

ORDINANCE NO. 100683

**DESIGNATING AND RESERVING UP TO \$130,000,000 OF THE CITY'S
\$230,000,000 CAPACITY TO ISSUE EMPOWERMENT ZONE BONDS FOR
THE CONVENTION CENTER HOTEL PROJECT**

WHEREAS, the City of San Antonio, Texas (the "City") desires to enter into a *Project Agreement*, to be dated on or about May 26, 2005 (the "Project Agreement") with Hotel Investments, L.P., a Delaware limited partnership (the "Developer") for the purpose of the Developer's designing, developing, constructing, equipping, furnishing and opening a full-service headquarters hotel and related parking (the "Convention Center Hotel Project") that will be initially owned by the Developer and located adjacent to the Convention Center on land owned by, and initially leased or licensed from, the City, and also desires to enter into a *Ground Lease and License Agreement* with the Developer, to be dated on or about May 26, 2005, (the "Ground Lease") pursuant to which the property owned by the City on which the Convention Center Hotel Project will be built will be leased or licensed to the Developer for an initial term of approximately 75 years; and

WHEREAS, the Convention Center Hotel Project is to be financed with a combination of funds provided by various entities including (i) up to \$130,000,000 in principal amount of *City of San Antonio, Texas Convention Center Hotel Finance Corporation Contract Revenue Empowerment Zone Bonds, Series 2005A* (the "Tax-Exempt Bonds"), (ii) up to \$100,000,000 in principal amount of *City of San Antonio, Texas Convention Center Hotel Finance Corporation Contract Revenue Bonds, Taxable Series 2005B* (the "Taxable Bonds" and collectively with the Tax-Exempt Bonds, the "Bonds"), and approximately (iii) \$77,300,000 of funds or capital asset contributions provided by the Developer and other equity investors identified and arranged by the Developer; and

WHEREAS, pursuant to the provisions of Subchapter D of Chapter 431, Texas Transportation Code, as amended, the City created the *City of San Antonio, Texas Convention Center Hotel Finance Corporation* (the "Issuer"), a Texas nonprofit local government corporation, "*for the purpose of financing a portion of the costs required to construct, furnish and equip a privately-owned hotel to be located on land owned by the City that is adjacent to the City's Convention Center in order to promote economic development and to stimulate business and commercial activity in the City, all at the request of the City Council of the City*"; and

WHEREAS, a portion of the City has been designated pursuant to Section 1391(h) of the Internal Revenue Code of 1986, as amended (the "Code") 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

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up to \$230,000,000 in principal amount of bonds (the "City's Empowerment Zone Bond Capacity") and loan the proceeds thereof to a private entity to provide an "enterprise zone facility" which consists of "qualified zone property" the principal user of which is an "enterprise zone business" (as such terms are defined in Sections 1394, 1397D and 1397C, respectively, of the Code) 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, the Convention Center Hotel Project is located within the Empowerment Zone and will satisfy the requirements of an "enterprise zone facility" in accordance with Section 1394(b) of the Code; and

WHEREAS, the Developer has represented to the City and the Issuer that the Developer and the Convention Center Hotel Project will satisfy the requirements of an "enterprise zone facility" as set forth in Section 1394(b) of the Code, which include the requirements of an "enterprise zone business" as set forth in Section 1397B of the Code, as modified by Section 1394 of the Code (including but not limited to the requirement that during each year of the term that the Tax-Exempt Bonds are outstanding, at least 35% of the employees of the enterprise zone business, including the Convention Center Hotel Project, will be residents of the Empowerment Zone) and "qualified zone property" as set forth in Section 1397D of the Code, as modified by Section 1394 of the Code; and

WHEREAS, on April 12, 2005, the EZ Governance Board adopted a resolution approving the Convention Center Hotel Project for financing with tax-exempt Empowerment Zone Bonds and recommended that the City or the Issuer, acting on the City's behalf, issue up to \$130,000,000 of tax-exempt Empowerment Zone Bonds to finance a portion of the Convention Center Hotel Project and that the City Council of the City designate and reserve up to \$130,000,000 of the City's Empowerment Zone Bond Capacity to finance all or a portion of the Convention Center Hotel Project with tax-exempt Empowerment Zone Bonds; and

WHEREAS, the City has determined that the construction and operation of the Convention Center Hotel Project will promote economic development and will stimulate business and commercial activity in the City and within the Empowerment Zone; and

WHEREAS, in lieu of the City issuing revenue bonds to finance the Convention Center Hotel Project as permitted by Chapter 1504, Texas Government Code, particularly Section 1504.002

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thereof, the City will request the Issuer to issue the Bonds on behalf of the City, and in so doing the Issuer will aid and act on behalf of the City to accomplish the governmental purpose of issuing revenue bonds to finance a portion of the Convention Center 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 Wells Fargo Bank, N.A., as Trustee, to be dated on or about May 15, 2005, together with any amendments and supplements thereto (the "Indenture"); and

WHEREAS, proceeds of the Bonds will be loaned to the Developer pursuant to the terms of a *Loan Agreement* between the Issuer and the Developer (the "Loan Agreement"), and the Developer will be obligated, pursuant to the Loan Agreement and the Ground Lease, to pay all operation and maintenance expenses of the Convention Center Hotel Project and debt service related to the Bonds with certain operating revenues generated from the Convention Center Hotel Project (more specifically defined in the Loan Agreement and the Ground Lease and referred to herein as the "Net Operating Revenues"); and

WHEREAS, the Bonds will be secured by and payable from a pledge of the Net Operating Revenues, and, pursuant to an *Economic Development Agreement*, dated as of May 15, 2005 (the "Economic Development Agreement"), which is expected to be approved by a separate Ordinance, the City will be committed to provide additional security for the Bonds by pledging or granting available revenues derived from certain local hotel occupancy taxes and from certain state hotel occupancy taxes and sales taxes, as further described below; and

WHEREAS, the City Council now deems it necessary and appropriate to: (i) approve the Convention Center Hotel Project for Empowerment Zone Bond financing; and (ii) designate and reserve up to \$130,000,000 of the City's Empowerment Zone Capacity to finance a portion of the Convention Center Hotel Project with tax-exempt Empowerment Zone Bonds; 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, TEXAS:

SECTION 1. APPROVAL AND RECOMMENDATION OF CONVENTION CENTER 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 Convention Center Hotel Project for Empowerment Zone Bond financing; and (iii) designates and reserves up to \$130,000,000 of the City's Empowerment Zone Capacity to finance a portion of the Convention Center Hotel Project with tax-exempt Empowerment Zone Bonds.

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SECTION 2. 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 3. SEVERABILITY. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 4. EFFECTIVE DATE. This Ordinance shall become effective on the tenth day from passage hereof.

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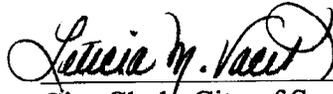
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PASSED AND APPROVED THIS 14TH DAY OF APRIL, 2005.



MAYOR

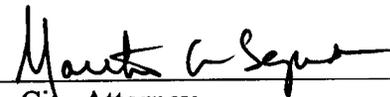
ATTEST:



City Clerk, City of San Antonio, Texas

(CITY SEAL)

APPROVED AS TO FORM:

By: 

City Attorney

** ** * ** * ** *

[SIGNATURE PAGE FOR CITY ORDINANCE RESERVING EMPOWERMENT ZONE BOND CAPACITY]

Agenda Voting Results

Name: 4 B.

Date: 04/14/05

Time: 04:58:51 PM

Vote Type: Multiple selection

Description: An Ordinance designating and reserving up to \$130,000,000.00 of the City's \$230,000,000.00 capacity to issue empowerment zone bonds for the Convention Center Hotel Project.

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
JOEL WILLIAMS	DISTRICT 2		x		
RON H. SEGOVIA	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
ENRIQUE M. BARRERA	DISTRICT 6		x		
JULIAN CASTRO	DISTRICT 7	Not present			
ART A. HALL	DISTRICT 8		x		
CARROLL SCHUBERT	DISTRICT 9				x
CHIP HAASS	DISTRICT_10		x		
MAYOR ED GARZA	MAYOR		x		