

STATE OF TEXAS §  
 COUNTIES OF DALLAS, §  
 COLLIN, DENTON AND §  
 ROCKWALL §  
 CITY OF DALLAS, TEXAS §

The City Council convened in Special Meeting on this the 19th day of June, 2009, with the following present: Mayor Leppert, Mayor Pro-Tem Garcia, Deputy Mayor Pro-Tem Caraway, Councilmembers Medrano, Neumann, Davis, Atkins, Kadane, Allen, Koop, Natinsky, Rasansky, and Hunt.

and with the following absent: Hill, Salazar

Constituting a quorum, at which time the following, among other business, was transacted:

Councilmember Natinsky moved to authorize the adoption of an Ordinance with amendments approving and consenting to (1) the issuance, sale, and delivery of Dallas Convention Center Hotel Development Corporation Hotel Revenue Bonds in one or more series, subject to certain parameters, (2) the Dallas Convention Center Hotel Development Corporation (the "Issuer") negotiating and entering into all agreements and instruments to which the Issuer is a party in connection with the issuance of its Hotel Revenue Bonds, including but not limited to an Indenture of Trust, Bond Purchase Agreement, Economic Development Agreement, Cash Management and Lockbox Agreement, and Continuing Disclosure Agreement, and the Issuer and its consultants taking all other actions deemed necessary in connection with the issuance of the Hotel Revenue Bonds, including the engagement of the Bond Underwriters, Trustee, Co-Bond Counsel and Co-Financial Advisors, (3) the Issuer entering into the Hotel Operating Agreement and related agreements and revised and/or amended Developer Agreement, Design/Build Contract and related agreements, (4) the execution by the City of an Economic Development Agreement with the Issuer and Continuing Disclosure Agreement in connection with the Hotel Revenue Bonds, (5) the conveyance by the City of the Hotel Site to the Issuer and the redemption of certain City of Dallas, Texas Combination Tax and Revenue Certificates of Obligation, Series 2008, (6) the amendment of the Articles of Incorporation of the Issuer, and (7) other actions deemed necessary in connection therewith.

The Motion was seconded by Mayor Pro Tem Caraway.

ROLL CALL ON MOTION:

Ayes: Medrano, Neumann, Caraway, Davis, Atkins, Kadane, Allen, Koop, Natinsky, Hunt, Leppert  
 Noes: None  
 Abstaining: Garcia, Rasansky  
 Absent: Hill, Salazar

The Ordinance, as passed, is as follows: ORDINANCE NO. 27567

AN ORDINANCE

APPROVING AND CONSENTING TO (1) THE ISSUANCE, SALE, AND DELIVERY OF DALLAS CONVENTION CENTER HOTEL DEVELOPMENT CORPORATION HOTEL REVENUE BONDS IN ONE OR MORE SERIES, SUBJECT TO CERTAIN PARAMETERS, (2) THE DALLAS CONVENTION CENTER HOTEL DEVELOPMENT CORPORATION (THE "ISSUER") NEGOTIATING AND ENTERING INTO ALL AGREEMENTS AND INSTRUMENTS TO WHICH THE ISSUER IS A PARTY IN CONNECTION WITH THE ISSUANCE OF ITS HOTEL REVENUE BONDS, INCLUDING BUT NOT LIMITED TO AN INDENTURE OF TRUST, BOND PURCHASE AGREEMENT, ECONOMIC DEVELOPMENT AGREEMENT, CASH MANAGEMENT AND LOCKBOX AGREEMENT, AND CONTINUING DISCLOSURE AGREEMENT, AND THE ISSUER AND ITS CONSULTANTS TAKING ALL OTHER ACTIONS DEEMED NECESSARY IN CONNECTION WITH THE ISSUANCE OF THE HOTEL REVENUE BONDS, INCLUDING THE ENGAGEMENT OF THE BOND UNDERWRITERS, TRUSTEE, CO-BOND COUNSEL AND COFINANCIAL ADVISORS, (3) THE ISSUER ENTERING INTO THE HOTEL OPERATING AGREEMENT AND RELATED AGREEMENTS AND REVISED AND/OR AMENDED DEVELOPER AGREEMENT, DESIGN/BUILD CONTRACT AND RELATED AGREEMENTS, (4) THE EXECUTION BY THE CITY OF AN ECONOMIC DEVELOPMENT AGREEMENT WITH THE ISSUER AND CONTINUING DISCLOSURE AGREEMENT IN CONNECTION WITH THE HOTEL REVENUE BONDS, (5) THE CONVEYANCE BY THE CITY OF THE HOTEL SITE TO THE ISSUER AND THE REDEMPTION OF CERTAIN CITY OF DALLAS, TEXAS COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2008, (6) THE AMENDMENT OF THE ARTICLES OF INCORPORATION OF THE ISSUER, AND (7) OTHER ACTIONS DEEMED NECESSARY IN CONNECTION THEREWITH

*WHEREAS*, the City of Dallas, Texas (the "City") owns and operates a convention center (the "Convention Center"); and

*WHEREAS*, the Dallas Convention Center Hotel Development Corporation (the "Issuer"), a Texas nonprofit local government corporation duly created by and acting on behalf of the City, has been legally incorporated under the provisions of Subchapter D of Chapter 431, Texas Transportation Code, as amended; and

*WHEREAS*, the Issuer was organized for the purpose of aiding, assisting, and acting on behalf of the City in the performance of its governmental functions to promote the development of the geographic area of the City included at or in the vicinity of the Convention Center, in furtherance of the promotion, development, encouragement and maintenance of employment, commerce, convention and meeting activity, tourism, and economic development in the City, including specifically, without limitation, the development and financing of a convention center hotel; and

*WHEREAS*, the City has determined that the construction and operation of the Hotel Project will promote economic development and will stimulate business and commercial activity in the City, including in connection with the operation of the Convention Center; and

**WHEREAS**, the Issuer intends to enter into a *Hotel Developer Agreement* (the "Developer Agreement") with Matthews Holdings Southwest, Inc., a Texas corporation (the "Developer") and a guaranteed maximum price design/build contract with Balfour Beatty, Russell, and Pegasus, a joint venture (the "Design/Builder") for the purpose of designing, developing, constructing, equipping, furnishing and opening a full-service headquarters hotel and related parking (the "Hotel Project") to be located within 1,000 feet of the Convention Center, on land owned by the City (purchased with proceeds from the City's Combination Tax and Revenue Certificates of Obligation, Series 2008) and to be purchased by the Issuer from the proceeds of bonds hereinafter described; and

**WHEREAS**, the Issuer intends to enter into a *Hotel Operating Agreement* (the "Hotel Operating Agreement") and other related documents (including, but not limited to, the *Technical Services and Pre-Opening Agreement, Room Block Agreement and Guaranty*) with Omni Hotel Management Corporation, a Delaware corporation (the "Operator") for the operation and management of the convention center hotel; and

**WHEREAS**, the agreements between the Issuer and the Developer and the Operator, and the contracts for the design, development and construction of the convention center hotel shall include the requirement that the City-approved Developer and Operator BID plans be implemented to ensure MWBE participation; and

**WHEREAS**, the Hotel Project is to be financed with a combination of (i) funds to be received from the issuance and sale of the *Dallas Convention Center Hotel Development Corporation Hotel Revenue Bonds* in one or more series (the "Bonds"), and (ii) certain funds or other assets contributed by third parties in support of the development of the Hotel Project; and

**WHEREAS**, the Bonds may be issued in one or more series in such manner as authorized by law, including, without limitation, as obligations the interest on which is exempt from federal income taxation, as "Build America Bonds-Direct Payment" (the interest on which is subject to federal income taxation as authorized by federal law), or as other obligations that are permitted to be issued under federal and state law;

**WHEREAS**, in lieu of the City issuing revenue bonds to finance the Hotel Project as permitted by Chapter 1504, Texas Government Code, particularly Section 1504.002 thereof, the City has directed the Issuer to issue the Bonds on behalf of the City in order to aid and act on behalf of the City to accomplish the governmental purpose of issuing revenue bonds to finance a portion of the Hotel Project as permitted by Section 431.101(a), Texas Transportation Code; and

**WHEREAS**, the Bonds will be issued pursuant to the terms of an *Indenture of Trust* between the Issuer and U.S. Bank National Association, as Trustee (together with any amendments and supplements thereto, the "Indenture"); and

**WHEREAS**, the Bonds will be secured by and payable from a pledge of certain sources as identified in the Indenture; and

**WHEREAS**, certain local hotel occupancy taxes and certain state hotel occupancy taxes and sales taxes that under state law are available to the City, together with additional funds that may be appropriated by the City and paid to the Issuer, shall be granted to the Issuer, pursuant to the terms of an *Economic Development Agreement* between the City and the Issuer (the "Economic Development Agreement"), as further provided therein, and made part of the "Trust Estate" established for the benefit of the owners of the Bonds under the terms of the Indenture; and

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**WHEREAS**, the Issuer will enter into a bond purchase agreement (the "Bond Purchase Agreement") with certain underwriters named therein where the underwriters will agree to purchase the Bonds subject to certain conditions set forth therein; and

**WHEREAS**, the net proceeds of the Bonds, together with certain funds or other assets contributed by third parties, will be used to (i) design, develop, construct, furnish and open the Hotel Project (including payment of all engineering, architectural and other professional fees related to the pre-development, design, development and construction of the Hotel Project, primarily pursuant to the terms of the Developer Agreement and Design/build Contract and reimbursement of pre-development costs), (ii) fund approximately 34 months of capitalized interest (which is intended to cover the period commencing with the date of issuance of the Bonds through six months following completion of construction of the Hotel Project), (iii) fund one or more debt service reserve funds, (iv) pay certain fees and expenses under the Issuer Agreements, as defined below, (v) purchase the land necessary for the Hotel Project, and (vi) pay costs of issuance, including, without limitation, the costs of obtaining municipal bond insurance or other credit enhancement; and

**WHEREAS**, the City Council now deems it necessary and appropriate to authorize and consent to the Issuer entering into, all agreements and instruments to which the Issuer is a party in connection with the issuance of the Bonds, including but not limited to the following agreements:

- (i) the Indenture;
- (ii) the Bond Purchase Agreement;
- (iii) the Economic Development Agreement;
- (iv) the Developer Agreement;
- (v) the Design/Build Contract;
- (vi) the Hotel Operating Agreement;
- (vii) a Cash Management and Lockbox Agreement, to be entered into concurrently with the Indenture, by and among the Issuer, the Trustee, the Depository Bank (as named therein), and the Operator (the "Cash Management Agreement");
- (viii) a Continuing Disclosure Agreement, to be entered into concurrently with the Indenture, by and among the Issuer, the City and the Trustee (the "Continuing Disclosure Agreement"); and
- (ix) related agreements to be entered into among the Issuer, the Trustee, the Developer, Design/Builder, the Operator and other parties.

**WHEREAS**, the agreements described in the preceding recital are collectively referred to herein as the "Issuer Agreements"; and

**WHEREAS**, the City Council now deems it necessary and appropriate to amend the Articles of Incorporation of the Issuer, in the manner hereinafter provided; and

**WHEREAS**, the City Council wishes to establish certain parameters relating to the execution and delivery by the Issuer of the Issuer Agreements and the issuance of Bonds by the Issuer to finance the

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Hotel Project; and

*WHEREAS*, the City Council now deems it necessary and appropriate to authorize the Issuer, on behalf of the City, within the parameters specified in this Ordinance, to take all other actions and approve all other agreements and instruments deemed necessary in connection with issuing the Bonds and providing a portion of the financing for the Hotel Project; and

*WHEREAS*, it is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS, TEXAS:**

**SECTION 1. CONSENT TO AND APPROVAL OF ISSUER AGREEMENTS; PARAMETERS.** The City Council hereby consents to and approves the execution by the Issuer of each of the Issuer Agreements with changes approved by the City Manager and, as to form, by the City Attorney, and further consents to the issuance, sale and delivery of the Bonds subject to the following binding parameters: (i) the overall interest yield on the Bonds shall not exceed a rate greater than 5.50%; (ii) the Bonds shall not produce net proceeds in excess of \$513,995,000; (iii) the term of the Bonds shall not exceed 40 years; (iv) the Hotel Development Budget (which includes the GMP design/build contract price, the owner contingency, hotel developer fees, project legal and accounting costs and pre-development costs) for the Hotel Project shall not exceed \$346,100,000; (v) the debt service reserve funds established in accordance with the terms of the Indenture shall be structured in such a manner that should the debt service reserve funds be drawn upon and used to pay debt service on the Bonds, neither the City nor the Issuer will be obligated to replenish the debt service reserve funds from any source of funds other than the revenues generated by the Hotel Project throughout the term of the Indenture and lawfully available state and local hotel occupancy taxes and sales taxes; and (vi) the Bonds will be secured by and payable only from (A) the Trust Estate, as defined in the Indenture; and (B) subsidy payments from the federal government, if Bonds are issued as "Build America Bonds-Direct Payment." Any direct subsidy payments received in connection with the issuance of Build America Bonds shall be taken into account in calculating yield.

**SECTION 2. AUTHORIZATION OF OTHER NECESSARY ACTIONS.** To the extent the parameters established in this Ordinance are met and to the extent authorized by the Board of Directors of the Issuer, the City Council hereby consents to the appropriate officials of the Issuer, as directed by the City Manager and as authorized by the Board of Directors of the Issuer, to do and perform all such acts and things and to execute, acknowledge, and deliver in the name and under its corporate seal and on behalf of the Issuer all such instruments, documents and agreements, whether herein mentioned, including, without limitation, obtaining municipal bond insurance or providing other forms of credit enhancement with respect to the issuance, sale and delivery of the Bonds, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the Issuer Agreements, with such changes as approved by the President or Vice President of the Issuer that may be necessary to effect the sale of the Bonds under the terms and conditions set forth in the Ordinance. In addition, the City Council hereby consents to the Issuer, as authorized by the Board of Directors of the Issuer, to use the previously contracted professional services of First Southwest Company and Estrada Hinojosa & Company, Inc., as co-financial advisors for the proposed bond sale, to use the previously contracted professional services of McCall, Parkhurst & Horton L.L.P. and Escamilla & Poneck, Inc., as co-bond counsel in connection with the sale and delivery of the Bonds, to use Citigroup Global Markets Inc., Goldman Sachs & Co., and Siebert Brandford Shank & Co., LLC, as lead underwriters for the Bonds, and to use U.S. Bank National Association, as trustee and depository bank for the Bonds (the "Trustee").

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In addition, prior to the initial delivery of the Bonds, the City Manager, any Assistant City Manager, the City Attorney, any Assistant City Attorney, the City Secretary, the Chief Financial Officer of the City, and all other officers and employees designated by the City Manager, are each hereby authorized and directed to approve any technical changes or corrections to this Ordinance in order to: (i) correct any ambiguity or mistake, or properly or more completely document the transactions contemplated and approved by this Ordinance; (ii) obtain the approval of the Bonds and the related financing documents by the Attorney General of Texas, as required by law; (iii) obtain municipal bond insurance or other forms of credit enhancement for the Bonds from the providers thereof or other parties thereto; or (iv) obtain the ratings contemplated in the Official Statement.

**SECTION 3. ISSUER RESOLUTION.** The City Council approves the action of the Board of Directors of the Issuer to adopt the resolution in substantially the form attached to this Ordinance and labeled Exhibit A to effect the sale of the Bonds and the approval, execution and delivery of the Issuer Documents by the Issuer, with such technical changes or corrections to such resolution as have been made in accordance with Section 2 of this Ordinance.

**SECTION 4. AMENDMENT TO ISSUER ARTICLES OF INCORPORATION.** The amendment to the Articles of Incorporation of the Issuer, in substantially the form attached to this Ordinance and labeled Exhibit B, is hereby approved, and the Board of Directors of the Issuer is hereby directed to adopt this amendment to the Articles of Incorporation without change at the next meeting held by the Board of Directors. Anything set forth in this Ordinance to the contrary, Bonds may not be sold by the Issuer prior to the date the amendments to the Articles of Incorporation are filed with and accepted by the Texas Secretary of State.

**SECTION 5. EXECUTION OF ECONOMIC DEVELOPMENT AGREEMENT AND CONTINUING DISCLOSURE AGREEMENT.** The City Manager or any Assistant City Manager (subject to approval as to form by the City Attorney) is hereby authorized to execute and deliver, on behalf of the City, the Economic Development Agreement, in substantially the form attached to this Ordinance and labeled Exhibit C and Continuing Disclosure Agreement substantially in the form attached to this Ordinance and labeled Exhibit C-1.

**SECTION 6. SALE OF LAND TO ISSUER.** The City is authorized to sell, convey and transfer to the Issuer, pursuant to a special warranty deed executed by the City Manager and approved as to form by the City Attorney, and the Issuer is authorized to purchase from the City from the proceeds of its Hotel Revenue Bonds for a purchase price of \$109.32 per square foot, all or part of a tract of land containing approximately 8.4 acres and commonly known as the "Chavez Site" to be used as the site for the Hotel Project. The procedures required by Section 2-24 of the Dallas City Code that are not required by State law concerning the sale of real property are waived with respect to the sale of this tract of land to the Issuer.

**SECTION 7. REDEMPTION OF THE CITY'S CERTIFICATES OF OBLIGATION.** The City Manager is hereby authorized to effect the redemption of the City's Combination Tax and Revenue Certificates of Obligation, Series 2008, from the proceeds of the Bonds dedicated to the purchase of the land from the City to be used as the site of the Hotel Project, in accordance with the terms of the ordinance authorizing the issuance of the City's Combination Tax and Revenue Certificates of Obligation, Series 2008, in such amount and in such manner as the City Manager determines.

**SECTION 8. FUNDING OF PRE-DEVELOPMENT COSTS.** The Trustee is directed to reimburse pre-development costs to the Dallas Convention and Visitor's Bureau for the hotel market study and legal expenses. The Trustee is further directed to reimburse the City of Dallas for pre-

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development costs incurred by the City as approved by Resolution Nos. 08-1884, 08-2488, 08-2907.

**SECTION 9. ACCOUNTING PROCEDURES.** The City Manager is hereby directed to work with the Issuer and the Trustee to provide a full and complete accounting of the deposit of the proceeds of the Bonds and the reimbursement of expenses to be paid from the proceeds of the Bonds to ensure that such expenditures are made consistent with the terms of the Indenture.

**SECTION 10. ENFORCEABILITY OF ORDINANCE.** That the sections, paragraphs, clauses, and provisions of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance and the City hereby declares that this Ordinance would have been enacted without such invalid provision. In case any obligation of the City authorized or established by this Ordinance or the Issuer Agreements is held to be in violation of law as applied to any person or any circumstance, such obligation shall be deemed to be the obligation of the City to the fullest extent permitted by law.

**SECTION 11. INCORPORATION OF RECITALS.** The City Council hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the City Council hereby incorporates such recitals as a part of this Ordinance.

**SECTION 12. IMMEDIATE EFFECT.** This Ordinance shall become effective immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas and it is accordingly so ORDAINED.

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PASSED AND APPROVED THIS THE 17 DAY OF JUNE, 2009.

APPROVED AS TO FORM:  
THOMAS P. PERKINS, JR., City Attorney

By:   
Assistant City Attorney