

**ECONOMIC DEVELOPMENT GRANT AGREEMENT OF THE CITY OF SAN ANTONIO
AND RIVER NORTH TAX INCREMENT REINVESTMENT ZONE #27**

This Economic Development Grant Agreement (hereinafter referred to as this "Agreement") is made and entered into by and among the City of San Antonio (the "City"), a municipal corporation of the State of Texas, acting by and through its City Manager or her designee, River North Tax Increment Reinvestment Zone #27, acting by and through its Board of Directors, (the "TIRZ") and Paradigm Hotel SA River Walk, LP, by and through Paradigm Hotel Group, LLC, its General Partner (hereinafter referred to as "GRANTEE") and whom together may be referred to as the "Parties."

WHEREAS, the GRANTEE is the owner of approximately 1.345 acres of real property located along 9th Street, North St. Mary's Street, and Arden Grove, as more particularly described on "Attachment A" attached hereto (the "Property"); and

WHEREAS, GRANTEE is engaged in an economic development project that will be located within the city limits of San Antonio that will consist of a riverfront hotel development consisting of a 90,000 square foot hotel with 130 rooms, restaurant, and conference space, and \$997,743.00 in public improvements to be located on the Property, bringing in approximately 80 retail jobs (the "Project"); and

WHEREAS, the City's governing body recommended to the TIRZ that the Project be reimbursed for public infrastructure undertaken and completed by GRANTEE; and

WHEREAS, GRANTEE is seeking an economic development grant from the City and the TIRZ for the purpose of defraying costs associated with the Public Improvements as further described in this Agreement; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code and Section 311.010(b) and Section 311.010(h) of the Texas Tax Code, the City and the TIRZ are authorized to grant funds to promote state or local economic development and to stimulate business and commercial activity in the municipality and the TIRZ; and

WHEREAS, the City and the TIRZ have identified grant funds to be made available to GRANTEE for use in completing Public Improvements for the Project and the Board of Directors of the TIRZ has authorized the TIRZ to enter into this Agreement with GRANTEE in accordance with the Resolution attached hereto as "Attachment B", dated May 2, 2012; and

WHEREAS, the City Council of City has authorized the City Manager or her designee to enter into this Agreement with GRANTEE in accordance with City Ordinance No.2012-05-17-0368 passed and approved on May 17, 2012 to grant funds; **NOW THEREFORE:**

The Parties hereto severally and collectively agree, and by the execution hereof are bound, for the consideration stated, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

SECTION 1. AGREEMENT PURPOSE

GRANTEE shall undertake the development of a riverfront hotel development consisting of a 90,000 square foot hotel with 130 rooms, restaurant, and conference space, and a minimum of \$997,743.00 in Public Improvements to be located on the Property, bringing approximately 80 retail jobs to the area.

The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio and the TIRZ. The City and TIRZ are supporting the Project through this Economic Development Program Grant to provide funds to be used to defer costs for Public Improvements associated with the Project.

SECTION 2. PROJECT REQUIREMENTS

A. GRANTEE shall make a minimum Investment (as hereafter defined) of EIGHTEEN MILLION, TWO HUNDRED THOUSAND DOLLARS AND NO CENTS (\$18,200,00.00) in the Project, which shall include approximately NINE HUNDRED NINETY-SEVEN THOUSAND, SEVEN HUNDRED FORTY-THREE DOLLARS AND NO CENTS (\$997,743.00) of Public Improvements (as hereafter defined). For the purposes of this Agreement, "Public Improvements" shall include street, drainage, and other infrastructure improvements pertaining to development of the Property, as more particularly described in "Attachment C" (attached hereto and made part hereof). Notwithstanding any other provision of this Agreement to the contrary, the City and TIRZ agree that GRANTEE shall not be required to expend the particular amounts described in Attachment C so long as the cumulative amount expended for the Public Improvements, at a minimum, achieves GRANTEE's performance obligations described in Attachment C. For purposes of this Agreement, "Investment" shall mean all expenditures made by GRANTEE directly or indirectly, without limitation, to develop the Project, including: architectural, engineering and surveying expenses, financing costs and fees, construction period interest, property acquisition, closing and settlement expenses, demolition, construction, site preparation, paving, landscaping, utilities, project marketing, legal expenses, and reasonable fees paid to consultants, contractors and developer.

B. GRANTEE shall commence construction on or before December 1, 2012 and shall use commercially reasonable efforts to complete construction no later than December 31, 2013, subject to Force Majeure. The commencement date shall be determined by the issuance of a building permit for the Project and City's receipt of correspondence from the general contractor for Project confirming that construction of the Project has commenced. The completion date shall be determined by the issuance of a Certificate of Occupancy for the Project by City (not to be unreasonably withheld).

C. GRANTEE shall make available to City any Project progress reports generated by GRANTEE during the construction phase of the Project. In addition, should City request a progress report on the Project from GRANTEE, GRANTEE shall provide such a report within fifteen (15) business days.

D. GRANTEE shall comply with all applicable Federal, State and local laws and regulations, as amended from time to time, and shall develop and operate the Project in accordance with the terms and conditions of this Agreement.

F. **Liens and Claims.** No Public Improvements with a lien still attached may be offered to the City for dedication. If any lien or claim of lien, whether choate or inchoate (collectively, any "Mechanic's Lien") is filed against the Property regarding the Public Improvements on the Project by reason of any work, labor, services or materials supplied or claimed to have been supplied by, or on behalf of, GRANTEE, or any of its agents or Contractors, GRANTEE shall cause the same to be satisfied or discharged of record, or effectively prevent the enforcement or foreclosure against the Project's Public Improvements by injunction, payment, deposit, bond, court order or otherwise.

G. GRANTEE is responsible for complying with all applicable City Code provisions, including provisions of the Unified Development Code enforced pursuant to the City's subdivision platting authority and as amended from time to time, including, but not limited to, those provisions related to drainage, utilities, and substandard public street rights-of-ways for development and construction of the

Project including the Public Improvements. In addition, GRANTEE shall follow the River North Master Plan for the Project, as adopted by City, and low impact development strategies for water quality, storm water and drainage where appropriate for the Project. This Agreement in no way obligates the City to approve any subsequent permits or requests for the Project, as GRANTEE is still responsible for acquiring all necessary permits and/or approvals as needed for the Project.

SECTION 3. ECONOMIC DEVELOPMENT PROGRAM GRANT

A. **Economic Development Program Grant.** City and TIRZ are providing GRANTEE with an Economic Development Program Grant. The TIRZ is directing the City to administrate this Agreement by disbursing the Grant Funds and monitoring GRANTEE's compliance with the terms and conditions of this Agreement. Such grant shall be as follows:

1. The TIRZ is providing NINE HUNDRED NINETY-SEVEN THOUSAND, SEVEN HUNDRED FORTY-THREE DOLLARS AND NO CENTS (\$997,743.00) in tax increment reimbursements from the Tax Increment Fund (hereafter defined), held by the City as fiscal agent (the "Grant Funds"), to be paid to GRANTEE as set forth herein.
2. The Grant Funds shall be used for the purpose of reimbursing GRANTEE for Investments in costs of the Public Improvements for the Project.

B. **Grant Disbursement.** The Grant Funds will be distributed over the Term of this Agreement, subject to the terms and conditions herein, as follows:

1. **Initial Requirements.** Grant disbursement shall require:

- (a) Execution of the Agreement by all Parties; and
- (b) Receipt of evidence of the issuance of all necessary permits from the City of San Antonio for the commencement of construction on the Project; and
- (c) GRANTEE providing to City the following: (i) a letter from a qualified financial institution confirming GRANTEE has funds available on deposit or under an existing credit facility exceeding EIGHTEEN MILLION, TWO HUNDRED THOUSAND DOLLARS AND NO CENTS (\$18,200,000.00, which is the estimated cost of constructing the Project; (ii) written confirmation from GRANTEE that it has received the necessary building permits to cause the Commencement of Construction of the four (4) story hotel building comprising a portion of the Project; (iii) a letter from GRANTEE's general contractor that Commencement of Construction of the Project has occurred prior to December 1, 2012; and (iv) a construction schedule and budget for the Public Improvements. City shall determine in its sole discretion whether the evidence provided by GRANTEE is sufficient to satisfy the foregoing conditions.

2. **Property Tax Increment Reimbursement (Maximum of \$997,743.00).** Subject to the terms and conditions of this Agreement and the Payment Conditions (defined herein), for each tax year commencing with the inclusion of the Project within the TIRZ, and then annually for eleven (11) tax years throughout the remainder of the Term, the TIRZ shall pay to GRANTEE no later than forty-five (45) business days following submission of a tax invoice by GRANTEE indicating full payment of all taxes by GRANTEE on the Project, an amount equal to: (a) the actual amount of real property taxes paid by GRANTEE to the City with respect to the Project (including land and improvements) for the immediately preceding tax year, less (b) the actual amount of real property taxes payable by GRANTEE to City with respect to the Property for

tax year 2011 (the difference between (a) and (b) being referred to herein as the "Annual Property Tax Increment Reimbursement"). GRANTEE shall also provide with each annual tax invoice GRANTEE submits to City information showing amounts paid by GRANTEE for the construction of the Public Improvements during each tax year for which Reimbursement is requested. Such information shall include, but is not limited to, paid invoices to contractors and vendors and an updated construction schedule and budget for the Public Improvements. GRANTEE shall only receive reimbursement for actual construction costs incurred and paid by GRANTEE, not to exceed the amount of tax increment attributed to the Project annually. Payment of the Annual Property Tax Increment Reimbursement to GRANTEE shall occur in accordance with the following conditions (collectively, the "Payment Conditions"):

- (a) For each tax year during the Term of this Agreement, TIRZ shall pay the Annual Property Tax Increment Reimbursement to GRANTEE if the City or other participating taxing entities have deposited funds into the Tax Increment Fund for that particular tax year, pursuant to Section 311.013 of the Texas Tax Code. Payment of the Annual Property Tax Increment Reimbursement to GRANTEE from the Tax Increment Fund shall come solely from City property taxes attributable to the Project. For purposes of this Agreement, "Tax Increment Fund" means that certain fund established by the City for the TIRZ, pursuant to Section 311.004, Texas Tax Code.
- (b) For any particular tax year during the Term of this Agreement, if no tax increment is realized within the TIRZ, the TIRZ shall defer payment of any Annual Property Tax Increment Reimbursement due to GRANTEE under this Section, during that tax year.
- (c) For any particular tax year during the Term of this Agreement, if insufficient City tax increment attributable to the Project is realized within the TIRZ to permit the full payment of the Annual Property Tax Increment Reimbursement due to GRANTEE under this Section, the TIRZ shall pay as much of the Annual Property Tax Increment Reimbursement to GRANTEE as possible from City tax increment attributable to the Project, and the TIRZ shall defer payment of any unpaid balance of the Property Tax Increment Reimbursement due to GRANTEE under this Section during that tax year.
- (d) It is expressly agreed that all deferred Property Tax Increment Reimbursements (the "Deferred Amounts Due") shall accrue without interest and be payable at the earliest reasonable opportunity to GRANTEE by TIRZ upon the availability of City tax increment attributable to the Project in the Tax Increment Fund.
- (e) At any time during the Term of this Agreement and provided that GRANTEE has no Deferred Amounts Due and there exist unallocated amounts of City tax increment attributable to the Project in the Tax Increment Fund, the TIRZ shall consider any reasonable request made by GRANTEE to pay amounts in addition to the Annual Property Tax Increment Reimbursement up to the Maximum Disbursement Amount. It is expressly understood that the TIRZ has no obligation to pay additional amounts.
- (f) The GRANTEE understands and agrees that any expenditure made by the GRANTEE in anticipation of reimbursement from Tax Increments shall not be, nor shall be construed to be, financial obligations of the City, or the TIRZ. The GRANTEE shall bear all risks associated with reimbursement, including, but not limited to: incorrect estimates of Tax Increment, changes in tax rates or tax collections, changes in state law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements,

changes in City policy, and/or unanticipated effects covered under legal doctrine of force majeure.

3. **Obligation to Pay Taxes.** It is understood that GRANTEE shall continue to pay all taxes owed on the Property as required by law. Taxes owed or paid shall be determined by the Bexar County Appraisal District. Prior to TIRZ disbursing funds under Section 3.B.(ii), GRANTEE must provide to City evidence indicating that all taxes owed by GRANTEE on the Property have been paid in full for the tax year for which payment of the Annual Property Tax Increment Reimbursement is sought, subject to GRANTEE's right to protest taxes as permitted by law. If, during the Term of this Agreement, GRANTEE allows its ad valorem taxes due on the Property to become delinquent and fails to timely and properly follow the legal procedures for the protest and/or contest of the taxing value, then the City's and TIRZ's remedies under this Agreement shall apply.
4. **Property Tax Reconciliation.** In no case shall disbursements made to GRANTEE under this Agreement exceed the Maximum Disbursement Amount. Should such disbursements exceed the Maximum Disbursement Amount, no further disbursements shall be due to GRANTEE and any excess funds disbursed shall be due and payable by GRANTEE to City or TIRZ within sixty (60) days following written notice from City to GRANTEE, provided such written notice is given within one (1) year following the expiration of the Term.

SECTION 4. AGREEMENT TERM

This Agreement shall commence upon the Effective Date listed on the signature page of this Agreement and terminate upon the earlier of: (A) the payment of Grant Funds by City and/or TIRZ to GRANTEE in the amount of the Maximum Disbursement Amount; (B) May 17, 2024, or (C) termination of this Agreement as otherwise provided herein (the "Term").

SECTION 5. CITY AND TIRZ OBLIGATIONS

- A. In consideration of full and satisfactory performance of activities required by Section 2 or Section 3 of this Agreement, as applicable, City and TIRZ will pay GRANTEE in accordance with Section 3 above.
- B. Neither City nor TIRZ will be liable to GRANTEE or any other entity for any costs incurred by GRANTEE in connection with this Agreement.
- C. The City agrees to act as the fiscal agent of the TIRZ by making disbursements under this Agreement. Additionally, the City shall monitor GRANTEE's compliance with the terms and conditions of this Agreement and provide updated information to the TIRZ regarding the progress of the Project.
- D. Any and all amounts payable by the TIRZ under this Agreement are payable solely from the TIRZ Tax Increment Fund, and no claim for payment of any amount outside of this contribution shall be made, claimed or permitted against any other funds, properties, assets or the general credit of the TIRZ and/or the City.

SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS

- A. GRANTEE shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. GRANTEE shall retain such records and any supporting documentation for the greater of: (1) five [5] years from the end of the Agreement Term; or (2) the period required by other applicable laws and regulations.

B. GRANTEE shall, following reasonable advance written notice from the City, give the City, its designee, or any of their duly authorized representatives, access to and the right to examine all material records related to the cost of Project (the "Records"). City's access to the Records will be limited to information needed to verify that GRANTEE is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by the City. GRANTEE shall not be required to disclose to the City or TIRZ any information that by law GRANTEE is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the City reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTEE. The rights to access the Records shall continue as long as the Records are retained by GRANTEE. Failure to provide reasonable access to the Records to authorized City representatives shall give the City and TIRZ the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default. All Records shall be retained by GRANTEE for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. The obligations of this Section 6 shall survive Termination of the Agreement.

SECTION 7. MONITORING

A. The City reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement. The City will provide GRANTEE and TIRZ with a written report of its findings. If the monitoring report notes deficiencies in GRANTEE's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by GRANTEE and a reasonable amount of time in which to attain compliance. Failure by GRANTEE to take action specified in the monitoring report within a reasonable amount of time may be cause for suspension or termination of this Agreement, in accordance with Sections 14 and 15 herein.

SECTION 8. CONFLICT OF INTEREST AND GIFTS

A. GRANTEE shall use good faith efforts to ensure that no employee, officer, or individual agent of City shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. GRANTEE shall comply with Chapter 171, Texas Local Government Code as well as the City's Code of Ethics.

B. City may terminate this Agreement immediately if the GRANTEE has offered, conferred, or agreed to confer any benefit on a City of San Antonio employee or official that the City of San Antonio employee or official is prohibited by law from accepting. Benefit means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law. Notwithstanding any other legal remedies, the City may obtain reimbursement for any expenditures made to the GRANTEE as a result of the improper offer, agreement to confer, or conferring of a benefit to a City of San Antonio employee or official.

SECTION 9. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. As a condition of entering into this agreement, GRANTEE represents and warrants that it will comply with the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, GRANTEE shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers funded in whole or in part with funds made available under this Agreement, nor shall GRANTEE retaliate against any person for reporting instances of such discrimination. GRANTEE shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. Grantee understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of GRANTEE from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

B. None of the performances rendered by GRANTEE under this Agreement shall involve, and no portion of the funds received by GRANTEE under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

C. GRANTEE shall, to the best of its knowledge and belief, include the substance of this Section in all agreements entered into by GRANTEE associated with the funds made available through this Agreement.

SECTION 10. LEGAL AUTHORITY

A. Each Party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. The person or persons signing and executing this Agreement on behalf of each Party or representing themselves as signing and executing this Agreement on behalf of a Party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that Party and to validly and legally bind that Party to all terms, performances and provisions herein set forth.

C. City and TIRZ will have the right to suspend or terminate this Agreement in accordance with Sections 14 and 15 herein if there is a dispute as to the legal authority, of either GRANTEE or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. GRANTEE is liable to City and TIRZ for any money it has received from City or TIRZ for performance of the provisions of this Agreement if City or TIRZ suspends or terminates this Agreement for reasons enumerated in this Section.

SECTION 11. LITIGATION AND CLAIMS

A. GRANTEE shall give City immediate notice in writing of any action, including any proceeding before an administrative agency, filed against GRANTEE arising out of the performance of any activities hereunder. Except as otherwise directed by City, GRANTEE shall furnish immediately to City copies of all pertinent papers received by GRANTEE with respect to such action or claim. GRANTEE shall notify the City immediately of any legal action, known to GRANTEE, filed against the GRANTEE or any

subcontractor thereto, or of any known proceeding filed under the federal bankruptcy code. GRANTEE shall submit a copy of such notice to City within 30 calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations. The above notwithstanding, GRANTEE is not required to notify City of claim litigation which arise out of GRANTEE's operations on the Project, including without limitation, landlord tenant disputes, personal injury actions (slip and falls), and other operational activities or relationships.

B. The TIRZ and GRANTEE acknowledge that City is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. Applicable Law and Venue. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Performance under this Agreement lies in Bexar County, Texas and venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

SECTION 12. ATTORNEY'S FEES

A. In the event that GRANTEE should default under any of the provisions of this Agreement and the City should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of GRANTEE herein contained, GRANTEE agrees to pay to the reasonable fees of such attorneys and such other expenses so incurred by the City.

B. In the event City or TIRZ should default under any of the provisions of this Agreement and the GRANTEE should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of City or TIRZ herein contained, City and TIRZ agree to pay to the GRANTEE reasonable fees of such attorneys and such other expenses so incurred by the GRANTEE.

SECTION 13. CHANGES AND AMENDMENTS

A. Except as provided below, any alterations, additions or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by the Parties.

B. It is understood and agreed by the Parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

C. Any alterations, additions or deletions to the terms of this Agreement (other than those terms in Section 2 or Section 3) required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

SECTION 14. SUSPENSION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code or anything else in this Agreement to the contrary, in the event GRANTEE fails to comply with the terms of this Agreement,

City shall provide GRANTEE with written notification as to the nature of the non-compliance and give GRANTEE a sixty (60) day period following the date of the GRANTEE's receipt of City's written notification to cure any issue of non-compliance. Should GRANTEE fail to cure any default within this period of time, the City may, upon written Notice of Suspension to GRANTEE, suspend this Agreement in whole or in part and withhold further payments to GRANTEE and prohibit GRANTEE from incurring additional obligations of funds under this Agreement. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended. Parties agree that any such Suspension shall not delay, preclude or alter the payment of Deferred Amounts Due accrued prior to the date of non-compliance hereunder.

B. In the case of default for causes beyond GRANTEE's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the City may, in its sole discretion, extend the cure period provided that GRANTEE shall: (1) immediately upon receipt of Notice of Suspension advise City of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. A suspension under this Section may be lifted only by City upon a showing of full compliance with or written waiver by City of the term(s) in question.

D. Neither City nor TIRZ shall be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement.

SECTION 15. TERMINATION

A. Should GRANTEE fail to timely commence construction in accordance with Section 2(b) above, this Agreement shall terminate automatically and any and all incentives offered to GRANTEE by City and TIRZ shall extinguish. City and TIRZ shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of completion of the Term whenever City determines that GRANTEE has failed to comply with any term of any Agreement with the City and TIRZ. City will provide GRANTEE with written notification as to the nature of the non-compliance, and grant GRANTEE a sixty (60) day period from the date of the City's written notification to cure any issue of non-compliance under such Agreement. Should GRANTEE fail to cure any default within this period of time, City may, upon issuance to GRANTEE of a written Notice of Termination, terminate this Agreement, withhold further payments to GRANTEE and seek repayment of any and all funds disbursed by City.

B. In the case of default for causes that cannot with due diligence be cured within such sixty (60) day period, the 60-day cure period shall be extended for such additional time as may be reasonable under the circumstances, provided that GRANTEE shall: (1) immediately upon receipt of Notice of Termination advise City of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. Recapture of Grant Funds. Should GRANTEE:

1. Fail to commence the Project on or before December 1, 2012;
2. Fail to complete the Project no later than December 31, 2013;
3. Fail to utilize Grant Funds for the Public Improvements for the Project;

4. Fail to keep adequate records necessary for the City to determine whether GRANTEE is in compliance with this Agreement; or
5. Breaches this Agreement in any manner set forth in this Agreement; then

City shall have the right to terminate this Agreement and recapture the Grant Funds. Upon such termination, City shall be entitled to the repayment of Grant Funds within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination.

D. Other Remedies Available. City shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and repayment of funds, if GRANTEE defaults under the material terms of this Agreement and fails to cure such default within the cure period set forth above. However, such termination and repayment shall be subject to any and all lawful offsets, settlements, deductions or credits to which GRANTEE may be entitled.

SECTION 16. SPECIAL CONDITIONS AND TERMS

A. **Termination of TIRZ.** The Parties agree that, in the event that the City, acting in accordance with State law, terminates the TIRZ or adopts an ordinance that causes the termination date of the TIRZ to occur on a date earlier than provided in the ordinance that initially established the TIRZ, the City may, in accordance with State law, establish a fund in an amount that will be sufficient to pay any other amounts that may become due, including compensation due to or to become due to the trustee or escrow agent, as well as to pay the principal of and interest on any other obligations incurred on behalf of the TIRZ. Should the Project become located in another TIRZ, GRANTEE may alternatively petition for assignment of the Agreement to said TIRZ in accordance with Section 20. GRANTEE may also petition the City, acting in its sole discretion, to amend this Agreement to provide for the payment of Annual Property Tax Increment Reimbursements by the City to GRANTEE in accordance with the material terms and conditions of this Agreement.

B. **Employment.** GRANTEE, in accordance with Chapter 2264 of the Texas Government Code, agrees not to knowingly employ any undocumented workers at the Project during the Term of this Agreement. If GRANTEE is convicted of a violation under 8 U.S.C. Section 1324a (f), then GRANTEE shall repay the City or TIRZ the amounts granted by this Agreement for the tax year(s) covered under this Agreement during which such violation occurred. Such payment shall be made within 120 business days after the date GRANTEE is notified by the City of such violation. The City, in its sole discretion, may extend the period for repayment herein. Additionally, GRANTEE shall pay interest on the amounts due to City or TIRZ at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate, from the date of such violation notice until paid.

SECTION 17. SUBCONTRACTING

A. GRANTEE shall use reasonable business efforts to ensure that the performance rendered under subcontracts entered into by GRANTEE complies with all terms and provisions of this Agreement as if such performance were rendered by GRANTEE. For purposes of this Agreement, the term "subcontract" shall include a contract entered into by GRANTEE and a general contractor for the construction of the Project.

B. GRANTEE, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, neither City nor TIRZ is liable to GRANTEE's subcontractor(s).

SECTION 18. DEBARMENT

By signing this Agreement, GRANTEE certifies that it will not award any funds provided under this Agreement to any party which it knows to be debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the City.

SECTION 19. RIGHTS UPON DEFAULT

It is expressly understood and agreed by the Parties that, except as expressly provided herein, any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreements between GRANTEE and the City or TIRZ or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

SECTION 20. ASSIGNMENT

A. This Agreement is not assignable by any Party without the written consent of the non-assigning Parties. Each transfer or assignment, to which there has been consent, shall be by instrument in writing, in form reasonably satisfactory to the City and the TIRZ, and shall be executed by the transferee or assignee, who shall agree in writing to be bound by and to perform all of the terms, covenants and conditions of this Agreement. Failure to first obtain, in writing, the City or TIRZ's consent, or failure to comply with the provisions herein shall prevent any such transfer or assignment from becoming effective. In the event both the City and TIRZ approve the assignment or transfer of this Agreement, as provided above, the GRANTEE shall be released from such duties and obligations.

B. Notwithstanding the foregoing, GRANTEE may assign this Agreement to a parent, subsidiary, affiliate entity or newly-created entity resulting from a merger, acquisition or other corporate restructure or reorganization of GRANTEE, or to any entity owned or controlled, or under common control, directly or indirectly by GRANTEE, without the written consent of the non-assigning Parties. Following completion of construction of the Project, GRANTEE shall also have the right to assign this Agreement to any party that acquires the Project, subject to the prior written consent of the City Manager or her designee, which shall not be unreasonably withheld. In either case, GRANTEE shall give City no less than 30 days* prior written notice of the proposed assignment or other transfer. Any and all future assignees must be bound by all terms and/or provisions and representations of this Agreement as a condition of assignment. Any attempt to assign the Agreement without the notification and subsequent consent of City and TIRZ shall release City and TIRZ from performing any of the terms, covenants and conditions herein; provided that a permitted assignment of this Agreement by GRANTEE following completion of construction of the Project shall relieve GRANTEE of any liability hereunder arising following the assignment provided that the assignee has expressly assumed all obligations and liabilities of GRANTEE under this Agreement attributable to the period following the date of such assignment. Any assignment of this Agreement in violation of this Section shall enable City to terminate this Agreement and exercise its rights under Section 15 of this Agreement.

C. Also notwithstanding the language in this Section, the City authorizes the TIRZ to assign this Agreement to any other Tax Increment Reinvestment Zone ("Zone") should this Project be included in the boundaries of said Zone and the Board of said Zone agrees to the assignment and assumption of all the duties, rights and obligations of the TIRZ as evidenced by a Board resolution. City staff and/or TIRZ

shall be responsible for providing GRANTEE written notice no less than 30 days of the proposed assignment.

D. The City and TIRZ acknowledge that GRANTEE has negotiated financing for the Project that may require the City to consent to an assignment of GRANTEE's rights under this Agreement to a third-party lender. In the event of default in the loan documents between GRANTEE and such lender, City and TIRZ agree to consider a request from GRANTEE to assign this Agreement and shall not unreasonably deny such a request to recognize the lender as a successor in interest to GRANTEE upon compliance of this Section and provided (i) no event of default of this Agreement has occurred by the action or inaction of GRANTEE prior to such assignment; (ii) lender promptly notifies City of such default; and (iii) lender assumes all obligations of GRANTEE hereunder.

E. Any restrictions in this Agreement on the transfer or assignment of the GRANTEE's interest in this Agreement shall not apply to and shall not prevent the assignment of this Agreement to a lending institution or other provider of capital in order to obtain financing for the Project. In no event shall the City be obligated in any way to said financial institution or other provider of capital. The City shall only issue a check or any other form of payment made payable only to the GRANTEE.

SECTION 21. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

SECTION 22. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

The City may grant temporary relief from any deadline for performance of any term of this Agreement if the GRANTEE is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the GRANTEE. The burden of proof for the need for such relief shall rest upon the GRANTEE. To obtain an extension based upon Force Majeure, GRANTEE must provide written notice to City of the occurrence of the Force Majeure event within ten (10) days following the date that GRANTEE becomes aware of the event and the fact that it will delay GRANTEE's performance of its obligations under this Agreement. City will not unreasonably withhold its consent. Consent from the TIRZ shall not be required under this Section.

SECTION 23. NOTICE

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or one (1) business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO CITY and TIRZ:

(If mailed):

Center City Development Office
P.O. Box 839966
San Antonio, Texas 78283-3966

(If by personal or overnight delivery):

Center City Development Office
Attn: Director
19th Floor
100 Houston St.
San Antonio, Texas 78205

(for both mail and personal or overnight delivery)

Planning and Community Development Department
Cliff Morton Development & Business Service Center
Attn: Tax Increment Finance Unit
1901 S. Alamo
San Antonio, TX 78204

TO GRANTEE:

(If mailed):

Paradigm Hotel Group, LLC
P.O. Box 691027
San Antonio, TX 78269-1027

(If by personal or overnight delivery):

Paradigm Hotel Group, LLC
24718 Staffordshire
San Antonio, TX 78258

SECTION 24. PUBLIC INFORMATION

GRANTEE acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

SECTION 25. INCORPORATION OF ATTACHMENTS

Each of the Attachments listed below is hereby incorporated by reference within this Agreement for all purposes.

ATTACHMENTS:

Attachment A – Property
Attachment B – TIRZ Resolution
Attachment C – Public Improvements of Project

WITNESS OUR HANDS, EFFECTIVE as of _____, 2012:

Accepted and executed in four duplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2012-_____, dated _____, 2012, and _____ (Grantee) pursuant to the authority of its _____.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

GRANTEE:
PARADIGM HOTEL SA RIVER
WALK LP, a Texas Limited
Partnership,

By and through PARADIGM HOTEL
GROUP, LLC, a Texas Limited
Liability Company, Its General Partner

Pat DiGiovanni
DEPUTY CITY MANAGER

Name: TIM SANFORD
Title: Managing Member


ATTEST:

ATTEST:

Leticia Vacek
CITY CLERK

Name:
Title:

APPROVED AS TO FORM:

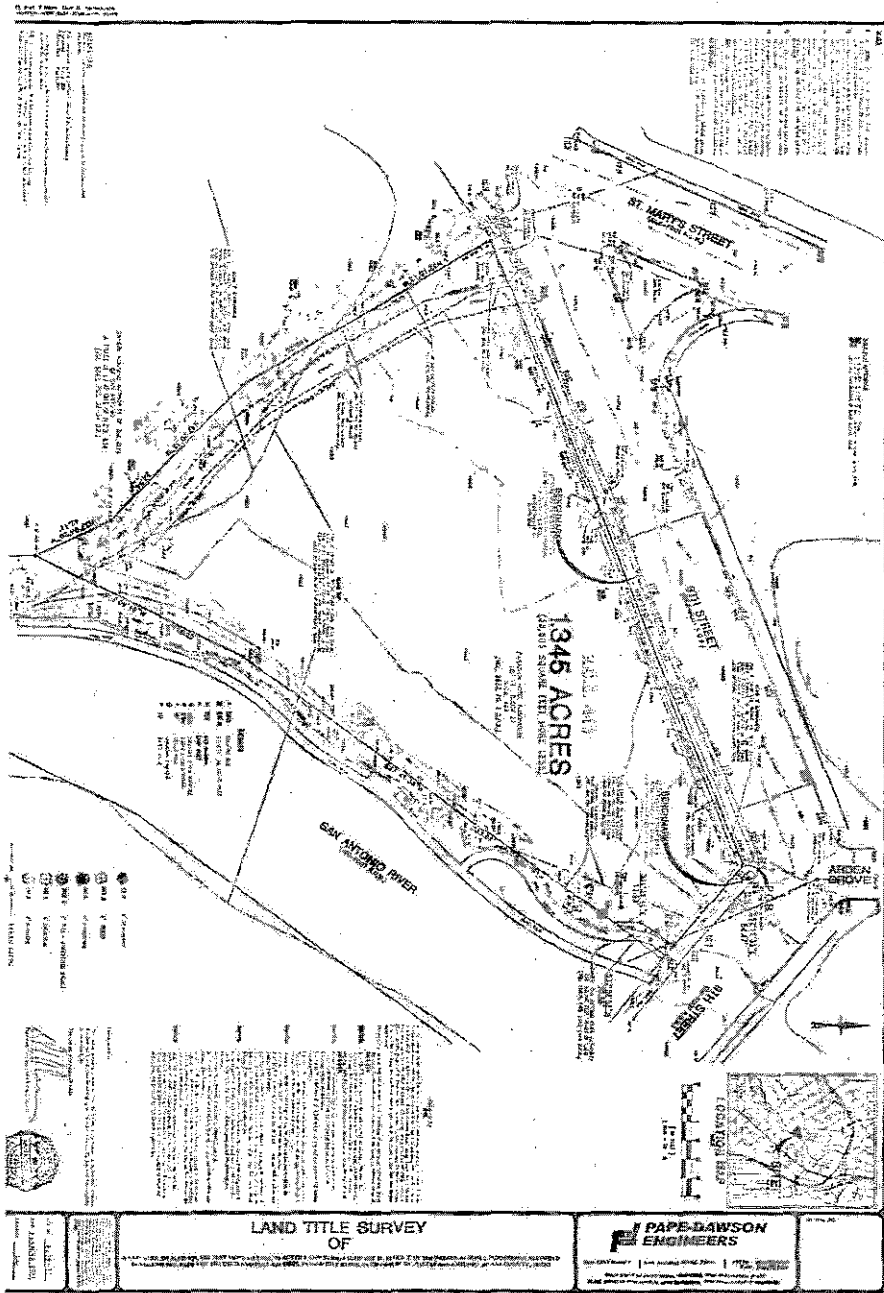


Nancy H. Reyes
ASSISTANT CITY ATTORNEY

RIVER NORTH TAX INCREMENT REINVESTMENT
ZONE #27:

Name:
Title:

ATTACHMENT A
Subject Property



ATTACHMENT B
TIRZ Resolution

A RESOLUTION OF THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER 27, CITY OF SAN ANTONIO, TEXAS KNOWN AS THE RIVER NORTH TIRZ AUTHORIZING THE COMMITMENT OF TAX INCREMENT FUNDS FOR A CHAPTER 380 GRANT FOR THE EMBARCADERO HOTEL PROJECT WITH PARADIGM HOTEL SA RIVER WALK, LP AND THE CITY OF SAN ANTONIO.

WHEREAS, the City of San Antonio ("City"), the River North TIRZ Board ("Board") and Paradigm Hotel SA River Walk, LP ("Developer") desire to enter into a Chapter 380 Economic Development Program Grant pursuant to Ordinance No. _____; and

WHEREAS, Developer is engaged in economic development by investing \$18,200,000.00 in a hotel development project, including approximately \$997,743.00 in public improvements along 9th Street, St. Mary's and Arden Grove located within the boundaries of the River North TIRZ ("Project"); and

WHEREAS, Developer is seeking an economic development grant for the purpose of defraying costs associated with undertaking the Project which will improve streets, drainage, and other infrastructure in the River North TIRZ in accordance with the River North Master Plan; and

WHEREAS, the Board is authorized to designate TIRZ funds consistent with its Project Plan and Finance Plan through a Chapter 380 Economic Development Program Grant Agreement and is authorized to direct the City to pay for such projects from the TIRZ's tax increment funds; and

WHEREAS, the Board and City have identified \$997,743.00 in available tax increment funds from the TIRZ for the Project; and

WHEREAS, the Board authorizes the commitment of tax increment funds earned from Project improvements for the Chapter 380 Economic Development Program Grant Agreement in order to promote local economic development, and to stimulate business and commercial activity, within the River North TIRZ.; **NOW THEREFORE:**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF TAX REINVESTMENT ZONE NUMBER 27, THE RIVER NORTH TIRZ, CITY OF SAN ANTONIO, TEXAS:

Section 1: The recitals set out above are adopted in their entirety.

Section 2: The River North TIRZ Board authorizes the City to commit up to \$997,743.00 in tax increment in a Chapter 380 Economic Development Program Grant Agreement for the Project, consistent with the terms stated in the attached letter and an approved Project Plan and Finance Plan, contingent upon City Council approval.

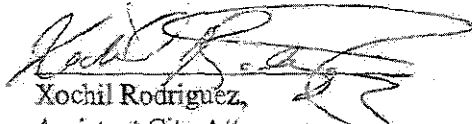
PASSED, APPROVED and ADOPTED this 2nd day of May 2012.


Board Chairperson

ATTEST:


Board Vice Chairperson

APPROVED AS TO FORM:


Xochil Rodríguez,
Assistant City Attorney

ATTACHMENT C
Public Improvements

The following Public Improvements will be made by GRANTEE on 9th Street from the bridge to St. Mary's and the intersection of Arden Grove:

<u>ELEMENT</u>	<u>COST</u>
Earthwork	\$ 211,649
Site Improvements	\$ 225,995
Utilities	\$ 97,901
Landscape & Irrigation	\$ 69,734
Overhead Electrical Removal	\$ 150,000
General Conditions	\$ 31,300
Allowances	\$ 12,600
Contingency	\$ 12,600
Sub-Total	<u>\$ 824,179</u>
Fee (8.00%)	\$ 65,934
Sub-Total	<u>\$ 965,017</u>
Waterline Extension	\$ 69,355
Liability Insurance	\$ 9,257
Bond	\$ 13,491
Sales Tax	\$ 15,527
PUBLIC IMPROVEMENTS TOTAL	<u>\$ 997,743</u>