within ten (10) days following the Construction Commencement Deadline. Additionally, at any time after a Permitting Regime Change at any time prior to Construction Commencement Date, Developer shall be entitled to terminate this Lease upon written notice to HPARC. If Developer elects to terminate this Lease under this Section upon such a termination, the Interim Period Deposit shall be refunded to Developer and thereafter none of the Parties hereto shall have any continuing rights or obligations under this Lease or under any of the related agreements between HPARC and the parties except for such obligations that expressly survive termination hereof. As obligations that shall survive any termination, (A) Developer shall restore and repair the Premises or any adjacent property to the extent any damage is caused by Developer or Developer’s permittees during such access; (B) the indemnities set forth in this Lease shall survive; and (C) upon any termination permitted under this Section, at HPARC’s request and at no cost to HPARC or Developer (except for delivery or copying fees to be paid by HPARC) and to the extent not restricted by confidentiality or other counterparty restrictions, Developer shall deliver to HPARC copies of all third party reports, studies, or assessments relating to all tests conducted at the Premises by Developer or its permittees on an “AS IS, WHERE IS” basis, without recourse to Developer or its contractors or agents, and with no representation or warranty as to the accuracy or completeness of the information contained therein.

(l) Commencing Construction of Project. The parties intend that Developer will Commence Construction of all Project Phases promptly upon the Construction Commencement Date. If Developer has not Commenced Construction of at least one of the Project Phases on or before the Construction Commencement Deadline (as may be extended pursuant to the terms of this Lease), then this

shall be an Event of Default and HPARC may elect to terminate this Lease upon written notice to Developer and, subject to the ninety (90) day cure period provided for under Section 24(a)(2), whereupon this Lease shall terminate, the Interim Period Deposit shall be released to HPARC and neither party shall have any further rights or liabilities hereunder, except for those obligations which expressly survive termination hereof. In addition, if Developer has not Commenced Construction on all Project Phases on or before the ninetieth (90<sup>th</sup>) day following the Construction Commencement Deadline (as may be extended pursuant to the terms of this Lease), then this shall be an Event of Default and HPARC may elect to terminate this Lease as to the Project Phases where Developer has not Commenced Construction upon written notice to Developer and subject to the ninety (90) day cure period provided for under Section 24(a)(2), whereupon this Lease shall terminate as to such Project Phase, an amount from the Interim Period Deposit equal to the Market Street Project Termination Fee or the Zachry Termination Fee (as applicable) shall be released to HPARC and neither party shall have any further rights or liabilities hereunder, except for those obligations which expressly survive termination hereof. Once Developer has Commenced Construction on all Project Phases, the remaining balance of the Interim Deposit shall be released to Developer.

(m) Park Facilities Memorandum. Prior to the expiration of the Due Diligence Period, HPARC shall provide Developer with the Park Facilities Memorandum. Notwithstanding any other provision contained herein, in no event shall HPARC be deemed in default under this Lease for a failure of HPARC or the City to satisfy any of the anticipated outcomes set forth in the Park Facilities Memorandum and Developer shall have no remedies in the event of such a failure except as expressly provided in Section 3(h) with respect to the occurrence of a MAE Termination involving delays in the construction of certain Park Facilities.

#### 4. RENT.

(a) Base Rent. Base Rent is allocated for purposes of this Lease, fifty-five percent (55%) to the South Alamo Project and forty-five percent (45%) to the Market Street Project. Base Rent is payable as follows:

(1) If the Rent Commencement Date for the South Alamo Project occurs prior to the Full Project Rent Commencement Date, then Developer shall pay to HPARC annual Base Rent until the Full Project Rent Commencement Date in the amount of One Million Fifty-Five Thousand Nine Hundred Seventy-One and No/100 Dollars (\$1,055,971.00), payable in monthly installments of Eighty-Seven Thousand Nine Hundred Ninety-Seven and 58/100 Dollars (\$87,997.58).

(2) If the Rent Commencement Date for the Market Street Project occurs prior to the Full Project Rent Commencement Date, then Developer shall pay to HPARC annual Base Rent until the Full Project Rent Commencement Date in the amount of Eight Hundred Sixty-Nine Thousand Twenty-Nine and No/100 Dollars (\$869,029.00), payable in monthly installments of Seventy-Two Thousand Four Hundred Nineteen and 08/100 Dollars (\$72,419.08).

(3) Commencing on the Full Project Rent Commencement Date and for the twenty-four month period thereafter, Developer shall pay to HPARC annual Base Rent in the amount of One Million Nine Hundred Twenty-Five Thousand Dollars (\$1,925,000.00), payable in monthly installments of One Hundred Sixty Thousand Four Hundred Sixteen and 66/100 Dollars (\$160,416.66).

(4) Commencing on the Percentage Rent Commencement Date, annual Base Rent will be One Million Four Hundred Fifty Thousand Dollars (\$1,450,000.00), payable in

monthly installments of One Hundred Twenty Thousand Eight Hundred Thirty-Three and 33/100 Dollars (\$120,833.33).

(5) Commencing with the January Adjustment Date and on each anniversary of the January Adjustment Date thereafter, except for those anniversary dates that are Market Rate Adjustment Dates (each, an "**Adjustment Date**"), the annual Base Rent shall be increased or decreased to equal the product of (x) the Base Rent in effect under this Lease immediately prior to such Adjustment Date *multiplied* by (y) the sum of (A) one (1) and (B) the year-over-year percentage increase or decrease in the CPI based on the most recent data available on the Adjustment Date; provided, however, that in no event shall the Base Rent ever be less than the initial Base Rent payable following the Percentage Rent Commencement Date. For example, if CPI has increased ten percent (10%) year-over-year as of the most recent data available on the January Adjustment Date (e.g., the published data for November or the prior calendar year), then the annual Base Rent for the calendar year commencing on the January Adjustment Date would increase from \$1,450,000.00 per year to \$1,595,000.00 per year.

(6) HPARC and Developer have agreed that annual Base Rent shall be adjusted periodically to an amount equal to Market Value Base Rental and that after the First Market Rate Adjustment Date (as defined below) the adjustment to Market Value Base Rental shall occur every ten (10) years during the Term. The term "**First Market Rate Adjustment Date**" means the earlier of: (1) the date which is thirty (30) days after Developer gives written notice to HPARC that it desires to determine the Market Value Base Rental for the following calendar year (the "**Determination Notice**"), which notice may not be given by Developer prior to the thirteenth (13<sup>th</sup>) anniversary of the Percentage Rent Commencement Date nor after the seventeenth (17<sup>th</sup>) anniversary of the Percentage Rent Commencement Date and (2) the eighteenth (18<sup>th</sup>) anniversary date of the Percentage Rent Commencement Date. After the First Market Rate Adjustment Date, the Market Value Base Rental Rate shall be determined on the tenth (10th), twentieth (20<sup>th</sup>), thirtieth (30th), fortieth (40th), fiftieth (50th), sixtieth (60th), seventieth (70th), and eightieth (80th) anniversaries of the January Rent payment date following the First Market Rate Adjustment Date (each a "**Market Rate Adjustment Date**"). The annual Base Rent shall adjust on the Market Rate Adjustment Date to equal the greater of (i) the Market Value Base Rental Rate (as defined below) as of such Market Rate Adjustment Date, and (ii) (A) on the first Market Rate Adjustment Date, \$1,450,000 and (B) on each Market Rate Adjustment Date following the first Market Rate Adjustment Date, the Market Value Base Rental Rate determined on the last occurring Market Rate Adjustment Date. The term "**Market Value Base Rental Rate**" as of any Market Rate Adjustment Date means the product of (i) six percent (6%) *multiplied* by (ii) the Fair Market Value of the Premises, assuming no improvements had been constructed thereon. For purposes hereof, the "**Fair Market Value of the Premises**" shall be the fair market value of the Premises (i) as if the Premises were vacant, unimproved, and free and clear of this Lease and the provisions thereof and of any lien or encumbrance evidencing a debt or judgment (including any mortgage, security interest, tax lien, or judgment lien), (ii) taking into account, to the extent relevant, any other encumbrances, restrictions, and covenants recorded in the land records or imposed by Landlord (e.g., Market Street Required Use and the Retail Use Restrictions) against the Premises, (iii) as if no Taking, zoning change, or landmarks designation was pending, threatened or under consideration, and (iv) without reference to any savings HPARC may realize as a result of any extension of the Lease term, such as savings in brokerage commissions, free rent, and tenant concessions, as agreed to by HPARC and Developer, but if they are unable to agree on such fair market value within one hundred twenty (120) days prior to a Market Rate Adjustment Date, then the same shall be determined by appraisal pursuant **Exhibit "K"**.

(b) Payment of Base Rent. Beginning with the first Base Rent Commencement Date, the applicable Base Rent specified in Section 4(a) above will be payable by Developer to HPARC in monthly installments in advance throughout the Term; provided, however, that such Base Rent shall be paid directly to the City until such time as the City and HPARC provide notice to Developer to commence payment of such rent to HPARC. All monthly payments of Base Rent shall be made on or before the first day of the applicable calendar month by check or, at Developer's option, wire transfer to an account identified by HPARC, without notice, offset (except as expressly provided herein) or demand. Base Rent for any period less than a calendar month shall be prorated.

(c) Percentage Rent.

(1) Calculation of Percentage Rent. In addition to the Base Rent, Developer shall pay to HPARC percentage rent ("**Percentage Rent**") calculated as follows using the Percentage Base Footage and the Gross Shared Revenues for the calendar year preceding the year in which the applicable installment of Percentage Rent is due according to the schedule described in section 4(c)(2) below:

A. Multiplying the Percentage Base Footage by Base Retail Rate (the product of such calculation referred to herein as the "**Revenue Breakpoint**");

B. Subtracting the Revenue Breakpoint from the Gross Retail Revenues (the difference so calculated, the "**Gross Shared Revenues**");

C. Dividing the Gross Shared Revenues by the Percentage Base Footage (the quotient thereof, the "**PSF Shared Revenues**");

D. Determining the "**HPARC Sharing Factor**" as follows:

(i) If the PSF Shared Revenues is less than or equal to five (5), then the HPARC Sharing Factor shall be the PSF Shared Revenues multiplied by twenty percent (20%);

(ii) If the PSF Shared Revenues is greater than five (5) and less than or equal to ten (10), then the HPARC Sharing Factor shall be equal to the sum of one (1) *plus* the product of (i) the excess of the PSF Shared Revenues over five (5) *multiplied* by (ii) thirty percent (30%);

(iii) If the PSF Shared Revenues is greater than ten (10) and less than or equal to fifteen (15), then the HPARC Sharing Factor shall be equal to the sum of two and one-half (2.5) *plus* the product of (i) the excess of the PSF Shared Revenues over ten (10) *multiplied* by (ii) forty percent (40%);

(iv) If the PSF Shared Revenues is greater than fifteen (15) and less than twenty (20), then the HPARC Sharing Factor shall be equal to the sum of four and one-half (4.5) *plus* the product of (i) the excess of the PSF Shared Revenues over fifteen (15) *multiplied* by (ii) fifty percent (50%); or

(v) If the PSF Shared Revenues is greater than twenty (20), then the HPARC Sharing Factor shall be equal to the sum of seven (7.0) *plus* the product of (i) the excess of the PSF Shared Revenues over twenty (20) *multiplied* by (ii) sixty percent (60%);

E. Multiplying the HPARC Sharing Factor by the Percentage Base Footage to determine the Percentage Rent due to HPARC, subject to any prorating for partial years as set forth below.

F. In the case of any Percentage Rent payment due during (i) the fractional calendar year (if any) including the Percentage Rent Commencement Date, or (ii) the fractional calendar year preceding the termination or expiration of this Lease, the sum calculated under "E" above shall be prorated based upon the number of days following the Percentage Rent Commencement Date or preceding such date of termination or expiration, as applicable.

(2) Payment of Percentage Rent. Commencing on the Percentage Rent Commencement Date, Percentage Rent shall be paid on the first day of each month during the remainder of the Term in monthly installments equal to one-twelfth (1/12) of the Percentage Rent calculated using the Projected Retail Revenue for the entirety of the calendar year in which such payment is being made (i.e., without taking into account any prorations for partial years as set forth above). All payments of Percentage Rent shall be made by check or, at Developer's option, wire transfer payable to HPARC, without notice, offset or demand.

(3) Gross Revenues Report. On or before each February 15th during the Term that follows the Percentage Rent Commencement Date, Developer shall deliver to HPARC a certified statement of Gross Retail Revenues for the preceding calendar year (each such statement a "**Gross Revenues Report**"). In addition, within sixty (60) days after the termination of this Lease, Developer shall prepare and deliver to HPARC a Gross Revenues Report for the preceding calendar year and/or any partial calendar year preceding the date of such termination. In addition, if Developer receives or discovers any Gross Retail Revenues that were not reflected in any prior Gross Revenues Report, Developer shall notify HPARC within sixty (60) days and pay to HPARC any Percentage Rent that should have been paid based upon the existence of such missing Gross Retail Revenues at the same time as its provide such notice.

(4) Reconciliation of Percentage Rent. At the same time as Developer delivers the Gross Revenues Report, it shall deliver a statement to HPARC (the "**Reconciliation**") setting forth the difference between (A) the amount actually paid to HPARC as Percentage Rent using the Projected Retail Revenues, and (B) the amount of Percentage Rent due to HPARC under this Lease based upon the Gross Retail Revenues reflected in the Gross Revenues Report. In a case where (A) exceeds (B), such overpayment shall be credited against the first Percentage Rent payment due thirty (30) days following the date such Reconciliation is delivered. In a case where (B) exceeds (A), Developer shall make an additional payment of Percentage to HPARC equal to the amount of such underpayment within thirty (30) days following such Reconciliation is delivered.

(5) Records and Audits. Developer shall keep an accurate set of books and records of all the Gross Retail Revenues and Excluded Revenues, and all supporting records such as tax reports, banking records and leases pertaining to the Retail Spaces. All such books and records shall be retained and preserved for at least sixty (60) months after the end of the calendar year to which they relate, and shall be subject to inspection and audit by HPARC and its agents upon reasonable advance notice and no more often than once per year. From time to time but no more often than twice per year, HPARC shall have the right to have auditors selected by HPARC audit all books, records and work papers, wherever located, pertaining to the Gross Retail Revenues and Excluded Revenues. If such audit determines that any of Developer's statements are found to be incorrect to an extent of a deviation of one percent (1%) or more of the Gross

Retail Revenues from those reflected on the Gross Revenues Report or otherwise reported by Developer, Developer shall pay for the reasonable out of pocket costs of HPARC for such audit. In addition, Developer shall promptly pay to HPARC any deficiency which is established by such audit and HPARC shall promptly reimburse to Developer any over payment established by such audit.

(6) Developer acknowledges that Developer's payment of Percentage Rent to HPARC and the Project's general contribution to the vitality and success of the Hemisfair District (also important in HPARC's determination to execute this Lease) will be substantially reduced if a substantial number of the Retail Units are vacant or leased to underperforming tenants. Accordingly, Developer hereby agrees to exercise commercially reasonable efforts to enhance and maximize the Gross Retail Revenues and Percentage Rent paid to HPARC, including without limitation by promoting, marketing and managing the Retail Units so as to minimize vacancies in the Retail Units.

(d) Additional Rent. All amounts, if any, which Developer is required to pay or discharge pursuant to this Lease, in addition to Base Rent and Percentage Rent, together with any interest, penalty, or other sum which may be added for late payment thereof, shall constitute additional rent hereunder ("Additional Rent"; Additional Rent together with Base Rent and Percentage Rent are sometimes collectively referred to as "Rent"). HPARC and Developer agree that each provision of this Lease for determining charges, amounts and other Additional Rent payable by Developer is commercially reasonable and, as to each such charge or amount, constitutes a "method by which the charge is to be computed" for purposes of Section 93.012 of the Texas Property Code. ACCORDINGLY, DEVELOPER VOLUNTARILY AND KNOWINGLY WAIVES ALL RIGHTS AND BENEFITS, IF ANY, AVAILABLE TO DEVELOPER UNDER SECTION 93.012 OF THE TEXAS PROPERTY CODE, AS SUCH SECTION NOW EXISTS OR AS IT MAY BE HEREAFTER AMENDED, SUCCEDED AND/OR RENUMBERED.

(e) All Sums Rent. Notwithstanding anything contained in this Lease to the contrary, all amounts payable by Developer to or on behalf of HPARC under this Lease, whether or not expressly denominated as rent, shall constitute Rent for all other purposes hereunder.

(f) Net Lease. The Developer shall pay all costs and expenses relating to the use, operation, maintenance and repair of the Premises including, without limitation, (i) taxes, (ii) insurance expenses, (iii) utility expenses, and (iv) the cost of structural and non-structural repairs, replacements and maintenance as hereinafter provided, such obligations being hereby expressly assumed by Developer. Any amount or obligation herein relating to the use and occupancy of the Premises which is not expressly declared to be an obligation of HPARC in this Lease shall be deemed to be an obligation of Developer to be performed by Developer at Developer's expense. Except as expressly provided in this Lease to the contrary, Rent, and all other sums payable hereunder by Developer shall be paid without notice, demand, setoff, offset, counterclaim, abatement, suspension, deduction or defense. It is the intent of the parties hereto that the Rent payable under this Lease shall be an absolutely net return to HPARC unless expressly stated in this Lease to the contrary; provided, however, that the parties agree that HPARC has no rights under this Lease to impose any expenses except for those expressly authorized by the Lease and such expenses as may be otherwise levied against the Premises under applicable law (excluding any such expenses created by HPARC or the PFC).

(g) No Abatement of Rent. Except as expressly provided in this Lease, this Lease shall not terminate, nor shall Developer have any right to terminate this Lease, nor shall Developer be entitled to any abatement of Rent, nor shall the obligations of Developer under this Lease be affected by reason of any damage to or destruction of all or any part of the Premises from whatever cause. It is the

intention of the parties hereto that the obligations of Developer hereunder shall be separate and independent covenants and agreements, that the Rent shall continue to be payable in all events and that the obligations of Developer hereunder shall continue unaffected, unless the requirements to pay or perform the same shall have been terminated pursuant to an express provision of this Lease.

(h) Termination Rights. Except for the termination and other rights expressly provided to Developer under this Lease, Developer agrees that it will remain obligated under this Lease in accordance with its terms, provisions and conditions and that it will not (except as expressly permitted herein or under applicable law) take any action to terminate, rescind, modify, or avoid this Lease.

(i) Late Charge. In addition to any other remedies available to HPARC pursuant to this Lease, in the event that Developer shall fail to pay any portion of any installment of Base Rent or any other sum due hereunder by the date which is ten (10) days after such payment is due, there shall be added to such unpaid amount a late charge in the amount of Five Hundred Dollars for the first late payment in any 12-month period and \$1,000 for any additional late payments in the same 12-month period, in order to compensate HPARC for the extra administrative expenses incurred by HPARC. In addition, if such installment is not paid within thirty (30) days after the date such payment is due, the total amount then due shall bear interest at the rate per annum which is the lesser of (a) twelve percent (12%) per annum, or (b) the highest lawful rate (the "**Default Rate**"), until paid.

(j) Housing Incentive. So long as, on the date on which each installment of the Housing Incentive is to be paid, (i) this Lease (or any direct lease between HPARC and NRP pursuant to the terms of the Recognition Agreement) remains in effect as to the Market Street Tract, (ii) the multi-family portion of the Market Street Project has achieved Substantial Completion, (iii) the multi-family portion of the Market Street Project is in compliance with the Hemisfair Mixed-Income Housing Requirement, and (iv) all Rent due hereunder has been paid, then HPARC shall pay directly to the developer of the multi-family residential component of the Market Street Project (or to its successors or assigns) the sum of \$2,400,000.00 (the "**Housing Incentive**") payable in four equal installments of \$600,000.00, each to be paid on or before the first, second, third and fourth anniversaries of the later of (i) Full Base Rent Commencement Date for the Market Street Project, or (ii) the date upon which the first residential tenants commence their residential tenancies within the Market Street Project.

(k) Construction of the Park Facilities by HPARC and Delivery of the Premises. With respect to each event that HPARC believes will adversely affect construction of the Park Facilities in accord with the Park Facilities Timeline, HPARC shall, within thirty (30) days after HPARC obtains knowledge of the occurrence of such event, give Developer notice of the facts and circumstances of such event and HPARC's good faith estimate of the resulting delay to the deadlines of the a Park Facilities Timeline. Upon HPARC obtaining knowledge of any delay in construction of the Park Facilities in accord with the Park Facilities Construction Timelines, HPARC shall use any and all authority it possesses to cause the continuation of the construction of the Park Facilities as far as reasonably practicable, using all reasonable efforts to prevent, minimize and mitigate, as applicable, the effect of a delay. The parties agree that the Park Facilities Timeline has been calculated in a manner to estimate the time periods needed for obtaining required permits and inspections.

## 5. CONSTRUCTION.

(a) Delivery of the Premises. Without limiting Developer's option to terminate this Lease during the Due Diligence Period and Interim Period as provided in Section 3(c) or Section 3(f) above, Developer accepts the Premises from HPARC (i) in its "AS IS", "WHERE IS" condition, without any representation or warranty by HPARC or PFC and with all faults, except for representations and warranties expressly made in this Lease, and (ii) subject to the Permitted Exceptions, any facts which a

survey of the Premises would show, and to all applicable laws and legal requirements. Developer acknowledges that neither HPARC nor PFC has any obligation to perform any site work, construction, repairs, tenant improvement work, finish-out work or other work whatsoever on the Premises and that Developer shall be solely responsible for all site work, all impact, utility, connection and use fees, site investigations, utility connections, and improvements to the Premises; provided, however, that the parties hereby acknowledge the ongoing demolition work to remove the former convention center from the Premises and adjacent land. Prior to the expiration of the Due Diligence Period, Developer shall have inspected the Premises and be thoroughly familiar with its condition and if this Lease is not sooner terminated, as of the expiration of the Due Diligence Period, Developer shall be deemed to accept the Premises as being in good and satisfactory condition and suitable for Developer's intended purposes. Developer acknowledges that it is developing in a historic area and that there are historic buildings, structures and artifacts on or about the Premises that may affect its ability to develop, and Developer, from and after the expiration of the Due Diligence Period, subject to Developer's termination rights described in subsection 3(f), assumes all risk relating to the presence of any historic buildings, structures or artifacts in or about the Premises. Except as may be required by applicable Laws or otherwise expressly agreed in writing (i) neither HPARC nor PFC shall be under any obligation whatsoever to undertake any repairs or maintenance of any kind with respect to the Premises, and (ii) in the event of any defect or deficiency of any nature in the Premises or any portion thereof, whether patent or latent, neither HPARC nor PFC shall have any responsibility or liability to Developer with respect thereto. THE PROVISIONS OF THIS SECTION 5 HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF, AND, EXCEPT AS EXPRESSLY STATED ABOVE, DEVELOPER DOES HEREBY DISCLAIM, ANY AND ALL WARRANTIES BY HPARC AND PFC, EXPRESS OR IMPLIED, RELATED TO THE CONDITION OF THE PREMISES, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANOTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

(b) Construction of Project.

(i) Construction Requirements. All improvements (whether constructed on the Premises initially, as a permitted alteration or following a casualty) shall be constructed with due diligence and in accordance with the Approved Plans, and all construction work shall be performed in a good and workmanlike manner and in accordance with good industry practices for the type of work in question. All construction work shall be in compliance with all provisions of the Permitted Exceptions, applicable Laws, requirements of all insurers of the Project and all issued permits. The work shall be completed with reasonable dispatch, free of any monetary liens other than any permitted Leasehold Mortgage(s), and shall be initiated, prosecuted and substantially completed in accordance with the Project Timeline, with respect to the initial Developer Improvements, or in accordance with reasonable mutually agreed upon timelines with respect to any work undertaken with respect to a permitted alteration or following a casualty. Developer shall take all reasonably necessary measures to minimize damage, disruption or inconvenience caused by such work and make adequate provisions for the safety and convenience of all Persons affected thereby.

(ii) Permits, Licenses. Developer will obtain all certificates of occupancy, permits and licenses as may be necessary to permit Developer to use the Premises for the Required Use, and no construction work shall commence prior to the receipt of all required licenses, permits and authorizations required by all Governmental Authorities for the prosecution of the construction. It is understood and agreed that, to the extent permitted by applicable Laws, such licenses, permits and authorizations may be procured in stages. Developer shall, promptly upon HPARC's written request, provide HPARC with copies of all permits or similar documents relating to the construction of the Project and/or the use and occupancy of the Premises

(iii) Substantial Completion; Excusable Delay. Developer shall cause

Substantial Completion to occur in accordance with the Project Timeline, subject to any extensions of the Project Timeline due to an Excusable Delay. The Project Timeline shall be adjusted as appropriate to reflect the delay in achieving the deadlines therein due to an Excusable Delay. With respect to each event that Developer believes to be an Excusable Delay, Developer shall within ten (10) Business Days after Developer obtains knowledge of the occurrence of such event, give HPARC notice of the facts and circumstances of such event and Developer's good faith estimate of the resulting delay to the deadlines of the Project Timeline and reasonable documentation of such facts, circumstances and estimate. If HPARC agrees with Developer, it shall confirm in writing the existence of an Excusable Delay and the corresponding revision of the Project Timeline. If HPARC disagrees with Developer, HPARC shall give notice of the reasons for such disagreement and any deficiencies in the documentation provided by Developer. Following such notice, Developer will have a reasonable period of time to supplement such documentation. If, upon receipt of such supplemental documentation, HPARC continues to disagree with Developer, HPARC shall give written notice to Developer within thirty (30) days following receipt of such supplemental documentation and Developer and HPARC shall attempt in good faith for a period of thirty (30) days to resolve such dispute. If Developer and HPARC are unable to resolve such dispute within such thirty (30) day period, then either HPARC or Developer may elect to refer such matter to binding arbitration to determine if an Excusable Delay has occurred. During the pendency of the determination of the arbitrator of whether an Excusable Delay has occurred, HPARC shall have no right to pursue, and agrees to refrain from pursuing, any rights it may have as a result of an Event of Default due to failure to achieve the deadlines in the Project Timeline by Developer under the terms of this Lease, at law or in equity. Upon any Excusable Delay, Developer shall use commercially reasonable efforts to continue to construct the Project as far as reasonably practicable, using all reasonable efforts to prevent, minimize and mitigate, as applicable, the effect of an Excusable Delay. The parties agree that the Project Timeline has been calculated in a manner to estimate the time periods needed for obtaining required permits and inspections under City Codes and that any delay due to the normal and customary exercise of the police powers of the City and the normal and customary periods for obtaining required permits and inspections under City Codes for the Project shall not be considered Excusable Delay.

(iv) As-Built Plans. Within one hundred twenty (120) days following

Substantial Completion of a Project Phase and any future buildings or structures on the Premises, Developer shall furnish HPARC with a full set of the as-built plans and specifications for such improvements.

(v) Infrastructure and Related Costs. Developer shall be solely responsible

for all infrastructure required for the Project, including alterations to existing infrastructure; provided, however, that the Developer may seek to obtain commitments from the City to undertake certain utility relocations and HPARC agrees to reasonably cooperate and support such efforts by the Developer. Without limiting the generality of the foregoing, Developer shall be responsible for all costs incurred in the construction of the Project including utility connection fees, all costs and fees payable to Governmental Authorities for building permits, platting and zoning fees, street closure fees and all other related costs. Developer shall be solely responsible for the costs of constructing new utility service lines and infrastructure improvements for the Project and the costs to relocate all utility lines and other lines (including chilled water or steam lines) crossing the Premises and for all other site preparation costs, fees or expenses incurred in connection with the development and construction of all elements of the Project.

(vi) Conditions. Dust, noise and other effects of the construction work shall

be reasonably controlled using commercially reasonable accepted methods so as to substantially comply with all Laws and not to unreasonably interfere with the continuous use or occupancy of nearby structures. DEVELOPER SHALL INDEMNIFY HPARC AND PFC FROM ALL DAMAGES, LAWSUITS AND CLAIMS ATTRIBUTABLE TO THE PERFORMANCE OF SUCH WORK, IN

## ACCORDANCE WITH THE INDEMNIFICATION PROVISIONS APPLICABLE TO ALL INDEMNIFIED PERSONS AS SET FORTH IN SECTION 13(b) OF THIS LEASE

(vii) Contract Requirements. To the extent permitted by Developer's Leasehold Mortgagee, other lenders and contracting counterparties, Developer shall use commercially reasonable efforts to ensure that the contracts with any architect or other design professionals or any general contractor for the construction of the Project shall provide for the assignment thereof (which provision for assignment shall be subordinate to the rights of the Developer's lenders and Leasehold Mortgagee(s) providing funding for such construction, operations, refinance, or any other aspect of the Project) to HPARC as security to HPARC for Developer's performance under this Lease, and HPARC (and, upon its request, City) shall be furnished with a true, correct and complete copy of all such contracts. To the extent permitted by Developer's Leasehold Mortgagee, other lenders and contracting counterparties, Developer shall use commercially reasonable efforts to obtain the further agreement of the parties to each contract (x) to perform such contract for HPARC, at its election, if this Lease is terminated for any reason other than a default by HPARC, and (y) following the termination of this Lease for any reason other than a default by HPARC, to permit HPARC to use and own any plans and specifications to the extent that Developer is so entitled under such contract, subject to HPARC's assumption of the obligations of Developer under such contract, including the obligation to pay any sums due thereunder.

(c) Drawing and Other Documents. Upon completion of any improvements to the Premises, Developer shall furnish to HPARC complete, legible, full-size sets of all "record drawings" in accordance with accepted industry standards, to the extent appropriate considering the work performed, regarding all Developer Improvements, and certified, true copies of all approvals, permits and certificates, including (if applicable), but not limited to, a certificate of occupancy or its equivalent, which shall be then required by any Governmental Authority.

(d) Safety. Without limiting any other provision of this Lease, Developer will conduct the construction of the improvements, and require all of its contractors, subcontractors and agent to do likewise, in accordance with the safety standards and procedures that would be followed by a reasonable and prudent developer and shall adopt a project safety plan reasonably designed to ensure safe working conditions and practices.

(e) Ownership of Improvements. All improvements shall be, automatically and without the need for the execution of any additional instrument, owned by Developer during the Term, and upon the expiration or earlier termination of this this Lease, the improvements will be the sole property of HPARC or the PFC, subject to the terms of the Master Lease. Developer shall execute, acknowledge (as necessary) and deliver to HPARC or the PFC such conveyances, deeds, or other instruments, at Developer's sole cost and expense, as may be necessary for purposes of vesting HPARC or the PFC with ownership of the improvements constructed by Developer at the times set forth above.

6. ALTERATIONS.

(a) Interior Alterations. Developer shall have the right, at any time and from time-to-time during the Term, to make such interior alterations to the Premises as Developer shall deem necessary or desirable, including any replacements thereof, provided that the same (i) shall be performed in a good and workmanlike manner, (ii) shall not violate any term, provision or condition of the Permitted Exceptions or any other agreement or restriction to which the Premises are subject, and (iii) shall be completed in compliance with all Laws applicable thereto and any such construction shall be performed in accordance with the construction standards set forth in Section 5(b)(i) above.

(b) Exterior Alterations Facing Park Facilities. The parties acknowledge the interest of HPARC in ensuring the Premises is consistent aesthetic, vision and overall plan for the Hemisfair District, in particular the building facades and structures facing the Park Facilities. Therefore, Developer shall not perform during the Term hereof any alterations to the exterior of the buildings on the Premises which face the Park Facilities (being generally the eastern, northern and southern frontage as to the South Alamo Project and the western and southern frontage as to the Market Street Project) that are materially inconsistent with the Approved Plans without obtaining HPARC's prior written consent, such consent to be given or withheld in HPARC's sole discretion (provided, however, that HPARC shall not act arbitrarily and capriciously withhold such consent and shall consider the principles of the Urban Design Manual in deciding whether to grant such consent or specify modification thereto). Any such alterations (i) shall be performed in a good and workmanlike manner, (ii) shall not violate any term, provision or condition of the Permitted Exceptions or any other agreement or restriction to which the Premises are subject, and (iii) shall be completed in compliance with all Laws applicable thereto and any such construction shall be performed in accordance with the construction standards set forth in Section 5(b)(i) above. Developer shall promptly pay all costs and expenses of each such improvement, discharge all liens arising therefrom and procure and pay for all permits and licenses required in connection therewith. All such alterations or improvements constructed by Developer shall be treated the same way as other improvements are treated under this Lease.

(c) Exterior Alterations as to Building Exteriors Not Facing Park Facilities. During the initial twenty-five (25) years of the Term, Developer shall not perform alterations to the exterior of the buildings on the Premises which do not face the Park Facilities (including the sides of such buildings) that are materially inconsistent with the Approved Plans without obtaining HPARC's prior written consent, such consent to be given or withheld in HPARC's sole discretion (provided, however, that HPARC shall not act arbitrarily and capriciously and shall consider the principles of the Urban Design Manual in deciding whether to grant such consent or specify modification thereto). After the initial twenty-five (25) years of the Term, as to the building facades and structures not facing the Park Facilities (and including the sides of such buildings), Developer shall have the right, at any time and from time-to-time during the Term, to make such exterior alterations to the Premises as Developer shall deem necessary or desirable, provided that the same (i) shall be performed in a good and workmanlike manner, (ii) shall not violate any term, provision or condition of the Permitted Exceptions or any other agreement or restriction to which the Premises are subject, and (iii) shall be completed in compliance with all Laws applicable thereto and any such construction shall be performed in accordance with the standards set forth in Section 5(b)(i) above.

(d) Exterior Alterations of the First Floor and Patio Areas. Notwithstanding anything contrary hereto in the balance of this Section 6, Developer shall have the right, at any time and from time-to-time during the Term, to make such exterior alterations to first floor of the Premises associated with and used for retail purposes and the balcony and patio areas of the hotel not associated with individual rooms, as Developer shall deem necessary or desirable, provided that the same (i) shall be performed in a good and workmanlike manner, (ii) shall not violate any term, provision or condition of the Permitted Exceptions or any other agreement or restriction to which the Premises are subject, and (iii) shall be completed in compliance with all Laws applicable thereto and any such construction shall be performed in accordance with the standards set forth in Section 5(b) above.

(e) Required Alterations. Notwithstanding the balance of this Section, Developer shall be entitled to make any and all alterations which may be required to comply with law, or which may be necessary for the health and safety of the public or its guests, employees, contractors, customers, patrons, invitees or licensees. Further, to the extent any Developer Improvements on the Premises are associated with a regional or national brand of hotel, Developer shall be entitled to make any alterations

necessary to comply with directives and requirements of the hotel brand so long as they are in compliance with the Hotel Restriction and the Hotel Compliance Ordinance.

7. **MECHANIC'S AND MATERIALMEN'S LIENS.** With respect to any contract for work performed by Developer or any permitted subtenant of all or any part of the Premises, or caused to be performed by Developer or any such subtenant in, on or to the Premises, Developer or such subtenant shall act as a principal and not as the agent of HPARC, and HPARC expressly disclaims any liability for the cost of labor performed by Developer or such subtenant or materials furnished to Developer or such subtenant. Developer shall pay or cause to be paid promptly when due the entire cost of any work affecting the Premises so that the Premises shall at all times be free of liens for labor and materials. Notwithstanding anything in this Lease to the contrary, Developer will not create or permit to remain beyond the period hereinafter provided, and will discharge in the manner hereinafter provided, any mechanics or materialmen's lien (being the liens of mechanics, laborers, artisans, or materialmen for work or materials done or furnished in connection with the Premises), encumbrance, or other charge upon the Premises or any part thereof, upon HPARC's or PFC's interest therein, or upon Developer's leasehold interest; provided, however, should any such lien be filed against the Premises or the leasehold estate created by this Lease, Developer shall, within sixty (60) days after receipt of notice of the filing of such lien, either discharge and cancel the lien of record or post a bond sufficient to remove such lien from the applicable real property records (in connection with which Developer may contest any claims of any persons who have provided, or alleged to have provided, work to the Premises). NOTICE IS HEREBY GIVEN THAT NEITHER HPARC NOR PFC IS OR SHALL BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO DEVELOPER, OR TO ANYONE HOLDING THE PREMISES OR ANY PART THEREOF THROUGH OR UNDER DEVELOPER, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF HPARC OR PFC IN AND TO THE PREMISES OR ANY PART THEREOF.

8. **USE, MAINTENANCE AND SURRENDER OF PREMISES.**

(a) **Required Uses.** The Market Street Tract shall be developed for the purposes of the following (collectively, the "**Market Street Project Required Uses**"):

- (i) approximately 353 apartment units (or at the election of Developer such units may be developed as a condominium regime and the Hemisfair Mixed-Income Housing Requirements shall continue to apply); provided, however, in no event shall such approximation be construed as an upper limit on the number of units Developer may develop (subject to applicable Laws)
- (ii) restaurant or retail space on the ground floor that may be used as described on the attached **Exhibit "K"** (the "**Retail Use Restrictions**"),
- (iii) a parking garage, and
- (iv) all related and ancillary uses in connection with the preceding items in this sentence.

The South Alamo Tract shall be developed for the purposes of the following (collectively, the "**South Alamo Required Uses**"):

- (i) a full service hotel containing no more than 200 hotel rooms (the "**Hotel**"),
- (ii) public meeting spaces and uses,
- (iii) restaurant and retail space, that are subject to the Retail Use Restrictions,
- (iv) office space, and
- (v) all related ancillary uses in connection with the preceding items in this sentence.

The Market Street Project Required Uses and the South Alamo Required Uses are sometimes collectively referred to herein as the "**Required Uses**". Any other use of the Premises shall require HPARC's prior written consent, which may be given or withheld in HPARC's sole discretion. Notwithstanding any other provision contained herein, the Hotel shall be subject to the limitations of the Hotel Restriction. Notwithstanding any other provision contained herein, there shall be at least 350 apartment units located on the Market Street Tract, at least 70,000 square feet of office space located on the South Alamo Tract, and at least 50,000 square feet of retail space located on the Premises (exclusive of any retail space that is excluded from the definition of Retail Units hereunder, which shall not count for purposes of satisfying this 50,000 square foot retail space requirement).

(b) Non-Discrimination. Developer shall not discriminate against any person or persons because of race, color, religion, national origin, age, sex, sexual orientation, gender identity, veteran status or disability in the development, improvement and conduct of operations on the Premises.

(c) Prohibited Use - Wireless Communication System. Developer is prohibited from installing or permitting the installation on the Premises of a “wireless communication system” (as that term is defined in the Unified Development Code of the City of San Antonio as of the Effective Date or may be hereafter amended or supplemented, and including any other terminology therein having the same or similar meaning). Nothing in the preceding sentence is intended to restrict Developer or its tenants/subtenants from installing Internet routers or other devices which allow access to the Internet via wireless means for such tenants/subtenants and their employees, guests and invitees.

(d) Hemisfair Mixed-Income Housing Requirement. At all times during the Term of this Lease, Developer shall ensure that at least the following number of residential apartment units on the Market Street Tract are leased or available to households in the following income ranges at monthly rents that are not greater than twenty-five percent (25%) of the Household Income (as defined below) for such households (collectively, the “**Hemisfair Mixed-Income Housing Requirement**”):

(i) at least six (6) units to households making between 50% and 60% of the Area Median Income (as defined below) for the applicable household size;

(ii) at least six (6) units to households making between 60% and 70% of the Area Median Income (as defined below) for the applicable household size;

(iii) at least six (6) units to households making between 70% and 80% of the Area Median Income (as defined below) for the applicable household size;

(iv) at least six (6) units to households making between 80% and 90% of the Area Median Income (as defined below) for the applicable household size;

(v) at least six (6) units to households making between 90% and 100% of the Area Median Income (as defined below) for the applicable household size; and

(vi) at least six (6) units to households making between 100% and 110% of the Area Median Income (as defined below) for the applicable household size.

In addition, if there are ever more than three hundred sixty (360) residential apartment units located on the Premises, then not less than ten (10%) of the number of residential apartment units in excess of three hundred sixty (360) shall be required to comply with the Hemisfair Mixed-Income Housing Requirement; provided, however, that the first such additional unit shall be required to be made available to a household making between 50% and 60% of the Area Median Income (as defined below) for the applicable household size, the second such additional unit shall be required to be made available to a household making between 60% and 70% of the Area Median Income (as defined below) for the applicable household size, the third such additional unit shall be required to be made available to a household making between 70% and 80% of the Area Median Income (as defined below) for the applicable household size, and so forth. Notwithstanding the foregoing, if the residential component of the Market Street Project initially contains three hundred fifty (350) residential apartment units or less, then the unit requirements for each of categories (i) – (vi) above shall be reduced (starting with category (vi) and descending in order through category (i)) by one unit for every tenth residential apartment fewer than three hundred sixty (360) (it being acknowledged and agreed that the Hemisfair Mixed-Income Housing Requirement is intended to require not less than ten percent (10%) of the aggregate number of

residential apartment units to be provided in the mixed income categories above). For example, if there are three hundred fifty (350) initial units, the requirement for item (vi) would be five (5) instead of six (6) and if there are three hundred forty (340) initial units, the requirement for item (v) would also be five (5) instead of six (6). The Parties hereby agree and acknowledge that nothing herein is intended to modify or reduce the requirement under Section 8(a) for there to be not less than three hundred fifty (350) apartment units located on the Market Street Tract.

Developer shall notify HPARC within five (5) Business Days if it ever fails to satisfy the Hemisfair Mixed-Income Housing Requirement and shall also deliver to HPARC a certification on or before January 15<sup>th</sup> of each calendar year during the Term certifying that Developer is in compliance with the Hemisfair Mixed-Income Housing Requirement. For purposes hereof, "***Area Median Income***" shall mean the current Area Median Income for single persons and households of various sizes established by the United States Department of Housing and Urban Development (HUD) or by any successor United States Government department, agency, or instrumentality, for the metropolitan statistical area which includes the City of San Antonio, Texas. For purposes hereof, "***Household Income***" shall be the "annual income" of the household, divided by 12, determined according to the regulations applicable Housing Choice Voucher Program established under Section 8 of the Housing Act of 1937, as such regulations exist as of the Effective Date hereof (any and subsequent change, replacement or termination of such regulations shall have no impact whatsoever on the standard described in the preceding portions of this sentence).

In addition, the Developer shall ensure that no more than fifty percent (50%) of the total residential apartment units on the Premises are Developer Subsidized Units (as defined below) at any one time during the Term of the Lease. For purposes hereof, "***Developer Subsidized Units***" shall include any apartment unit rented by Developer to a tenant for rent that is restricted or limited in any manner for purposes of qualifying for any grants, loans, tax exemption, other payment, benefit or incentive targeted towards the provisions and/or maintenance of affordable housing or workforce housing.

Developer shall retain and preserve the records it is relying upon to confirm compliance with the Hemisfair Mixed-Income Housing Requirement for at least four (4) years after the end of the calendar year to which they relate. Such records shall be subject to inspection and audit by HPARC and its agents upon reasonable advance notice.

(e) **Thoroughfares.** For the duration of the Lease, subject to closure as reasonably necessary to complete construction, alterations, repairs to the Premises, Developer shall permit public pedestrian access over and across the Thoroughfares twenty-four (24) hours a day.

(f) **Maintenance and Repair.** Developer shall maintain all improvements on the Premises in a condition and manner consistent with a development complying with the principles of the Urban Design Goals described in the Urban Design Manual in the San Antonio central business district area and in accordance with all applicable Laws. If the standards for a first class product type change after the Effective Date, Developer shall not have any requirement to alter the improvements or personal property on the Premises, add services or amenities, or otherwise change the improvements or personal property on the Premises from the Approved Plans.

(g) **Nuisances and Disturbances.** Developer shall not use or occupy, knowingly permit the Premises to be used or occupied, nor do or knowingly permit anything to be done in or on the Premises in a manner which would in any way make void or voidable any insurance then in force with respect thereto or make it impossible to obtain the insurance required to be furnished by Developer hereunder. Developer shall not take any action which would constitute a legal nuisance or violate the Permitted Exceptions or any Laws.

(h) Surrender. During the last two (2) years of the Term, HPARC shall have the right to perform at its sole cost an environmental audit of the Premises, including all improvements situated thereon, and if such environmental audit reveals environmental conditions that violate Developer's obligation hereunder, HPARC shall have the right to cause Developer to remediate such adverse environmental condition and surrender the Premises in the condition required by this Lease. Subject to the foregoing, Developer will surrender and HPARC will accept the Premises and any improvements thereon in their then current "as-is" condition. Any property not removed by Developer may be deemed, at the option of HPARC, to have been abandoned by Developer and may be retained by such party without any claim by Developer. Any such audit shall be conducted in a manner and during times intended to minimize any interference with Developer's continued use and enjoyment of the Premises. Prior to a surrender of the Premises, Developer shall also pay to HPARC as additional rent an amount sufficient to the amount of hotel use taxes due from the Premises for periods prior to the surrender date or provide HPARC with a certificate from the City confirming that no such hotel use taxes are due from the Premises.

(i) Hemisfair Conditions. Developer hereby acknowledges that the Premises are part of the Hemisfair District which contains public parkland where events featuring small and large gatherings of people are expected to be regular occurrences. Developer acknowledges that it is taking the Property subject to all legally permissible conditions or impacts that may arise or affect the Premises by virtue of its proximity to such public parkland, including without limitation the effects of amplified and unamplified music or other noise, heavy traffic and congestion (both pedestrian and vehicular), displays of light commonly associated with music and other artistic performance, and construction related to the development of such public parkland, adjacent commercial development and the installation and construction of new streets and other public amenities planned within the Hemisfair District.

(j) Programming at Park Improvements. HPARC acknowledges the interest of Developer in ensuring the enjoyable use of the Premises for its tenants, residents, invitees, licenses, customers and patrons. HPARC covenants to Developer that it shall not take any action, agree to the taking of any action by any other party, and shall use any and all authority it possesses to prevent any action or inaction, which would constitute a legal nuisance or violate any Laws on or within the Civic Park and Park Facilities or any other portion of the Hemisfair District. Should HPARC breach the foregoing covenant, Developer shall have the right, but not the obligation, after thirty (30) days' written notice to HPARC to enter onto the relevant portion of the Park Facilities and remedy such violation itself; provided, however, that the exercise of any rights hereunder by Developer shall be at Developer's sole risk and subject to all applicable Laws relating to the control and use of the Park Facilities.

(k) Park Use Termination. If fifty percent (50%) or more of the land area upon which the Park Facilities are to be located ever ceases to be used as a park, for park purposes or for compatible park uses for a period of twenty-four (24) consecutive months, exclusive of any time period during which such Park Facilities or any other park facilities are be constructed, reconstructed or repaired, Developer shall be relieved of its obligations to (i) maintain the Required Uses under subsection 8(a), or (ii) comply with the Retail Use Restrictions under subsection 8(a), or (iii) comply with subsection 6(b) with respect to approval of alterations.

## 9. UTILITIES

(a) Developer shall pay all public utility charges and maintenance expenses for utility services to the Premises, including (i) heat, water, sewer, electricity, telephone, CATV and other utility services on the Premises during the Term of this Lease, and (ii) any and all impact, utility reserve, connection and use fees associated with the use and construction of the Premises.

(b) If reasonably feasible considering the plans for the Developer Improvements and, other information related to the available technology and overall design of the Developer Improvements and the Park Facilities and other relevant circumstances, HPARC shall have the right to capture and utilize nuisance water generated on the premises and condensate water generated on the Premises in amounts agreed upon with Developer (collectively, the “*Excess Water*”); provided, however, that HPARC shall be responsible for all engineering, architectural, and construction costs associated with the capture, transportation and utilization of such Excess Water.

(c) Unless waived by the PFC, Developer shall be required to obtain chilled water services from the SAWS distribution system in the San Antonio central business district for each of the Improvements, to the extent that such distribution system is available to serve, in Developer’s sole discretion, Developer Improvement and service to that Developer Improvement is reasonably feasible under the circumstances and available technology.

#### 10. **TAXES AND ASSESSMENTS.**

(a) **Real Estate Taxes.** Developer shall pay all such real estate taxes, assessments and governmental charges (if any), plus additional amounts, if any, in penalties, interest, attorney’s fees, collection penalties and/or other amounts (collectively, “*Taxes*”) assessed against HPARC, PFC or Developer on account of the Premises allocable to the Term or pro rata portions of the Term, as well as any other charges, Taxes and/or impositions now in existence or hereinafter imposed by any governmental authority based upon the privilege of renting the Premises or upon the amount of rent collected therefor or which are added to a tax or charge previously included within the definition of Taxes.

(b) **INDEMNIFICATION.** DEVELOPER AGREES TO PROTECT, INDEMNIFY AND HOLD HARMLESS HPARC AND THE PFC, AND THEIR AGENTS, SERVANTS, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, OWNERS, OFFICERS, EMPLOYEES, FROM LIABILITY FOR ANY AND ALL SUCH TAXES, AND FROM ANY SALE OR OTHER JUDICIAL OR NON-JUDICIAL PROCEEDING SEEKING TO ENFORCE PAYMENT THEREOF.

(c) **Notice and Payment.** HPARC shall provide Developer with copies of any tax statements and assessments affecting the Premises that HPARC receives within thirty (30) days following HPARC’s receipt thereof; provided, however, that Developer promptly shall use commercially reasonable efforts to cause the Premises to be separately rendered as a tax parcel by and direct, in writing and with copy to HPARC, both the Bexar County Appraisal District (“*BCAD*”) and the Office of the Bexar County Tax Assessor-Collector (“*Tax Office*”) to designate Developer as the party to be responsible for receiving and bills, appraisals or related notices from either BCAD or the Bexar County Appraisal Review Board, as well as all notices, demands, warnings, or other communications from the Tax Office concerning any “*Taxes*” (as defined above) pertaining to the Premises. Developer agrees to pay all such foregoing taxes, assessments and charges (including any penalties or interest associated therewith) for which Developer is responsible at least fifteen (15) days prior to the date of delinquency thereof, subject to subsection (d) below, and to deliver to HPARC evidence of such payments promptly upon payment thereof.

(d) **Contest.** Developer shall have the right to contest the amount or validity of real property taxes and assessments pertaining to the Premises or Improvements thereon by appropriate administrative and legal proceedings brought in its own name by property tax consultants and/or legal counsel selected and engaged by Developer. Any such proceedings shall be undertaken at the sole cost and expense of Developer and any refund resulting therefrom shall belong solely to Developer. DEVELOPER AGREES TO PROTECT, INDEMNIFY AND HOLD HARMLESS HPARC AND THE PFC AND THEIR AGENTS, SERVANTS, OFFICERS, DIRECTORS, MEMBERS, MANAGERS,

OWNERS, OFFICERS, EMPLOYEES, FROM ANY COSTS, LIABILITY OR EXPENSE OF ANY KIND INCURRED AS A RESULT OF SUCH CONTEST.

(e) Rent Taxes.

(1) In addition to the timely payments and furnishing of all notices and proof of payment by Developer as required under the preceding paragraphs of this Section 10, Developer shall pay all other general and special taxes, assessments, liens, bond obligations, license fees or taxes, water and sewer rents and charges, utilities and communications taxes and charges, any similar impositions in lieu of other impositions now or previously within the definition of real property taxes or assessments, all other government charges, general and special, ordinary and extraordinary, foreseen and unforeseen, or any other charge constituting Taxes as defined in Section 10(a) above, which are imposed upon or assessed against (i) any Rent or other sum payable by Developer hereunder, (ii) this Lease and the leasehold estate created hereby, or (iii) the ownership, operation, occupancy, leasing, use or possession of the Premises (including, without limitation, any gross receipts tax, gross rental tax, sales tax, use tax or excise tax) and any and all assessments under any covenants, conditions and restrictions affecting the Premises (collectively "**Rent Taxes**") which may be now or hereafter levied or assessed against the Premises, applicable to the period from the Demise Date until the expiration or earlier termination of this Lease. Notwithstanding the foregoing, there shall be excluded from Rent Taxes all excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal, state and local income taxes, and any sales tax imposed against HPARC.

(2) If at any time during the Term a tax or excise on rent or any other tax however described (other than an income tax), including anything constituting Taxes as defined in Section 10(a) above, is levied or assessed under any Laws by any Governmental Authority against HPARC on account of rent payable to HPARC hereunder or any tax based on or measured by expenditures made by Developer on behalf of HPARC, such tax or excise shall be considered Rent Taxes for purposes of this paragraph, and will be payable in full by Developer; provided, however, that any sales tax imposed against HPARC is excluded from such definition of Rent Taxes. Such taxes or excises will be payable within ten (10) days after Developer's receipt of the tax bill therefor from HPARC.

(f) Personal Property Taxes. Developer will pay or cause to be paid, prior to delinquency (and promptly after its receipt of HPARC's request therefor, provide HPARC with written evidence of such payment) all Taxes and assessments (real and personal) levied against any personal property placed by Developer or its subtenants on the Premises (including any increase in the assessed value of the Premises based upon the value of any such personal property or trade fixtures).

11. INSURANCE.

(a) Developer's Insurance. Commencing on the Construction Commencement Date and continuing throughout the Term of this Lease, Developer shall maintain insurance in accordance with the following:

(1) Developer shall, at its sole cost and expense, obtain and maintain a (i) commercial general liability insurance insuring Developer, and with HPARC, the City, and PFC, if any, as an additional insured, against all claims, demands, or actions arising out of or in connection with injury to or death of a person or persons and for damage to or destruction of property occasioned by or arising out of or in connection with the use or occupancy of the Premises and any and all Improvements situated thereon, or by the condition of the Premises, the limits of such policy or policies to be in an amount not less than \$1,000,000 per occurrence; (ii) all risk property insurance covering the full

replacement value of the Project and all other Improvements on the Premises, together with all personal property owned by Developer and located on the Premises; (iii) a business automobile policy or policies extending to all owned, non-owned, hired, and borrowed automobiles, the limits of such policy or policies to be in an amount not less than \$1,000,000, (iv) workers' compensation insurance with statutory limits, and employer's liability with limits of not less than \$1,000,000 in respect of bodily injury by accident, \$1,000,000 in respect of bodily injury by disease, and (v) commercial umbrella/excess liability insurance with limits of not less than \$10,000,000 per occurrence and in the aggregate. Developer will implement reasonable increases in any such limits consistent with the insurance being required by institutional owners of properties similar to the Project in the San Antonio, Texas area; provided, however, that if HPARC and Developer disagree on what constitute reasonable increases in such limits, then such insurance limits shall be increased to equal such amounts in Constant Dollars. "**Constant Dollars**" for these purposes shall mean the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. Within sixty (60) days of written notice from HPARC, an adjustment shall occur on the first day of January immediately following the tenth (10th) anniversary of the Effective Date, and thereafter at ten (10) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current CPI and the denominator of which is the Base CPI. The "**Base CPI**" shall be the CPI for the calendar year in which the Effective Date occurs; and the "**Current CPI**" shall be the CPI for the calendar year preceding the adjustment year. In connection with the construction of any improvements or any alterations at the Premises, Developer shall maintain (and cause its contractors to maintain) Builder's Risk insurance on an All Risk basis (including collapse) on a completed value (non-reporting) form, for full replacement value covering all work incorporated in the Improvements and all materials and equipment in or about the Premises. Developer will cause HPARC and PFC to be named as an additional insured on all contractor general liability insurance policies for both ongoing work and completed operations. In addition, all contractor's workers compensation policies shall name HPARC and PFC as an additional insured.

(2) All policies of insurance shall be issued by an insurance company or companies having an AM Best's rating of not less than A- and a financial rating of Class VII as stated in the most current available Best's insurance reports (or comparable rating service if Best's reports are not currently being published), licensed to do business in the State of Texas. Developer shall deliver to HPARC a standard ACORD certificate evidencing the required insurance on or before the Effective Date. Ten (10) days prior to the expiration of each of the policies required hereunder, Developer shall furnish HPARC with certificate of insurance in force or replacement coverage and meeting the standards hereinabove provided, all as required by this Lease. In the event Developer fails to maintain, or cause to be maintained, the insurance required by this Lease, HPARC may procure such insurance for the benefit only of HPARC, the City and PFC for such risks covering their respective interests, and Developer will pay all premiums thereon within thirty (30) days after demand by HPARC. In the event Developer fails to pay such premiums (or reimburse HPARC) upon demand the amount of all such premiums shall bear interest at the Default Rate.

(b) Waiver of Subrogation. Notwithstanding anything contained in this Lease to the contrary, each party hereto hereby waives any and every claim which arises or may arise in its favor and against the other party hereto, or anyone claiming through or under them, by way of subrogation or otherwise, during the Term for any and all loss of, or damage to, any of its property (whether or not such

loss or damage is caused by the fault or negligence of the other party or anyone for whom such other party may be responsible), which loss or damage is covered, or is required by this Lease to be covered, by insurance policies. Such waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss or damage to property of the parties hereto. The party incurring the damage or loss will be responsible for any deductible under its property insurance. Each party to this Lease agrees to promptly give the insurance company which has issued its property insurance coverage, written notice of the terms of the waivers contained in this Section 11(b), and if necessary, to have such insurance policies properly endorsed to waive the insurance company's rights of recovery under subrogation or otherwise against the other party.

(c) Termination of Insured's Rights. If at any time neither HPARC, the PFC, nor any other entity owned or controlled by the City of San Antonio has any ownership or leasehold interest in the Premises, then (i) Developer shall no longer be obligated to add the City as an additional insured, and (ii) Developer shall no longer be obligated to indemnify the City with respect to claims arising on or after the date upon which neither HPARC, the PFC, nor any other entity controlled or owned by the City of San Antonio has any ownership or leasehold interest in the Premises.

## 12. HAZARDOUS SUBSTANCES.

(a) Hazardous Substance. For purposes of this Section 12, "**Hazardous Substance**" means any substance, matter, material, waste, or pollutant, the generation, storage, disposal, handling, release (or threatened release), treatment, discharge, or emission of which is regulated, prohibited, or limited under: (i) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended ("RCRA") (42 U.S.C. §§ 6901 et seq.), (ii) the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, as now or hereafter amended ("CERCLA") (42 U.S.C. §§ 9601 et seq.), (iii) the Clean Water Act, as now or hereafter amended ("CWA") (33 U.S.C. §§ 1251 et seq.), (iv) the Toxic Substances and Control Act, as now or hereafter amended ("TSCA") (15 U.S.C. §§ 2601 et seq.), (v) the Clean Air Act, as now or hereafter amended ("CAA") (42 U.S.C. §§ 7401 et seq.), (vi) the Safe Drinking Water Act, as now or hereafter amended ("SDWA") (42 U.S.C. §§ 300(f) - 300(j)), and (vii) the Oil Pollution Act of 1990, as now or hereafter amended ("OPA") (33 U.S.C. §§ 2701 et seq.), (viii) any present or future state or local statute, regulation, or ordinance analogous to any of the foregoing statutes, and (ix) any other present or future federal, state or local law (including any common law), statute, regulation, or ordinance regulating, prohibiting, or otherwise restricting or governing the placement, discharge, release, threatened release, generation, treatment, or disposal upon or into any environmental media of any substance, pollutant, or waste which is now or hereafter classified and regulated as hazardous or toxic. All of the laws, statutes, regulations and ordinances referred to in subsections (viii) and (ix) above are collectively referred to herein as "**Hazardous Waste Laws**". The term "**Hazardous Substances**" shall also include any substance the presence of which on the Premises by virtue of its chemical composition requires reporting or remediation under any Hazardous Waste Law. Hazardous Substances shall not include normal cleaning fluids, office supplies, batteries, vehicles or construction equipment, pest control products or other materials used in connection with the development and use of the Premises for commercial purposes that are typically used and maintained in accordance with Hazardous Waste Laws.

(b) Hazardous Substances on Premises Prohibited. Except as provided in the last sentence of Section 12(a) above, Developer shall not conduct, permit, or authorize the use, distribution, manufacturing, emission, generation, transportation, storage, treatment, or disposal in, on or under the Premises, of any Hazardous Substance without prior written authorization by HPARC.

(c) Compliance with Hazardous Waste Laws.

(1) Developer shall, at its sole cost and expense, comply with all Hazardous Waste Laws applicable to the Premises.

(2) Developer shall promptly provide HPARC with copies of all written communications, permits, reports, sampling results, or agreements with and/or from any governmental authority or agency (federal, state, local, or foreign) relating to any violation or alleged violation of Hazardous Waste Laws in connection with the Premises.

(d) Clean Up and Mitigation. If any Hazardous Substances are released from or on the Premises in violation of Hazardous Waste Laws during the Term, or if Hazardous Substances are stored, transported, treated or disposed of at or from the Premises during the Term in violation of Hazardous Waste Laws, Developer shall promptly notify HPARC and the PFC and take any and all remedial, removal, or other action lawfully required by any governmental authority or by any order of a court or arbitration panel to clean up or remediate such violative condition at the Premises, mitigate exposure to liability arising from such Hazardous Substance, as required by law, or cease taking or cause requisite corrective action(s) to be taken to preclude any or further (as the case may be) regulatory enforcement actions or civil or criminal actions or proceedings resulting from such activity.

(e) INDEMNITY. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS HPARC, THE PFC, AND THE CITY FROM AND AGAINST ANY AND ALL LIABILITY, REASONABLE COSTS, REASONABLE EXPENSES, REASONABLE ATTORNEYS' FEES, REASONABLE REMEDIAL OR RESPONSE COSTS, REASONABLE INVESTIGATORY COSTS, AND SIMILAR REASONABLE EXPENSES ARISING OUT OF OR OTHERWISE ATTRIBUTABLE TO ANY RELEASE OR DISPOSAL OF HAZARDOUS SUBSTANCES ON THE PREMISES AND/OR ANY OFFSITE LOCATION ARISING AS A RESULT OF THE USE OF THE PREMISES HEREUNDER BY DEVELOPER OR ANY DEVELOPER-RELATED PARTY (AS HEREINAFTER DEFINED) OR OTHERWISE ARRANGED FOR BY OR ON BEHALF OF DEVELOPER OR ANY DEVELOPER-RELATED PARTY. SUCH INDEMNITY OBLIGATION SHALL NOT BE SUBJECT TO AND SHALL EXPRESSLY SURVIVE ANY TERMINATION OR EXPIRATION OF THIS LEASE.

(f) HPARC Representations. Except as disclosed in (i) any Property Information provided to Developer, (ii) the Environmental Assessment Reports and Supplemental Environmental Reports prepared by Raba Kistner Environmental, Inc. in connection with the Henry B. Gonzalez Convention Center Expansion Project and delivered to the City of San Antonio, and (iii) that certain letter from Gary Boyd to Rene Garcia dated January 27, 2017, to HPARC'S Actual Knowledge, as of the Effective Date, there are no Hazardous Substances located on the Premises and the Premises has not been used for the generation, treatment, storage or disposal of Hazardous Substances, no underground storage tanks have ever been located on the Premises nor are any underground storage tanks presently located on the Premises. For all purposes under this Lease, the "*Actual Knowledge*" of HPARC means the actual knowledge of Andres Andujar, Omar Gonzalez and Gary Boyd.

(g) Offsite Disposal. Developer shall maintain such written records as are required by any applicable rules of any governmental authority in connection with the disposal of Hazardous Substances from the Premises (including, without limitation, originals or copies of invoices of all third parties involved in any manner with such disposal), including without limitation (as applicable), the method of disposition thereof and, to the extent such disposition is by offsite disposal, all reports, invoices, and other written materials pertaining to such offsite disposition. Developer shall make such records available for review by HPARC on request and shall furnish a complete set of records in question on request by HPARC within thirty (30) days after the end of each calendar year following the Effective Date or on expiration or earlier termination of this Lease.

(h) Pre-Existing Conditions. Except as expressly provided in this Section 12h, nothing contained in this Lease shall be construed as imposing upon HPARC or Developer any responsibility for any Hazardous Substances located on the Premises prior to the Demise Date of this Lease (the "*Pre-Existing Conditions*"). HPARC shall have responsibility for Pre-Existing Conditions that were either (i) caused by HPARC or that (ii) HPARC had Actual Knowledge of but did not disclose to Developer as required under section 12(f) above and for which Developer or a Developer Affiliate did not have actual knowledge of prior to discovery of subsequent to the Effective Date of this Lease. Developer shall have responsibility for Pre-Existing Conditions that exist on the Premises as a result of action by Developer.

13. **DEVELOPER'S INDEMNIFICATION OF INDEMNIFIED PERSONS.**

(1) DEFINITIONS. THE FOLLOWING DEFINED TERMS WILL BE USED IN THIS SECTION 13 AND SOME OF THE TERMS INCORPORATE TERMS THAT ARE DEFINED ELSEWHERE IN THIS LEASE:

(A) INDEMNIFY: MEANS TO PROTECT, DEFEND, HOLD HARMLESS, PAY, AND BE SOLELY RESPONSIBLE FOR THE "**INDEMNIFIED LIABILITIES**" (AS DEFINED IN SECTION 13(1)(C) BELOW);

(B) LIABILITIES: MEANS ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES (INCLUDING COURT COSTS, ATTORNEYS FEES, AND COSTS OF INVESTIGATION) OF ANY NATURE, KIND OR DESCRIPTION BY, THROUGH, OR OF ANY PERSON OR ENTITY;

(C) INDEMNIFIED LIABILITIES: MEANS ALL LIABILITIES ARISING FROM INDEMNIFIED MATTERS (AS THAT TERM IS DEFINED IN SECTION 13(b)(2) BELOW), OTHER THAN TO THE EXTENT SUCH LIABILITIES ARISE FROM EXCLUDED MATTERS (AS DEFINED IN SECTION 13(3) BELOW);

(D) ARISE: MEANS DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART (I) TO OCCUR AS A RESULT OF, (II) TO CAUSE, OR (III) TO RESULT IN;

(E) DEVELOPER-RELATED PARTY: MEANS (I) DEVELOPER ITSELF, (II) ANY CONTRACTOR OF DEVELOPER, (III) THE EMPLOYEES OF DEVELOPER OR OF ANY CONTRACTOR OF DEVELOPER, (IV) ANY PERSON THAT DEVELOPER OR ANY CONTRACTOR OF DEVELOPER'S CONTROLS OR EXERCISES CONTROL OVER, (V) ANY INVITEE OF DEVELOPER, (VI) ANY LICENSEE OF DEVELOPER, AND (VII) SUBTENANTS OF DEVELOPER AND THEIR EMPLOYEES, AGENTS, CONTRACTORS OR INVITEES;

(F) INDEMNIFIED PERSONS: MEANS (I) HPARC, (II) THE PFC, (III) THE CITY AND (IV) AS TO EACH OF THE PERSONS OR ENTITIES LISTED IN "I" THROUGH "III" ABOVE, THE FOLLOWING PERSONS OR ENTITIES: SUCH PERSON OR ENTITY'S PARTNERS, PARTNERS OF THEIR PARTNERS, AND ANY SUCCESSORS, ASSIGNS, HEIRS, PERSONAL REPRESENTATIVES, ELECTED OFFICIALS, DEVISEES, AGENTS, STOCKHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AND AFFILIATES.

(2) INDEMNITY: DEVELOPER COVENANTS AND AGREES TO INDEMNIFY THE INDEMNIFIED PERSONS FOR ALL INDEMNIFIED LIABILITIES WHICH ARISE OUT OF ANY OF THE FOLLOWING MATTERS (THE "**INDEMNIFIED MATTERS**"):

(A) ANY INJURY, DEATH OR DAMAGE TO ANY PERSON OR PROPERTY OCCURRING IN, ON THE PREMISES AS A RESULT OF DEVELOPER'S OPERATIONS OR THAT OCCUR ON THE PREMISES AFTER THE DEMISE DATE AND PRIOR TO THE EXPIRATION OR TERMINATION OF THIS LEASE;

(B) THE USE, OCCUPATION, CONDITION, OPERATION, MAINTENANCE OR MANAGEMENT OF THE PREMISES OR ANY PART THEREOF DURING THE TERM OF THIS LEASE;

(C) PERFORMANCE OF ANY LABOR OR SERVICES OR THE FURNISHING OF ANY MATERIALS OR OTHER PROPERTY IN RESPECT OF THE PREMISES OR ANY PART THEREOF BY DEVELOPER OR ANY DEVELOPER-RELATED PARTY; OR

(D) FINES OR PENALTIES IMPOSED BY A GOVERNMENTAL AUTHORITY AS A RESULT OF ANY VIOLATION BY DEVELOPER (OR BY ANY DEVELOPER-RELATED PARTY THEN UPON OR USING THE PREMISES) OF ANY LAWS WITH RESPECT TO THE PREMISES AFTER THE EFFECTIVE DATE.

(3) EXCLUDED MATTERS: THE INDEMNIFIED LIABILITIES DO NOT INCLUDE ANY LIABILITIES TO THE EXTENT RESULTING FROM (A) GROSS NEGLIGENCE OF ANY INDEMNIFIED PERSON IN THEIR CAPACITY AS A REPRESENTATIVE, EMPLOYEE OR AGENT OF HPARC, THE PFC OR THE CITY, AND NOT AS AN INVITEE OF DEVELOPER, (B) THE WILLFUL MISCONDUCT OF ANY INDEMNIFIED PERSON IN THEIR CAPACITY AS A REPRESENTATIVE, EMPLOYEE OR AGENT OF HPARC, THE PFC OR THE CITY AND NOT AS AN INVITEE OF DEVELOPER, (C) ANY LAWSUITS CHALLENGING THE VALIDITY OR ENFORCEABILITY OF THIS LEASE, (D) ANY ENVIRONMENTAL LIABILITIES RELATING TO CONTAMINATION OR CONDITIONS TO THE EXTENT EXISTING ON THE PREMISES PRIOR TO THE DEMISE DATE EXCEPT TO THE EXTENT CAUSED BY DEVELOPER, ITS EMPLOYEES, CONSULTANTS, CONTRACTORS OR ANY OTHER PARTY UNDER DEVELOPER CONTROL, (E) ANY LIABILITY ARISING OUT OF THE CONDITION OF THE ADJACENT PARKLAND, THE PARKING GARAGE, OR OTHER CITY-OWNED PROPERTY UNLESS CAUSED BY DEVELOPER, ITS EMPLOYEES, CONSULTANTS, CONTRACTORS OR ANY OTHER PARTY UNDER DEVELOPER CONTROL, OR BY SOME CONDITION ON OR OF THE PREMISES, OR (F) ANY CLAIM AGAINST THE CITY ARISING OUT THE EXERCISE BY THE CITY OF ANY CITY GOVERNMENTAL FUNCTION.

(4) NOTICE: HPARC WILL ADVISE DEVELOPER IN WRITING OF ANY ACTION, ADMINISTRATIVE OR LEGAL PROCEEDING OR INVESTIGATION TO WHICH THE INDEMNIFICATION SET FORTH IN SUBSECTIONS 13(2) AND (3) MAY APPLY WITHIN TEN (10) DAYS AFTER IT BECOMES AWARE OF SUCH ACTION, PROCEEDING OR INVESTIGATION.

(5) DEFENSE: DEVELOPER, AT DEVELOPER'S EXPENSE, MUST ASSUME ON BEHALF OF THE INDEMNIFIED PERSONS AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ANY INDEMNIFIED LIABILITIES. HPARC FURTHER AGREES TO COOPERATE AT NO COST TO HPARC IN DEVELOPER'S DEFENSE OF ANY ACTION OR PROCEEDING BROUGHT BY A PERSON OR ENTITY IN CONNECTION WITH ANY INDEMNIFIED LIABILITY. EACH INDEMNIFIED PERSON HAS THE RIGHT, AT ITS OPTION, TO BE REPRESENTED BY ADVISORY COUNSEL OF ITS OWN SELECTION AND AT DEVELOPER'S EXPENSE. IN THE EVENT OF FAILURE BY DEVELOPER TO FULLY PERFORM IN ACCORDANCE WITH THIS INDEMNIFICATION, EACH

INDEMNIFIED PERSON, AT ITS OPTION, AND WITHOUT RELIEVING DEVELOPER OF ITS OBLIGATIONS UNDER THIS SECTION 13, MAY SO PERFORM, BUT DEVELOPER MUST REIMBURSE SUCH INDEMNIFIED PERSON FOR ALL COSTS AND EXPENSES SO INCURRED, TOGETHER WITH INTEREST AT THE DEFAULT RATE. DEVELOPER'S OBLIGATIONS UNDER THIS SECTION 13 ARE NOT AND CANNOT BE DEEMED TO BE LIMITED TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEES' BENEFIT ACTS.

(6) DEVELOPER'S RELEASE OF INDEMNIFIED PERSONS. NO INDEMNIFIED PERSON WILL BE LIABLE IN ANY MANNER TO DEVELOPER OR ANY OTHER PARTY FOR, AND DEVELOPER HEREBY WAIVES AND RELEASES THE INDEMNIFIED PARTY FROM ANY CLAIM ARISING FROM, ANY INJURY TO OR DEATH OF PERSON OR FOR ANY LOSS OF OR DAMAGE TO THE PROPERTY OF DEVELOPER, REGARDLESS OF WHETHER SUCH PROPERTY IS ENTRUSTED TO EMPLOYEES OF AN INDEMNIFIED PERSON OR SUCH LOSS OR DAMAGE IS OCCASIONED BY CASUALTY, THEFT, OR ANY OTHER CAUSE OF WHATSOEVER NATURE, EXCEPT TO THE EXTENT DUE TO THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF AN INDEMNIFIED PERSON. IN NO EVENT WILL ANY INDEMNIFIED PERSON BE LIABLE IN ANY MANNER TO DEVELOPER OR ANY OTHER PARTY AS A RESULT OF THE ACTS OR OMISSIONS OF DEVELOPER OR ANY DEVELOPER-RELATED PARTY.

(7) THIS SECTION 13 IS SUBJECT TO THE WAIVER OF SUBROGATION PROVISIONS OF SECTION 11(b).

THE PREVIOUS SECTIONS WERE SET OFF FROM THE REMAINDER OF THE LEASE IN ORDER TO MAKE THEM CONSPICUOUS.

14. **COMPLIANCE WITH LAWS; COOPERATION ON PLAT MODIFICATION.**

(a) Developer shall comply with all Laws applicable to the Premises or to the use or occupancy thereof. Developer, at its expense, shall obtain all licenses or permits which may be required for the use and occupancy of the Premises within the terms, provisions and conditions of this Lease, or for alterations, improvements, or additions which Developer may desire to make, and HPARC, where necessary, shall join with and cooperate with Developer in applying for all such permits or licenses reasonably necessary to achieve the purposes of this Lease and the uses of the Premises as contemplated by this Lease, at no cost, expense or liability to HPARC. Without limiting the generality of the foregoing, HPARC agrees (a) if requested by Developer, to support any governmental application of Developer permitted by this Lease, by filing a letter with the appropriate governmental authority in a form reasonably satisfactory to Developer, and (b) not to oppose, in any way, whether directly or indirectly, any such valid, accurate application or approval at any administrative, judicial or legislative level. HPARC shall cooperate with Developer in such matters, so long as HPARC has sufficient notice regarding the request for such cooperation, has staff available to facilitate such cooperation and is reimbursed for its out-of-pocket expenses.

(b) HPARC has as of the Effective Date hereof commenced pursuit and will continue to diligently pursue to completion a final plat of the Premises so that the Premises forms separate legal platted parcels, in form and substance reasonable acceptable to and approved in writing by Developer, which approval will not be unreasonably withheld, conditioned or delayed. HPARC shall bear the costs of preparing and filing the subdivision plan and obtaining any other required approvals and permits for such subdivision. On or prior to February 15, 2017, after communicating and coordinating with

Developer, HPARC shall prepare and submit to Developer for review a draft of the contemplated replat of the Premises (the “**Initial Plat**”). Developer shall have a period of ten (10) days following its receipt of the Initial Plat within which to notify HPARC of any objections to the Initial Plat (the “**Plat Objection Period**”). In the event that Developer timely objects to the Initial Plat, HPARC and Developer shall thereafter in good faith work together for thirty (30) days (the “**Plat Modification Period**”) to attempt agree in writing upon a final form of replat of the Premises which will not contain any easements or restrictions which could reasonably be anticipated to interfere with the Permitted Uses contemplated herein (the “**Final Plat**”). In the event the parties fail to agree in writing on Final Plat prior to the expiration of the Plat Modification Period, Developer shall be entitled to terminate this Lease. Upon such a termination, the Interim Period Deposit shall be refunded to Developer and thereafter none of the Parties hereto shall have any continuing rights or obligations under this Lease or under any of the related agreements between HPARC and the parties except for such obligations that expressly survive termination hereof.

Upon completion of the replat in a fashion approved by both parties, the newly subdivided parcel on which the Improvements are located shall become the leased parcel and the “Premises” under this Lease; in such event, Developer and HPARC shall execute an amendment to this Lease with a revised **Exhibit “A-1”** and **Exhibit “A-2”** and shall execute and record an amended memorandum in recordable form under State law describing the new Premises.

HPARC recognizes that Improvements cannot be built across platted lot lines in the city of San Antonio, and therefore agrees that, after the recording of the Final Plat, if there are internal lot lines within the exterior lot boundary lines, and the Approved Plans identify Improvements to encroach or cross over such interior lot lines, HPARC will cooperate with Developer and execute all instruments necessary to move such interior lot lines or remove such interior lot lines to ensure the replatting of the Premises in a fashion whereby the Improvements reflected on the Approved Plans shall not encroach or cross lot lines.

## 15. **ASSIGNMENT-SUBLEASING BY DEVELOPER; LEASEHOLD MORTGAGES.**

(a) Developer may assign this Lease (i) in whole or (ii) in one or more parts related to the Market Street Project and the South Alamo Project, at any time to any entity that is an Affiliate of Developer without the need for any consent from HPARC. Except as provided in the preceding sentence of this paragraph and in Section 15(f) below, Developer may not assign this Lease prior to Substantial Completion, without the prior written consent of HPARC, which consent may be given or withheld in HPARC’s sole discretion (but HPARC shall not be arbitrary or capricious in determining whether to provide any such consent); *provided, however*, HPARC consents as of the Effective Date to the sublease of the Market Street Project to The NRP Group, LLC (subject to the required reservation of Developer’s rights to the Market Street Retail Space as described above) and the assignment of the Market Street Project to The NRP Group, LLC following Substantial Completion of the entire Project.

(b) Following Substantial Completion of the entire Project, Developer may assign this Lease (i) in whole, (ii) with respect to the entirety of the Market Street Project exclusive of the Market Street Retail Space, of which control and ownership shall always remain with the same party as the Retail Units contained within the South Alamo Project, (iii) with respect to the entirety of the Market Street Project and the Market Street Retail Space, (iv) with respect to the hotel project contained within the South Alamo Project, (v) with respect to the office project contained within the South Alamo Project, or (vi) with respect to all of the Retail Units contained within the South Alamo Project and the Market Street Retail Space, with the prior written consent of HPARC and such consent shall not to be unreasonably withheld, conditioned or delayed; *provided, however*, that HPARC shall be required to give its consent to any assignment where the following conditions are satisfied:

(i) as to the Market Street Project only, either (A) the assignee and its Affiliates own or operate at least 1,000 multifamily apartment units, or (B) the assignee agrees to hire a professional property management company that is then presently managing at least 1,000 multifamily apartment units;

(ii) as to the South Alamo Project only, either (A) the assignee and its Affiliates own or operate at least 1,000 hotel rooms, or (B) the assignee agrees to hire a professional property management company that is then presently managing at least 1,000 hotel rooms;

(iii) either (a) the assignee is a publicly-traded company that has not ever been convicted of a felony under the laws of the State of Texas or the United States of America, or (b) no person owning twenty percent (20%) or more of the beneficial ownership of the assignee nor any current executive officer of the assignee has ever been convicted of a felony under the laws of the State of Texas or the United States of America;

(iv) as to the portion of the South Alamo Project related to office use only, either (A) the assignee and its Affiliates own or operate at least 100,000 rentable square feet of office space, or (B) the assignee agrees to hire a professional property management company that is then presently managing at least 100,000 rentable square feet of office space;

(v) the assignee nor its Affiliates have ever been a defendant in a lawsuit with HPARC, the PFC, the City, or any agency, division or subsidiary of the City involving allegations made by HPARC, the PFC, the City, or any agency, division or subdivision of the City against the assignee or its Affiliate of fraud, misrepresentation or breach of a material contract by such assignee or its Affiliate; and

(vi) the assignee or its Affiliates have a tangible net worth equal to or greater than ten percent (10%) of the total consideration to be paid to assignor in connection with such assignment.

In the event of any Assignment, Developer shall provide HPARC with a copy of such assignment within fifteen (15) days following execution of such Assignment.

For purposes of demonstrating satisfaction of the conditions described in (i)-(iii) above, the proposed assignee shall submit to HPARC a signed copy of the certification attached to this Lease as **Exhibit "L"** (the "*Certification*") along with a schedule of the multifamily apartment units being relied upon with respect to (i) above. For purposes of the condition described in (vi) above, the proposed assignee shall submit to HPARC an executed letter addressed to HPARC from a duly licensed certified public accountant or federally insured financial institution or, other verifiable information, confirming the tangible net worth requirement (a "*Net Worth Letter*"). From the date of HPARC's *actual* receipt (the date actually received by HPARC notwithstanding the deemed received language contained in Section 21) of a request to approve an assignment along with the original Certification, the accompanying information thereto, and the Net Worth Letter, HPARC shall have ten (10) Business Days to either approve such assignment or provide written notice to Developer citing specific discrepancies in the information provided or specific information calling into question the validity of one or more of the conditions described in (i)-(iii) above. Any consent required from HPARC under this Section 15(b) shall be deemed given if HPARC does not respond in writing within ten (10) Business Days following receipt of a request for such approval from Developer.

(c) Notwithstanding the foregoing, in the event that neither HPARC, the PFC, nor any other entity owned or controlled by the City of San Antonio, Texas has any ownership or leasehold

interest in the Land or the Premises, then Developer shall have the right to freely assign this Lease or any portion thereof related to a portion of the Project without the need for any consent from HPARC. In addition, at any time after the Effective Date, HPARC hereby consents and grants to Developer and its Affiliates, the right, on an exclusive or non-exclusive basis, to encumber, hypothecate, mortgage or pledge (including by mortgage, deed of trust or personal property security instrument) all or any portion of Developer's right, title or interest under this Lease as security for the repayment of any indebtedness and/or the performance of any Leasehold Mortgage. Upon a permitted assignment of any portion of Developer's interest under this Lease, HPARC shall recognize such assignee as Developer's successor, and the assignee shall have all of the assigned rights, benefits and obligations of Developer under and pursuant to this Lease, and Developer shall be relieved of all of its obligations relating to the assigned interests under this Lease, as applicable, that relate to acts or omissions which occur or accrue following the effective date of such grant, sale, lease, conveyance or assignment. Either Developer or NRP may also enter into subleases for the sublet of the apartment units, live/work spaces, office, and retail spaces and all related uses spaces without the consent of HPARC, and grant a leasehold mortgage or other security interest in Developer's leasehold interest in this Lease or NRP's Leasehold Interest in the NRP Sublease at any time without the consent of HPARC. Notwithstanding the foregoing or anything contained herein to the contrary, any such assignment, sublease or leasehold mortgage shall be expressly subject to the terms of this Lease and subject to the NRP Sublease, if applicable.

(d) Without HPARC's consent, each of Developer and NRP may at all times sublet or license all or any portion of the Premises, or grant a license, concession or other right of occupancy of all or portions of the Premises; provided, however, neither Developer nor NRP shall permit any such subtenants, licensees and other occupants of the Premises to either use the Premises for any use other than the Required Uses or to violate the Retail Use Restrictions and such subleases and licenses shall be expressly subject to the terms, conditions and provisions of this Lease or the NRP Sublease, respectively. Developer shall have the right, upon prior written notice to HPARC, so long as there exists no event of default under this Lease, to grant to utility providers easements over, across or under the Premises, or grant permits or licenses in respect to the use thereof, as shall be necessary for the operation, use or financing of the Project, or required by any utility company, so long as such grant shall not materially adversely affect the use or operation of the improvements for the Required Uses. HPARC shall execute and deliver any and all instruments necessary or appropriate to confirm and grant any such easement, permit or license.

(e) Notwithstanding any provision of this Lease to the contrary, any sale, assignment or transfer of Developer's interest in this Lease or NRP's interest in the NRP Sublease in any proceeding for the foreclosure of any Leasehold Mortgage (as defined below), or the assignment or transfer of Developer's interest in this Lease or NRP's interest in the NRP Sublease under any instrument of assignment or transfer in lieu of the foreclosure of, or exercise of power of private sale under, any Leasehold Mortgage (collectively, "**Foreclosure**") will be a permitted transfer of Developer's interest in this Lease or NRP's interest in the NRP Sublease, as applicable. Notwithstanding any provision of this Lease to the contrary, in the event that any Leasehold Mortgagee or its nominee acquires Developer's interest in this Lease or NRP's interest in the NRP Sublease or in a new lease through Foreclosure, such Leasehold Mortgagee or its nominee, as applicable, will have the right to sell, transfer, convey or assign its interest in the Lease or the NRP Sublease, respectively, without HPARC's consent, but the transferee under any such transfer, conveyance or assignment shall thereafter be bound by all of the terms, conditions and provisions of this Lease or the NRP Sublease, as applicable, including with respect to any future assignment.

(f) Leasehold Mortgaging.

(i) Subject to Section 40 of this Lease, neither HPARC's right, title and interest in this Lease, the Master Lease or the Premises, nor the PFC's right, title and interest in the Master Lease or the Premises, will be subordinated to the lien, priority and security title of any encumbrance of this Lease, the NRP Sublease, or the interest of Developer or the NRP, respectively, as security for any indebtedness Developer or NRP may incur, whether by deed to secure debt, mortgage, deed of trust or other security instrument (a "**Leasehold Mortgage**", and the owner or owners or holder or holders of all or any of which is a "**Leasehold Mortgagee**").

(ii) Each of Developer and NRP have the right, subject to the requirements set forth in this Section 15(f), without the consent of HPARC, to convey a security interest in all or a part of Developer's interest under this Lease or NRP's interest under the NRP Sublease and the Improvements, if any, as security for any indebtedness that Developer or NRP may incur as applicable. No enforcement by the Leasehold Mortgagee of any rights or remedies contained in the Leasehold Mortgage and provided by law for the benefit of any Leasehold Mortgagee that affect the Developer's leasehold interest under this Lease shall be effective as between HPARC and the Leasehold Mortgagee unless and until a written notice of such Leasehold Mortgage is delivered to HPARC, notwithstanding any other form of notice to HPARC, actual or constructive.

(iii) If HPARC receives from Developer or from a Leasehold Mortgagee written notice in the manner provided in this Lease, specifying the name and address of such Leasehold Mortgagee and requesting that HPARC give to such Leasehold Mortgagee a copy of each notice of default by Developer at the same time as and whenever any such notice of default is given by HPARC to Developer, then (a) HPARC will comply with such request by giving such notice, addressed to such Leasehold Mortgagee at the address last furnished to HPARC, with respect to each default by Developer occurring on or after the date of HPARC's receipt of such notice, and (b) (I) if such default is a default in the payment of any sum due under this Lease, such Leasehold Mortgagee will have the right to cure such default for the longer of the time period afforded to Developer under this Lease and for an additional thirty (30) days after such period, provided such cure period for such Leasehold Mortgagee shall never be less than thirty (30) days after receipt by such Leasehold Mortgagee of such notice; (II) if such default is a default in observing or performing any other covenant or condition to be observed or performed by Developer under this Lease, and such default can be cured by such Leasehold Mortgagee without obtaining possession of the Premises, such Leasehold Mortgagee will have the right to cure such default for the longer of the time period afforded to Developer under this Lease or sixty (60) days after receipt of such notice (provided, however, in the case of a default that cannot with diligence be cured, or the curing of which cannot be commenced, within such sixty (60) days, such Leasehold Mortgagee will have such additional period as may be necessary to cure such default with diligence and continuity); or (III) if such default is a default that can only be cured by such Leasehold Mortgagee by obtaining possession of the Premises, the time period afforded to such Leasehold Mortgagee to cure such default will include the time necessary to obtain such possession with diligence and continuity, through a receiver or otherwise, and an additional sixty (60) days after obtaining such possession (provided, however, in the case of a default that cannot with diligence be cured, or the curing of which cannot be commenced, within such period of sixty (60) days, such Leasehold Mortgagee will have such additional period as may be necessary to cure such default with diligence and continuity). So long as a Leasehold Mortgagee is prevented by any process, stay or injunction issued by any court of competent jurisdiction from commencing or prosecuting foreclosure or other appropriate proceedings of that nature, the foregoing cure period afforded to a Leasehold Mortgagee under clause III above will be extended for an additional period of time necessary to enable such Leasehold Mortgagee to obtain possession or control of the Premises, provided that the Leasehold Mortgagee uses reasonable efforts to contest and appeal the issuance or continuance of any such process, stay or injunction. HPARC will accept performance by any Leasehold Mortgagee of any covenant, condition or agreement of Developer's with the same force and effect as though performed by Developer, if, at or prior to the time of such performance, HPARC is (or has been) furnished with

evidence reasonably satisfactory to HPARC of the interest in this Lease claimed by the Leasehold Mortgagee tendering such performance. Timeframes for Leasehold Mortgagee to respond to any notice or demand under this Lease will run from the date such written notice or demand is actually received by Leasehold Mortgagee. A Leasehold Mortgagee is not required to cure any previously occurred non-monetary defaults of Developer which are not reasonably susceptible of being cured by Leasehold Mortgagee. Examples of such previously occurred non-monetary defaults would include, without limitation, Developer's bankruptcy, Developer's failure to provide reports and returns with respect to Taxes under this Lease or a prior non-recurring violation of the permitted use clause under this Lease. Notwithstanding the foregoing, if HPARC receives written notice from NRP requesting that HPARC give to NRP a copy of each notice of default by Developer at the same time as and whenever any such notice of default is given by HPARC to Developer and Leasehold Mortgagee, then HPARC will comply with such request by giving such notice, addressed to NRP at the address last furnished to HPARC, with respect to each default by Developer occurring on or after the date of HPARC's receipt of such notice.

(iv) If any Leasehold Mortgagee or NRP or its nominee acquires title to all or a part of Developer's interest in this Lease or the Improvements, by foreclosure, assignment in lieu of foreclosure or otherwise, or enters into a new lease with HPARC as provided below, such Leasehold Mortgagee or NRP or its respective nominee may assign its interest in this Lease (or such new lease) subject to and in accordance with the provisions and conditions of this Section 15(f) and such Leasehold Mortgagee or NRP or its respective nominee, as applicable, will be released from any further liability for the performance or observance of the Developer's covenants and conditions under this Lease (or such new lease) to be performed and observed after the date of such assignment, but not with respect to the period of time in which Leasehold Mortgagee or NRP or its respective nominee held title to such interest, for which Leasehold Mortgagee or NRP or its respective nominee will remain liable.

(v) In the event of a Foreclosure, the purchaser at any sale of Developer's interest in this Lease and the Improvements, if any, in any Foreclosure will be a permitted assignee or transferee of this Lease and Improvements. No Leasehold Mortgagee or other acquirer of Developer's interest in this Lease or the Improvements pursuant to Foreclosure, or who becomes the Developer under a new lease, and each subsequent acquirer of Developer's interest in this Lease or of the Developer's interest in the new lease (collectively, the "**Successor**") will become personally liable for the performance or observation of any covenants or conditions to be performed or observed by Developer unless and until such Successor becomes the owner of all or a portion of Developer's interest upon a Foreclosure or enters into a new lease with HPARC pursuant to this Section 15(f). Any Successor will be liable for (A) the performance and observance of such covenants and conditions only so long as such Successor owns such interest of Developer under this Lease or the interest of the Developer under such new lease, and (B) any defaults by such Successor occurring during the period it owned such interest of Developer under this Lease or the interest of the Developer under such new lease (collectively, the "**Successor Liabilities**"). Each Successor, on acquiring Developer's interest in this Lease or Developer's interest in the new lease, may only sell, transfer, mortgage, encumber, convey or assign Developer's interest in this Lease or Developer's interest in the new lease in accordance with the terms of this Lease, and will be relieved of all obligations under this Lease or the new lease to be performed from and after the date of such assignment, but not relieved of the Successor Liabilities.

(vi) Without in any manner or for any purpose waiving or modifying the provisions of Section 24: (a) in the event, this Lease is terminated for any reason prior to the end of the Term, including, without limitation, by reason of any bankruptcy proceedings in respect of Developer, any Leasehold Mortgagee, NRP or a person designated by such Leasehold Mortgagee or NRP will have the right, exercisable by written notice to HPARC within thirty (30) days after the effective date of such termination, rejection or disaffirmance, to enter into a new lease of the Premises with HPARC; (b) the term of said new lease will begin on the date of the termination, rejection or disaffirmance of this Lease

and will continue for the remainder of the Term; (c) such new lease will otherwise contain the same terms, conditions and provisions as those set forth in this Lease, except for requirements that are no longer applicable or have already been performed, provided that such Leasehold Mortgagee, or NRP, as applicable, has cured all defaults on the part of Developer that are susceptible of being cured by the payment of money within the time periods provided in Section 15(f)(iii), and that such new lease will require the Developer promptly to commence, and expeditiously to continue, to cure all other defaults on the part of Developer under this Lease to the extent susceptible of being cured; and (d) this provision will survive the termination of this Lease and will continue in full force and effect to the same extent as if this provision were a separate and independent contract among HPARC, Developer, NRP and each Leasehold Mortgagee.

(vii) HPARC agrees that, so long as any Leasehold Mortgagee holds a Leasehold Mortgage, no voluntary termination of the Lease by Developer and no cancellation, surrender or modification of this Lease will be effective without the prior written consent of each then outstanding Leasehold Mortgagee. Notwithstanding the foregoing to the contrary, Leasehold Mortgagee's consent will not be required with respect to minor or ministerial modifications of this Lease that do not adversely affect the rights of Developer or the Leasehold Mortgagee. Developer will provide any Leasehold Mortgagee and NRP with a copy of any modification executed pursuant to either of the two (2) preceding sentences promptly following execution by HPARC and Developer.

(viii) Within fifteen (15) days after receipt of written request from any Leasehold Mortgagee or NRP, HPARC will execute, acknowledge and deliver to such Leasehold Mortgagee or NRP, as applicable a written certificate certifying (i) that attached to the certificate are true and correct copies of the Lease, (ii) to the actual knowledge of HPARC, the Lease is in full force and effect (or, if not, so specifying), (iii) whether or not, to the actual knowledge of HPARC, a default or Event of Default by Developer has occurred under this Lease which has not been cured (and if so, specifying the same) or whether or not to HPARC's actual knowledge conditions exist which but for the passage of time or the giving of notice, or both, would constitute an Event of Default by Developer; (iv) the date through which Base Rent has been paid, and (v) any other matters or state of facts regarding this Lease which are reasonably requested by such Leasehold Mortgagee or NRP.

(ix) For so long as any Leasehold Mortgagee or its nominee is the owner of the leasehold estate created by this Lease, HPARC will look solely to the interest of such Leasehold Mortgagee or its nominee in the Premises, including, without limitation, any rents, revenue, profits, property insurance or rent loss insurance proceeds or other proceeds derived from the Premises after such Leasehold Mortgagee has been notified in writing by HPARC that a default or an Event of Default has occurred under this Lease, in the event of the breach or default by such Leasehold Mortgagee or its nominee under the terms of this Lease, and HPARC agrees that any judgment or decree to enforce the obligations of such Leasehold Mortgagee or its nominee will be enforceable only to the extent of the interest of such Leasehold Mortgagee or its nominee in the Premises, and any such judgment will not be subject to execution on nor be a lien on any assets of the Leasehold Mortgagee or nominee other than the Premises. Notwithstanding the foregoing, this limitation of personal liability shall not in any manner impair HPARC's exercise of any or all of its rights against any predecessor to the Leasehold Mortgagee as Developer or with respect to the Premises under Section 24 below or against Guarantor under the Guaranty. The term "**Premises**", as used in this Section, will be deemed to include, without limitation, any rents, revenue, profits, property insurance or rent loss insurance proceeds or other proceeds derived from the Premises during any period the leasehold estate created by this Lease is owned by such Leasehold Mortgagee or its nominee and such Leasehold Mortgagee or its nominee has been notified in writing by HPARC that a default or Event of Default has occurred under this Lease.

(x) Neither the bankruptcy nor the insolvency of Developer or any assignee shall be grounds for terminating this Lease as long as the Rent and all other monetary charges and non-monetary obligations of Developer or assignee under this Lease are paid and performed by the Leasehold Mortgagee in accordance with the terms of this Lease.

(xi) No payment made to HPARC by a Leasehold Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of this Lease; and a Leasehold Mortgagee having made any payment to HPARC pursuant to HPARC's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment.

(xii) There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease or the leasehold estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Premises and all persons (including Leasehold Mortgagee) having an interest in this Lease or in the estate of HPARC or assignee shall join in a written instrument effecting such merger and shall duly record the same.

(xiii) Each Leasehold Mortgagee is and shall be an express third party beneficiary of the provisions of this section, and, following such mortgagee's foreclosure of its interest in the Premises, such mortgagee shall be entitled to compel the performance of the obligations of HPARC under this Lease.

#### 16. ASSIGNMENT BY HPARC.

(a) HPARC shall have the right to assign its rights under this Lease, collaterally or otherwise, without Developer's consent. Except as expressly provided in this Lease, no assignment by HPARC shall alter the rights of Developer hereunder, and all of the recitals, terms, provisions, covenants, and conditions of this Lease shall remain in full force and effect upon the assignment. Upon any assignment by HPARC, Developer shall be entitled to continue making rental payments to the assignor unless and until the assignor actually delivers to Developer a written notice directing rental payments to thereafter be made to the assignee.

(b) HPARC will not grant any easements or impose any restrictive covenants against the Premises other than the Permitted Exceptions and Retail Use Restrictions, without the express written approval of Developer, nor shall HPARC seek to change the zoning or enter into any agreements that modify or alter Developer's rights and obligations under this Lease without Developer's prior written consent.

17. HOLDOVER. Any holdover by Developer after any termination of this Lease or the expiration of this Lease shall create no more than a tenancy at sufferance at one hundred twenty-five percent (125%) of the Base Rent then in effect, and on all other applicable conditions herein provided, plus any and all Additional Rent and other charges which would have been applicable had the Term of this Lease continued through the period of such holding over by Developer; HPARC and Developer hereby agree in advance that such rent is a fair rental rate for such tenancy. No holding over by Developer after the expiration of the Term of this Lease shall be construed to extend the Term of this Lease; and in the event of any holding over, Developer shall indemnify HPARC against all claims for damages by any other tenant or prospective tenant to whom HPARC may have leased all or any part of the Premises effective before or after the expiration of the Term of this Lease, resulting from delay by HPARC in delivering possession of all or any part of the Premises. Notwithstanding any discussions or negotiations of any nature then pending between HPARC and Developer, any holding over, with or

without the consent of HPARC, if any, shall thereafter constitute a tenancy from month to month, under the terms, provisions and conditions of this Lease to the extent applicable to a tenancy from month to month unless and until HPARC and Developer, in each of their sole and absolute discretion, and with no obligation to do so, enter into a specific written agreement to the contrary. Notwithstanding anything herein to the contrary, pursuant to Section 91.001(c) of the Texas Property Code, HPARC and Developer specifically agree that no notice to terminate Developer's tenancy hereunder will be required from and after the expiration of the Term of this Lease under Section 91.001 or Section 24.005 of the Texas Property Code before HPARC files a forcible detainer suit on grounds that the Developer is holding over beyond the end of the rental term or renewal period (if any) hereof.

18. **ESTOPPEL CERTIFICATE.** HPARC and Developer will, at any time and from time to time, upon not less than thirty (30) days' prior written request by the other party or by PFC, execute, acknowledge and deliver to the requesting party a certificate, certifying that (a) this Lease is unmodified and in full effect (or setting forth any modifications and that this Lease is in full effect as modified); (b) the Base Rent and Additional Rent payable and the dates to which the Base Rent has been paid and whether Additional Rent and other sums payable hereunder have been paid; (c) any default of which HPARC or Developer, as applicable, may have knowledge; (d) the commencement and expiration dates of this Lease; and (e) such other matters as may reasonably be requested by HPARC, Developer or PFC. Any such certificate may be relied upon by any mortgagee or prospective purchaser or prospective mortgagee of the Premises.

19. **DESTRUCTION.**

(a) **Restoration or Termination.** In the event that any improvements built on the Premises by Developer or NRP ("**Developer Improvements**") shall be wholly or partially damaged or destroyed by fire or other casualty, Rent shall not be abated and Developer shall, subject to the terms of any documents related to the rights of a Leasehold Mortgagee and compliance with applicable Laws, at its own expense after receipt of full insurance proceeds payable in connection with such casualty, cause the damaged Developer Improvements to be restored to their prior condition. Notwithstanding the foregoing, Developer shall have the option of terminating this Lease with respect to either or both Tracts and being released from the obligation to restore the damaged Developer Improvements on the applicable Tract(s) if any of the following conditions exists (any such condition, a "**Material Casualty**"):

- (i) the costs of repair and reconstruction of Developer Improvements so damaged by fire or other casualty would exceed 50% (fifty percent) of the replacement cost of all Developer Improvements on the applicable Tract, or
- (ii) in the event any Leasehold Mortgagee requires that the insurance proceeds payable as a result of said fire or other casualty be used to retire the related mortgage debt, or
- (iii) in the event that there is a casualty within the last five (5) years of the applicable portion of the Term, the cost of repair and reconstruction of Developer Improvements so damaged by fire or other casualty exceeds 25% (twenty-five percent) of the replacement cost thereof, then Developer, at Developer's option, shall be released from the obligation to restore the damaged Developer Improvements.

(b) In order to terminate this Lease in the event of a Material Casualty, Developer must provide notice to HPARC (such notice, a "**Casualty Termination Notice**") including documentation supporting its claim that a Material Casualty has occurred and stating its election to terminate the Lease as the applicable Tract(s). Developer must deliver any Casualty Termination Notice within one hundred twenty (120) days after the date of the casualty, unless there are factors that reasonably prevent Developer from making an informed decision regarding its election concerning restoration of the damaged Developer Improvements or termination within one hundred twenty (120) days, whereupon the period for such election and delivery of the Casualty Notice shall be extended as reasonably required and for so long as Developer continues to diligently pursue resolution of the factors preventing Developer from making such informed decision up to a maximum of one hundred eighty (180) total days for making such election as

measured from the date of the casualty. If Developer delivers a Casualty Termination Notice, HPARC shall have thirty (30) days to deliver notice to Developer contesting the existence of a Material Casualty or requesting additional information to make such determination (such notice, a “**Contest Notice**”). If HPARC does not deliver a Contest Notice within such thirty (30) day period, then the Lease shall be terminated with respect to the applicable Tract(s) on the date that is the later of (i) the last day of such thirty (30) day period, or (ii) the date upon which Developer has satisfied its obligations with respect to the condition of the Premises as described in subsection (c) below. If HPARC delivers a Contest Notice and a Material Casualty is later determined to have actually occurred, then the Lease with respect to the applicable Tract(s) shall be deemed to have terminated on the date that is the later of (i) the day that is thirty (30) days after the Casualty Termination Notice was delivered, or (ii) the date upon which Developer has satisfied its obligations with respect to the condition of the Premises as described in subsection (c) below. In the event of any such termination, Rent under this Lease with respect to applicable Tract(s) being terminated shall be abated as of the date of termination.

(c) Obligations after Casualty Termination Election. Notwithstanding any other provision of this Lease to the contrary, following receipt of a Casualty Termination Notice, HPARC may obligate Developer to raze the damaged Developer Improvements, place the surface of the parcel on which the damaged Developer Improvements are located in a condition free of surface debris and in compliance with the Permitted Exceptions and all applicable Laws, and deliver to HPARC all insurance proceeds received by Developer in excess of amounts required to satisfy (i) the claim of any Leasehold Mortgagee secured primarily by such Tract and (ii) the expenses incurred by Developer to raze the damaged Developer Improvements, remove the surface debris from the parcel on which the damaged Developer Improvements are located and to comply with the Permitted Exceptions and all applicable Laws.

(d) Time for Repairs. Except related to a Developer’s rights and obligations in connection with a Casualty Termination Notice, if Developer has elected in the Casualty Notice to repair or restore the damaged Developer Improvements, Developer shall commence such repairs or restoration as may be required to cause the damaged Developer Improvements to be in a safe and sightly condition, such commencement to be within one hundred twenty (120) days following approval by HPARC of the Approved Plans for construction of the damaged Developer Improvements, as contemplated by Section 5. of this Lease and upon the commencement thereof, diligently and continuously prosecute such work to completion; provided, however, that if there are factors that reasonably prevent Developer from commencing such repairs or restoration within one hundred twenty (120) days following approval by HPARC of the Approved Plans for construction of the damaged Developer Improvements, then the time period for commencing such repairs or restoration shall be extended as reasonably required and for so long as Developer continues to diligently pursue resolution of the factors preventing Developer from commencing such repairs or restoration. If such damage or destruction shall occur prior to Substantial Completion, the completion date for Substantial Completion set forth in the Project Timeline shall be extended in accordance with this Section 19(c).

## 20. CONDEMNATION.

(a) If, during the Term, all or a portion of the Premises are condemned or taken by any legal entity having the power of eminent domain, or is transferred in lieu (collectively, a “**Taking**” or “**Taken**”, as applicable), and such Taking is with respect to the entire Premises or such portion of the Premises as renders the remaining portion to be of substantially no commercial value (as determined by Developer in its sole but commercially reasonable discretion), this Lease will terminate as of the date that title vests in such condemning authority; provided, however, that such termination will not benefit such condemning authority and will be without prejudice to the rights of either HPARC or Developer to recover just and adequate compensation from the condemning authority.

(b) If, during the Term, any portion of the Premises are Taken and the Lease is not terminated as provided in subsection (a) above, then (i) this Lease will terminate only as to the portion of the Premises so Taken as of the date that title to such portion of the Premises vests in such condemning authority (provided, however, that such termination will not benefit such condemning authority and will be without prejudice to the rights of either HPARC or Developer to recover just and adequate compensation from the condemning authority), and (ii) except with respect to the last fifteen (15) years of the Term as set forth below, this Lease will not terminate as to the portion of the Premises not Taken. In the event of a partial Taking, Developer will be entitled to a pro-rata reduction in Base Rent based on the number of square feet of in the Premises remaining after the Taking. In the event a partial Taking occurs within the last fifteen (15) years of the Term, Developer will have the right to terminate this Lease by providing thirty (30) days prior written notice of such termination to HPARC, on or before the date which is ninety (90) days after such partial Taking is finalized, and satisfaction of the following conditions: (1) by paying to HPARC, on the effective date of such termination, a sum equal to all amounts and payments under this Lease due from Developer to HPARC to such date; and (2) by surrendering the Premises to HPARC on the effective date of such termination.

(c) The condemnation award shall be allocated between HPARC and Developer in accordance with this Section 20(c).

(i) To the extent permitted by applicable condemnation law, the “compensation” due to each of HPARC and Developer for the Taking of each of their separate estates in and to the Premises created by this Lease as to the Premises shall be determined by separate findings by the trier of fact in such condemnation proceeding. As used in this Section 20, “**compensation**” shall mean and include all sums of money which the condemning authority is required to pay for the Taking of the Premises (including the Land and Improvements), for damages to any portion of the Premises not taken, and for cost of demolition, removal, restoration or relocation. For the avoidance of doubt, the award to Developer shall never be less than the product equal to the Remaining Portion multiplied by the value assigned to the Project in such condemnation proceeding. The “**Remaining Portion**” means a fraction, the numerator of which is equal to the number of years remaining during the Term (assuming deemed exercise of all extension rights), and the denominator of which is equal to the number 75.

(ii) If applicable condemnation law or the court in which such proceedings are held does not require or permit the condemning authority to separately compensate each of HPARC and Developer for the estates in the Premises being taken from each of them, then HPARC and Developer agree:

(1) They will cooperate with each other in the presentation of evidence bearing on the value of the Premises disregarding the separate estates of each; and

(2) They will request the trier of fact in the condemnation proceeding to apportion and allocate the single determination of value between HPARC and Developer based upon the fair market value of the estate of each of HPARC and Developer calculated immediately prior to the Taking as determined by separate and additional findings of the trier of fact, and each of HPARC and Developer shall be permitted to present to the trier of fact the relevant factors and components in determining the fair market value of their respective estates.

(iii) If a court is prohibited by law from apportioning and allocating the single determination of value between HPARC and Developer or declines to do so, then HPARC and Developer shall attempt in good faith to agree upon the allocation of the compensation between them. If HPARC and Developer cannot agree on the allocation of the award, and if such inability to agree continues for thirty (30) days after the amount of the award is determined, HPARC and Developer agree that the

determination of such allocation will be made by the Board of Appraisers appointed in accordance with this subsection (iii) in accordance with the following procedure, and the compensation shall be divided between HPARC and Developer on the basis of the proportion which the fair market value of the estate of each of HPARC and Developer in the Premises as determined by the Board of Appraisers and calculated as of the date that is immediately prior to the date of the Taking bears to the aggregate of such fair market values. HPARC and Developer will each promptly appoint one (1) appraiser, and those two (2) appraisers will promptly appoint a third (3rd) appraiser (the “**Board of Appraisers**”). Each appraiser appointed will be a member of the American Institute of Real Estate Appraisers (or successor organization) having at least ten (10) years’ experience in appraisal of real estate for commercial use in downtown San Antonio, Texas. If such appraisers fail to appoint such third (3rd) appraiser within thirty (30) days after notice of their appointment, then either HPARC or Developer, upon notice to the other, may request the appointment of a third (3rd) appraiser by the then president of the San Antonio Board of Realtors, or any then similar existing body. The three (3) appraisers so appointed will jointly determine the fair market value of the estate of each of HPARC and Developer calculated immediately prior to the Taking, and each of HPARC and Developer shall be permitted to present to the appraisers the relevant factors and components in determining the fair market value of their respective estates. If, after notice by either HPARC or Developer of the appointment of an appraiser by the party giving such notice, the other party to whom such notice is given fails, within a period of ten (10) days after such notice, to appoint an appraiser, then the appraiser so appointed by the party giving the notice will have the power to proceed as sole appraiser to make the determination and allocation. HPARC will pay the fees and expenses of the person appointed by HPARC as an appraiser, Developer will pay the fees and expenses of the person appointed by Developer as an appraiser, and HPARC and Developer will each pay one-half (1/2) of the fees and expenses of the third (3rd) appraiser appointed pursuant to the provisions of this subsection (iii).

(d) Notwithstanding anything contained in this Lease to the contrary, neither HPARC nor Developer will be prohibited from introducing into any condemnation proceeding or proceedings with respect to the Premises such appraisals or other estimates of value, loss and/or damage as each may in its discretion determine. Developer will be entitled to claim in any condemnation proceedings such award as may be allowed for relocation costs or other consequential damages, but only to the extent that the same does not reduce, and is in addition to, the award for the Land and Improvements and damage to the remainder. At Developer's direction, any condemnation award to which Developer is entitled will be paid directly to its Leasehold Mortgagee.

(e) If there is a temporary taking of all or any portion of the Premises which less than one year, there shall be no abatement of Base Rent, but Developer will be entitled to the entire award for such taking (whether paid by way of damages, rent or otherwise) unless the period of occupation and use by the condemning authority extends beyond the date of expiration of the Term, in which case the award made for such taking will be apportioned between HPARC and Developer as of the date of such expiration based upon the pro rata portions of the term of the temporary taking before and after the termination of the Lease.

21. **NOTICES.** Any notice to be given or to be served in connection with this Lease must be in writing, and may be given by (a) facsimile transmission and shall be deemed to have been given and received on the date sent with confirmation of transmission if sent during the normal business hours of the recipient on a business day and if sent at other times then such transmission shall be deemed received on the next succeeding business day, (b) certified or registered mail and shall be deemed to have been given and received on the date a certified or registered letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mails; and (c) if given otherwise, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices shall be given at the following address:

TO HPARC: Hemisfair Park Area Redevelopment Corporation  
Attn: Chief Executive Officer  
434 South Alamo  
San Antonio, Texas 78205

WITH A COPY TO: Golden Steves Cohen & Gordon LLP  
Attn: Stephen L. Golden  
300 Convent Street, Suite 2600  
San Antonio, Texas 78205

TO DEVELOPER: ZH Downtown Development Company, LLC  
Attn: Rene M. Garcia  
2330 North Loop 1604  
San Antonio, Texas 78248

TO GUARANTOR: ZACHRY HOSPITALITY LLC  
Attn: Warren A. Stokes  
2330 North Loop 1604  
San Antonio, Texas 78248

WITH A COPY TO: Hornberger Fuller & Garza Incorporated  
Attn: Drew R. Fuller, Jr.  
Ty H. Sheehan  
7373 Broadway, Suite 300  
San Antonio, Texas 78209

TO PFC: Hemisfair Park Public Facilities Corporation  
100 Military Plaza, First Floor  
San Antonio, Texas 78205  
Attention: City Clerk

WITH COPY TO: Hemisfair Park Public Facilities Corporation  
100 Military Plaza, Third Floor  
San Antonio, Texas 78205  
Attention: City Attorney

or to such other place as a notice party shall subsequently notify to the other notice parties in writing.

22. **QUIET ENJOYMENT.** Developer, upon paying the Rent and performing the covenants and agreements of this Lease, shall quietly have, hold and enjoy the Premises and all rights granted Developer in this Lease during the Term hereof.

23. **COMMISSIONS.** HPARC and Developer acknowledge and agree that neither party has engaged the services of any real estate broker in connection with this Lease. Developer and HPARC shall indemnify and hold the other harmless against any other commission, payment, interest or participation claimed on account of this Lease under any alleged agreement or understanding entered into between or on that party's behalf with the person or entity claiming the commission, payment, interest or participation.

24. **DEFAULT AND REMEDIES.**

(a) Events of Default. Subject to the rights of Leasehold Mortgagees as provided in this Lease, each of the following events shall constitute an “***Event of Default***” by a party:

(1) Monetary Defaults. The failure or omission by either party to pay amounts required to be paid pursuant to this Lease when due hereunder, and such failure or omission has continued for sixty (60) days after written notice from the other party (each such failure or omission referred to herein as a “***Monetary Default***”). It is hereby expressly acknowledged that Monetary Defaults include the failure of a party to pay monetary damages awarded to the other party in connection with an Event of Default other than a Monetary Default within sixty (60) days after written demand for payment following the date upon which a judgment from a court of competent jurisdiction or arbitration as herein provided becomes final and non-appealable.

(2) Construction Defaults. The failure of Developer to Commence Construction prior to the applicable Construction Commencement Deadline or achieve any of the other construction milestones by the deadlines set forth in the Project Timeline, as any of the same may be extended by Excusable Delay or pursuant to any of the express terms of this Lease, and such failure continues for ninety (90) days after written notice from HPARC, or the failure by Developer to complete restoration of the improvements following a casualty by the deadlines set forth in Section 19 and such failure continues for ninety (90) days as same may be extended by Excusable Delay, after written notice from HPARC (each such failure referred to herein as a “***Construction Schedule Default***”). Notwithstanding the foregoing, HPARC shall have no right to terminate this Lease due to a Construction Schedule Default (excluding a failure to Commence Construction by the applicable Construction Commencement Deadline) unless either (a) such default continues for six (6) months and Developer does not present a credible plan within such six (6) month period to cure such default and satisfy such milestone prior to the second anniversary of the original deadline set forth in the Project Timeline, as same may have been extended by Excusable Delay, or (b) Developer does not cure such default and satisfy such milestone prior to the second anniversary of the original deadline set forth in the Project Timeline, as same may have been extended by Excusable Delay; provided, however, that this limitation shall not apply to HPARC’s right to terminate this Lease pursuant to Section 3(l).

(3) General Non-Monetary Defaults. The breach of any covenant of a party under this Lease, and the failure or omission by either party to observe, keep or perform any of the other terms, agreements or conditions set forth in this Lease, and such breach, failure or omission has continued for sixty (60) days (or such longer period as may reasonably be required to cure such failure or omission, provided that cure has commenced and such party is diligently and continuously proceeding to complete such cure) (the “***Non-Monetary Default Cure Period***”) after written notice from the other party (each such failure or omission referred to herein as a “***General Non-Monetary Default***”).

(4) Bankruptcy Defaults. (a) Developer’s filing for voluntary bankruptcy; or (b) an involuntary bankruptcy is filed against Developer which Developer does not use commercially reasonable efforts to seek to have dismissed within sixty (60) days of such filing (each such event referred to herein as a “***Bankruptcy Default***”).

(b) HPARC Remedies for Developer Defaults.

(1) General Remedies. Subject to the rights of Leasehold Mortgagees as expressly provided in this Lease and subject to any other limitations of remedies expressly provided in this Lease including, without limitation, the Disputed Default provisions of Section 24 (b)(2) of this Lease, upon the occurrence and during the continuation of an Event of Default by Developer, HPARC may, at its option, and in addition to and cumulatively of any other rights HPARC may have under this Lease, at law or in equity (a) cure the Developer Event of Default (including without limitation the failure

of Developer party to pay Taxes, to maintain insurance or to remove mechanic's liens as required under this Lease) on Developer's behalf, in which event Developer shall reimburse HPARC on demand for all sums so expended by HPARC, including without limitation such reasonable expenses that HPARC has incurred in connection therewith, plus interest at the Default Rate from the date paid by HPARC until repaid by Developer, or (b) enforce, by all proper and legal suits and other means, its rights hereunder, at law, or in equity, including the collection of sums due hereunder, or the enforcement and specific performance when available.

(2) **Disputed Defaults.** With respect to any General Non-Monetary Default that HPARC asserts against Developer that is disputed by Developer in writing within sixty (60) days following receipt of written notice of such default from HPARC, HPARC or Developer may elect to refer such matter to binding arbitration to determine if a General Non-Monetary Default has occurred. During the pendency of the determination of the arbitrator of whether a General Non-Monetary Default has occurred, HPARC shall have no right to pursue, and agrees to refrain from pursuing, any rights it may have as a result of an Event of Default by Developer under the terms of this Lease, at law or in equity. If the arbitrator determines that a General Non-Monetary Default has occurred ("***Arbitrator Determined General Non-Monetary Default Determination***"), then Developer shall cure such General Non-Monetary Default within the Non-Monetary Default Cure Period commencing upon the time the arbitrator's decision becomes final and non-appealable. If Developer does not cure such General Non-Monetary Default within such Non-Monetary Default Cure Period, then HPARC may, at its option, and in addition to and cumulatively of any other rights HPARC may have under this Lease, at law or in equity, elect to terminate this Lease by giving notice thereof to Developer ("***General Non-Monetary Default Termination Election***"), in which event Developer shall immediately surrender the Premises to HPARC and if Developer fails so to do, HPARC may, without prejudice to any other remedy which it may have for possession or arrearages in Rent, by any legal process, enter upon and take possession of the Premises. If any such General Non-Monetary Default is cured before Developer's receipt of the General Non-Monetary Default Termination Election, HPARC shall have no right to terminate this Lease on account of such General Non-Monetary Default.

(3) **General Termination Rights.** With respect to any Monetary Default, any Construction Schedule Default, or any Bankruptcy Default, HPARC may, at its option, and in addition to and cumulatively of any other rights HPARC may have under this Lease, at law or in equity, elect to terminate this Lease by giving notice thereof to Developer ("***Other Default Termination Election***"), in which event Developer shall immediately surrender the Premises to HPARC and if Developer fails so to do, HPARC may, without prejudice to any other remedy which it may have for possession or arrearages in Rent, by any legal process, enter upon and take possession of the Premises; provided, however, that in the event of a Construction Schedule Default relating solely to the failure of Developer to achieve Substantial Completion of a Project Phase, such termination right shall only apply to the Project Phase that has not achieved Substantial Completion, whereupon the "Premises" shall thereafter be construed to apply solely to the Project Phase that has not been terminated. If any such Monetary Default or Construction Schedule Default is cured before Developer's receipt of the Other Default Termination Election, HPARC shall have no right to terminate this Lease on account of such Monetary Default, Construction Schedule Default, or Bankruptcy Default. Notwithstanding the foregoing, HPARC's termination right set forth in this Section 22(a)(3) shall be subject to the terms and conditions set forth in the Recognition Agreement and the rights of Leasehold Mortgagees as expressly provided in this Lease.

(4) **Rent Damages.** Upon any termination of this Lease by HPARC due to an Event of Default by Developer, Developer shall pay as liquidated damages for any Rent due to HPARC for the remainder of the Term following the date of termination, an amount equal to the positive difference (if any) between: (i) the present value calculated with a discount factor equal to six percent

(6%) of the excess of (x) the entire amount of Rent and other charges and assessments that would become due and payable during the remainder of the Initial Term or the current Extension Period (the “**Default Measurement Period**”), as applicable, determined as though this Lease had not been terminated, over (y) the then fair market rental value of the Premises (on the same net basis as this Lease) for the Default Measurement Period, and (ii) the Fair Market Value of the Developer Improvements on the date of termination of this Lease by HPARC. In addition, Developer shall pay HPARC’s actual, out of pocket, attorneys fees and court costs or arbitration costs incurred by HPARC in connection with the Event of Default claimed by HPARC as the basis for termination of this Lease. The calculations in this section shall be made without including any Extension Periods which are not yet in effect as of the date of termination. The payment of the liquidated damages for Rent referenced in this section shall in no manner preclude the recovery of other monetary damages arising from an Event of Default by Developer aside from the Rent due to HPARC for the remainder of the Term following the date of termination.

(5) **Cumulative Remedies.** Except as expressly provided herein, pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law or equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any Rent due to HPARC hereunder or of any damages accruing to HPARC by reason of the violation of any of the terms, provisions, conditions and covenants herein contained. HPARC’s acceptance of Rent following an Event of Default hereunder shall not be construed as HPARC’s waiver of such Event of Default.

(6) **Split Cause of Action.** In case of default in payment of any part of the Rent, HPARC shall have the privilege of splitting its cause of action so as to permit the institution of separate suits for the Rent, and neither the institution of any such suit, nor the entry of judgment therein, shall bar HPARC from bringing a separate suit for the other, it being understood that the forbearance of HPARC in the institution of any suit or in the entry of judgment for the Rent shall not be defense against, or prejudice a subsequent action for, the other. Developer waives the right to claim a merger of Rent in the previous suit or the judgment entered therein. The claims for Rent may be regarded by HPARC, if it so elects, as separate claims.

(c) **Developer Remedies for HPARC Defaults.**

(1) Upon the occurrence and during the continuation of an Event of Default by HPARC, Developer may, at its option, and in addition to and cumulatively of any other rights Developer may have under this Lease, at law or in equity (a) cure the HPARC Event of Default on HPARC’s behalf, in which event HPARC shall reimburse Developer on demand for all sums so expended by Developer plus interest at the Default Rate from the date paid by Developer until repaid by HPARC, (b) terminate this Lease by notice to HPARC and in conformity with procedures required hereby and by applicable Law, or (c) enforce, by all proper and legal suits and other means, its rights hereunder, at law, or in equity, including the collection of sums due hereunder. Developer shall have the right but not the obligation after providing at least sixty (60) days’ notice to HPARC to perform, acquire, or satisfy any lien, encumbrance, agreement or obligation of HPARC which is a lien or encumbrance on the Premises or Improvements; provided HPARC is not contesting the correctness or validity of such lien, encumbrance, agreement or obligation and such lien, encumbrance, agreement or obligation does not result in a material risk of loss of the Premises or Improvements.

(d) **Attorney's Fees.** In any case where HPARC or Developer employs attorneys to protect or enforce its rights hereunder and prevails, then the non-prevailing party agrees to pay the other party reasonable attorney's fees incurred by the prevailing party.

(e) **Waiver.** Failure on the part of HPARC or Developer to complain of any action or non-action on the part of Developer or HPARC, no matter how long the same may continue, shall never be deemed to be a waiver by HPARC or Developer of any of its respective rights hereunder. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by HPARC or Developer shall be construed as a waiver of any of the other provisions hereof and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval by HPARC or Developer to or of any action by Developer or HPARC requiring HPARC's or Developer's consent or approval shall not be deemed to waive or render unnecessary HPARC's or Developer's consent or approval to or of any subsequent similar act by Developer or HPARC.

25. **MEMORANDUM OF LEASE.** This Lease shall not be recorded. On the Effective Date, HPARC and Developer shall execute a Memorandum of Lease, in the form attached hereto as "**M**" for recordation in Bexar County at the expense of Developer on the Demise Date. Upon the expiration or earlier termination of this Lease, Developer shall, at its expense, within five (5) Business Days following said expiration or termination, file a release of this Lease in the Official Public Records of Real Property of Bexar County, Texas. This obligation shall survive the expiration of the Term or earlier termination of this Lease.

26. **ENTIRETY-EXECUTION-SUCCESSION-AMENDMENT-TIME OF ESSENCE.** This Lease merges and supersedes all prior negotiations, representations, and agreements, and constitutes the entire contract between HPARC and Developer concerning the leasing of the Premises and the consideration therefor. This Lease and all options herein shall bind and inure to the benefit of the successors and assigns of HPARC, and the successors and permitted assigns of Developer. No variations, modifications or changes herein or hereof shall be binding upon any party hereto unless set forth in writing executed by both parties hereto. Time is of the essence in the payment and performance of all of the obligations of the parties under this Lease.

27. **LIMITATION OF LIABILITY.** Neither the managers, officers, employees or other agents of HPARC are personally, corporately or individually liable for any debt, act, omission or obligation of HPARC hereunder, and Developer and all persons having claims against HPARC hereunder shall look solely to HPARC's interest in the Premises for the enforcement of their rights hereunder. Additionally, upon the assignment of this Lease to a bona fide third party that assumes HPARC's obligations under this Lease and written notice of such assignment to Developer, HPARC shall have no further liability for the obligations of HPARC accruing from and after such assignment.

Upon a permitted assignment of this Lease to a bona fide third party that assumes Developer's obligations under this Lease and written notice of such assignment to HPARC, Developer shall have no further liability for the obligations of Developer accruing from and after such assignment. Neither the partners or owners of Developer, nor their managers, officers, employees or other agents are personally, corporately or individually liable for any debt, act, omission or obligation of Developer hereunder. and HPARC and its successors and assigns and, without limitation, all other persons and entities, shall look solely to Developer's assets for the payment of any claim or for any performance, and HPARC, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability.

Notwithstanding any other provision of this Lease to the contrary, in no event will HPARC or Developer be liable for consequential, special, exemplary or punitive damages.

The provisions of this Section shall survive the termination or expiration of this Lease

28. **HPARC MORTGAGES.** Developer acknowledges that HPARC's leasehold interest under the Master Lease is not subordinated to (but is subject to) this Lease and that HPARC may subject HPARC's leasehold interest under the Master Lease in the Premises to one or more mortgage loans. In such event, HPARC's mortgagee shall agree for itself, its successors and assigns (by written instrument in substantially the recordable form attached hereto and by reference incorporated herein as **Exhibit "N"**): (i) to be bound by the terms of this Lease; (ii) not to disturb Developer's or NRP's use or possession of the Premises in the event of a foreclosure of such lien or encumbrance so long as Developer is not in default hereunder beyond any applicable notice and cure period; and (iii) not to join Developer or NRP as a party defendant in any foreclosure proceeding relating to HPARC's leasehold interest in the Master Lease unless such joinder is required by applicable law and provided that such joinder of Developer as a party shall not extinguish or interfere with the rights of Developer under this Lease. Developer or NRP hereby agrees to enter into an agreement with HPARC and HPARC's mortgagee substantially in the form attached hereto as **Exhibit "N"** upon written request from HPARC from time-to-time. Notwithstanding the foregoing, and without limiting the effect thereof, HPARC hereby confirms that there is no financing encumbering HPARC's leasehold interest in the Master Lease as of the Effective Date.

29. **HPARC AND PFC RIGHT OF ENTRY.** During the final year of the Term of this Lease, Developer will grant HPARC and its agents the right from time-to-time upon reasonable written notice to enter the Premises to show the Premises to prospective purchasers or mortgagees. Within the last year of the Term, HPARC may perform such non-invasive inspections as HPARC may reasonably require confirming Developer's compliance with the terms and provisions of this Lease. HPARC must be accompanied by a representative of Developer at all times while on the Premises. In addition, the PFC and its agents, employees and permittees shall have the right of ingress and egress over and across the Premises for all reasonable purposes of the PFC; provided, however, that the exercise of such rights by the PFC shall not unreasonably interfere with or disturb the operations of Developer and PFC shall give reasonable notice (not less than 48 hours) prior to exercising such rights, except in the case of an emergency, and provided further that the rights hereby reserved for the benefit of the PFC are expressly subject to the terms, conditions and provisions of that certain Recognition Agreement entered into between the PFC and Developer as of even date herewith. Notwithstanding the foregoing, in the event that Developer or NRP has sublet the Premises, or a portion thereof, to a third party residential tenant, then the rights of HPARC and PFC as set forth in this Section 29 shall be subject to the terms of such residential sublease.

30. **NO IMPLIED WARRANTIES.** HPARC AND DEVELOPER EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR DEVELOPER'S INTENDED COMMERCIAL PURPOSE AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS LEASE, DEVELOPER'S OBLIGATION TO PAY RENT HEREUNDER IS NOT DEPENDENT UPON THE CONDITION OF THE PREMISES OR THE PERFORMANCE BY HPARC OF ITS OBLIGATIONS HEREUNDER, AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS LEASE, DEVELOPER SHALL CONTINUE TO PAY ANNUAL RENT AND ALL AMOUNTS DUE HEREUNDER, WITHOUT ABATEMENT, SETOFF OR DEDUCTION NOTWITHSTANDING ANY BREACH BY HPARC OF ITS DUTIES OR OBLIGATIONS HEREUNDER, WHETHER EXPRESS OR IMPLIED. AS OF THE EXPIRATION OF THE DUE DILIGENCE PERIOD, DEVELOPER WILL HAVE HAD A FULL AND FAIR OPPORTUNITY TO INSPECT THE PREMISES AND FINDS THAT THE PREMISES SUIT DEVELOPER'S PURPOSES. DEVELOPER HAS KNOWLEDGE OF THE PREMISES AND WITH THIS KNOWLEDGE HAS VOLUNTARILY AGREED TO DISCLAIM THE IMPLIED WARRANTY OF SUITABILITY. BOTH HPARC AND DEVELOPER HAVE EXPRESSLY BARGAINED FOR AND AGREED TO THIS DISCLAIMER. FOR AND IN CONSIDERATION OF THE EXECUTION OF THIS LEASE, HPARC AND DEVELOPER AGREE THAT HPARC WOULD NOT HAVE SIGNED THIS LEASE BUT FOR THE DISCLAIMERS SET FORTH ABOVE, AND DEVELOPER

WAIVES ANY WARRANTY REGARDING THE PREMISES EXCEPT THOSE EXPRESSLY PROVIDED IN THIS LEASE.

31. **SURVIVAL.** Any obligations of indemnification created under this Lease shall survive the expiration or earlier termination of this Lease for one (1) year thereafter.

32. **EXHIBITS.** The Exhibits attached hereto are incorporated herein and made a part of this Lease for all purposes.

33. **GOVERNING LAW.** This Lease will be governed by the laws of the State of Texas.

34. **FORCE MAJEURE.** Whenever performance is required of any party under this Lease, the obligation for such performance will be extended as provided in this Section 34. If completion of performance is delayed at any time by reason of acts of God, war, terrorism, sabotage, civil commotion, strife or other violence, riots, strikes, picketing or other labor disputes, extraordinary weather conditions, flood, drought, earthquake, storm, tornado, lightning, windstorm, other natural catastrophe, damage to work in progress by reason of fire or other casualty (provided this shall not extend the timeframes for commencing of repairs or restoration set forth in Section 19(b)), or causes beyond any reasonable control of a party (other than unavailability of labor or materials due to a party's inability to pay for labor or materials), acts of the State, Federal or local government in its sovereign capacity (other than the usual and customary observance and enforcement of Laws), including a moratoria, litigation challenging the validity or content of any permit or approval necessary for the construction or operation of the Project; or litigation by HPARC or the City, nearby landowners or third party interest groups challenging the validity or content of this Lease or any aspect of the construction or operation of the Project (each, a "**Force Majeure Event**"), then, the time for performance as specified in this Lease will be appropriately extended by the time of the delay actually caused; provided that the party claiming a permitted delay pursuant to this Section 34 advises the other party of the circumstances supporting such claim within ninety (90) days following the date the claiming party obtains actual knowledge of the occurrence of the Force Majeure Event. Failure to timely provide notice of a permitted delay under this Section 34 will be deemed a waiver of the additional time claim. For the avoidance of doubt, the term "litigation" in the preceding sentence shall not include litigation resulting from Developer's failure to comply with the terms of this Lease or a breach of the Guaranty. The provisions of this Section 34 will not operate to excuse any part from the prompt payment of any money required by this Lease, including but not limited to Developer's obligation to pay Rent in accordance herewith.

35. **LIMITED GUARANTY.** DEVELOPER SHALL CAUSE GUARANTOR TO EXECUTE AND DELIVER TO HPARC THE GUARANTY OF THIS LEASE IN THE FORM ATTACHED HERETO AS EXHIBIT "C" CONTEMPORANEOUSLY WITH THE EFFECTIVE DATE.

36. **MEANING.** All terms and words used in this Lease, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Lease or any section or clause herein may require, the same as if such words had been fully and properly written in number and gender. Unless expressly stated otherwise, references to "include" or "including" means "including, without limitation." The terms "hereto," "herein" or "hereunder" refer to this Lease as a whole and not to any particular Article or Section hereof.

37. **THIRD PARTY BENEFICIARY.** Certain provisions of this Lease include certain benefits for PFC and the City, which are not parties to this Lease. HPARC and Developer agree that such provisions are for the third party benefit of PFC and the City, respectively, and may be performed and/or

enforced, in their respective sole discretion and without any duty to do so or liability to HPARC or to Developer from doing so or failing to do so for any reason.

38. **RELATIONSHIP OF PARTIES.** The relationship of HPARC and Developer under this Lease is that of landlord and tenant, each acting in its own best interests. No partnership, joint venture or other or additional business relationship is established or intended hereby.

39. **NO LANDLORD'S LIEN.** It is expressly understood and agreed that HPARC shall not have any contractual or statutory landlord's lien or security interest of any kind applicable to the Improvements or to Developer's furniture, fixtures, equipment, inventory, or other property regardless of where any such property may be located, and HPARC hereby waives and relinquishes any such contractual and statutory landlord's lien and security interest of any kind applicable to the Improvements and to Developer's property.

40. **TREATMENT OF LIENS; THIRD PARTY RIGHTS.** If at any time during the Term, any lien or any third party right exists against the Premises or any portion thereof, that creates rights superior to those of Developer, and Developer determines that the existence, use, operation, implementation or exercise of such lien or such third party right could reasonably be inconsistent with or delay, interfere with, impair or prevent the exercise of any of Developer's rights under this Lease or the financing of the Project, Developer shall be entitled to seek to obtain a Subordination and Non-Disturbance Agreement (defined below) from the holder of such lien or such third party right, and HPARC shall use commercially reasonable efforts and diligence in helping Developer obtain the same at no out-of-pocket expense to HPARC. HPARC also agrees that any right, title or interest created by HPARC after the Effective Date and effective during the Term in favor of or granted to any third party affecting the Premises shall be subject to (i) this Lease and all of Developer's rights, title and interests created in this Lease, (ii) any and all documents executed or to be executed by and between Developer and HPARC in connection with this Lease, and (iii) the NRP Sublease and all of NRP's rights, title and interests created in the NRP Sublease once the NRP Recognition Agreement has been executed. A "**Subordination and Non-Disturbance Agreement**" shall mean an agreement between Developer, NRP (once the NRP Recognition Agreement has been executed) and the holder of a lien or a third party right that provides that the holder of such lien or such third party right (i) subordinates such lien or such third party right to Developer's interest under this Lease, and NRP's interest under the NRP Sublease once the NRP Recognition Agreement has been executed, (ii) agrees not to disturb Developer's possession or rights under this Lease, or NRP's possession or rights under the NRP Sublease once the NRP Recognition Agreement has been executed, and (iii) agrees to provide notice of defaults of HPARC under the lien or third party right documents to Developer and NRP and agrees to allow Developer and NRP and their respective lenders a reasonable period of time following such notice to cure such defaults on behalf of HPARC. All Subordination and Non-Disturbance Agreements obtained pursuant to this section shall be in a form reasonably acceptable to Developer, NRP (once the NRP Recognition Agreement has been executed), Developer's lenders, and NRP's Lenders (once the NRP Recognition Agreement has been executed), if any, and shall be in a form that may be recorded following their execution.

41. **LEGAL DESCRIPTION.** Developer shall have the right to resurvey the Premises during the Due Diligence Period to confirm the accuracy of the legal descriptions of the Premises attached hereto as **Exhibit "A-1"** and **Exhibit "A-2"**. In the event that Developer discovers through such resurvey any inaccuracies in the legal description of the Premises, the parties agree that the validity of this Lease shall not be affected, but rather the parties shall amend the legal description of the Premises contained in Exhibit "A" of this Lease and in Exhibit "A" of the and the memorandum of this Lease to reflect the corrected legal description of the Premises as mutually agreed upon between the parties.

[Signature Page Follows]

IN WITNESS WHEREOF, HPARC and Developer have caused this Lease to be executed on the date first set forth above.

**HPARC:**

**HEMISFAIR PARK AREA  
REDEVELOPMENT CORPORATION,  
a Texas local government corporation**

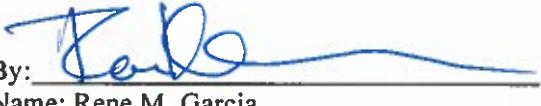
By: \_\_\_\_\_

Name: Andres Andujar

Title: Chief Executive Officer

**DEVELOPER:**

**ZH DOWNTOWN DEVELOPMENT COMPANY,  
LLC, a Texas limited liability company**

By:   
Name: Rene M. Garcia  
Title: VP Development

**EXHIBIT "A-1"**  
**LEGAL DESCRIPTION OF MARKET STREET TRACT**

METES AND BOUNDS DESCRIPTION

FOR

LAND BANK TRACT 1

A 2.140 acre, or 93233 square feet more or less, tract of land comprised of all of that 1.484 acre tract described in deed to the Hemisfair Park Public Corporation recorded in Volume 16485, Pages 42-49 and as Lease Tract 1 to Hemisfair Park Area Redevelopment Corporation in deed recorded in Volume 17362, Pages 2119-2137, both of the of the Official Public Records of Real Property of Bexar County, Texas said 2.140 acres being 1.439 acres out of Lot 14, Block 3 and 0.045 acres out of the Public Waterway in Block 3 of the H.B. Gonzalez Convention Center Subdivision recorded in Volume 9677, Pages 10-12 of the Deed and Plat Records of Bexar County, Texas and 0.656 acre tract surveyed previously out of the Market Street right-of-way established in the Civic Center Project No 5 Tex. R-83 Urban Renewal Agency City of San Antonio subdivision recorded in Volume 9518, Pages 123-126 of the Deed and Plat Records of Bexar County, Texas and all in New City Block 13814 of the City of San Antonio, Bexar County, Texas. Said 2.140 acre tract being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (NA2011) epoch 2010.00;

**BEGINNING:** At an "+" in concrete set for the north corner of said 1.484 acre tract, being an angle of that 8.926 acre tract as described in Deed of dedication recorded in Volume 16485, Pages 22-41 and on the southwest right-of-way line of the said Market Street right-of-way, a 125-foot right-of-way as established in said Civic Center Project No 5 Tex. R-83 Urban Renewal Agency City of San Antonio subdivision, and being the west corner of said 0.656 acre tract and being S 75°00'34", a distance of 165.78 feet from a ½" iron rod with cap marked "Pape-Dawson" set for a curve return of said right-of-way and said Lot 14;

**THENCE:** N 14°59'26" E, over and across said Market Street right-of-way with the northwest line of said 0.656 acre tract, a distance of 59.40 feet to the north corner of said 0.656 acre tract and the herein described tract;

**THENCE:** S 75°00'34" E, over and across said Market Street right-of-way with the northeast line of said 0.656 acre tract, a distance of 481.25 feet to the east corner of said 0.656 acre tract;

THENCE: S 15°01'04" W, over and across said Market Street right-of-way with the southeast line of said 0.656 acre tract, at 59.40 feet passing a brass nail stamped "Pape-Dawson set for an angle corner of said 1.484 acre tract and of said 8.926 acre tract, and being the south corner of said 0.656 acre tract, and continuing with a southeast line of said 1.484 acre tract a total distance of 145.40 feet to a brass nail stamped "Pape-Dawson set for a south corner of said 1.484 acre tract and a reentrant corner of said 8.926 acre tract, and being the southernmost corner of the herein described tract;

THENCE: Continuing with the line of said 1.484 acre tract and said 8.926 acre tract the following bearings and distances:

N 75°00'34" W, a distance of 111.81 feet to a point;

S 15°01'04" W, a distance of 69.00 feet to a point;

N 75°00'34" W, a distance of 297.97 feet to a point;

N 33°54'50" W, a distance of 94.71 feet to a point;

THENCE: N 14°59'26" E, a distance of 92.75 feet to the POINT OF BEGINNING, and containing 2.140 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey description and map prepared under job number 7645-30 by Pape-Dawson Engineers, Inc.

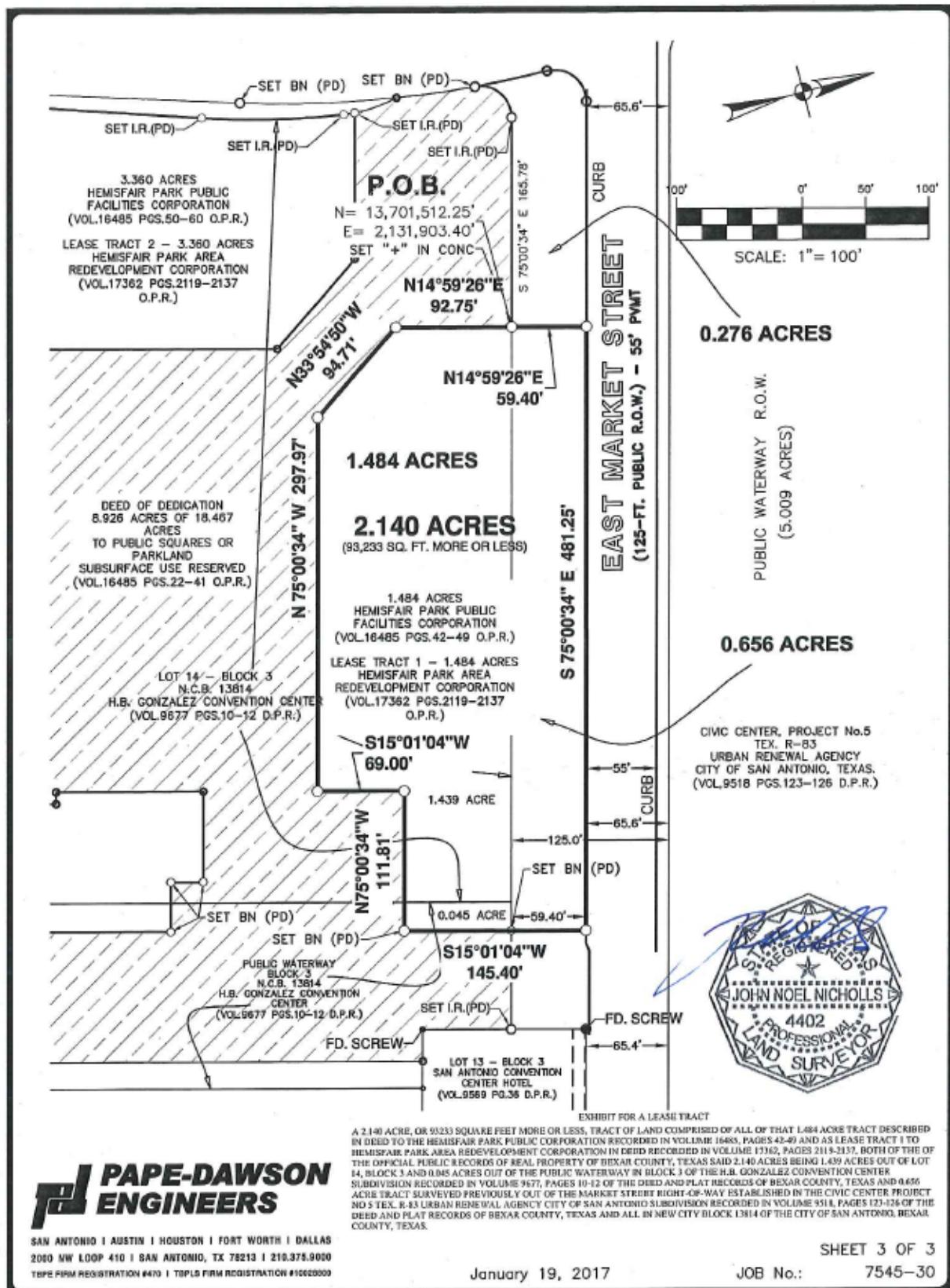
PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: January 19, 2017

JOB NO. 7645-30

DOC. ID. N:\CIVIL\7645-30\Word\7645-30 North Lease tract.docx





Title: N:\\GWR\\7645-30\\7645-30-ER-Lesse Tract-North.deg

**PAPE-DAWSON  
ENGINEERS**

SAN ANTONIO | AUSTIN | HOUSTON | FORT WORTH | DALLAS  
2800 NW LOOP 410 | SAN ANTONIO, TX 78213 | 210.375.9000

EXHIBIT "A-1" – Page 3

**EXHIBIT "A-2"**  
**LEGAL DESCRIPTION OF SOUTH ALAMO TRACT**

**METES AND BOUNDS DESCRIPTION  
FOR  
LAND BANK TRACT 2**

A 2.254 acre, or 98,191 square feet more or less, tract of land comprised of 1.542 acres and 0.192 acres out of Lot 14, Block 3 and all of that called 0.0875 acres, surveyed as 0.094 acres, dedication to the right-of-way of South Alamo Street of the H.B. Gonzalez Convention Center subdivision recorded in Volume 9677, Pages 10-12 of the Deed and Plat Records of Bexar County, Texas, and 0.457 acres of a remaining portion of Lot 12, Block 3 of the Civic Center, Project No. 5 Tex R-83 Urban Renewal Agency City of San Antonio, Texas subdivision recorded in Volume 9518, Pages 122-126 of the Deed and Plat Records of Bexar County, Texas, and all but said 0.094 acres being also out of that 3.360 acre tract described in deed to Hemisfair Park Public Facilities Corporation recorded in Volume 16485, Pages 50-60 and as Lease Tract 2 to the Hemisfair Park Area Redevelopment Corporation recorded in Volume 17362, Pages 2119-2137 both of the Official Public Records of Real Property of Bexar County, Texas. And said 2.254 acres being in New City Block 13814 of the City of San Antonio, Bexar County, Texas. Said 2.254 acre tract being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (NA2011) epoch 2010.00;

**BEGINNING:** At a brass nail stamped "Pape-Dawson" on the east right-of-way line of said South Alamo Street, a variable width public right-of-way, at the southwest corner of said 0.094 acre right-of-way dedication and of said H.B. Gonzalez Convention Center subdivision, said brass nail set for a corner of said 3.360 acre tract;

**THENCE:** With the west line of said 0.094 acre right-of-way dedication the following bearings and distances:

N 17°29'05" E, a distance of 259.15 feet to a brass nail set for a point of curvature; Along a tangent curve to the left, said curve having a radius of 863.00 feet, a central angle of 08°16'32", a chord bearing and distance of N 13°20'49" E, 124.54 feet, for an arc length of 124.65 feet to a point of cusp and northernmost corner of the herein described tract at an angle of Lot 14 of said H.B. Gonzalez Convention Center subdivision and said 3.360 acre tract, being also an angle of that 8.926 acre tract as described in Deed of Dedication recorded in Volume 16485, Pages 22-41 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: Departing said right-of-way and with the common line of said 3.360 acre tract and said 8.926 acre tract the following bearings and distances:

Along a non-tangent curve to the right, said curve having a radial bearing of S 76°33'23" W, a radius of 113.50 feet, a central angle of 17°43'06", a chord bearing and distance of S 04°35'04" E, 34.96 feet, for an arc length of 35.10 feet to a set ½" iron rod with cap marked "Pape-Dawson";

S 75°00'34" E, a distance of 115.70 feet to a point;

S 33°54'50" E, a distance of 94.26 feet to a point;

S 14°59'26" W, at 301.97 feet passing a south line of said Lot 14, and continuing over and across said Lot 12 for a total distance of 349.64 feet to a set mag nail and washer stamped "Pape-Dawson";

S 75°00'34" E, at 24.91 feet passing a west line of said Lot 14 and continuing over and across said Lot 14 for a total distance of 89.59 feet to a point;

THENCE: Departing said line and over and across said Lot 14 and said 3.360 acre tract the following bearings and distances:

S 15°01'04" W, a distance of 115.67 feet to a point;

S 47°30'40" W, a distance of 34.14 feet to a point;

N 41°52'18" W, at 55.32 feet passing the aforementioned west line of said Lot 14, and continuing over and across said Lot 12 for a total distance of 139.77 feet to a point;

THENCE: Continuing over and across said Lot 12 and said 3.360 acre tract the following bearings and distances:

N 67°03'01" W, a distance of 21.88 feet to a point;

N 14°21'21" E, a distance of 21.22 feet to a point;

N 67°52'31" W, a distance of 29.51 feet to a point;

N 22°34'54" E, a distance of 36.42 feet to a point;

THENCE: N 74°27'39" W, at 15.8 feet passing the northeast corner of that 0.2156 acre tract save and except tract to the lease recorded in the aforementioned Volume 17362, Pages 2119-2137 of the Official Public Records of Real Property of Bexar County, Texas and continuing 80.9 feet with the north line of said 0.2156 acre tract and continuing 20.0 feet for a total distance of 116.70 feet to a point on the west line of said Lot 12 and said 3.360 acre tract and being the aforementioned east right-of-way line of South Alamo Street;

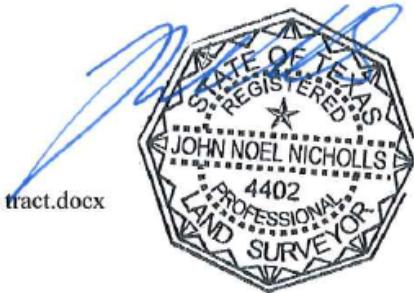
THENCE: N 17°29'05" E, with said east right-of-way line of said South Alamo Street and east line of said Lot 12 and said 3.360 acre tract a distance of 64.13 feet to the POINT OF BEGINNING, and containing 2.254 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey description and map prepared under job number 7645-30 by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: January 20, 2018

JOB NO. 7645-30

DOC. ID. N:\CIVIL\7645-30\Word\7645-30 South Lease tract.docx





**EXHIBIT “B”**

## PLAN APPROVAL PROCESS

- (a) Within sixty (60) days following the Effective Date of this Lease, Developer shall deliver to HPARC and to City its PPSD (as defined below) for the Improvements.
- (b) Within thirty (30) days of receipt thereof, HPARC shall review such PPSDs and either (i) approve such PPSDs in writing, or (ii) provide comments to Developer requesting changes to such PPSDs which shall include written explanations and suggestions regarding such requested changes (the “**PPSD Objections**”). HPARC shall not be arbitrary or capricious in determining whether the PPSDs are approved or disapproved, and HPARC shall base its approval or disapproval of the PPSD on whether such PPSDs conform to the aesthetic, vision and overall plan for the Hemisfair District and the July 22, 2015 Hemisfair Park: RFP P3, including without limitation the massing, height, orientation, color and materials shown on the PPSDs. If HPARC shall fail to provide any PPSD Objection within the thirty (30) day period referenced above, HPARC shall be deemed to have approved the PPSDs. If HPARC objects to any matter in the time and manner provided herein, Developer may, at Developer’s option, within twenty (20) days after receipt of the PPSD Objections (“**Modification Period**”) modify the PPSDs to take into account HPARC’s PPSD Objections and deliver to the HPARC an updated set of PPSDs (the “**Concluding Preliminary Plans**”). During the Modification Period HPARC agrees to use good faith and reasonable efforts to cooperate and communicate with Developer regarding the preparation of the Concluding Preliminary Plans. In the event Developer fails to deliver a Concluding Preliminary Plans prior to the expiration of the Modification Period, then as of the expiration of the Modification Period the Preliminary Plans shall be deemed the Concluding Preliminary Plans. In the event HPARC has reasonable objections to the Concluding Preliminary Plans, within ten (10) days after the expiration of the Modification Period, HPARC may (a) approve the Concluding Preliminary Plans in writing thereby waiving any further uncured objections and comments, or (b) terminate this Lease, unless the parties agree in writing to extend the relevant periods hereunder. HPARC’s failure to make the foregoing election by written notice to Developer within such ten (10) day period shall be deemed HPARC’s approval of the Concluding Preliminary Plans. If HPARC terminates this Lease pursuant to the terms of this paragraph, then neither party will thereafter have any further obligations hereunder, other than the expressly surviving obligations under the Lease.
- (c) Following approval or deemed approval of the Concluding Preliminary Plans, Developer shall prepare the Final Plans (as defined below) and submit them to HPARC for approval on or before March 31, 2018 (the “**Final Plan Submittal Deadline**”). HPARC shall review the Final Plans and, within thirty (30) days after receipt thereof, either (i) approve such Final Plans in writing, or (ii) provide comments to Developer requesting changes to such Final Plans which shall include written explanations and suggestions regarding such requested changes (“**Final Plan Objections**”); provided, however, that HPARC’s approval of the Final Plans shall not be unreasonably withheld, conditioned or delayed so long as such Final Plans conform to the Concluding Preliminary Plans. HPARC’s review shall not relieve the Developer’s responsibility for conformance with applicable statutes, ordinances, codes, rules and regulations. HPARC’s review shall not relieve the Developer’s responsibility for technical design, coordination of the parts and coordination with related work and existing conditions, except that the Developer shall not be held responsible for non-performance of entities not directly contracted with the Developer.

If HPARC objects to any matter in the time and manner provided herein at Developer's request, for up to sixty (60) days after receipt of the Final Plan Objections ("Final Modification Period"), HPARC and Developer shall cooperate with one another and endeavor together using good faith and commercially reasonable efforts to modify the Final Plans to take into account HPARC's Final Plan Objections and prepare a mutually acceptable updated set of Final Plans (the "Concluding Final Plans").

In the event Developer fails to deliver a Concluding Final Plans prior to the expiration of the Final Modification Period, or the parties have not prior thereto agreed in writing as to the approval of the Concluding Final Plans, Developer shall be entitled to deliver written notice to HPARC that the Final Modification Period shall be extended for up to sixty (60) additional days and during such extended Final Modification Period the parties shall continue to cooperate with one another and endeavor together using good faith and commercially reasonable efforts to prepare a mutually acceptable updated set of Final Plans. In the event Developer fails to deliver a Concluding Final Plans prior to the expiration of the Final Modification Period, as extended if applicable, then as of the expiration of the Final Modification Period the Final Plans shall be deemed the Concluding Final Plans. In the event HPARC has reasonable objections to the Concluding Final Plans, within ten (10) days after the expiration of the Final Modification Period, HPARC may (a) approve the Concluding Final Plans in writing thereby waiving any further uncured objections and comments, or (b) terminate this Lease, unless the parties agree in writing to extend the relevant periods hereunder. HPARC's failure to make the foregoing election by written notice to Developer with such ten (10) day period shall be deemed HPARC's approval of the Concluding Final Plans. If HPARC terminates this Lease pursuant to the terms of this paragraph, then neither party will thereafter have any further obligations hereunder, other than the expressly surviving obligations under the Lease. Upon such a termination, the Interim Period Deposit shall be refunded to Developer.

The Concluding Final Plans once approved or deemed approved by HPARC shall constitute the "Approved Plans" for all purposes under this Lease.

For purposes hereof, "PPSDs" shall mean preliminary plans and schematic drawings that illustrate the scale and relationship of the Project components, conforming to the aesthetic, vision and overall plan of the Hemisfair District. The PSD shall consist of drawings and other documents including site plans, preliminary building plans, preliminary sections and elevations, perspective sketches, preliminary selections of major building systems, exposed to view material and finish schedules.

For purposes hereof, the "Final Plans" shall mean final plans illustrating compliance with the Concluding Preliminary Plans. The Final Plans shall include site plans, building plans, elevations, sections and exposed to view material and color schedules and perspective sketches. The Final Plans shall describe the arrangement and relationship of spaces, functionality, exterior envelope, major building systems including foundation, superstructure, fenestration, mechanical, electrical and plumbing systems, security and alarms systems, vertical conveyance systems, significant finish materials, colors and textures and compliance with applicable statutes, ordinances, building codes, rules and regulations.

**EXHIBIT "C"****LIMITED GUARANTY**

This Limited Guaranty ("Guaranty"), effective \_\_\_\_\_, 2017, is made by Zachry Hospitality, LLC ("Guarantor") to and for the benefit of HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION, a Texas local government corporation formed under Subchapter D of Chapter 431 of the Texas Transportation Code ("HPARC"). Capitalized terms not otherwise defined herein have the meanings specified in the Lease (as defined below).

**Recitals**

ZH DOWNTOWN DEVELOPMENT COMPANY, LLC, a Texas limited liability company ("Developer"), and HPARC are parties to that certain Development Sublease Agreement (the "Lease") effective as of the date hereof, pertaining to that certain real property located in the City of San Antonio, Bexar County, Texas, more particularly described in the Lease. Capitalized words or phrases that are not defined herein will have the meaning ascribed to such capitalized words and phrases in the Lease, unless the context clearly indicates another meaning.

**Guaranty**

In consideration of the foregoing and to induce HPARC to enter into the Lease, Guarantor agrees as follows:

1. Subject to paragraph 9 below, Guarantor unconditionally and absolutely guarantees to HPARC the prompt and full payment and performance when due and owing of all present and future obligations of Developer under the Lease that are not timely paid or performed by Developer in accordance with the terms of the Lease.
2. Guarantor shall perform all obligations under this Guaranty strictly in accordance with the terms and provisions of the Lease.
3. Guarantor waives (a) presentment and demand for payment of any indebtedness to Developer or Guarantor, and (b) protest and notice of dishonor or default to Developer or Guarantor to which Developer or Guarantor might otherwise be entitled under a guaranty.
4. This Guaranty is an absolute, continuing and unconditional guaranty of payment and performance and not of collection. Notice to Guarantor of any and all defaults is waived and consent is hereby given to all extensions of time that HPARC may grant to Developer in the payment or performance of any of the terms or provisions of the Lease and/or to the waiving in whole or in part of any such payment or performance, and/or to the releasing of Developer in whole or in part from any such performance, and/or to the adjusting of any dispute in connection with the Lease, and/or to the assignment of the Lease to any other entity; and no such defaults, extensions, waivers, releases, adjustments, or assignments, with or without the knowledge of Guarantor, shall affect or discharge the liability of Guarantor. Guarantor and HPARC hereby waive any and all right to a trial by jury in any action or proceeding to enforce this Guaranty. Guarantor and HPARC further agree that the prevailing party in any action to enforce this Guaranty will be entitled to receive from the other party all reasonable expenses, including legal fees and disbursements paid or incurred by the prevailing party in any action seeking to enforce this Guaranty. Guarantor agrees that it is not necessary for HPARC, in order to enforce this Guaranty, to institute suit or exhaust its legal remedies against Developer; but the sole condition precedent to enforcement of the obligations of Guarantor hereunder is that Developer does not timely perform its payment or performance obligations in accordance with the terms of the Lease.

5. This Guaranty shall not be impaired by, and Guarantor hereby consents to (i) any modification, supplement, extension or amendment of the Lease to which the parties thereto may hereafter agree, (ii) any assignment of the Lease, (iii) any exercise or non-exercise of any right, remedy, power, or privilege under or in respect of this Guaranty or the Lease; or (iv) any assignment or transfer of the assets of Developer to, or any consolidation or merger of Developer with or into any other person, partnership, or corporation, or any disposition by Guarantor of any interest in Developer. The liability of Guarantor hereunder is primary, direct, unconditional and co-extensive with that of the Developer and may be enforced without requiring HPARC first to resort to any other right, remedy or security. The enforceability of this Guaranty shall not be affected by any bankruptcy proceeding or other proceeding affecting the rights of creditors of Developer, nor by discharge or modification of Developer's liability under the Lease in any bankruptcy proceeding. Guarantor shall have no right of subrogation, reimbursement or indemnity whatsoever, nor any right of recourse to security for the debts and obligations of Developer to HPARC, unless and until all of said debts and obligations have been satisfied in full.
6. This Guaranty is governed as to its validity, construction and performance by the laws of the State of Texas, without regard to its conflict of law provisions.
7. Subject to paragraph 9 below, Guarantor agrees that this Guaranty is a continuing and irrevocable guaranty and shall remain in full force and effect until all payment and performance obligations under the Lease have been paid and performed as set forth in the Lease. Nothing in this paragraph 7 shall be construed to diminish in any way the effect of paragraph 9 below.
8. This Guaranty is binding upon Guarantor, its successors and assigns, and inures to the benefit of HPARC and its successors and assigns.
9. Upon Substantial Completion of the Project in accordance with the Lease, this Guaranty shall terminate completely, including without limitation as to all obligations of Developer under the Lease, including those arising prior to the date of Substantial Completion, provided that the obligations of Guarantor under this Guaranty shall continue and remain in full force and effect with respect to the payment of any unpaid Rent under the Lease for the period prior to the date of Substantial Completion.

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STATE OF TEXAS

COUNTY OF BEXAR

Before me, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

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Notary Public

Commission Data:

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(NOTARIAL SEAL)

**EXHIBIT "D"**

**PERMITTED EXCEPTIONS**

1. Volume 5505, Page 957, Volume 6205, Page 537, Volume 6433, Page 177, Deed Records, Bexar County, Texas.
2. Declaration of Restrictive Covenants made by the City and recorded in the Official Public Records of Bexar County on November 7, 2013 as Document Number 20130231717 and Volume 16425, Page 2058, Real Property Records, Bexar County, Texas.
3. 10 foot chilled water and steam lines easements, shown on plat recorded in Volume 9518, Pages 123-126, Deed and Plat Records, Bexar County, Texas.
4. 50 foot utility easement, shown on plat recorded in Volume 9518, Pages 122-126, Deed and Plat Records, Bexar County, Texas.
5. Permanent and Temporary Construction Easement, San Antonio River Authority, grantee, recorded in Volume 4220, Page 152, Real Property Records, Bexar County, Texas.
6. Memorandum of Lease with Hemisfair Park Area Redevelopment Corporation recorded in Volume 17362, Page 2119, Real Property Records, Bexar County, Texas.
7. Historic Designation Verified Certificate as described in instrument filed August 13, 2014, recorded in Volume 16817, Page 1967, Real Property Records, Bexar County, Texas. This exception is in addition to and not in lieu or limitation of any other exception or exclusion in this policy.

**EXHIBIT "E"**

PROJECT TIMELINE

PROJECT PHASE	COMPLETION DATE
Construction Commencement Deadline	July 31, 2018
Substantial Completion	May 31, 2021

*TWO ADDITIONAL MILESTONES BETWEEN THE CONSTRUCTION COMMENCEMENT DEADLINE AND SUBSTANTIAL COMPLETION TO BE ADDED DURING DUE DILIGENCE.*

**EXHIBIT "F"**  
**CERTIFICATE OF SUBSTANTIAL COMPLETION**

**EXHIBIT "G"**  
**PFC RECOGNITION AGREEMENT**

AFTER RECORDING, RETURN TO:  
 ZH Downtown Development Company, LLC  
 c/o Rene M. Garcia  
 2330 N Loop 1604 W  
 San Antonio, Texas 78248  
 P.O. Box 33240, San Antonio, TX 78265-3240

**RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

This RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is made and entered into effective as of February 3, 2017 by and between the Hemisfair Park Public Facilities Corporation, a Texas non-profit public facilities corporation (the "PFC") and ZH DOWNTOWN DEVELOPMENT COMPANY, LLC, a Delaware limited liability company ("Subtenant"), and is executed as of the later date accompanying the signature of PFC or Subtenant below.

**RECITALS:**

A. On December 11, 2014, PFC, as landlord, and HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION, a Texas non-profit local government corporation ("HPARC"), as tenant, entered into that certain Master Lease Agreement covering property in San Antonio, Bexar County, Texas, which property is more fully described in Memorandum of Lease dated July 23, 2015, executed by PFC and HPARC and filed for record in Book 17362, Page 2119, Official Public Records of Real Property of Bexar County, Texas, as amended by First Amendment to Master Ground Lease Agreement executed June 6, 2016 and by Second Amendment to Master Ground Lease Agreement dated February \_\_, 2017 (as amended, the Master Ground Lease).

B. On February 3, 2017 (the Effective Date), HPARC, as sublandlord, and Subtenant entered into that certain Development Sublease Agreement (Sublease) covering the tract of land (the Subleased Property) described on Exhibit A attached to and made a part of this Agreement for all purposes, which Sublease is subject to the Master Ground Lease. *Capitalized words or phrases not defined in this Agreement shall have the meaning ascribed thereto in the Sublease.*

C. PFC and Subtenant wish to (i) clarify their respective positions during the period in which the Master Ground Lease is in effect (ii) clarify the relationship of the parties if the Master Ground Lease should terminate prior to any expiration or termination of the Sublease, and (iii) assure Subtenant's possession of the Premises upon terms and conditions set forth in the Sublease, irrespective of a termination or expiration of the Master Ground Lease, pursuant to the terms and conditions set forth herein.

**AGREEMENTS:**

NOW, THEREFORE, for and in consideration of the matters set forth in the Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PFC and Subtenant hereby agree:

1. Recognition of Sublease. PFC hereby approves the Sublease and all of the terms, covenants, conditions and provisions thereof, and agrees that the exercise by Subtenant of any of the rights, remedies and options contained therein shall not constitute a default under the Master Ground Lease.

2. Relationship of the parties while the Master Ground Lease remains in effect:

- a. Subtenant's Obligation to Give Notice of Defaults: Any event which would give Subtenant the right to exercise any remedies under the Sublease is referred to in this Agreement as a "Sublease Default." If a Sublease Default occurs and whether or not the Sublease requires Subtenant to give HPARC notice and a period of time in which to cure such Sublease Default, then Subtenant agrees that before it exercises any such remedy, it will provide to PFC a copy of any notice of default provided to HPARC and allow PFC, shall have the right to cure any Sublease Default for a period equal to the greater of thirty (30) days or the cure period afforded HPARC under the Sublease PFC shall have no duty or obligation to cure any default of HPARC under the Sublease while the Master Ground Lease remains in effect.
- b. PFC's Obligation to Give Notice of Defaults: PFC hereby agrees to give copies to Subtenant of all notices given to HPARC under the Master Ground Lease, including but not limited to, notices of default thereunder. PFC agrees that Subtenant shall have the right but not the obligation to cure any default or failure in performance of HPARC under the Master Ground Lease for a period equal to the greater of thirty (30) days or the cure period afforded HPARC under the Master Ground Lease. PFC agrees that it shall not seek to terminate the Master Ground Lease or exercise any other remedy which would affect the use or possession of the Subleased Property during the Subtenant's cure period hereunder.
- c. Non-disturbance: As long as Subtenant is not in default beyond any applicable cure period granted to Subtenant in the Sublease, PFC will not interfere with, disturb or deprive Subtenant's possession of the Subleased Property, or any right or privilege granted to or inuring to the benefit of Subtenant under the Sublease, in the exercise of any of its rights under the Master Ground Lease or any instrument modifying or amending the same or entered into in substitution or replacement thereof. The inspection rights and right of re-entry reserved to PFC under the Master Ground Lease will be limited in all respects to the inspection of the Subleased Property to determine that the Subleased Property and the use thereof comply with the Sublease and the Master Ground Lease.
- d. Consents of PFC. PFC hereby agrees that whenever it has an obligation under the Master Ground Lease with respect to the Subleased Property, or its consent or approval is required for any action of HPARC or Subtenant under the Sublease, then, to the extent such obligation, consent or approval relates to the Subleased Property or Subtenant's use and occupation thereof, it will perform such obligation in accordance with the Master Ground Lease or Sublease, as applicable.
- e. Amendment of Sublease. No amendment of the Sublease may authorize a use of the Subleased Property which is prohibited under the Master Ground Lease or which eliminates the prohibition of discrimination against any person or persons because of race, color, religion, national origin, age, sex, sexual orientation, gender identity, veteran status or disability in the development, improvement and conduct of operations on the Subleased Property. For the avoidance of doubt, by signing this Agreement, the PFC agrees and confirms that it has approved all terms of the Sublease and the uses and rights under the Sublease are permitted by the Master Ground Lease. The prior, written consent of PFC shall be required for any modification, extension or amendment of the Sublease which:
  - (i) materially alters, in a manner beneficial to the Subtenant, the financial terms of the Sublease (including, without limitation, the amounts and types of rent or expenses payable by Subtenant, the manner of calculating such rent and expenses or the amounts and types of insurance required to be provided by Subtenant),

- (ii) materially changes the permitted purpose for which the Subleased Property may be used by Subtenant,
- (iii) alters any provision of the Sublease which grants or provides to PFC any right, benefit or indemnity, or
- (iv) alters the Term or any Extension Option.

Subtenant may assign, or collaterally assign, its rights under the Sublease without the need for any consent from the PFC.

f. Subordination of Landlord's Lien. From time to time, some or all of Subtenant's property or Improvements may be financed or owned by someone other than Subtenant. To the extent that any of Subtenant's property or Improvements are financed or owned by someone other than Subtenant, PFC agrees to recognize the rights of the lender or owner of Subtenant's property or Improvements and hereby subordinates any claim arising by way of any landlord's lien (whether created by statute or by contract) or otherwise with respect to the Subtenant's relevant property or Improvements to any lender or secured creditor or lessor. .

g. Insurance Proceeds. So long as the Sublease remains in effect, PFC shall permit insurance, eminent domain, condemnation and similar payments and/or awards relating to the improvements constructed on the Subleased Property and the subleasehold estates created pursuant to the Sublease to be used as required or permitted pursuant to the provisions of the Sublease.

3. Relationship of the parties if Master Ground Lease terminates. Upon the termination or expiration of the Master Ground Lease, PFC shall use commercially reasonable efforts to give prior written notice of such termination to Subtenant and Subtenant's Leasehold Mortgagee (as defined in the Sublease) and in all cases shall give written notice of such termination or expiration to Subtenant and Subtenant's Leasehold Mortgagee (as defined in the Sublease) within fifteen (15) days thereafter. Notwithstanding such termination of the Master Ground Lease, the Sublease will continue in full force and effect, and the PFC shall succeed to and assume all the rights and obligations of the HPARC as landlord under the Sublease, the Sublease shall continue as a direct lease between PFC and Subtenant without the necessity of executing a new lease or sublease, on the same terms and conditions as are in effect under the Sublease immediately preceding the termination or expiration of the Master Ground Lease, and Subtenant shall continue to have all the rights and obligations of the Subtenant under the Sublease and shall attorn to PFC in such event. The only exceptions to such arrangement are as follows:

- a. Effect of Prepayment by the Subtenant under the Sublease. PFC is not bound to recognize Subtenant's payment to Landlord of any amounts under the Sublease if such amounts were paid more than one (1) payment period in advance of when they were due. PFC shall recognize all prepayments by Subtenant to HPARC of taxes, insurance and other charges which are Rent under the Sublease.
- b. Recognition of Amendments to the Sublease. PFC is not bound to recognize any amendment to the Sublease to which PFC which does not comply with the terms of this Agreement.
- c. Existing Defaults: PFC is not liable in damages for any default by HPARC under the Sublease. However, if Subtenant has sent PFC the notice required under the terms of Section 1(a) above, and the Sublease Default set forth in such notice has not been cured by PFC after the expiration of PFC's cure period as set forth in Section 1(a) above, Subtenant's remedies will survive the termination of the Master Ground Lease. If an event has occurred that allows Subtenant an immediate remedy without notice and an opportunity to cure to HPARC, then in order for Subtenant

to be entitled to exercise such remedy against PFC after termination of the Master Ground Lease, Subtenant must first give PFC thirty (30) days' notice and opportunity to cure.

4. Condition of Master Ground Lease: PFC hereby confirms that the Master Ground Lease is in full force and effect, that to its actual knowledge (without duty of inquiry or investigation), HPARC is not presently in default under the Master Ground Lease and there exists no circumstance or condition which, with the giving of notice or the passage of time would constitute a default thereunder, and that the Master Ground Lease has not been amended or modified as of the date hereof except as stated in the Recitals to this Agreement.

5. Updated Recognition Agreement: To the extent HPARC executes the NRP Recognition Agreement as provided for in Section 2(f) of the Sublease, and such NRP Recognition Agreement contains terms which are in the reasonable and good faith opinion of Subtenant materially more favorable for NRP as a subsubtenant to the Master Ground Lease than the terms incorporated herein for the benefit of the Subtenant as a subtenant to the Master Ground Lease, at Subtenant's written request, Subtenant and PFC shall execute an updated Agreement in replacement hereof incorporating those same more favorable terms.

6. Miscellaneous:

a. Notices: All notices, requests, consents, demands, and other communications required or which any party desires to give with respect to any matter set forth in this Agreement must be in writing and will be deemed delivered and received upon actual receipt or, if earlier and regardless of whether actually received or not, three (3) days after being deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the applicable party at the addresses set forth below:

TO PFC: Hemisfair Park Public Facilities Corporation  
100 Military Plaza, First Floor  
San Antonio, Texas 78205  
Attention: City Clerk

WITH COPY TO: Hemisfair Park Public Facilities Corporation  
100 Military Plaza, Third Floor  
San Antonio, Texas 78205  
Attention: City Attorney

Subtenant: ZH Downtown Development Company, LLC  
c/o Rene M. Garcia and \_\_\_\_\_  
2330 N Loop 1604 W  
San Antonio, Texas 78248  
P.O. Box 33240, San Antonio, TX 78265-3240

WITH COPY TO: Hornberger Fuller & Garza Incorporated  
Attn: Drew R. Fuller Jr. and Ty Hunter Sheehan  
7373 Broadway, Suite 300  
San Antonio, Texas 78209

Any party may designate another addressee (as long as the total number of addressees designated for such party does not exceed five) or address by written notice to the other parties, which notice will be effective ten (10) days after it is delivered.

b. Binding Effect: This Agreement runs with the Subleased Property and Improvements and inures to the benefit of and is binding upon the parties and their respective successors, and permitted assigns. Specifically, but not in limitation, any person or entity succeeding to PFC's interest in the Subleased Property or Improvements will be bound by the terms of this Agreement as they relate to PFC.

c. Court Costs, Attorneys' Fees, Governing Law, and Venue. In the event that at any time any party to this Agreement institutes any action or proceeding against any other party to this Agreement relating to the provisions of this Agreement, then the prevailing party in such action or proceeding is entitled to recover from the other party its reasonable and necessary costs, expenses, and attorneys' fees in connection with such action or proceeding. THIS AGREEMENT MUST BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE PARTIES AGREE IN THE EVENT OF COURT ACTION, VENUE WILL BE IN BEXAR COUNTY, TEXAS.

d. Headings. The headings appearing in this Agreement are for the purpose of easy reference only and cannot be considered a part of this Agreement nor do they in any way modify, amend, limit, or affect the provisions this Agreement.

e. Modifications. Any modification of this Agreement must be in writing and duly signed by PFC, Landlord, and Subtenant.

f. Severability. If any term or provision of this Agreement is found to be invalid, illegal, or unenforceable, the remaining terms and provisions of this Agreement will not be affected thereby, and each term and provision of this Agreement is valid and enforceable to the fullest extent permitted by law.

g. Counterparts. This Agreement may be executed in multiple counterpart originals, all of which shall comprise one and the same document. It shall not be necessary that the signatures of all parties appear on each counterpart so long as each party's signature appears on one or more of such counterpart originals. Facsimile or electronic signatures shall have the same force and effect as original signatures.

h. TREATMENT OF LIENS; THIRD PARTY RIGHTS. If at any time during the term of the Sublease, any lien or any third party right exists against the Subleased Property or any portion thereof, that creates rights superior to those of Subtenant, and Subtenant determines that the existence, use, operation, implementation or exercise of such lien or such third party right could reasonably be inconsistent with or delay, interfere with, impair or prevent the exercise of any of Subtenant's rights under the Sublease or the financing of the Sublease project, Subtenant shall be entitled to seek to obtain a Subordination and Non-Disturbance Agreement (defined below) from the holder of such lien or such third party right, and the PFC shall use commercially reasonable efforts and diligence in helping Subtenant obtain the same at no out-of-pocket expense to the PFC, if the PFC does not dispute the existence or validity of such lien or third party right. The PFC also agrees that any right, title or interest created by the PFC after the Effective Date and effective during the term of the Sublease in favor of or granted to any third party affecting the Subleased Property shall be subject to (i) the Sublease and all of Subtenant's rights, title and interests created in the Sublease, and (ii) any and all documents executed or to be executed by and between Subtenant and HPARC in connection with the Sublease. A "**Subordination and Non-Disturbance Agreement**" shall mean an agreement between Subtenant and the holder of a lien or a third party right that provides that the holder of such lien or such third party right (i) subordinates such lien or such third party right to Subtenant's interest under the Sublease, (ii) agrees not to disturb Subtenant's possession or rights under the Sublease, and (iii) agrees to provide notice of defaults of HPARC under the lien or third party right documents to Subtenant

and agrees to allow Subtenant and its lenders a reasonable period of time following such notice to cure such defaults on behalf of HPARC. All Subordination and Non-Disturbance Agreements obtained by the PFC pursuant to this paragraph shall be in a form reasonably acceptable to Subtenant and Subtenant's lenders, if any, and shall be in a form that may be recorded following their execution. If, on the date of this Agreement, any mortgage lien or other lien exists against the Subleased Property, Landlord shall cause the holder of each such lien to enter into a recordable Subordination and Non-Disturbance Agreement with Tenant within thirty (30) days after the date hereof.

- i. Estoppels. The PFC, at any time and from time to time but not more often than once in any six (6) month period, upon not less than thirty (30) days' prior written request by Subtenant, shall execute, acknowledge and deliver to Subtenant or its lenders a certificate, certifying that (a) this Master Ground Lease is unmodified and in full effect (or setting forth any modifications and that the Master Ground Lease is in full effect as modified); (b) the rent payable and the dates to which the rent has been paid and whether other sums payable thereunder have been paid; (c) any default of which the PFC may have knowledge; (d) the commencement and expiration dates of the Master Ground Lease; and (e) such other matters as may reasonably be requested by Subtenant or its lenders. Any such certificate may be relied upon by any mortgagee or prospective purchaser or prospective mortgagee of the Subleased Property.
- j. Recording. Following execution of this Agreement, this Agreement shall be immediately recorded in the Official Public Records of Real Property of Bexar County, Texas.

[Remainder of page intentionally blank; signatures appear on following pages.]

PFC:

**HEMISFAIR PARK PUBLIC FACILITIES CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date of Signature: \_\_\_\_\_

THE STATE OF TEXAS

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

Before me, the undersigned authority, this instrument was acknowledged on the day of, 2017, by  
, \_\_\_\_\_ of HEMISFAIR PARK PUBLIC FACILITIES CORPORATION, a Texas  
non-profit public facilities corporation, on behalf of said corporation.

[SEAL]

\_\_\_\_\_  
**NOTARY PUBLIC, STATE OF TEXAS**

\_\_\_\_\_  
(Printed or stamped name of Notary)

My Commission Expires:

\_\_\_\_\_

SUBTENANT:

ZH Downtown Development Company, LLC, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date of Signature: \_\_\_\_\_

THE STATE OF TEXAS

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

Before me, the undersigned authority, this instrument was acknowledged on the \_\_\_\_\_ day of \_\_\_\_\_ 2017, by, \_\_\_\_\_ of ZH Downtown Development Company, LLC, LLC, a Delaware limited liability company, on behalf of said company.

[Seal]

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

\_\_\_\_\_  
(Printed or stamped name of Notary)

My Commission Expires:

\_\_\_\_\_

Exhibit A to Recognition Agreement

Description of Sublease Property

**EXHIBIT G-1**  
**CITY RECOGNITION AGREEMENT**

AFTER RECORDING, RETURN TO:  
ZH Downtown Development Company, LLC  
c/o Rene M. Garcia  
2330 N Loop 1604 W  
San Antonio, Texas 78248  
P.O. Box 33240  
San Antonio, TX 78265-3240

**RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**  
**[Subtenant and City]**

This RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is made and entered into effective as of February 3, 2017 by and between the CITY OF SAN ANTONIO (the "City"), and ZH DOWNTOWN DEVELOPMENT COMPANY, LLC, a Delaware limited liability company ("Subtenant"), and is executed as of the later date accompanying the signature of City or Subtenant below.

**R E C I T A L S :**

A. The City of San Antonio (the "City") passed City Ordinance 2012-11-01-0856 (the "Ordinance") and, in accordance with the Ordinance, the City adopted a P3 Program and the P3 Program Guidelines for the purposes of allowing the City and/or its designees to enter into public-private partnerships for the development of land for the City and/or its designees by encouraging private entity participation in various qualifying projects, sharing the risk and expense between the City and the contracting private entity and to allow the City to participate in cash flow performance by organizing public-private partnerships.

B. These public-private partnerships are documented through a comprehensive development agreement between the City and/or its designees and a private sector person or entity.

C. Through a comprehensive development agreement, or similar instrument, the assets and professional skills of each sector (public and private) are shared to deliver a facility and/or service (e.g., planning, designing, financing, constructing, operating, maintaining, and owning) for the use of the general public.

D. The City may identify qualifying projects consisting of properties owned by the City for inclusion in the P3 Program.

E. The City established the Hemisfair Park Public Facility Corporation, a Texas non-profit public facilities corporation ("PFC") to assist City in financing, refinancing or providing public facilities and other facilities directly related thereto, as requested by City, relating to the renovation, expansion, redevelopment, construction, acquisition, provisions,

conveyance and leasing of land that was formerly a part of Hemisfair, a world exposition recognized by the Bureau International des Expositions ("Hemisfair"), and to serve as a land bank.

F. The City conveyed fee simple title to certain parcels of land in Hemisfair to PFC to further the purposes for which PFC was created.

G. The City identified Hemisfair as a qualifying P3 project and created HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION, a Texas non-profit local government corporation ("HPARC"), to manage and oversee the redevelopment and management of Hemisfair. HPARC was created to achieve the City's goal of revitalizing the Hemisfair area and creating a spectacular public space in the heart of San Antonio, complete with plazas, courtyards, green spaces, art and cultural amenities, residences and local businesses.

H. On December 11, 2014, PFC, as landlord, and HPARC, as tenant, entered into that certain Master Lease Agreement covering property in San Antonio, Bexar County, Texas, which property is more fully described in Memorandum of Lease dated July 23, 2015, executed by PFC and HPARC and filed for record in Book 17362, Page 2119, Official Public Records of Real Property of Bexar County, Texas, as amended by First Amendment to Master Ground Lease Agreement executed June 6, 2016 and by Second Amendment to Master Ground Lease Agreement dated February \_\_, 2017 (as amended, the "Master Ground Lease").

I. On February 3, 2017 (the "Effective Date"), HPARC, as sublandlord, and Subtenant entered into that certain Development Sublease Agreement ("Sublease") covering the tract of land (the "Subleased Property") described on Exhibit A attached to and made a part of this Agreement for all purposes, which Sublease is subject to the Master Ground Lease. *Capitalized words or phrases not defined in this Agreement shall have the meaning ascribed thereto in the Sublease.*

J. In the event of the winding up, dissolution and termination of PFC, the rights and assets of PFC, including the fee interest in the Subleased Property, shall be distributed to and inure to the City as successor to PFC, and as such, the City and Subtenant wish to clarify the relationship of the parties if (1) the PFC shall be wound up, dissolved or terminated and the fee interest in the Subleased Property should be conveyed from PFC to the City, or (2) the fee interest in the Subleased Property should otherwise be conveyed to City.

## **A G R E E M E N T S:**

NOW, THEREFORE, for and in consideration of the matters set forth in the Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Subtenant hereby agree:

1. Recognition of Master Ground Lease. The City hereby recognizes the Sublease

and all of the terms, covenants, conditions and provisions thereof and hereby acknowledges and approves of the terms of that certain Recognition, Non-Disturbance and Attornment Agreement between the PFC and Subtenant, dated on or about the date hereof (the "PFC Recognition Agreement").

2. Recognition of Sublease. The City hereby recognizes the Sublease and all of the terms, covenants, conditions and provisions thereof.

3. Relationship of the parties upon expiration of termination of Master Lease and the Winding-up, Termination or Dissolution of PFC. Upon *both* of the following being true: (a) any expiration or termination of the Master Lease, and (b) any winding-up, termination or dissolution of the existence of PFC and the distribution of the Subleased Property to the City, or (c) the fee interest in the Subleased Property should otherwise be conveyed to the City, then in such case the Sublease will continue in full force and effect, and the City shall succeed to and assumes all the rights and obligations of HPARC as landlord under the Sublease, the Sublease shall continue as a direct lease between City and Subtenant without the necessity of executing a new lease or sublease, on the same terms and conditions as are in effect under the Sublease immediately preceding winding-up, termination or dissolution of the existence of PFC and the distribution of the Subleased Property to the City, and Subtenant shall continue to have all the rights and obligations of the Subtenant under the Sublease and shall attorn to City in such event except that the City shall not be liable for any default by PFC under the Master Ground Lease or by HPARC under the Sublease.

4. Miscellaneous:

a. Notices: All notices, requests, consents, demands, and other communications required or which any party desires to give with respect to any matter set forth in this Agreement must be in writing and will be deemed delivered and received upon actual receipt or, if earlier and regardless of whether actually received or not, three (3) days after being deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the applicable party at the addresses set forth below:

**CITY:** City of San Antonio  
100 Military Plaza, 1<sup>st</sup> Floor  
San Antonio, Texas 78207  
Attention: City Manager

**With copies to:** City Clerk  
100 Military Plaza, 2<sup>nd</sup> Floor  
San Antonio, Texas 78205, and

City Attorney  
100 Military Plaza, 3<sup>rd</sup> Floor  
San Antonio, Texas 78205

Subtenant: ZH Downtown Development Company, LLC  
c/o Rene M. Garcia and \_\_\_\_\_  
2330 N Loop 1604 W  
San Antonio, Texas 78248  
P.O. Box 33240, San Antonio, TX 78265-3240

WITH COPY TO: Hornberger Fuller & Garza Incorporated  
Attn: Drew R. Fuller Jr. and Ty Hunter

Sheehan  
7373 Broadway, Suite 300  
San Antonio, Texas 78209

Any party may designate another addressee (as long as the total number of addressees designated for such party does not exceed five) or address by written notice to the other parties, which notice will be effective ten (10) days after it is delivered.

b. Binding Effect: This Agreement runs with the Subleased Property and Improvements and inures to the benefit of and is binding upon the parties and their respective successors, and permitted assigns.

c. Court Costs, Attorneys' Fees, Governing Law, and Venue. In the event that at any time any party to this Agreement institutes any action or proceeding against any other party to this Agreement relating to the provisions of this Agreement, then the prevailing party in such action or proceeding is entitled to recover from the other party its reasonable and necessary costs, expenses, and attorneys' fees in connection with such action or proceeding. THIS AGREEMENT MUST BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE PARTIES AGREE IN THE EVENT OF COURT ACTION, VENUE WILL BE IN BEXAR COUNTY, TEXAS.

d. Headings. The headings appearing in this Agreement are for the purpose of easy reference only and cannot be considered a part of this Agreement nor do they in any way modify, amend, limit, or affect the provisions this Agreement.

e. Modifications. Any modification of this Agreement must be in writing and duly signed by PFC, Landlord, and Subtenant.

f. Severability. If any term or provision of this Agreement is found to be invalid, illegal, or unenforceable, the remaining terms and provisions of this Agreement will not be affected thereby, and each term and provision of this Agreement is valid and enforceable to the fullest extent permitted by law.

g. Counterparts. This Agreement may be executed in multiple counterpart originals, all of which shall comprise one and the same document. It shall not be necessary that the signatures of all parties appear on each counterpart so long as each party's signature appears on one or more of such counterpart originals. Facsimile or electronic signatures shall have the same force and effect as original signatures.

h. Recording. Following execution of this Agreement, this Agreement shall be immediately recorded in the Official Public Records of Real Property of Bexar County, Texas.

[Remainder of page intentionally blank; signatures appear on following pages.]

**CITY:**

**CITY OF SAN ANTONIO, TEXAS**

By \_\_\_\_\_

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

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

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

**ATTEST:**

---

City Clerk

**APPROVED:**

---

City Attorney

THE STATE OF TEXAS

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

Before me, the undersigned authority, this instrument was acknowledged on the day of, 2017, by \_\_\_\_\_, \_\_\_\_\_ of the CITY OF SAN ANTONIO, on behalf thereof.

[SEAL]

---

NOTARY PUBLIC, STATE OF TEXAS

---

(Printed or stamped name of Notary)

My Commission Expires:

SUBTENANT:

ZH DOWNTOWN DEVELOPMENT COMPANY,  
LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date of Signature: \_\_\_\_\_

THE STATE OF TEXAS

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

Before me, the undersigned authority, this instrument was acknowledged on the \_\_\_\_\_  
day of \_\_\_\_\_ 2017, by, \_\_\_\_\_ of ZH  
DOWNTOWN DEVELOPMENT COMPANY, LLC, a Delaware limited liability company, on  
behalf of said company.

[Seal]

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

\_\_\_\_\_  
(Printed or stamped name of Notary)

My Commission Expires:

Exhibit A to Recognition Agreement  
Description of Sublease Property

[to be attached]

**GAL DESCRIPTION OF MARKET STREET TRACT**

**EXHIBIT “H”  
OMITTED**

**EXHIBIT "I"**  
**THOROUGHFARE LICENSE AND MAINTENANCE AGREEMENT**

**THOROUGHFARE LICENSE AND MAINTENANCE AGREEMENT**

**THIS THOROUGHFARE LICENSE AND MAINTENANCE AGREEMENT** ("License Agreement") is entered into as of \_\_\_\_\_, 201\_\_\_\_\_ ("Effective Date") by and between the HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION, a Texas local government corporation formed under Subchapter D of Chapter 431 of the Texas Transportation Code (the "HPARC") and ZH Downtown Development Company, LLC, a Texas limited liability company ("Licensee").

**R E C I T A L S :**

**A.** On December 11, 2014, Hemisfair Park Public Facilities Corporation, a Texas non-profit public facilities corporation (the "PFC"), as landlord, and HPARC as tenant, entered into that certain Master Lease Agreement (the "Master Ground Lease") covering property in San Antonio, Bexar County, Texas, which property is more fully described in Memorandum of Lease dated July 23, 2015, executed by PFC and HPARC and filed for record in Book 17362, Page 2119, Official Public Records of Real Property of Bexar County, Texas.

**B.** On \_\_\_\_\_, 2017, HPARC, as sublandlord, and Licensee, as subtenant, entered into that certain Development Sublease Agreement ("Development Sublease") covering the tract[s] of land (the "Subleased Premises") described on **Exhibit A** attached to and made a part of this Agreement for all purposes. *Capitalized words or phrases not defined in this Agreement shall have the meaning ascribed thereto in the Development Sublease.*

**C.** Pursuant to the Development Sublease, there are certain pedestrian thoroughfares crossing through the Subleased Premises that are intended to provide public access between the publicly dedicated parkland adjacent to the Subleased Premises (the "Park") and the public rights of way adjacent to the Subleased Premises, as illustrated and described on **Exhibit B** attached hereto (the "Thoroughfares"), such illustrations being derived from the Approved Plans.

**D.** Pursuant to the Development Sublease, the Thoroughfares were to be excluded from the Premises upon Substantial Completion of the applicable Project Phase(s), which includes the vertical improvements on the Subleased Premises and the improvements and facilities comprising the Thoroughfares (the "Thoroughfare Improvements").

**E.** In connection with the exclusion of the Thoroughfares from the Subleased Premises, HPARC and Licensee were required under the Developer Sublease to enter into this License Agreement for purposes of providing Licensee with rights and obligations to operate, utilize, manage, equip, light, repair and maintain the Thoroughfares upon the terms, conditions and provisions set forth herein.

**F.** Licensee has constructed and completed the improvements comprising the Thoroughfares in accordance with the Approved Plans.

**NOW THEREFORE**, in consideration of the mutual promises, covenants and agreements set forth herein, \$10.00 and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE 1

### THOROUGHFARE LICENSE

**1.1     Grant of License.** Subject to the reservations and exceptions hereinafter specified, HPARC hereby grants to Licensee, for the benefit of Licensee and the Permitted Parties, a license to use the Thoroughfares for the Permitted Uses defined and described in Section 1.2 below. For purposes hereof, the “**Permitted Parties**” shall mean Licensee, the Occupants (as defined below) and their respective employees, tenants and subtenants, licensees, invitees, guests, visitors, successors and assigns. For purposes hereof, “**Occupant**” shall mean, individually, collectively, or any appropriate combination of any person who acquires rights by lease, sublease, license, or other instrument or written arrangement to possess, use or occupy any portion of the Subleased Premises, whether as a party to the Development Sublease or approved subsublessee thereof or otherwise.

**1.2     Permitted Uses of Licensee.** For purposes hereof, the “**Permitted Uses**” of this License shall include the following:

1.2.1     Ingress/Egress and Access. Twenty-four (24) hour pedestrian, bicycle or non-motorized access over and across the Thoroughfares by Permitted Parties for purposes of traveling between the Improvements on the Subleased Premises and between such Improvements and the Park and/or adjacent rights-of-way.

1.2.2     Construction, Maintenance and Repair of the Thoroughfares Improvements. The exclusive rights of Licensee to use the Thoroughfares for purposes of constructing, maintaining, installing, repairing, altering and operating the Thoroughfares Improvements substantially as set forth in the Approved Plans.

1.2.3     Construction, Maintenance and Repair of the Improvements. The exclusive rights of Licensee to use the Thoroughfares for purposes of constructing, maintaining, installing, repairing, altering and operating the Improvements in accordance with the Development Sublease.

1.2.4     Support. For the lateral and subjacent support of all portions of the Improvements on the Subleased Premises or Thoroughfares.

1.2.5     Beautification, Leisure and Recreation Improvements. Exclusive rights of Licensee to use the Thoroughfares for purposes of constructing, maintaining, installing, repairing, altering and operating landscaping, hardscaping, water features, seating, tables, and other improvements relating to the use of the Thoroughfares for leisure activities and entertainment by the Permitted Parties.

1.2.6     Beautification, Leisure and Recreation Programming. Exclusive rights of Licensee and Occupants to use the Thoroughfares for programming leisure activities and entertainment, and for events programming (such as, without limitation, music events, food events, weddings, private parties and cultural events) for the Permitted Parties or potential Occupants, or celebratory or recreational activities and programming for the Permitted Parties or potential Occupants.

1.2.7     Signage. Exclusive rights of Licensee and Occupants to use the Thoroughfares for constructing, maintaining, installing, repairing, and altering various signage which may be desirable for the operation of the Subleased Premises and Thoroughfares.

1.2.8     Emergency Use. Non-exclusive rights to use the Thoroughfares for the evacuation of all or any part of the Subleased Premises, and related consistent use, in the event of any emergency.

**1.3     Rules and Regulations.** Licensee shall be entitled to adopt and post and enforce all

reasonable and non-discriminatory rules, regulations and security protocols for the Thoroughfares from time to time.

**1.4 Reservation from Grant of License.** Notwithstanding any other provision contained herein, the Thoroughfares shall remain open at all times, twenty-four (24) hours a day, for pedestrian, bicycle or non-motorized access by the general public between the Park and the adjacent rights-of-way except during any Permitted Closure. For purposes hereof, “**Permitted Closures**” shall mean the closure by Licensee of all or a portion of the Thoroughfares for purposes of exercising any of the rights set forth above in Sections 1.2.2 and 1.2.3; provided, however, that Licensee shall (a) minimize to the extent possible the duration and disruptions to pedestrian access caused by such closures, (b) except in the case of an emergency, notify HPARC not less than sixty (60) days in advance notice of any intended closures, (c) except in the case of an emergency, schedule the dates and time periods for such closures in coordination with HPARC so as to avoid conflicts with scheduled events in the Park or peak usage periods for the Park, and (d) post signage in advance and during such closures directing members of the public to the most convenient available alternative routes to the Park or public rights-of-way.

## **ARTICLE 2** **TERM OF LICENSE**

**2.1 Term.** The Term of the License Agreement shall commence on the Effective Date hereof and be coterminous with the term of the Development Sublease unless this License Agreement is earlier terminated pursuant to the terms, conditions and provisions hereof (such term being referred to herein as the “Term”). Except upon the expiration of the Term hereof, this License is irrevocable during the term of the Development Sublease except to the extent expressly provided otherwise herein or upon an Event of Default.

**2.2 Termination by Licensee without Cause.** At any time during the Term hereof, Licensee may elect, without cause, to terminate this License Agreement upon sixty (60) days’ notice to HPARC, and upon any such termination the Thoroughfares shall be deemed Subleased Premises under the terms of the Development Sublease and shall be subject to the terms thereof.

## **ARTICLE 3** **USE AND MAINTENANCE OF THOROUGHFARES**

**3.1 Condition and Maintenance of Thoroughfares by Licensee.** Licensee is obligated hereunder to operate, manage, equip, light, repair and maintain the Thoroughfares and all equipment and fixtures serving the same, for their intended purposes and in good and usable repair; provided, Licensee shall cause all such work to be completed as quickly as reasonably possible, and in a manner so as to minimize interference with the Thoroughfares and the same shall be performed in a good and workmanlike manner. Licensee shall provide and maintain sanitary receptacles on the Thoroughfares in which refuse or trash may be placed, and Licensee shall cause such refuse or trash to be removed from the area in a commercially reasonable manner in order to maintain a sanitary condition. Licensee shall sweep as needed and keep free of refuse the Thoroughfares.

**3.2 HPARC’s Self-Help Right.** Notwithstanding any other provision contained herein to the contrary, if Licensee fails to maintain the Thoroughfare as required pursuant to Section 3.1 above and fails to commence diligently efforts towards correcting such deficiency within five (5) days after receipt of a written request therefor from HPARC, then HPARC shall be entitled to undertake the same at its own expense (such right referred to hereunder as “**HPARC’s Self-Help Right**”), and Licensee shall pay such amounts plus a 10% administrative fee to HPARC within thirty (30) days after completion and request therefor.

**3.3 Alterations to Thoroughfares by Licensee.** Licensee shall not make any alterations to  
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the paving, layout or other permanent aesthetic features of the Thoroughfares that are materially inconsistent with the Approved Plans under the Development Sublease without obtaining HPARC's prior written consent, such consent to be given or withheld in HPARC's sole discretion (provided, however, that HPARC shall not act arbitrarily and capriciously withhold such consent and shall consider the principles of the Urban Design Manual in deciding whether to grant such consent or specify modification thereto). Any such alterations (i) shall be performed in a good and workmanlike manner, (ii) shall not violate any term, provision or condition of the Permitted Exceptions or any other agreement or restriction to which the Thoroughfares are subject, (iii) shall be completed in compliance with all Laws applicable thereto and any such construction shall be performed in accordance with the standards set forth in the Development Sublease, and (iv) shall not in any manner prevent or limit (except in inconsequential or non-material manners) the use of the Thoroughfares pedestrian, bicycle or non-motorized thoroughfares for purposes of traveling to and from the Park and the adjacent rights-of-way. Notwithstanding the foregoing, Licensee may change and modify the furnishings and temporary decorative features within the Thoroughfares without obtaining HPARC's consent so long as such alterations (i) shall be performed in a good and workmanlike manner, (ii) shall not violate any term, provision or condition of the Permitted Exceptions or any other agreement or restriction to which the Thoroughfares are subject, (iii) shall be completed in compliance with all Laws applicable thereto and any such construction shall be performed in accordance with the standards set forth in the Development Sublease, and (iv) do not in any manner prevent or limit (except in inconsequential or non-material manners) the use of the Thoroughfares pedestrian, bicycle or non-motorized thoroughfares for purposes of traveling to and from the Park and the adjacent rights-of-way.

## **ARTICLE 4** **INSURANCE AND INDEMNITY**

**4.1 Licensee Insurance.** During the Term, as to the Thoroughfares, Licensee shall maintain the same insurance with respect to the Thoroughfares that Licensee as "Developer" is required to maintain with respect to the Subleased Premises under the Development Sublease.

**4.2 HPARC Insurance.** During the Term, HPARC shall maintain insurance as set forth and required of HPARC under the terms of the Development Sublease, if any.

**4.3 Waiver of Subrogation.** To the extent each party can obtain such an endorsement on the relevant policy, each of HPARC and Licensee hereby waives all claims that arise or may arise in its favor against the other party, or anyone claiming through or under them, by way of subrogation or otherwise, during the Term of this License Agreement or any extension or renewal thereof, for any injury to or death of any person or persons or the theft, destruction, loss of, or damage to, any of its property (a "Loss") caused by casualty, theft, fire, third parties, or any other matter, to the extent the same is insured against by it under any insurance policy that covers the relevant Thoroughfare, or is required to be insured against by it under the terms hereof (whether or not the loss or damage is caused by the fault or negligence [but not as to the sole negligence, gross negligence or willful conduct] of the other party or anyone for whom the other party is responsible). These waivers are in addition to, and not in limitation of, any other waiver or release in this License Agreement with respect to any Loss. Since these mutual waivers preclude the assignment of any claim by way of subrogation (or otherwise) to any insurance company (or any other person), each party shall immediately give each insurance company issuing to it policies of fire and extended coverage insurance written notice of the terms of these mutual waivers, and have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of these waivers.

**4.4 Licensee Indemnity.**

A. **DEFINITIONS.** THE FOLLOWING DEFINED TERMS WILL BE USED IN THIS SECTION 4.4 AND SOME OF THE TERMS INCORPORATE TERMS THAT ARE DEFINED  
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ELSEWHERE IN THIS LICENSE AGREEMENT:

(1) INDEMNIFY: MEANS TO PROTECT, DEFEND, HOLD HARMLESS, PAY, AND BE SOLELY RESPONSIBLE FOR THE "**INDEMNIFIED LIABILITIES**" (AS DEFINED BELOW);

(2) LIABILITIES: MEANS ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES (INCLUDING COURT COSTS, ATTORNEYS FEES, AND COSTS OF INVESTIGATION) OF ANY NATURE, KIND OR DESCRIPTION BY, THROUGH, OR OF ANY PERSON OR ENTITY;

(3) INDEMNIFIED LIABILITIES: MEANS ALL LIABILITIES ARISING FROM INDEMNIFIED MATTERS (AS THAT TERM IS DEFINED BELOW), OTHER THAN TO THE EXTENT SUCH LIABILITIES ARISE FROM EXCLUDED MATTERS (AS DEFINED BELOW);

(4) ARISE: MEANS DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART (I) TO OCCUR AS A RESULT OF, (II) TO CAUSE, OR (III) TO RESULT IN;

(5) LICENSEE-RELATED PARTY: MEANS (I) LICENSEE ITSELF, (II) ANY PERMITTED PARTIES, (III) ANY CONTRACTOR OF LICENSEE, (IV) THE EMPLOYEES OF LICENSEE OR OF ANY CONTRACTOR OF LICENSEE, (V) ANY PERSON THAT LICENSEE OR ANY CONTRACTOR OF LICENSEE'S CONTROLS OR EXERCISES CONTROL OVER, (VI) ANY INVITEE OF LICENSEE, (VII) ANY LICENSEE OF LICENSEE, AND (VIII) SUBTENANTS OF LICENSEE AND THEIR EMPLOYEES, AGENTS, CONTRACTORS OR INVITEES;

(6) INDEMNIFIED PERSONS: MEANS (I) HPARC, (II) THE PFC, (III) THE CITY AND (IV) AS TO EACH OF THE PERSONS OR ENTITIES LISTED IN "(I)" THROUGH "(III)" ABOVE, THE FOLLOWING PERSONS OR ENTITIES: SUCH PERSON OR ENTITY'S PARTNERS, PARTNERS OF THEIR PARTNERS, AND ANY SUCCESSORS, ASSIGNS, HEIRS, PERSONAL REPRESENTATIVES, ELECTED OFFICIALS, DEVISEES, AGENTS, STOCKHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AND AFFILIATES.

B. INDEMNITY: LICENSEE COVENANTS AND AGREES TO INDEMNIFY THE INDEMNIFIED PERSONS FOR ALL INDEMNIFIED LIABILITIES WHICH ARISE OUT OF ANY OF THE FOLLOWING MATTERS (THE "**INDEMNIFIED MATTERS**"):

(1) ANY INJURY, DEATH OR DAMAGE TO ANY PERSON OR PROPERTY OCCURRING IN OR ON THE THOROUGHFARES AS A RESULT OF LICENSEE'S OPERATIONS OR THAT OCCUR AFTER THE EFFECTIVE DATE AND PRIOR TO THE EXPIRATION OR TERMINATION OF THIS LICENSE AGREEMENT;

(2) THE USE, OCCUPATION, CONDITION, OPERATION, MAINTENANCE OR MANAGEMENT OF THE THOROUGHFARES OR ANY PART THEREOF DURING THE TERM OF THIS LICENSE AGREEMENT;

(3) PERFORMANCE OF ANY LABOR OR SERVICES OR THE FURNISHING OF ANY MATERIALS OR OTHER PROPERTY IN RESPECT OF THE THOROUGHFARES OR ANY PART THEREOF BY LICENSEE OR ANY LICENSEE-RELATED PARTY; OR

(4) FINES OR PENALTIES IMPOSED BY A GOVERNMENTAL AUTHORITY AS A RESULT OF ANY VIOLATION BY LICENSEE (OR BY ANY LICENSEE-RELATED PARTY THEN UPON OR USING THE THOROUGHFARES) OF ANY LAWS WITH RESPECT TO THE THOROUGHFARES AFTER THE EFFECTIVE DATE.

C. EXCLUDED MATTERS: THE INDEMNIFIED LIABILITIES DO NOT INCLUDE ANY LIABILITIES TO THE EXTENT RESULTING FROM (A) GROSS NEGLIGENCE OF ANY INDEMNIFIED PERSON IN THEIR CAPACITY AS A REPRESENTATIVE, EMPLOYEE OR AGENT OF HPARC, THE PFC OR THE CITY, AND NOT AS AN INVITEE OF LICENSEE, (B) THE WILLFUL MISCONDUCT OF ANY INDEMNIFIED PERSON IN THEIR CAPACITY AS A REPRESENTATIVE, EMPLOYEE OR AGENT OF HPARC, THE PFC OR THE CITY AND NOT AS AN INVITEE OF LICENSEE, (C) ANY LAWSUITS CHALLENGING THE VALIDITY OR ENFORCEABILITY OF THIS LICENSE AGREEMENT, (D) ANY ENVIRONMENTAL LIABILITIES RELATING TO CONTAMINATION TO THE EXTENT EXISTING ON THE THOROUGHFARES PRIOR TO THE DEMISE DATE EXCEPT TO THE EXTENT CAUSED BY LICENSEE, ITS EMPLOYEES, CONSULTANTS, CONTRACTORS OR ANY OTHER PARTY UNDER LICENSEE CONTROL, (E) ANY LIABILITY ARISING OUT OF THE CONDITION OF THE ADJACENT PARKLAND, THE PARKING GARAGE, OR OTHER CITY-OWNED PROPERTY UNLESS CAUSED BY LICENSEE, ITS EMPLOYEES, CONSULTANTS, CONTRACTORS OR ANY OTHER PARTY UNDER LICENSEE CONTROL, OR BY SOME CONDITION ON OR OF THE THOROUGHFARES , OR (F) ANY CLAIM AGAINST THE CITY ARISING OUT THE EXERCISE BY THE CITY OF ANY CITY GOVERNMENTAL FUNCTION.

D. NOTICE: HPARC WILL ADVISE LICENSEE IN WRITING OF ANY ACTION, ADMINISTRATIVE OR LEGAL PROCEEDING OR INVESTIGATION TO WHICH THE INDEMNIFICATION SET FORTH HEREIN MAY APPLY WITHIN TEN (10) DAYS AFTER IT BECOMES AWARE OF SUCH ACTION, PROCEEDING OR INVESTIGATION.

E. DEFENSE: LICENSEE, AT LICENSEE'S EXPENSE, MUST ASSUME ON BEHALF OF THE INDEMNIFIED PERSONS AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ANY INDEMNIFIED LIABILITIES. HPARC FURTHER AGREES TO COOPERATE AT NO COST TO HPARC IN LICENSEE'S DEFENSE OF ANY ACTION OR PROCEEDING BROUGHT BY A PERSON OR ENTITY IN CONNECTION WITH ANY INDEMNIFIED LIABILITY. EACH INDEMNIFIED PERSON HAS THE RIGHT, AT ITS OPTION, TO BE REPRESENTED BY ADVISORY COUNSEL OF ITS OWN SELECTION AND AT LICENSEE'S EXPENSE. IN THE EVENT OF FAILURE BY LICENSEE TO FULLY PERFORM IN ACCORDANCE WITH THIS INDEMNIFICATION, EACH INDEMNIFIED PERSON, AT ITS OPTION, AND WITHOUT RELIEVING LICENSEE OF ITS OBLIGATIONS UNDER THIS SECTION 4.4, MAY SO PERFORM, BUT LICENSEE MUST REIMBURSE SUCH INDEMNIFIED PERSON FOR ALL COSTS AND EXPENSES SO INCURRED, TOGETHER WITH INTEREST AT THE DEFAULT RATE. LICENSEE'S OBLIGATIONS UNDER THIS SECTION 4.4 ARE NOT AND CANNOT BE DEEMED TO BE LIMITED TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEES' BENEFIT ACTS.

F. LICENSEE'S RELEASE OF INDEMNIFIED PERSONS. NO INDEMNIFIED PERSON WILL BE LIABLE IN ANY MANNER TO LICENSEE OR ANY OTHER PARTY FOR, AND LICENSEE HEREBY WAIVES AND RELEASES THE INDEMNIFIED PARTY FROM ANY CLAIM ARISING FROM, ANY INJURY TO OR DEATH OF PERSON OR FOR ANY LOSS OF OR DAMAGE TO THE PROPERTY OF LICENSEE, REGARDLESS OF WHETHER SUCH PROPERTY IS ENTRUSTED TO EMPLOYEES OF AN INDEMNIFIED PERSON OR SUCH LOSS OR DAMAGE IS OCCASIONED BY CASUALTY, THEFT, OR ANY OTHER CAUSE OF WHATSOEVER

NATURE, EXCEPT TO THE EXTENT DUE TO THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF AN INDEMNIFIED PERSON. IN NO EVENT WILL ANY INDEMNIFIED PERSON BE LIABLE IN ANY MANNER TO LICENSEE OR ANY OTHER PARTY AS A RESULT OF THE ACTS OR OMISSIONS OF LICENSEE OR ANY LICENSEE-RELATED PARTY.

G. THIS SECTION 4.4 IS SUBJECT TO THE WAIVER OF SUBROGATION PROVISIONS OF SECTION 11(b) OF THE DEVELOPMENT SUBLEASE.

THE PREVIOUS SECTIONS WERE SET OFF FROM THE REMAINDER OF THE LICENSE AGREEMENT IN ORDER TO MAKE THEM CONSPICUOUS.

## ARTICLE 5 CASUALTY; CONDEMNATION

**5.1 Casualty.** Section 19 (as amended from time to time) of the Development Sublease addresses the Subleased Premises thereunder being wholly or partially damaged or destroyed by fire or other casualty (the “**Casualty Section**”). The terms of the Casualty Section of the Development Sublease are hereby referred to and incorporated as if they were set out herein at length, provided, that references to “Developer” thereunder shall be deemed references to “Licensee” herein, and references to the “Premises” thereunder shall be deemed to include the Thoroughfares are part of the adjacent Developer Improvements. Licensee hereby expressly assumes and agrees: (i) to comply with the Casualty Section of the Development Sublease as to the Thoroughfares except to the extent expressly set forth otherwise herein; and (ii) to perform all the obligations on the part of the “Developer” to be performed under the terms of the Casualty Section of the Development Sublease as to the Thoroughfares except to the extent expressly set forth otherwise herein.

**5.2 Condemnation.** Section 20 (as amended from time to time) of the Development Sublease addresses the Subleased Premises thereunder being wholly or partially condemned or taken by any legal entity having the power of eminent domain, or is transferred in lieu (the “Condemnation Section”). The terms of the Condemnation Section of the Development Sublease are hereby referred to and incorporated as if they were set out herein at length, provided, that references to “Developer” thereunder shall be deemed references to “Licensee” herein, and references to the “Premises” thereunder shall be deemed to include the Thoroughfares are part of the adjacent Developer Improvements. Licensee and HPARC hereby expressly (i) assume and agree to comply with the Condemnation Section of the Development Sublease as to the Thoroughfares except to the extent expressly set forth otherwise herein; and (ii) to perform all the obligations on the part of the “Developer” or “HPARC”, as relevant, to be performed under the terms of the Condemnation Section of the Development Sublease as to the Thoroughfares except to the extent expressly set forth otherwise herein.

## ARTICLE 6 LEASEHOLD MORTGAGEES

**6.1 Leasehold Mortgages and License Mortgages.** In the event the Developer enters into a Leasehold Mortgage with a Leasehold Mortgagee under Section 15(f) of the Development Sublease (as such section may be amended from time to time), Licensee shall be entitled to convey a security interest in all or a part of Licensee’s interest under this License Agreement and the Thoroughfares and Thoroughfares Improvements, if any, as security for any indebtedness that Developer may incur, under the same terms as and as part of such Leasehold Mortgage (such lender being a “License Mortgagee”).

**6.2 Priority.** Neither HPARC’s right, title and interest in this License Agreement, the Master Lease or the Thoroughfares, nor the PFC’s right, title and interest in the Master Lease or the Thoroughfares, will be subordinated to the lien, priority and security title of any encumbrance of this

License Agreement or the interest of Licensee as security for any indebtedness Licensee may incur, whether by deed to secure debt, mortgage, deed of trust or other security instrument.

## ARTICLE 7 DEFUALTS AND REMEDIES

**7.1 Default.** Subject to the rights of Leasehold Mortgagees as provided in this License Agreement, each of the following events shall constitute an "Event of Default" by a party:

7.1.1 Monetary Defaults. The failure or omission by either party to pay amounts required to be paid pursuant to this License Agreement when due hereunder, and such failure or omission has continued for sixty (60) days after written notice from the other party (each such failure or omission referred to herein as a "**Monetary Default**"). It is hereby expressly acknowledged that Monetary Defaults include the failure of a party to pay monetary damages awarded to the other party in connection with an Event of Default other than a Monetary Default within sixty (60) days after written demand for payment following the date upon which a judgment from a court of competent jurisdiction or arbitration as herein provided becomes final and non-appealable.

7.1.2 General Non-Monetary Defaults. The breach of any covenant of a party under this License Agreement, and the failure or omission by either party to observe, keep or perform any of the other terms, agreements or conditions set forth in this License Agreement, and such breach, failure or omission has continued for sixty (60) days (or such longer period as may reasonably be required to cure such failure or omission, provided that cure has commenced and such party is diligently and continuously proceeding to complete such cure) (the "**Non-Monetary Default Cure Period**") after written notice from the other party (each such failure or omission referred to herein as a "**General Non-Monetary Default**"). HPARC and Licensee agreed and acknowledge that the exercise of HPARC's Self-Help Rights shall not be subject to the Non-Monetary Default Cure Period or otherwise except as set forth above in Section 3.2

7.1.3 Bankruptcy Defaults. (a) the filing for voluntary bankruptcy by a party; or (b) an involuntary bankruptcy is filed against a party that does not use commercially reasonable efforts to seek to have dismissed within sixty (60) days of such filing (each such event referred to herein as a "**Bankruptcy Default**").

**7.2 Disputed Defaults.** With respect to any General Non-Monetary Default that HPARC asserts against Licensee but Licensee disputes in writing within sixty (60) days following receipt of written notice of such default from HPARC, HPARC or Licensee may elect to refer such matter to binding arbitration to determine if a General Non-Monetary Default has occurred. If the arbitrator determines that a General Non-Monetary Default has occurred ("**Arbitrator Determined General Non-Monetary Default Determination**"), then Licensee shall cure such General Non-Monetary Default within the Non-Monetary Default Cure Period commencing upon the time the arbitrator's decision becomes final and non-appealable. If Licensee does not cure such General Non-Monetary Default within such Non-Monetary Default Cure Period, then HPARC may, at its option, and in addition to and cumulatively of any other rights HPARC may have under this License Agreement, at law or in equity, elect to terminate this License by giving notice thereof to Licensee ("**General Non-Monetary Default Termination Election**"), in which event Licensee shall immediately surrender the Thoroughfares to HPARC and if Licensee fails so to do, HPARC may, without prejudice to any other remedy which it may have, by any legal process, enter upon and take possession of the Thoroughfares. If any such General Non-Monetary Default is cured before Licensee's receipt of the General Non-Monetary Default Termination Election, HPARC shall have no right to terminate this License Agreement on account of such General Non-Monetary Default.

### 7.3 Remedies; Survival of Various Licenses.

7.3.1 **Remedies.** Upon and Event of Default of this License Agreement, the affected party shall be entitled to pursue all remedies available in law or equity against the defaulting party, including specific performance, injunctive relief, declaratory judgment, damages or other suitable legal or equitable remedy.

7.3.2 **Survival of Various Fundamental Licenses.** Notwithstanding anything else to the contrary herein, upon an Event of Default, in the event of a contemplated termination of this License Agreement by HPARC, in no event shall the rights granted under Section 1.2.1 [Ingress/Egress and Access], Section 1.2.3 [Construction, Maintenance and Repair of the Improvements], Section 1.2.4 [Support], and Section 1.2.7 [Emergency Use] (the “**Fundamental Licenses**”) be deemed cancelled, rescinded or otherwise terminated or eliminated; provided, however, such limitation shall not affect, in any manner, any other rights or remedies which HPARC may have hereunder by reason of any Event of Default of Licensee. No Event of Default shall defeat or render invalid the Fundamental Licenses if the Development Sublease remains effective.

## **ARTICLE 8** **ADDITIONAL PROVISIONS**

**8.1 Notices.** Any notice to be given or to be served in connection with this Lease must be in writing, and may be given by (a) facsimile transmission and shall be deemed to have been given and received on the date sent with confirmation of transmission if sent during the normal business hours of the recipient on a business day and if sent at other times then such transmission shall be deemed received on the next succeeding business day, (b) certified or registered mail and shall be deemed to have been given and received on the date a certified or registered letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mails; and (c) if given otherwise, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices shall be given at the following address:

TO HPARC:	Hemisfair Park Area Redevelopment Corporation Attn: Chief Executive Officer 434 South Alamo San Antonio, Texas 78205
WITH A COPY TO:	Golden Steves Cohen & Gordon LLP Attn: Stephen L. Golden 300 Convent Street, Suite 2600 San Antonio, Texas 78205
TO DEVELOPER:	ZH Downtown Development Company, LLC Attn: Rene M. Garcia 2330 North Loop 1604 San Antonio, Texas 78248
WITH A COPY TO:	Hornberger Fuller & Garza Incorporated Attn: Drew R. Fuller, Jr. 7373 Broadway, Suite 300 San Antonio, Texas 78209
TO PFC:	Hemisfair Park Public Facilities Corporation 100 Military Plaza, First Floor San Antonio, Texas 78205 Attention: City Clerk

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WITH COPY TO:

Hemisfair Park Public Facilities Corporation  
100 Military Plaza, Third Floor  
San Antonio, Texas 78205  
Attention: City Attorney

or to such other place as a notice party shall subsequently notify to the other notice parties in writing.

**8.2 Modification and Non Waiver.** No variations, modifications or changes herein or hereof shall be binding upon any party hereto unless set forth in writing executed by both parties hereto. No waiver by either party of any breach or default of any term, condition or provision hereof, including without limitation the acceptance by HPARC of any Rent at any time or in any manner other than as herein provided, shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character or description under any circumstance. No waiver of any breach or default of any term, condition or provision hereof shall be implied from any action of any party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving party.

**8.3 Governing Law.** This License Agreement shall be construed in accordance with the laws of the State of Texas. Each party waives the right to a jury in any action, proceeding or counterclaim brought by either of them against the other on any matters whatsoever arising under this License Agreement.

**8.4 Interpretation; Number and Gender; Caption; References.** Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate. Article and section headings in this License Agreement are for convenience of reference and shall not affect the construction or interpretation of this License Agreement. Whenever the terms "hereof," "hereby," "herein" or words of similar import are used in this License Agreement they shall be construed as referring to this License Agreement in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "Article" or "Section" shall be construed as referring to the indicated article or section of this License Agreement. Whenever placed before one or more items, the words "include," "includes," and "including" shall mean considered as part of a larger group, and not limited to the item(s) recited.

**8.5 Exhibits.** All exhibits and addenda attached hereto are incorporated herein for all purposes.

**8.6 Severability.** If any provision of this License Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this License Agreement, or the application of such provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

**8.7 Attorney Fees.** If suit should be arising from a dispute under the terms of this License Agreement, the prevailing party shall be entitled to all reasonable costs and legal fees incurred in connection with such action.

**8.8 Force Majeure.** As used herein "**Force Majeure**" shall have the meaning ascribed thereto in the Development Sublease. If HPARC or Licensee shall be delayed, hindered or prevented from performance of any of its obligations by reason of Force Majeure (and Licensee or HPARC as applicable shall not otherwise be in default hereunder) the time for performance of such obligation shall be extended for the period of such delay, provided that the following requirements are complied with by Licensee or HPARC as applicable: (i) Licensee or HPARC shall give prompt written notice of such

occurrence to the other; and (ii) Licensee or HPARC as applicable shall diligently attempt to remove, resolve or otherwise eliminate such event, keep the other advised with respect thereto, and commence performance of its obligations hereunder immediately upon such removal, resolution or elimination. Anything contained in or inferable from this License Agreement to the contrary notwithstanding, the Term shall not be extended by an event of Force Majeure

**8.9 Entire Agreement.** This License Agreement constitutes the entire agreement of the parties hereto with respect to its subject matter, and all prior agreements with respect thereto are merged herein. Any agreements entered into between HPARC and Licensee of even date herewith are not, however, merged herein.

**8.10 Successors and Assigns.** This License Agreement shall constitute a real property interest, and, subject to the provisions hereof pertaining to Licensee's rights to assign, sublet or encumber, this License Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever a reference is made herein to either party, such reference shall include the party's successors and assigns.

**8.11 No Third Parties Benefitted.** The terms and provisions of this License Agreement are for the sole benefit of HPARC and Licensee, and no third party is intended to benefit herefrom.

**8.12 Survival.** Any terms and provisions of this License Agreement pertaining to rights, duties or liabilities extending beyond the expiration or termination of this License Agreement shall survive the end of the Term.

**8.13 Time of Essence.** Time is of the essence of this License Agreement and each and all of its provisions in which performance is a factor.

**8.14 Business Days.** If a date for performance by either party falls on a Saturday, Sunday or on a legal holiday, such date for performance shall instead be the next following business day.

**8.15 Remedies Cumulative.** All rights and remedies herein created or otherwise existing at law or in equity are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as the relevant party shall deem desirable.

**8.16 Limitation on Waiver.** One or more waivers of any covenant, term or condition of this License Agreement by either party may not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

**8.17 Office of Foreign Assets Control Certification.** Licensee certifies that it is not acting, directly or indirectly, for or on the behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "**Specifically Designated National and Blocked Person**" or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control.

**8.18 Estoppel Certificate.** Within ten (10) days after written request by Licensee, HPARC shall execute and deliver to Licensee an estoppel certificate certifying as to such facts and agreeing to such other matters as Licensee may reasonably request, if true.

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IN WITNESS WHEREOF, HPARC and Licensee have caused this License Agreement to be executed on the date first set forth above.

**HPARC:**

**HEMISFAIR PARK AREA  
REDEVELOPMENT CORPORATION,**  
a Texas local government corporation

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

Name: Andres Andujar

Title: Chief Executive Officer

THE STATE OF TEXAS        §  
                                  §  
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me this the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by \_\_\_\_\_, as the \_\_\_\_\_ of the Hemisfair Park Area Redevelopment Corporation, a Texas local government corporation, on behalf of said corporation.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, HPARC and Licensee have caused this License Agreement to be executed on the date first set forth above.

**LICENSEE:**

**ZH Downtown Development, LLC,**  
a Texas limited liability company

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

THE STATE OF TEXAS        §  
                                  §  
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me this the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by \_\_\_\_\_, as the \_\_\_\_\_ of the [ZACHRY ENTITY], a Delaware limited liability company, on behalf of said company.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_  
**Exhibit A**

**Subleased Premises**

*[to be attached]*

**Exhibit B**

**Illustration and Description of Thoroughfares**

*[to be attached]*

## **EXHIBIT "J"**

### **APPRAISAL METHOD FOR MARKET RATE ADJUSTMENTS**

Determination of Fair Market Value of the Premises. If HPARC and Developer are required to determine the Fair Market Value of the Premises pursuant to the Lease, such Fair Market Value shall be determined in accordance with this **Exhibit "K"**. Notwithstanding anything contained herein to the contrary, for purposes of determining the Fair Market Value of the Premises pursuant to Section 4(a)(iv), the Premises shall be deemed to include only the Land. HPARC and Developer shall negotiate in good faith to determine and mutually agree upon the Fair Market Value of the Premises. As used herein "Fair Market Value" shall mean the "Fair Market Value of the Premises" as such term is defined in Section 4(b) of this Lease. If HPARC and Developer are unable to agree upon the Fair Market Value of the Premises within the time period specified in the applicable provision of the Lease (the "Negotiation Period"), then HPARC and Developer shall be irrevocably bound by the determination of Fair Market Value set forth hereinafter in this **Exhibit "K"**:

(1) Final Offers. Within twenty (20) days following the expiration of the Negotiation Period, HPARC and Developer shall meet either in person or by telephone and each of them shall contemporaneously present to the other party their final determinations of the Fair Market Value of the Premises (the "Final Offers"). If the Fair Market Value as determined by the lower of the two (2) proposed Final Offers is not more than ten percent (10%) below the higher, then the Fair Market Value shall be determined by averaging the two (2) Final Offers.

If the difference between the lower of the two (2) proposed Final Offers is more than ten percent (10%) below the higher, then the Fair Market Value of the Premises shall be determined by Baseball Arbitration (as hereinafter defined) in accordance with the procedure set forth below.

(2) Baseball Arbitration. For all purposes of this Lease, Baseball Arbitration shall follow the following procedures:

(a) If there is a discrepancy in the Final Offers that is greater than ten percent (10%), within ten (10) days after the delivery of the Final Offers, HPARC and Developer shall each select an arbitrator ("HPARC's Arbitrator" and "Developer's Arbitrator", respectively) who shall be a qualified and impartial person licensed in the State of Texas who has been a Member of the Appraisal Institute with at least ten (10) years of experience in appraising real properties similar to the Premises in San Antonio, Texas.

(b) HPARC's Arbitrator and Developer's Arbitrator shall name a third arbitrator, similarly qualified, within ten (10) days after the appointment of HPARC's Arbitrator and Developer's Arbitrator.

(c) Said third arbitrator shall, after due consideration of the factors to be taken into account under the definition of Fair Market Value set forth above and hearing whatever evidence the arbitrator deems appropriate from HPARC, Developer and others, and obtaining any other information the arbitrator deems necessary, in good faith, make its own determination of the Fair Market Value of the Premises (the "Arbitrator's Initial Determination") and thereafter select either HPARC's Final Offer or the Developer's Final Offer, but no other, whichever is closest to the Arbitrator's Initial Determination (the "Final Determination"), such determination to be made within thirty (30) days after the appointment of the third arbitrator. The Arbitrator's Initial Determination, Final Determination and the market information upon which such determinations are based shall be in writing and counterparts thereof shall be delivered to HPARC and Developer within said thirty (30) day period. The arbitrator shall have no

right or ability to determine the Fair Market Value of the Premises in any other manner. The Final Determination shall be binding upon the parties hereto.

(d) The costs and fees of the third arbitrator shall be paid by HPARC if the Final Determination shall be Developer's Final Offer or by Developer if the Final Determination shall be HPARC's Final Offer.

(e) If Developer fails to appoint Developer's Arbitrator in the manner and within the time specified in subparagraph (a), then the Fair Market Value shall be the Fair Market Value contained in the HPARC's Final Offer. If HPARC fails to appoint HPARC's Arbitrator in the manner and within the time specified in subparagraph (a) above, then the Fair Market Value shall be the Fair Market Value contained in the Developer's Final Offer. If Developer's Arbitrator and HPARC's Arbitrator fail to appoint the third arbitrator within the time and in the manner prescribed in herein, then HPARC and Developer shall jointly and promptly apply to the local office of the American Arbitration Association for the appointment of the third arbitrator.

## **EXHIBIT “K”**

### **RETAIL USE RESTRICTIONS**

All Retail and restaurant uses contained within the Project (the “*Retail Space*”) are subject to the following restrictions.

No portion of the Retail Space may be used for any of the following:

1. Any nuisance;
2. Any use which violates laws or requirements of governmental authorities having jurisdiction over the Retail Space;
3. Any establishment primarily selling, renting, displaying or advertising sexually explicit material or performances, including without limitation any adult book store, adult arcade, adult novelty or video store, adult cabaret, gentlemen’s club, go-go club, strip bar, or escort or escort agency;
4. A massage parlor (except as part of the regular services offered by a doctor, chiropractor, health club, day spa or beauty salon);
5. A store selling, distributing or displaying any drug paraphernalia primarily used in connection with the use or ingestion of illicit drugs;
6. A “second hand” store, including as examples those operated by Goodwill Industries or the Salvation Army; provided, however, that this shall not prohibit a store selling antiques or collectible furniture and home decorations;
7. A pawn shop;
8. A flea market; provided, however, that a temporary arts and crafts market shall be permitted;
9. A mortuary or funeral home;
10. A tattoo or piercing parlor;
11. A kennel or veterinary clinic where animals are kept overnight;
12. An automobile body and repair shop;
13. A gun shop;
14. A check-cashing operation other than a bank;
15. A bail bonds office or operation;
16. A “fast food restaurant”. For purposes hereof, a “fast food restaurant” shall mean a restaurant that is a Formula Business Use whose principal business is the sale of foods, desserts or beverages prepared in quantity by a standardized method in a ready-to-consume state and intended primarily for immediate consumption by the customer without further preparation, either within the restaurant building or for carry-out with consumption off the premises, and which has all of the following characteristics: (a) food items are served primarily in paper, plastic or other disposable containers; (b) the restaurant provides rapid customer service by preparing the menu items in advance of the customer’s order or by having the items in a ready-to-assemble condition; (c) the food items consist primarily of items sold at Formula Business Use restaurants. This restriction is not intended to prevent food service uses which sell prepared entrees, salads, side dishes and desserts intended for consumption off the premises; or
17. Stores where souvenirs, t-shirts, or novelties comprise more than thirty-five percent (35%) of the display area or visible floor area. Display for these purposes includes any wall display such as shelves, hangers, etc., and any floor space such as shelves, tables, etc. T-shirts, souvenirs, or

novelties, or any combination thereof, may also not be displayed in more than thirty-five percent (35%) of the window(s) or door(s) visible from the street of such store; or

18. Entertainment uses targeted principally towards tourists or visitors (such as, for example, Ripley's Believe It Or Not, Guinness World Records, and similar such uses).

In addition, no portion of the Retail Space may be used for a Formula Business Use (as defined below) unless HPARC gives its prior written consent to such use in writing, such consent to be given or withheld in HPARC's sole discretion.

For purposes hereof, a "**Formula Business Use**" is defined as a type of retail, restaurant, service or other business use establishment which, along with three (3) or more other such establishments located in the San Antonio area and ten (10) or more establishments located in Texas under the same name, shares two or more of the following features at the time the initial lease term for such tenant on the Premises commences: (a) a Standardized Array of Merchandise or (in the case of a restaurant, coffee shop, bar or other establishment serving food or drink) a Standardized Menu, (b) a Standardized Facade, (c) a Standardized Decor and Color Scheme, or (d) Standardized Uniform Apparel. Formula Business Uses may include, without limitation, the following: retail stores, restaurants, bars, banks, sales offices, spas, and hair and nail salons.

For purposes hereof, the following terms shall be defined as follows:

1. "**Standardized Array of Merchandise**" is defined as a situation in which 50% or more of in-stock merchandise is from a single distributor bearing uniform markings.
2. "**Standardized Menu**" is defined as a menu that share 50% or more of the same items with other such establishments.
3. "**Standardized Façade**" is defined as a generalized conforming appearance of the face or front of a Formula Business Uses to other such establishments.
4. "**Standardized Décor**" is defined as a generalized conforming style of interior finishes, which may include but is not limited to, style of furniture, wallcoverings or permanent fixtures.
5. "**Standardized Color Scheme**" is defined as a generalized conforming selection of colors used inside and outside of the Formula Business Use, such as on the furnishings, permanent fixtures, and wallcoverings, or as used on the facade.
6. "**Standardized Uniform Apparel**" is defined as a generalized conforming use of standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hat, and pins (other than name tags) as well as standardized colors of clothing.

Notwithstanding any other provision contained herein, if Developer exercises commercially reasonable efforts to lease any portion of the Retail Space for a period of six (6) months but does not receive any written offers to lease the that portion of Retail Space for the Minimum Rental Amount (as defined below), then Developer shall be permitted to lease the Retail Space, without HPARC's prior written consent, to either (a) a Formula Business Use, or (b) a fast food restaurant; provided, however, that such fast food restaurant may not also be a Formula Business Use, and to renew, extend, or amend the lease for that portion of the Retail Space without HPARC's prior written consent. Once Developer has successfully leased that portion of the Retail Space following such six (6) month period, then Developer shall again be subject to the full range of Retail Use Restrictions with respect to any future users of the same; provided, however, that Developer shall have the same rights described in the preceding sentence if Developer again exercises commercially reasonable efforts to lease that portion of the Retail Space for a period of six (6) months but does not receive any written offers to lease that portion of the Retail Space

for the Minimum Rental Amount. For purposes hereof, the “***Minimum Rental Amount***” is defined as eighteen dollars (\$18.00) per square foot net rent per year, excluding any deductions for concessions or tenant allowances offered or proposed, with such Minimum Rental Amount to be adjusted to account for changes in CPI using a base year of 2018.

## **EXHIBIT "L"**

### **CERTIFICATION**

In connection with the intended purchase by \_\_\_\_\_ ("Assignee") of all rights of Developer (defined below) in that one certain Development Sublease Agreement (the "Lease") dated on or about \_\_\_\_\_, 2016 (as amended and assigned) between the Hemisphere Park Area Redevelopment Corporation, a Texas local government corporation formed under Subchapter D of Chapter 431 of the Texas Transportation Code ("HPARC"), and [\_\_\_\_\_ LLC, a \_\_\_\_\_ limited liability company/ or list other current holder of lease rights if applicable] ("Developer").

I, \_\_\_\_\_, on behalf of Assignee certify the following statements are accurate as of [insert date of this certification]:

1. HPARC may rely upon the statements contained in this certification.
2. *[insert relevant language from Section 15(b) of the Lease as it pertains to permitted assignment conditions depending upon the portion of the Project being assigned; for instance, on the multifamily certificate, this portion of the Certification would read as follows:*  
*"[ Choose one of the following and mark through or delete the other ones:] (A) Assignee or its Affiliates (as defined in the Lease) have owned or operated, or presently own or operate, at least 1,000 multifamily apartment units; or (B) Assignee or its Affiliates have hired a professional property management company that is presently managing at least 1,000 multifamily apartment units. Attached hereto as Exhibit "A" is a schedule of the multifamily apartment units being relied upon in making this certification." ]*
3. Either (a) the assignee is a publicly-traded company that has not ever been convicted of a felony under the laws of the State of Texas or the United States of America, or (b) neither any person owning twenty percent (20%) or more of the beneficial ownership of the assignee nor any executive officer of the assignee has ever been convicted of a felony under the laws of the State of Texas or the United States of America.
4. Neither the assignee nor its Affiliates have ever been a defendant in a lawsuit with the HPARC, the PFC, the City, or any agency, division or subsidiary of the City involving fraud, misrepresentation or breach of a material contract.
5. The assignee or its affiliates have a tangible net worth equal to or greater than ten percent (10%) of the total consideration to be paid to assignor in connection with such assignment.

ASSIGNEE:

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

**EXHIBIT "M"**

**MEMORANDUM OF LEASE**

After recording return to:

**MEMORANDUM OF LEASE**

THIS MEMORANDUM OF LEASE (the "Memorandum of Lease") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION, a Texas local government corporation formed under Subchapter D of Chapter 431 of the Texas Transportation Code ("HPARC"), and ZH DOWNTOWN DEVELOPMENT COMPANY, LLC, a Texas limited liability company ("Developer").

**W I T N E S S E T H:**

A. HPARC and Developer entered into that certain Development Sublease Agreement (the "Lease") dated \_\_\_\_\_, 2016 (the "Effective Date") relating to certain land in the City of San Antonio, Texas, being more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Premises").

B. HPARC and Developer desire to execute and record this Memorandum of Lease to provide record notice of the Lease and certain terms and conditions contained in the Lease.

NOW, THEREFORE, for and in consideration of the mutual covenants contained in this Memorandum of Lease and in the Lease, HPARC and Developer hereby agree as follows:

1. Premises. As of the Effective Date, HPARC leases to Developer, and Developer rents from HPARC, the Premises.

2. Term. The Initial Term of the Lease commenced on \_\_\_\_\_, 201\_\_ and shall end at midnight on December 31, 2066. Developer also has options to extend the Term of the Lease for four (4) successive periods of ten (10) years and a final period of seven (7) years pursuant to the terms, conditions and provisions of the Lease.

3. Incorporation of Lease. The provisions of the Lease are incorporated into this Memorandum of Lease as if set out in full. In the event of any conflict or inconsistency between the terms of this Memorandum of Lease and the terms of the Lease, the terms of the Lease will govern and control for all purposes.

4. Master Lease. This Lease is subject and subordinate in all respects to the Master Lease by and between the Hemisfair Park Public Facilities Corporation, as landlord, and HPARC, as tenant, dated effective as of December 11, 2014, a memorandum of which is recorded in Book 17362, Page 2119, Official Public Records of Bexar County, Texas. Developer's rights under the Lease are further subject to the terms and conditions of that certain Recognition Agreement between **HEMISFAIR PARK PUBLIC FACILITIES CORPORATION**, a Texas non-profit public facilities corporation ("PFC"), and Developer dated February 1, 2016.

5. Defined Terms. All capitalized terms and words of art which are used but not defined in this Memorandum of Lease will have the same respective meaning designated for such terms and words of art in the Lease.

6. Cancellation of Memorandum of Lease. On the request of HPARC following the expiration or termination of the Lease, Developer will promptly execute and deliver an appropriate release and/or cancellation instrument in recordable form acknowledging the expiration or termination of the Lease and releasing any and all right, title and interest of Developer in and to the Premises under the Lease.

[Signatures begin on the following page]

HPARC and Developer have caused this Memorandum of Lease to be executed on the day, month and year set out above.

**HPARC:**

**Hemisfair Park Area Redevelopment Corporation,**  
a Texas local government corporation

By: \_\_\_\_\_  
Name: Andres Andujar  
Title: Chief Executive Officer

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on \_\_\_\_\_, 2016, by Andres Andujar, the Chief Executive Officer of Hemisfair Park Area Redevelopment Corporation, a Texas local government corporation, on behalf of said local government corporation.

---

Notary Public

Commission Data:

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(NOTARIAL SEAL)

*[Signatures continued on following page]*

**DEVELOPER:**

ZH DOWNTOWN DEVELOPMENT COMPANY,  
LLC, a Texas limited liability company

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

Name:

Title:

STATE OF TEXAS

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

This instrument was acknowledged before me on \_\_\_\_\_, 2016, by  
\_\_\_\_\_, the \_\_\_\_\_ of ZH DOWNTOWN DEVELOPMENT  
COMPANY,LLC, a Texas limited liability company, on behalf of said company.

---

Notary Public

Commission Data:

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(NOTARIAL SEAL)

**EXHIBIT "A" TO MEMORANDUM OF LEASE  
LEGAL DESCRIPTION**

## **EXHIBIT "N"**

When recorded, return to:

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### **ATTORNEY AND NON-DISTURBANCE AGREEMENT**

This ATTORNEY AND NON-DISTURBANCE AGREEMENT ("Agreement") is made and entered into effective as of \_\_\_\_\_, 201\_\_\_\_\_ by and between \_\_\_\_\_ ("Beneficiary"); \_\_\_\_\_, a \_\_\_\_\_ ("HPARC"); and \_\_\_\_\_, a \_\_\_\_\_ ("Developer").

A. Beneficiary is the owner and holder of [\_\_\_\_\_], the "Deed of Trust", which Deed of Trust constitutes a lien on the land described in Exhibit A (the "Property").

B. Developer is the holder of a leasehold estate in the Property (the property which is the subject of such leasehold estate being referred to as the "Demised Premises") pursuant to the terms of the Development Sublease Agreement (the "Lease") dated February 1, 2016, and executed by and between Developer, as the tenant, and HPARC, as the landlord.

C. HPARC, Developer and Beneficiary desire to confirm their understandings with respect to the Lease and the Deed of Trust.

In consideration of the mutual and dependent covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereto agree and covenant as follows:

1. Recognition of Lease. Subject to the terms of this Agreement, Beneficiary acknowledges and agrees that the security interest of Beneficiary pursuant to the Deed of Trust is subject to the Lease. Nothing in this Agreement will be deemed or construed as limiting or restricting the enforcement by Beneficiary of any of the terms, covenants, provisions or remedies against HPARC as specified in the Deed of Trust.

2. Purchaser. As used herein, the term "Purchaser" shall be deemed to include Beneficiary and any of its successors and assigns, including anyone who shall have succeeded to HPARC's interest in the Demised Premises by, through or under judicial foreclosure sale, non-judicial foreclosure sale or other similar proceedings brought pursuant to the Deed of Trust, deed in lieu of such foreclosure, other proceedings brought by Beneficiary under or with respect to the Note or Deed of Trust, or otherwise.

3. Attornment. If the interests of HPARC in and to the Demised Premises become owned by Beneficiary or another Purchaser by reason of judicial foreclosure, non-judicial foreclosure by the trustee under the Deed of Trust, other proceedings brought by Beneficiary or Purchaser or by any other manner, including, but not limited to, Beneficiary's exercise of its rights under any collateral assignment(s) of leases and rents, whereby Purchaser succeeds to the interest of the HPARC under the Lease, Developer shall be bound to Purchaser in accordance with all of the terms, covenants and conditions of the Lease for the balance of the term thereof and any extension thereof duly exercised by Developer with the same force and effect as if Purchaser were the HPARC under the Lease. Developer does hereby attorn to Purchaser, as its HPARC, which attornment shall be effective and self-operative, without the execution of any further instruments on the part of any of the parties hereto, immediately

upon Purchaser's succeeding to the interest of the HPARC under the Lease; provided, however, that Developer shall be under no obligation to pay rent to Purchaser until Developer receives written notice from Purchaser that it has succeeded to the interest of the HPARC under the Lease, and upon receipt of such notice, Developer shall pay to Purchaser all rental and other payments required under the Lease for the duration of the term of the Lease and any extensions thereof duly exercised by Developer, in accordance with all of the terms, covenants and conditions of the Lease. The respective rights and obligations of Developer and Purchaser upon such attornment, to the extent of the then remaining balance of the term of the Lease and any extension thereof duly exercised, shall be and are the same as now set forth therein, it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference, with the same force and effect as if expressly set forth herein.

4. Non-Disturbance. If the interests of HPARC in and to the Demised Premises become owned by Beneficiary or another Purchaser by reason of judicial foreclosure, non-judicial foreclosure by the trustee under the Deed of Trust, other proceedings brought by Beneficiary or Purchaser or by any other manner, the interests of Purchaser will be subject in all respects to the Lease and Developer's rights, title, interest, possession, use and occupancy of the Demised Premises pursuant to the Lease shall not be extinguished or terminated by such foreclosure nor interfered with or disturbed by Purchaser during the term of the Lease and any extension thereof duly exercised by Developer so long as Developer is not in default under the Lease beyond any applicable notice and cure periods; which non-disturbance shall be effective and self-operative, without the execution of any further instruments on the part of any of the parties hereto, immediately upon Purchaser's succeeding to the interest of the HPARC under the Lease.

5. Purchaser's Obligations. If Purchaser shall succeed to the interest of HPARC under the Lease, Purchaser shall be bound to Developer under all of the terms, covenants and conditions of the Lease; provided, however, that Purchaser shall not be:

(a) liable for any act or omission of any prior HPARC (including HPARC) under the Lease; however, Purchaser acknowledges that it will be liable for all defaults by the prior HPARC under the Lease to the extent they are of an ongoing nature and are continuing from and after the date it becomes the Purchaser;

(b) subject to any offsets or defenses which Developer might have against any prior HPARC (including HPARC) under the Lease; however, Purchaser acknowledges that it will be liable for all defaults by the prior HPARC under the Lease to the extent they are of an ongoing nature and are continuing from and after the date it becomes the Purchaser;

(c) bound by any rent, additional rent, advance rent or other monetary obligations which Developer might have paid for more than the current month to any prior HPARC (including HPARC) under the Lease and which is not delivered or paid to Purchaser at the time of Purchaser's succession to title to the Demised Premises

(d) bound by any security deposit of any type or advance rental deposit made by Developer under the Lease that is not delivered or paid to Purchaser at the time of Purchaser's succession to title to the Demised Premises; or

(e) bound by any material modification or amendment of the Lease that has the effect of modifying the Term, reducing the amount of Rent or increasing the liability of the HPARC in any material way.

6. Exculpation of Purchaser. Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement, the Lease shall be deemed to have been automatically amended to the extent it does not currently provide, to provide that Purchaser's obligations and liability under the Lease shall never extend beyond Purchaser's interest, if any, in the Demised Premises from time to time (collectively, "Purchaser's Interest"). Developer shall look exclusively to

Purchaser's Interest for payment or discharge of any obligations of Purchaser under the Lease. If Developer obtains any money judgment against Purchaser with respect to the Lease or the relationship between Purchaser and Developer, then Developer shall look solely to Purchaser's Interest to collect such judgment. Developer shall not collect or attempt to collect any such judgment out of any other assets of Purchaser.

7. Default Notice. Developer agrees to give written notice ("Default Notice") to Beneficiary of any default by HPARC of its obligations under the Lease specifying the nature of the default, contemporaneously with the delivery of any notice of such default to HPARC. After receipt of a Default Notice, Beneficiary will have the right (but not the obligation) to correct or cure the default of HPARC within the time period given to HPARC to cure the default.

8. Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; properly addressed, (ii) by delivering same in person to the intended addressee; or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the address of the intended addressee. Notice so mailed shall be effective two (2) days after its deposit with the United States Postal Service or any successor thereto; notice sent by a commercial delivery service shall be effective one (1) day after delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated address of the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth herein.

Beneficiary: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

HPARC: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Developer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Counterparts. To facilitate execution, this instrument may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.

10. Amendment. This Agreement may not be modified orally or in any manner other than by an agreement, in writing, signed by the parties hereto or their respective successors in interest.

11. Successors. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

12. Governing Law. This Agreement shall be governed by the laws of the State of Texas and venue for any action brought hereunder shall be in Bexar County, Texas.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.  
THE SIGNATURE PAGES FOLLOW.]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

BENEFICIARY:

---

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

STATE OF \_\_\_\_\_ SS:

COUNTY OF \_\_\_\_\_ SS:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, on behalf of such bank.

(Seal and Expiration Date)

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Notary Public

HPARC:

**Hemisfair Park Area Redevelopment Corporation,**  
a Texas local government corporation

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

Name: Andres Andujar

Title: Chief Executive Officer

STATE OF \_\_\_\_\_ SS:

COUNTY OF \_\_\_\_\_ SS:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
201\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_.

(Seal and Expiration Date)

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Notary Public

DEVELOPER:

\_\_\_\_\_

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

STATE OF \_\_\_\_\_ SS:

COUNTY OF \_\_\_\_\_ SS:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_.

(Seal and Expiration Date)

\_\_\_\_\_

Notary

\_\_\_\_\_

Public

**EXHIBIT "O"**  
**DEPICTION OF MAE PARK FACILITIES AREA**

The area shown below in blue is the MAE Park Facilities Area.

