VZ
10/17/13
Item No. 4

**AN ORDINANCE** 2013-10-17-0711

**AUTHORIZING A RESTRICTIVE COVENANT LIMITING HOTEL DEVELOPMENT IN THE HEMISFAIR PARK SITE.**

* * * * *

**WHEREAS**, the Hemisfair Park Area Redevelopment Corporation (HPARC) was established by City Council in 2009 to plan and oversee the re-development of portions of the site of Hemisfair '68, commonly known as Hemisfair Park; and

**WHEREAS**, the Framework and Master Plan for this area which was prepared through HPARC and approved by City Council in 2012 envisions balanced development including commercial and residential land uses and open spaces; and

**WHEREAS**, in keeping with the Plan, City Council desires to impose restrictions on the size and proximity of hotels that may be located in the area to be re-developed by HPARC; **NOW THEREFORE**:

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1**. The City Council approves the terms and conditions of the Declaration of Restrictive Covenants set out in **Attachment I.** The restrictions shall be effective upon the filing of the Declaration in the Official Public Records of Bexar County, Texas.

**SECTION 2**. The City Manager or her designee is authorized to execute the Declaration and such other documents as may be required to carry out the intent of the Ordinance and approved by the City Attorney.

**SECTION 3.** This Ordinance shall become effective immediately upon its passage by eight (8) votes or more and upon ten (10) days following its passage if approved by fewer than eight (8) votes.

PASSED AND APPROVED this 17th day of OCTOBER 2013.

**M A Y O R**
Julián Castro

**ATTEST:**

Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

Michael D. Bernard, City Attorney

| | |
|---|---|
| **Agenda Item:** | **4** |
| **Date:** | 10/17/2013 |
| **Time:** | 09:58:40 AM |
| **Vote Type:** | Motion to Approve |
| **Description:** | An Ordinance authorizing a restrictive covenant limiting hotel development for the Hemisfair Park site. [Carlos Contreras, Assistant City Manager; Lori Houston, Director, Center City Development] |
| **Result:** | Passed |

| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
|---|---|---|---|---|---|---|---|
| Julián Castro | Mayor | | x | | | | |
| Diego Bernal | District 1 | | x | | | | x |
| Ivy R. Taylor | District 2 | | x | | | | |
| Rebecca Viagran | District 3 | | x | | | | |
| Rey Saldaña | District 4 | | x | | | | |
| Shirley Gonzales | District 5 | x | | | | | |
| Ray Lopez | District 6 | | x | | | x | |
| Cris Medina | District 7 | | x | | | | |
| Ron Nirenberg | District 8 | | x | | | | |
| Elisa Chan | District 9 | | x | | | | |
| Carlton Soules | District 10 | | x | | | | |

# ATTACHMENT I

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER=S LICENSE NUMBER.**

# DECLARATION OF RESTRICTIVE COVENANTS

STATE OF TEXAS '
'
COUNTY OF BEXAR '

This **DECLARATION OF RESTRICTIVE COVENANTS** (this ***"Declaration"***) is made by the City of San Antonio, a home rule municipality under the laws of the State of Texas (the ***"City"***), acting by and through its City Manager or Assistant City Manager, and is to be effective as of the date on which this Declaration has been filed for record in the Official Public Records of Bexar County, Texas (the "***Effective Date***").

**WHEREAS**, as the owner and holder of fee simple title to that portion of the site of Hemisfair '68 which is more particularly described by metes and bounds in the attached Exhibit "A" (herein, the "**Hemisfair Site**"), the City seeks to facilitate the redevelopment of the Hemisfair Site as a vibrant mixed-use area centered on a city park;

**WHEREAS**, for the purpose of preserving the appropriate balance of uses of the Hemisfair Site, the City hereby desires to create and impose upon the Hemisfair Site restrictive covenants limiting the size and proximity of all Hotel Buildings (as defined below) that may be located on the Hemisfair Site;

**WHEREAS**, to facilitate the redevelopment of the Hemisfair Site, the City may acquire Other Lands (as defined below) and intends that the restrictive covenants hereby created and imposed on the Hemisfair Site shall also be imposed on any and all Other Lands; and

**WHEREAS**, this Declaration shall be fully effective from and after the Effective Date in perpetuity to accomplish such purposes.

**NOW, THEREFORE**, in consideration of the premises and for the purposes and intent expressed herein, the City does hereby declare that all and each portion of the Hemisfair Site and all Other Lands, if any, shall be owned, held, mortgaged, transferred, sold, conveyed, occupied and enjoyed subject to the Hotel Limitation (as defined and described in Article 2 of this Declaration), which is expressly made applicable to the Hemisfair Site and to all Other Lands, if any, by this Declaration, and the Hotel Limitation shall run with the Hemisfair Site and all such Other Lands and shall be binding upon the City, all parties hereafter having any right, title, or interest in or to the Hemisfair Site (or any part thereof) or the Other Lands (or any part thereof) and their respective heirs, legal representatives, successors and assigns; and that each contract, deed, lease or other instrument conveying any interest in the Hemisfair Site or the Other Lands, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the Hotel Limitation in accordance with this Declaration, regardless of whether or not the same is set out in full or by reference in said instrument of conveyance or otherwise, from and after the Effective Date.

## ARTICLE 1
## Definitions

1.1 **Enforcement Organization** means the San Antonio Conservation Society, a Texas nonprofit corporation or, if the San Antonio Conservation Society shall cease to exist or, in the good faith determination of the City Council of City, shall fail or decline to perform its duties hereunder for any reason, a successor organization designated by the City Council to exercise the duties of an Enforcement Organization under the terms of this Declaration, by written instrument filed for record in the Real Property Records of Bexar County, Texas.

1.2 **Floor Area** means the gross horizontal area of all floors of a Hotel Building, including interior balconies and mezzanines, measured from the exterior face of exterior walls, or from the centerline of a wall separating two (2) structures, excluding stairwells and elevator shafts, but including the area of roofed porches having more than one (1) wall.

1.3 **Guest Room** means the area of a Hotel Building purposed for the exclusive use of a hotel guest as overnight lodging.

1.4 **Hotel** means a commercial establishment offering overnight lodging to the public.

1.5 **Hotel Complex** means all Hotel Buildings of a single Hotel.

1.6 **Hotel Building** means any building or structure used or to be used in connection with the operation of a Hotel, including any and all Guest Rooms, meeting areas, restaurants, bars, kitchens, catering areas, laundry facilities, parking garages, storage facilities and similar facilities, whether or not located under the same roof or on the same parcel or tract of land.

1.7 **Hotel Complexes** means, collectively, all Hotel Buildings for all Hotels.

1.8 **Other Lands** means, collectively, all interests in real property acquired by City after the Effective Date and conveyed by City to a land bank (as defined under Section 379C of the Texas Local Government Code), which conveyance expressly states that the interest in real property thereby conveyed is an addition to the re-development of the Hemisfair Site.

## ARTICLE 2
## Hotel Limitation

For the purposes of this Declaration, "***Hotel Limitation***" means and includes the following limitations and requirements that apply to the Hemisfair Site and the Other Lands (if any):

2.1 **Hotel Size and Location Restrictions.**

a. The combined Floor Area of all Hotel Complexes shall not exceed four hundred thousand square feet (400,000 s.f.);

b. The Floor Area of a Hotel Complex shall not exceed two hundred thousand square feet (200,000 s.f.);

c. No Hotel Building containing Guest Rooms shall be located less than three hundred (300) linear feet from any other Hotel Building containing Guest Rooms; and

d. The total combined number of Guest Rooms in all Hotel Complexes shall not exceed two hundred (200).

2.2 **Exclusions from Calculation of Floor Area**. For the purpose of determining the size limitations under Section 2.1.a and Section 2.1.b hereof, the following shall not be included in the calculation of Floor Area:

a. The portion(s) of a parking garage that is open to members of the public and/or is not restricted, reserved for or otherwise limited to the use of guests of the subject Hotel;

b. Residential units (including condominium units) not available for the use of a Hotel or its guests; and

c. Common areas, facilities and amenities for residential units (including condominium units) not available for the use of a Hotel or its guests.

## ARTICLE 3
## Enforcement

3.1 **Enforcement Authorities**. The City and the Enforcement Organization shall each have the right, acting jointly or independently, to enforce the Hotel Limitation.

3.2 **Remedies**. Enforcement of the Hotel Limitation and/or this Declaration may be by a proceeding at law or in equity against any person(s) or entity(ies) violating or attempting to violate, contest or invalidate the Hotel Limitation or this Declaration, as applicable, whether the relief sought is an injunction and/or the recovery of damages, or otherwise, and may include the recovery of all attorney fees and costs expended in enforcement or support of the Hotel Limitation and/or this Declaration.

3.3 **Non-Waiver**. Any failure or delay in enforcement of any remedy provided under this Declaration shall in no event be deemed to be a waiver of the right to do so or to seek damages or other relief thereafter.

## ARTICLE 4
## General Provisions

4.1 **Runs with Land**. The restrictive covenants set forth herein shall be appurtenant to and shall run with the Hemisfair Site and all Other Lands, if any, and shall be binding upon all future owners, tenants, and/or occupants of all or any portion of the Hemisfair Site or the Other Lands and their respective heirs, legal representatives, successors, and assigns. Every person or entity that, now or hereafter, owns or acquires any right, title, or interest in or to any portion of the Hemisfair Site or the Other Lands, whether as an owner, tenant, or occupant in any right or capacity, is and shall be conclusively deemed to have consented and agreed to the Hotel Limitation, whether or not any reference to this Declaration or the Hotel Limitation shall be contained in the instrument by which such person or entity acquires an interest in the Hemisfair Site or the Other Lands.

4.2 **Partial Invalidity**. If any term, covenant or condition of this Declaration or the application of such term, covenant or condition to any circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration and the application of such term, covenant or condition to circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby,

and each term, covenant or condition of this Declaration shall be valid and may be enforced to the extent permitted by law.

4.3 **Captions; Language**. The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants or conditions contained herein. Each word or phrase used herein that is not defined will have its ordinary meaning in the context in which it is used. The use of the word "including" in this Declaration will be deemed to be followed by the phrase "but not limited to."

4.4 **Amendment**. This Declaration may be canceled, changed, modified or amended, in whole or in part, only by the written and recorded agreement of the City, the Enforcement Organization and the owners of not less than fifty-one percent (51%) of the total land area comprising the Hemisfair Site and the Other Lands, if any. For the purposes of the foregoing sentence, the word "recorded" means filed for record in the Real Property Records of Bexar County, Texas.

4.5 **No Dedication**. Nothing herein shall be deemed to be a gift or dedication of any property to the general public or for the general public, it being the intention that this Declaration and the enforcement hereof shall be strictly limited to and for the purposes herein expressed. This Declaration is not intended to create, and shall not be in any way interpreted or construed to create, any third party beneficiary or enforcement rights in any person or entity not referenced herein.

4.6 **Exhibits**. All documents referred to in this Declaration as attachments are incorporated herein as a part hereof for all purposes.

4.7 **Term**. Unless canceled in accordance with Section 4.4 hereof, this Declaration and all of the rights, obligations and liabilities created hereby shall encumber the Hemisfair Site and the Other Lands, if any, in perpetuity.

4.8 **City's Governmental Functions**. No provision of this Declaration shall be a limitation upon, constitute a waiver by or estop City with respect to any of its rights, powers or duties exercisable, as necessary or advisable, in the performance of its Governmental Functions. For example, neither this Declaration nor any development activity that otherwise complies with this Declaration shall constitute satisfaction of any requirements of, or the need to obtain any approval by, City in the exercise of its Governmental Functions or as may be required under any applicable laws. "***Governmental Functions***" means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which City is authorized or required to perform in its capacity as a municipality under applicable laws.

[Remainder of page intentionally blank.]

EXECUTED on the ____ day of _____, 2013, to be effective as of the Effective Date.

**CITY OF SAN ANTONIO**,
a Texas home rule municipality

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by ___ _____, _____of the City of San Antonio, a Texas home rule municipality, on behalf of said home rule municipality.

_____
Notary Public in and for
The State of Texas

APPROVED AS TO FORM:

_____
CITY ATTORNEY

JOINDER BY SAN ANTONIO CONSERVATION SOCIETY

The San Antonio Conservation Society joins in the execution of the foregoing Declaration of Restrictive Covenants for the sole purpose of accepting its appointment thereunder as the Enforcement Organization.

SAN ANTONIO CONSERVATION SOCIETY

By: _____
Name: _____
Title: _____

Date: _____, 2013

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by ___ _____, _____of the San Antonio Conservation Society, a Texas non-profit corporation, on behalf of said non-profit corporation.

_____
Notary Public in and for
The State of Texas

**EXHIBIT "A" TO DECLARATION OF RESTRICTIVE COVENANTS**

**Metes and Bounds Description of Hemisfair Site**

**[To be attached]**

# HemisFair Park Restrictive Covenants

October 17, 2013

1

## Agenda Item #4

- An Ordinance authorizing a restrictive covenant limiting hotel development for the Hemisfair Park site.

2

## History

- September 2009 – City Council creates the Hemisfair Park Area Redevelopment Corporation (HPARC).
- HPARC's purpose is to assist the City in the planning, developing, constructing, managing, maintaining, and financing of projects within the Hemisfair site and its adjacent areas.

## TX Loc Govt Code 379C.014

- 83rd Texas Legislature enacts TX Loc Govt Code 379C.014.
- Authorizes City to convey the Hemisfair site to a land bank subject to any deed restrictions the City may adopt.

## RESTRICTIVE COVENANTS

- The City is proposing to restrict property it owns in the Hemisfair site to limit hotel development in the following manner:
  - The combined floor area of all hotels may not exceed 400,000 square feet
  - The floor area of a single hotel may not exceed 200,000 square feet
  - Floor area calculation will include all rooms, restaurants, bars, kitchens, meeting space, parking garage (except public parking), whether in one or more buildings
  - A hotel building with guest rooms may not be less than 300 feet from another hotel building with guest rooms

## HOTEL Comparisons

- Hilton Palacio Del Rio (400,228 sq. ft.)
- Westin (387,444 sq. ft.)
- Sheraton Gunter (312,480 sq. ft.)
- Contessa (240,934 sq. ft.)
- Valencia (153,947 sq. ft.)
- Fairmont (38,865 sq. ft.)

## ENFORCEMENT

- The City and San Antonio Conservation Society each have the right, acting jointly or independently, to enforce the restrictive covenants.

7

## EXCLUSIONS

- The restrictive covenants will not apply to residential condominiums, common areas or facilities not available for use by hotel guests.

8

## FUTURE ACQUISITIONS

- The restrictive covenants will apply to land the City may acquire in the Hemisfair area for the purpose of redevelopment.

9

## RECOMMENDATION

- City staff recommends approval of this Ordinance.
- This ordinance has been coordinated through the City Attorney's Office, the City Manager's Office, Convention Sports & Entertainment Facilities Department and the Center City Development Office.

10