

AN ORDINANCE

99380

OF THE CITY COUNCIL OF THE CITY OF SAN ANTONIO, TEXAS REQUESTING THE CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION TO ISSUE UP TO \$40,000,000.00 OF TAX-EXEMPT EMPOWERMENT ZONE BONDS, THE PROCEEDS FROM WHICH WOULD BE LOANED TO A PARTNERSHIP COMPOSED OF DRURY SOUTHWEST, INC. AND EURO ALAMO INVESTMENTS, INC. (OR THEIR AFFILIATES OR RELATED ENTITIES) AND USED TO PROVIDE ALL OR A PORTION OF THE FUNDS REQUIRED BY SUCH PARTNERSHIP TO RENOVATE AND REDEVELOP THE ALAMO NATIONAL BANK BUILDING AND PARKING GARAGE INTO A HOTEL AND PARKING FACILITY AND RELATED AMENITIES; AND DESIGNATING AND RESERVING UP TO \$40,000,000.00 OF THE CITY'S \$230,000,000.00 CAPACITY TO ISSUE EMPOWERMENT ZONE BONDS FOR SUCH REDEVELOPMENT PROJECT

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WHEREAS, a portion of the CITY OF SAN ANTONIO, TEXAS (the "City") has been designated by the U.S. Department of Housing and Urban Development as a *Round III Urban Empowerment Zone* (the "Empowerment Zone"), which, among other areas, includes the downtown area of the City; and

WHEREAS, among other federal tax incentives available to provide a catalyst for private investment and promote economic development within the Empowerment Zone, the City is authorized to issue up to \$230,000,000 in principal amount of bonds (the "City's Empowerment Zone Bond Capacity") and loan the proceeds thereof to an "enterprise zone business" to finance "qualified zone property" (as such terms are defined in Sections 1397C and 1397D, respectively, of the Internal Revenue Code of 1986) in the Empowerment Zone, the interest on which is excludable from federal income taxation ("Empowerment Zone Bonds"); and

WHEREAS, on April 15, 2004, pursuant to Ordinance No. 99089, the City Council of the City created the CITY OF SAN ANTONIO EMPOWERMENT ZONE GOVERNANCE BOARD (the "EZ Governance Board") to advise and assist the City Council and the City staff in leveraging the Empowerment Zone incentive tools to achieve maximum economic benefits, including evaluating and ranking projects eligible for financing with Empowerment Zone Bonds and the prioritizing and allocation of bonding capacity among eligible projects; and

WHEREAS, pursuant to Subchapter D of Chapter 431, Texas Transportation Code, as amended (the "Act"), the City also created the **CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION** (the "Issuer") as a nonprofit local government corporation to aid and act on behalf of the City to accomplish certain governmental purposes of the City, to wit: the administration of various federal tax incentives relating to the Empowerment Zone designated within the City, including but not limited to the issuance of Empowerment Zone Bonds on behalf of qualified businesses within the Empowerment Zone, at the request of the City Council of the City; and

WHEREAS, DRURY SOUTHWEST, INC., a Missouri corporation authorized to do business in the State of Texas ("Drury Southwest"), has submitted an application to the City requesting that the City designate \$40,000,000 of the City's Empowerment Zone Bond Capacity, and that the Issuer issue up to \$40,000,000 in principal amount of Empowerment Zone Bonds, in order to provide for tax-exempt financing to renovate and redevelop the Alamo National Bank Building and related parking facilities (located on the west side of St. Mary's Street between Commerce Street and Market Street in the City's downtown area) in one or more phases into a new hotel which, upon completion, will include approximately 390 guest rooms and related hotel amenities and parking facilities and improvements along the Riverwalk (the "Drury Hotel Project"); and

WHEREAS, the Drury Hotel Project is located within the Empowerment Zone and is expected to satisfy the requirements of a "qualified zone property" as set forth in Section 1397D of the Internal Revenue Code of 1986; and

WHEREAS, it is further expected that the Drury Hotel Project will be operated as a "Drury Hotel" and will be owned by a partnership composed of Drury Southwest and **EURO ALAMO INVESTMENTS, INC.**, a Texas corporation ("Euro Alamo"), or one or more related entities of Drury Southwest and/or Euro Alamo and managed by Drury Southwest or one of its affiliates (herein referred to collectively as the "Borrower"); and

WHEREAS, Drury Southwest has represented to the City and the Issuer that the Borrower will satisfy the requirements of an "enterprise zone business" as set forth in Section 1397C of the Internal Revenue Code of 1986 (including but not limited to the requirement that during each year of the term that such bonds are outstanding, at least 35% of the employees of the enterprise zone business will be residents of the Empowerment Zone); and

WHEREAS, on June 24, 2004, prior to the adoption of this Ordinance, the Interim Governing Board of the City of San Antonio Empowerment Zone Governance Board adopted a resolution approving the Drury Hotel Project for financing with tax-exempt Empowerment Zone Bonds and recommending that the Issuer issue up to \$40,000,000 of tax-exempt Empowerment Zone Bonds to finance all or a portion of the Drury Hotel Project and that the City Council of the City designate and reserve up to \$40,000,000 of the City's Empowerment Zone Capacity to finance all or a portion of the Drury Hotel Project with tax-exempt Empowerment Zone Bonds; and

WHEREAS, in connection with its application for the issuance of Empowerment Zone Bonds by the Issuer, Drury Southwest has executed an "Inducement and Indemnity Agreement" which, among other things, obligates Drury Southwest to, at all times, indemnify and hold harmless the Issuer and the members, officers, employees, attorneys, and agents of its Board of Directors, the City of San Antonio, and the members, officers and employees of the City Council of the City against all losses, costs, damages, expenses and liabilities of whatsoever nature and kind directly or indirectly resulting from, arising out of, or related to the acceptance, consideration and approval or disapproval of its application for Empowerment Zone Bond financing or the issuance, offering, sale, delivery or payment of any such obligations, interest thereon and premium, if any or the design, construction, installation, operation, use, occupancy, maintenance or ownership of the Drury Hotel Project; and

WHEREAS, in conjunction with the Drury Hotel Project, Drury Southwest has indicated that it, along with Euro Alamo or other private entities, will use other available funds to renovate and redevelop the Aztec Theater, located near the Drury Hotel Project, into a state-of-the-art theme tourist destination movie theater and Riverwalk restaurant, which project is expected to provide additional economic development to the City; and

WHEREAS, the City Council has reviewed the application submitted by Drury Southwest, and information related thereto submitted by City staff, and now deems it necessary and appropriate to: (i) approve the Drury Hotel Project for Empowerment Zone Bond financing; (ii) recommend and request that the Issuer issue up to \$40,000,000 of tax-exempt Empowerment Zone Bonds to finance all or a portion of the Drury Hotel Project; and (iii) designate and reserve up to \$40,000,000 of the City's Empowerment Zone Capacity to finance all or a portion of the Drury Hotel Project with tax-exempt Empowerment Zone Bonds in accordance with the application submitted by Drury Southwest; 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 SAN ANTONIO:

SECTION 1. APPROVAL AND RECOMMENDATION OF DRURY HOTEL PROJECT FOR FINANCING, AND DESIGNATION AND RESERVATION OF A PORTION OF THE CITY'S EMPOWERMENT ZONE CAPACITY. The City Council hereby: (i) approves the Drury Hotel Project for Empowerment Zone Bond financing; (ii) recommends and requests that the Issuer issue up to \$40,000,000 of tax-exempt Empowerment Zone Bonds to finance all or a portion of the Drury Hotel Project; and (iii) designates and reserves up to \$40,000,000 of the City's Empowerment Zone Capacity to finance all or a portion of the Drury Hotel Project with tax-exempt Empowerment Zone Bonds, provided, however, such designation and reservation of a portion of the City's Empowerment Zone Capacity shall automatically terminate and be

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rescinded in the event: (i) the City and the Borrower do not execute a mutually agreeable development agreement with respect to the Drury Hotel Project by December 31, 2004; or (ii) the Issuer does not issue Empowerment Zone Bonds to finance the Drury Hotel Project by July 1, 2007.

SECTION 2. INCORPORATION OF RECITALS. The Issuer hereby finds that the statements set forth in the recitals of this Resolution are true and correct, and the Issuer hereby incorporates such recitals as a part of this Resolution.

SECTION 3. EFFECTIVE DATE. This Ordinance shall become effective immediately upon the passage of eight affirmative votes. In the event of less than eight affirmative votes, this Ordinance shall be effective on and after the tenth day after passage thereof.

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PASSED AND APPROVED THIS 24TH DAY OF JUNE, 2004.



MAYOR

ATTEST:



[Signature]

City Clerk, City of San Antonio, Texas

APPROVED AS TO FORM:

By: *[Signature]*

City Attorney

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[EXECUTION PAGE TO ORDINANCE APPROVING
DRURY HOTEL PROJECT FOR EMPOWERMENT ZONE BOND FINANCING]