

RESOLUTION NO. 2008-190

Adopted by the Sacramento City Council

March 25, 2008

AUTHORIZING THE SALE OF THE GARAGE AT 13TH AND J STREET (LOT E GARAGE) IN CONNECTION WITH THE SALE OF THE SACRAMENTO SHERATON GRAND HOTEL AND THE DEFEASANCE OF THE SACRAMENTO CITY FINANCING AUTHORITY SENIOR REVENUE BONDS (SACRAMENTO CONVENTION CENTER HOTEL PROJECT) 1999 SERIES A AND SACRAMENTO CITY FINANCING AUTHORITY SUBORDINATE REVENUE BONDS (SACRAMENTO CONVENTION CENTER HOTEL PROJECT) 1999 SERIES B

Background:

- A. The City of Sacramento, a charter city and municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City"), is authorized pursuant to its charter (the "Charter") and the laws of the State of California to sell the City's real and personal property when necessary and proper for municipal purposes. In addition, under section 3.88.090 of the Sacramento City Code, the City Council may, by resolution, provide for the sale of real property without first calling for bids when it finds that such action will be in the best interest of the City.
- B. The Sacramento City Financing Authority, a joint exercise of powers entity duly organized and existing under and by virtue of the laws of the State of California (the "Authority"), determined to assist the City in furtherance of the City's municipal purposes.
- C. The City is authorized pursuant to its Charter; Ordinance No. 83-022, adopted on February 15, 1983 (as amended by Ordinance No. 99-004, enacted on February 9, 1999), known as the City of Sacramento Economic Development Bond Law (the "Law"); and the laws of the State of California to provide financial assistance to a Participating Party (as defined in the Law) in financing the acquisition, construction, installation, rehabilitation, improvement and/or equipping of a convention center hotel within the City limits which is necessary, essential, a public purpose and a municipal affair.
- D. The Authority determined to assist the City and the Sacramento City Redevelopment Agency (the "Agency") in exercising a common power of the City and the Agency to issue bonds and loan the proceeds to the Sacramento Hotel Corporation, a California nonprofit public-benefit corporation (the "Corporation").

- E. The Corporation applied to the City for approval as a Participating Party and for approval of a Facility (as defined in the Law) for financing under the Law, which approvals were duly made by the City.
- F. The City determined it was a municipal purpose and of public benefit to assist the Corporation in the acquisition of certain real property and the construction, installation, rehabilitation, improvement, and/or equipping of facilities thereon which comprise a convention center hotel (the "Hotel Project").
- G. The Authority issued its Senior Revenue Bonds (Sacramento Convention Center Hotel Project) 1999 Series A (the "1999 Series A Bonds") pursuant to an indenture (the "Indenture"), dated as of April 1, 1999, between the Authority and The Bank of New York Trust Company, N.A., as successor trustee (the "Trustee").
- H. The Authority also issued its Subordinate Revenue Bonds (Sacramento Convention Center Hotel Project) 1999 Series B (the "Subordinate Bonds" and, together with the 1999 Series A Bonds, the "Bonds") pursuant to an indenture (the "Subordinate Indenture"), dated as of April 1, 1999, between the Authority and The Bank of New York Trust Company, N.A., as successor trustee (the "Subordinate Trustee"), which Subordinate Bonds are subordinate in all respects to payments of principal, redemption premium, if any, and interest on the 1999 Series A Bonds.
- I. The proceeds of the Bonds were loaned to the Corporation pursuant to a loan agreement (the "Loan Agreement"), dated as of April 1, 1999, between the Authority and the Corporation, for the purpose of financing the acquisition of certain real property and the construction, installation, rehabilitation, improvement, and/or equipping of the Hotel Project.
- J. The Bonds were to be repaid from the operating revenues from the Hotel Project and the City's 13th and J Street Garage (Lot E Garage) (the "Garage"), which was leased by the City, as lessor, to the Corporation, as lessee, pursuant to a garage lease (the "Garage Lease"), dated as of April 1, 1999.
- K. At the time the Bonds were issued, various agreements relating to the Hotel Project and the Garage were entered into, including (1) a garage sublease (the "Garage Sublease"), dated as of April 1, 1999, between the Corporation, as sublessor, and Public Market Building, LLC, a California limited liability company (the "Manager"), as sublessee, which grants the Manager a conditional option to purchase the Garage; (2) a qualified management agreement (the "Qualified Management Agreement"), dated as of April 1, 1999, between the Corporation and the Manager, which grants the Manager a conditional right of first offer to purchase as well as a conditional option to purchase the Hotel Project; and (3) a hotel operating agreement (the "Hotel Operating Agreement"), dated as of April 1, 1999, between the Manager and Sheraton Operating Corporation (the "Hotel

Operator”), which grants the Hotel Operator the conditional right to terminate the Hotel Operating Agreement if the Hotel Project is sold by the Corporation.

- L. The Garage Sublease, the Qualified Management Agreement and the Hotel Operating Agreement (collectively, the “Hotel Project Documents”) afford the Manager substantial and important property rights with respect to the operation, control and possible ownership of the Hotel Project and the Garage for a substantial period of time into the future, including the conditional right to purchase the Hotel Project and the Garage pursuant to, and subject to the terms and conditions of, the Hotel Project Documents.
- M. The City, the Authority, the Corporation, the Agency, and the Manager have determined that sale of the Hotel Project and the Garage at this time would be mutually beneficial; in addition, the City has determined that the sale would constitute a municipal affair, would achieve substantial public purposes, and would provide significant public benefits for the City by providing a significant return on investment to the City and the Agency and by generating needed funds to accelerate the development, construction, acquisition, and enhancement of various facilities, projects, and improvements within the City. In particular, 50% of the net proceeds from the sale would be used on underutilized and economically depressed sites in the Merged Downtown area of the City to develop, construct, acquire, and enhance those sites on a much more rapid schedule than would otherwise be possible if the Hotel Project and the Garage were not sold together at this time (the “Economic Development Benefits”).
- N. In accordance with the requirements of the Indenture, the Subordinate Indenture, and the Loan Agreement, all of the Bonds are to be defeased using a portion of the cash purchase price paid to the Corporation for the Hotel Project, a portion of the cash purchase price paid to the City for the Garage, and certain other available funds relating to the Hotel Project and the Garage. The Corporation is to make the remaining portion of the cash purchase price for the Hotel Project available to the City. The City manager is to allocate the sum of that remaining portion and the cash purchase price for the Garage as follows: 50% to the Agency to fund the Economic Development Benefits, 25% to the City’s Reserve for Economic Uncertainty, and 25% to the Agency and Parking for reinvestment into income-generating projects.
- O. All acts, conditions, and things required by the Constitution and laws of the State of California, the Law, and the Charter to exist, to have happened, and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened, and have been performed in regular and due time, form, and manner as required by law, and the City is now duly authorized and empowered, pursuant to every requirement of law, to consummate such transactions for the purpose, in the manner, and upon the terms herein provided.

Based on the Facts Set Forth in the Background, the City Council Resolves as Follows:

Section 1. Based upon the facts, circumstances, and documents described in the recitals, presentations made by the City Manager and other City staff to the City Council at the time of the adoption of this resolution, and such other matters as have previously been presented to the City Council, the City Council does hereby determine that all of the statements, findings, and determinations of the City set forth in the above recitals are true and correct.

Section 2. The City Council hereby finds that the actions authorized in this resolution constitute and are with respect to municipal affairs of the City. In addition, for the reasons set forth above in the Background, and in accordance with Sacramento City Code section 3.88.090, the City Council hereby finds it is in the best interests of the City to provide for the sale of the Garage without first calling for bids.

Section 3. The form of the Agreement of Purchase and Sale relating to the Garage (the "Garage Sale Agreement"), presented to this meeting and on file with the City Clerk, is hereby approved, except as follows: section 3.1 is to be amended so that Seller does not make any representations or warranties about matters within the Sacramento Hotel Corporation=s knowledge. The City Manager is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Garage Sale Agreement, with such changes as the City Manager may require or approve after review by the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof. The City Manager is hereby further authorized to accept the net proceeds of the sale of the Hotel Project from the Corporation and to allocate the sum of those net proceeds and the net proceeds of the sale of the Garage as follows: 50% to the Agency, 25% to the City's Reserve for Economic Uncertainty, and 25% to the Agency and Parking for reinvestment into income generating projects.

Section 4. The City hereby approves the defeasance of all of the Bonds by the Authority and authorizes the use of a portion of the cash purchase price paid to the Corporation for the Hotel Project and a portion of the cash purchase price paid to the City for the Garage, together with other available funds relating to the Hotel Project and the Garage, for such defeasance.

Section 5. The City Clerk is hereby authorized and directed to attest the signature of the Mayor, the Vice Mayor, the City Manager, and City Treasurer, and to affix the seal of the City, as may be required or appropriate in connection with the execution and delivery of the Garage Sale Agreement, and any other documents executed and delivered pursuant to the authority granted in this resolution.

Section 6. The City Manager, City Treasurer, City Attorney, City Clerk, and any and all other officers, agents and employees of the City are hereby further authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents, including without limitation a grant deed, a bill of sale and assignment of intangible property, assignments and assumptions of leases, contracts

and warranties and guarantees, affidavits and notices to title companies, contractors and utility companies, escrow instructions and similar documents, that they may deem necessary or advisable to carry out, give effect to, and comply with the terms and intent of this resolution, the Garage Sale Agreement and any other documents executed and delivered pursuant to the authority granted in this resolution. Any such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 7. This resolution takes effect immediately upon its passage.

Adopted by the City of Sacramento City Council on March 25, 2008 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: None.



Mayor Heather Fargo

Attest:



Dawn Bullwinkel, Assistant City Clerk