



REPORT TO COUNCIL AND FINANCE AUTHORITY City of Sacramento

915 I Street, Sacramento, CA 95814-2671

CONSENT
May 6, 2008

Honorable Mayor and
Members of the City Council and Finance Authority

Title: Approval of Amendments to Articles of Incorporation and Bylaws of Sacramento Hotel Corporation

Location/Council District: Council District 3

Recommendation: Adopt a **City Council Resolution and Finance Authority Resolution** approving amendments to the Sacramento Hotel Corporation's articles of incorporation and bylaws ("Corporation Documents"), which broaden the corporation's mission and authorize distribution of proceeds from the sale of the Sheraton Grand Hotel at 13th and J streets without dissolving the corporation.

Contact: Sheri Smith, Project Manager, (916) 808-7204;
Leslie Fritzsche, Downtown Division Manager, (916) 808-5450

Presenters: NA

Department: Economic Development

Division: Downtown Development

Organization No: 4451

Description/Analysis

Issue: In 1997 the City entered into a public/private partnership with Public Market Building LLC (formed by David S. Taylor Interests and Hensel/Phelps, hereafter referred to as "PMB") to develop the Sheraton Grand Hotel (the "Hotel") with a desire to bring a first-class hotel to downtown to support the then newly renovated Convention Center and stimulate downtown redevelopment efforts. In 1999 the Sacramento Hotel Corporation (the "Corporation"), a self-supporting non-profit organization, was formed to own the hotel and to provide ongoing oversight and direction to PMB, which would manage the hotel. To facilitate development of the Hotel, the Sacramento City Financing Authority (the "Authority") became a financing conduit for the Corporation to issue \$92.8 million in bonds. Additionally, as part of the transaction, the City entered into a long-term lease with the Corporation for the garage located across from the Hotel.

All of the goals of the initial public/private partnership have been met. On March 25, 2008, the Council approved the sale to CIM/J Street Sacramento Hotel, LLC of the garage associated with the Sheraton; and on April 10, 2008, the

Corporation's Board of Directors approved the sale of the Hotel to the same buyer.

Under the original articles of incorporation, the Corporation was authorized only to "purchase, own, lease, encumber, and sell" the Sheraton Grand Hotel. Upon completion of that mission the Corporation would be dissolved and its assets or proceeds from the sale of its assets would be distributed to the City. The Corporation has performed its mission admirably. Rather than move forward immediately with dissolution, however, staff recommends that the city investigate the merits of keeping the Corporation active for use on future projects. The proposed amendments to the bylaws and articles of incorporation will allow time for that investigation while authorizing the Corporation to distribute the sale proceeds to the city now.

The amendments are generally two-fold. First, they broaden the Corporation's mission to include "assisting the City of Sacramento, California, including its Office of Economic Development and the Redevelopment Agency (collectively, the "City") to revitalize areas within the City assist in economic growth." Second, they authorize the distribution to the City of the sales proceeds from the Sheraton in advance of the Corporation's dissolution. The proposed amendments are included herein as Attachment 1.

The proposed amendments to the articles and bylaws will not in any way require future use of the Corporation. They merely allow time for staff to fully analyze the benefits of using the Corporation to assist economic development efforts, rather than the recently formed Sacramento Economic and Employment Corporation or the Downtown Sacramento Revitalization Corporation.

Policy Considerations: The recommended approval of the amendments is consistent with the City's goal of providing avenues for creating economic development opportunities within the City.

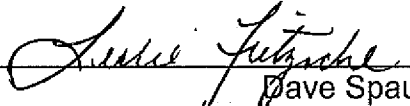
Committee/Commission Action: On April 10, 2008, the Board of Directors of the Sacramento Hotel Corporation unanimously approved the amendments to the articles of incorporation and bylaws, thereby expanding the Corporation's mission and authorizing the distribution to the City of the proceeds from the sale of the Sheraton Grand without dissolving the Corporation.

Environmental Considerations: The recommended actions do not constitute a project under CEQA.

Rationale for Recommendation: The proposed amendments allow the distribution of the estimated \$45 million dollars in proceeds from the sale of the Sheraton Grand and the garage to flow to the City without the dissolution of the Corporation and will allow time to fully analyze the Corporation's future role.

Financial Considerations: There are no direct fiscal implications of the actions outlined in this report.

Emerging Small Business Development (ESBD): None

Respectfully Submitted by: 
Dave Spaur
Director, Economic Development

Recommendation Approved:



RAY KERRIDGE
City Manager

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Attachment 1

**RESTATED ARTICLES OF INCORPORATION OF
SACRAMENTO HOTEL CORPORATION,
[_____]¹**

a California Nonprofit Public Benefit Corporation

Walter J. Slipe[_____] and Andrew Plescia[_____] hereby certify that:

1. They are the President[_____] and Assistant Secretary[_____] , respectively, of the Sacramento Hotel Corporation, a California nonprofit corporation.

This corporation has no members. Pursuant to Section 5812(b)(3) of the California NonProfit Public Benefit Law and Article 4 of the Articles of Incorporation, the Articles of Incorporation may be amended if approved by the ~~Board of Directors~~ and resolution of the City Council of the City of Sacramento, the written approval of the Sacramento City Financing Authority and the affirmative vote of 100% of the Board of Directors.

The Articles of Incorporation of this corporation are amended and restated to read as follows:

ARTICLE I

The name of this corporation is Sacramento Hotel Corporation[_____].

ARTICLE II

This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. ~~It is organized under the California Nonprofit Public Benefit Corporation Law for public purposes. The specific and sole public purpose of this corporation is to purchase, own, lease, encumber and sell certain real property located at 13th and J Street in Sacramento, California (the "Hotel Property") and to lease the City of Sacramento Lot E Parking Garage (the "Garage", the Hotel Property and the Garage collectively, the "Property") for the purpose of purchasing, designing, building, owning, operating, financing, encumbering, maintaining, leasing and selling a full service convention center hotel in the City of Sacramento, and to engage in such activities as may be necessary or advisable in~~

¹ Staff is authorized to select a new name for this corporation that reflects its expanded purpose effective as of the close the sale of the Hotel.

~~connection therewith. Notwithstanding anything contained herein to the contrary, this corporation shall not engage in any business, and it shall have no purpose, unrelated to the Property, and shall not acquire any real property or own assets other than those related to the Property and/or otherwise in furtherance of the purposes of this corporation.~~ lessen the burdens of government by assisting the City of Sacramento, California, including its Office of Economic Development and the Redevelopment Agency, (collectively, the "City") to revitalize areas within the City and assist in economic growth within the City by (i) owning, acquiring, developing, financing (including but not limited to loaning money in connection with), assisting, leasing and managing projects in areas within the City; (ii) providing amenities associated with any projects undertaken by this corporation; (iii) providing financial support and other assistance to businesses and individuals within the City for the purpose of promoting economic growth within the City; (iv) assisting businesses within the City to encourage, attract, retain and expand job opportunities in the City; (v) assisting the City in its efforts to promote economic growth and otherwise revitalize areas within the City; (vi) making payments to the City for public purposes, and (vii) conducting or performing any ancillary or related activity in furtherance of the foregoing. This corporation shall be permitted to conduct other lawful activities permitted under the California Nonprofit Public Benefit Corporation Law.

ARTICLE III

No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and this corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of or in opposition to any candidate for public office.

ARTICLE IV

Neither these articles of incorporation nor the bylaws of this corporation may be amended without the approval by resolution of the City Council of the City of Sacramento, ~~the written approval of the Authority and the affirmative vote of 100% of the Board of Directors.~~

ARTICLE V

Upon dissolution of or winding up of the affairs of this corporation, all of this corporation's assets remaining after payment of or provision for payment of all debts and liabilities of this corporation shall be and become the assets of the City of Sacramento.

ARTICLE VI

The directors of this corporation shall be appointed by, and shall be subject to removal and replacement, with or without cause, by, resolution duly adopted by the City Council of the City of Sacramento.

ARTICLE VII

The City Council of the City of Sacramento shall have the right to approve by resolution the annual budget of this corporation, and to approve by resolution in advance any borrowing transaction including, but not limited to, approval of repayment schedules and procedures.

ARTICLE VIII

The liability of this corporation's agents (as defined in Section 5238(a) of the California Nonprofit Public Benefit Law) shall be eliminated to the fullest extent permissible under California law. This corporation is authorized to provide indemnification of any such agents through bylaw provisions, agreements with such agents, vote of disinterested directors, or otherwise, to the fullest extent permissible under California law. Any amendment, repeal or modification of any provision of this Article 9 shall not adversely affect any right or protection of an agent of this corporation existing at the time of such amendment, repeal or modification.

4. The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the ~~Board of Directors of this corporation and by resolution of~~ the City Council of the City of Sacramento ~~pursuant to a resolution adopted on April 13, 1999 and by~~ the written approval of the Sacramento City Financing Authority and the affirmative vote of 100% of the Board of Directors.

The undersigned further declares under penalty of perjury under the laws of the State of California that the matters set forth in the foregoing Certificate are true and correct of ~~their own~~ knowledge, and that this declaration was executed on April 14, 1999, , 2008, at Sacramento, California.

Walter J. Slipe

President

Name:

Title:

Assistant Secretary

Name:

Title:

AMENDED AND RESTATED

BYLAWS OF

SACRAMENTO HOTEL CORPORATION,

[_____],

a California Nonprofit Public Benefit Corporation

Article I

Name of Corporation

The name of this corporation is Sacramento Hotel Corporation [_____].

Article II

Offices

1. Principal Executive Office. Subject to the requirements of Article VII hereof, the board of directors of this corporation shall by a duly adopted resolution fix the location of the principal executive office of this corporation at any place within the State of California.

2. Other Offices. Subject to the requirements of Article VII hereof, the Board may at any time establish branch or subordinate offices at any place or places where this corporation is qualified to do business.

Article III

General and Specific Purposes

This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for public purposes. The specific and ~~sole public purpose~~ of this corporation is to ~~purchase, own, lease, encumber and sell certain real property located at 13th and J Street in Sacramento, California (the "Hotel") and to lease the City of Sacramento Lot E Parking Garage (the "Garage", the Hotel and the Garage collectively, the "Property") for the purpose of purchasing, designing, building, owning, operating, financing, encumbering, maintaining, leasing and selling a full service convention center hotel in the City of Sacramento, and to engage in such activities as may be necessary or advisable in connection therewith. Notwithstanding anything contained herein to the contrary, this corporation shall not engage in any business, and it shall have no purpose, unrelated to the Property, and shall not acquire any real property or own assets other than those related to the Property and/or otherwise in~~

furtherance of the purposes of this corporation lessen the burdens of government by assisting the City of Sacramento, California, including its Office of Economic Development and the Redevelopment Agency, (collectively, the "City") to revitalize areas within the City and assist in economic growth within the City by (i) owning, acquiring, developing, financing (including but not limited to loaning money in connection with), assisting, leasing and managing projects in areas within the City; (ii) providing amenities associated with any projects undertaken by this corporation; (iii) providing financial support and other assistance to businesses and individuals within the City for the purpose of promoting economic growth within the City; (iv) assisting businesses within the City to encourage, attract, retain and expand job opportunities in the City; (v) assisting the City in its efforts to promote economic growth and otherwise revitalize areas within the City; (vi) making payments to the City for public purposes, and (vii) conducting or performing any ancillary or related activity in furtherance of the foregoing. This corporation shall be permitted to conduct other lawful activities permitted under the California Nonprofit Public Benefit Corporation Law.

Article IV

Members

This corporation shall have no members within the meaning of the California Nonprofit Public Benefit Corporation Law. Subject to the terms of the articles of incorporation of this corporation, any action which would otherwise require approval by a majority of all members or approval by the members shall require only approval of the Board. All rights which would otherwise vest in the members shall vest in the Board.

Article V

Directors

1. Number of Directors. Subject to the requirements of subsection 4(d) of this Article V, the authorized number of directors of this corporation shall be not less than three (3) nor more than five (5), and the exact number of directors shall be five (5) until changed, within the limits specified above, by a resolution amending such exact number, duly adopted by the Board and approved by resolution of the Sacramento City Council.

2. Terms of Directors. The directors shall be divided into three classes, with the term of office of the first class, which class shall initially consist of one director, to expire on January 1, 2001; the term of office of the second class, which class shall initially consist of two directors, to expire on January 1, 2002; the term of office of the third class, which class shall initially consist of two directors, to expire on January 1, 2003; and thereafter the term of each class of directors shall be for three years from the date of the last appointment of directors of such class. Any additional persons appointed to the Board of Directors shall be classified at the discretion of the Sacramento City Council.

3. Nomination and Removal of Directors. Subject to the requirements of subsection 4(d) of this Article V, all directors shall be nominated by the Board and shall be appointed pursuant to a resolution duly adopted by the Sacramento City Council; provided that all directors shall be subject to removal and replacement by the Sacramento City Council with or without cause.

4. Powers of Directors.

a. **General powers.** Subject to the provisions and limitations of the California Nonprofit Public Benefit Corporation Law and any other applicable laws, and subject to any limitations of the articles of incorporation or these bylaws, this corporation's activities shall be managed, and all corporate powers shall be exercised by or under the direction of the Board. The Board may delegate the management of the activities of this corporation to any person or persons, a management company, or committees, however composed, provided that the activities and affairs of this corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

b. **Specific powers.** Without prejudice to the general powers set forth above, but subject to the limitations set forth in the articles of incorporation and in subsection 4(c) of this Article V, the Board shall have the power to:

(i) Take any and all actions reasonable or necessary for purposes of implementation of the purposes of this corporation as set forth in these bylaws and in the articles of incorporation.

(ii) Engage the services of consultants and contractors.

(iii) Appoint, remove and replace, at the pleasure of the Board, all corporate officers, agents and employees; prescribe powers and duties for them as are consistent with the law, the articles of incorporation, and these bylaws; fix their compensation; and require from them security for the faithful performance of their duties.

(iv) Change the location of the principal executive office of this corporation.

(v) Authorize corporate ownership, leasing, encumbering, purchasing and sale of ~~the Property and~~ any real or personal property ~~related to the Property owned by this corporation,~~ or any rights or lesser interests therein or incidents thereof, ~~for the purpose of designing, building, owning, operating, financing, encumbering, maintaining, leasing, purchasing or selling, or taking any other action with respect to, a full-service convention-center hotel in the City of Sacramento.~~

(vi) Borrow money and incur indebtedness on this corporation's behalf and cause to be executed and delivered for this corporation's purposes, in the

corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidences of debt and securities in connection with the purposes of this corporation set forth in Article III.

(vii) Adopt, use and alter the form of a corporate seal.

c. **Limitations on Powers.** The general and specific powers set forth above shall be exercised subject to the following limitations:

Neither these bylaws nor the articles of this corporation may be amended without the approval by resolution of the Sacramento City Council.

Upon dissolution of, or winding up the affairs of this corporation, all of this corporation's assets remaining after payment or provision for payment of all debts and liabilities of this corporation shall be and become the assets of the City of Sacramento.

The Sacramento City Council shall have the right to approve by resolution the annual budget of this corporation pursuant to Article XI of these bylaws, and to approve by resolution in advance any borrowing transaction including, but not limited to, approval of repayment schedules and procedures.

d. **Restrictions on Interested Persons as Directors.** At any time, no more than forty-nine percent (49%) of the persons serving on the Board or on any committee of the Board established pursuant to Article VI hereof may be "interested persons." An interested person is (i) any person compensated by this corporation or the City of Sacramento for services rendered to it within the previous 12 months, whether as an officer, full-time or part-time employee, independent contractor, or otherwise, excluding compensation and reimbursement of expenses paid to a director pursuant to subsection 6(h) of this Article V; or (ii) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of such person; provided, however, that any violation of this paragraph shall not affect the validity or enforceability of transactions entered into by this corporation.

5. Vacancies on the Board of Directors.

a. **Events Causing Vacancies on the Board of Directors.** A vacancy or vacancies on the Board shall occur in the event of (i) the death or resignation of any director; (ii) the declaration by resolution of the Board of a vacancy in the office of a director who has been convicted of a felony, declared of unsound mind by a court order, or found by final order or judgment of any court to have breached a duty under the California Nonprofit Public Benefit Corporation Law, Chapter 2, Article 3; (iii) the removal, with or without cause, of a Board member by resolution of the Sacramento City Council; or (iv) an increase in the authorized number of directors.

b. **Resignation of Directors.** Subject to the provisions of Section 5226 of the California Nonprofit Public Benefit Corporation Law, any director may resign by giving written notice to the Chair of the Board. The resignation shall be effective when the notice is given unless it specifies a later time to become effective.

c. **Filling vacancies on the Board of Directors.** Subject to the requirements of subsection 4(d) hereof, in the event of a vacancy on the Board, the remaining Board members shall nominate a person to fill such vacancy. The Board shall promptly notify the Sacramento City Council of the person nominated to fill such vacancy and such nominee shall serve as director, with all the rights, powers and limitations afforded thereto, until either the Sacramento City Council appoints by resolution another person to fill such vacancy or the expiration of the term of the replaced director. The person nominated by the Board shall be appointed to fill such vacancy by a duly adopted resolution of the Board.

6. Meetings of Board of Directors.

a. **Place of Meetings.** Meetings of the Board shall be held at any place within or outside California that has been designated by resolution of the Board or in the notice of the meeting or, if not so designated, at the principal executive office of this corporation.

b. **Annual Meetings.** The Board shall hold an annual meeting for the purpose of organization, appointment of officers, and the transaction of other business. Annual meetings of the Board shall be held during the fourth quarter of each year.

c. **Other Regular Meetings.** Other regular meetings of the Board shall be held on such dates and at such times as may be fixed by the Board but in no event less frequently than once every calendar quarter.

d. **Special Meetings.** Special meetings of the Board for any purpose or purposes may be called at any time by the Chair of the Board, the Chief Executive Officer, any two (2) directors acting together or resolution of the Sacramento City Council. Special meetings of the Board shall be held upon four days' notice by first-class mail or 48 hours' notice given to each director by (i) personal delivery, (ii) first class mail, postage prepaid, (iii) telephone, including a voice messaging system or other system or technology designed to record and communicate messages either directly to the director or a person at the director's office who would reasonably be expected to communicate such notice to the director promptly, (iv) telegram, (v) facsimile, (vi) electronic mail, or (vii) other similar means of communication. Any such notice shall be addressed or delivered to each director at such director's physical or electronic mail address or telephone or facsimile number as it is shown upon the records of this corporation by the director for purposes of notice or, if such information is not shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held.

Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mail, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone or voicemail, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the receiver.

Notice of a meeting need not be given to any director who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting, without protesting, prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Notwithstanding the foregoing, noticing and conduct of such special, annual and other regular meetings shall be in accordance with the Ralph M. Brown Act, Government Code Sections 54950 *et seq.* (the "Brown Act"). The agenda procedures for Board meetings shall conform to said statutory procedures, except that as permitted by law the Board may utilize abbreviated agenda procedures.

e. **Quorum.** A majority of the authorized number of directors shall constitute a quorum for the transaction of any business except adjournment. Every action taken or decision made by a majority of the directors present at a duly held meeting at which a quorum is present shall be an act of the Board, subject to the more stringent provisions of the California Nonprofit Public Benefit Corporation Law including, but not limited to, those provisions relating to (i) approval of contracts or transactions in which a director has a direct or indirect material financial interest; and (ii) indemnification of directors. A meeting at which a quorum is initially present may continue to transact business, despite the withdrawal of some directors, if any action taken or decision made is approved by at least a majority of the required quorum for that meeting.

f. **Participation in Meetings by Conference Telephone.** To the extent permitted by and subject to the provisions of the Brown Act, members of the Board may participate in a meeting through use of conference telephone, electronic video screen communication or other communications equipment, so long as (i) all members participating in such meeting can hear and communicate with all other members concurrently, (ii) each member is provided the means of participating in all matters before the Board, including, without limitation, the capacity to propose or interpose an objection to a specific action to be taken by the Board, and (iii) the Board adopts and implements some means of verifying that (A) each person participating in the meeting is a director or other person entitled to participate in the meeting and (B) all actions of, or votes by, the Board are taken or cast only by the directors and not by persons who are not directors.

g. **Adjournment; Notice of adjourned meeting.** To the extent permitted by and subject to the provisions of the Brown Act, a majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place is fixed at the meeting adjourned, except as provided in the next sentence. If the meeting is adjourned for more than 24 hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

h. **Compensation and Reimbursement.** Each director of this corporation shall receive five hundred dollars (\$500.00) for each meeting of the Board attended by such director up to a maximum of four thousand dollars (\$4,000) per year. The Board may from time to time increase the compensation paid to directors by a resolution duly adopted by the Board, subject to the approval by resolution of the Sacramento City Council. In addition, reimbursement for reasonable expenses incurred in performance of duties may be fixed by the Board.

Article VI

Committees

1. Committees of the Board. Subject to the requirements of subsection 4(d) hereof, the Board may appoint one or more committees, each consisting of two (2) or more directors. The Board may delegate to such committees any of the authority of the Board except with respect to:

- a. the taking of any final action on any matters set forth in subsection 4(c) of Article V;
- b. the filling of vacancies on the Board or on any committee;
- c. the fixing of compensation of the officers or employees of this corporation;
- d. the amendment or repeal of the articles of incorporation or these bylaws or the adoption of new articles of incorporation or bylaws;
- e. the amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
- f. the appointment of any other committees of the Board or the members of such committees; or
- g. the approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the California Nonprofit Public Benefit Corporation Law.

Any such committee must be created, and the members thereof appointed, by resolution duly adopted by a majority of the authorized number of directors then in office, provided a quorum is present, and any such committee may be designated by such name as the Board shall specify. The Board may appoint, in the same manner, alternate members of any committee who may replace any absent member at any meeting of the committee. The Board shall have the power to prescribe the manner in which proceedings of any such committee shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless the Board or such committee shall otherwise provide, the regular and special meetings and other actions of any such committee shall be governed by the provisions of Article V applicable to meetings and actions of the Board. Notwithstanding the foregoing, noticing and conduct of such proceedings shall be in accordance with the provisions of the Brown Act. Minutes shall be kept of each meeting of each committee.

2. Advisory Committees. Advisory committees may be appointed from time to time by the Board. Advisory committees' membership may consist of both directors and nondirectors or nondirectors only. Advisory committees have no legal authority to act for this corporation but shall report their findings and recommendations to the Board.

Article VII

Officers

1. Officers. The officers of this corporation shall be a Chair of the Board, Chief Executive Officer, Secretary, and Chief Financial Officer. The corporation may also have, at the discretion of the Board, one or more vice presidents, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article VII. Any number of offices may be held by the same person, except as provided in the articles of incorporation or in these bylaws.

2. Appointment of Officers. The officers of this corporation, except those appointed in accordance with the provisions of Section 3 or Section 6 of this Article VII, shall be chosen annually by the Board, and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment.

3. Subordinate Officers. The Board may appoint, and may authorize the Chair of the Board or the Chief Executive Officer or another officer to appoint, any other officers that the business of this corporation may require, each of whom shall have the title, hold office for the period, have the authority, and perform the duties specified in these bylaws or determined from time to time by the Board.

4. Removal of Officers. Without prejudice to the rights of any officer under an employment contract, the Board may remove any officer with or without cause.

5. Resignation of Officers. Any officer may resign at any time by giving written notice to the Board. The resignation shall take effect on the date the notice is received or at any later time specified in the notice. Unless otherwise specified in the notice, the resignation need not be accepted to be effective. Any resignation shall be without prejudice to any rights of this corporation under any contract to which the officer is a party.

6. Vacancies in Office. If a vacancy occurs in any office because of death, resignation, removal, disqualification, or any other cause, the Board shall appoint an officer to fill the vacancy. Each officer so appointed shall hold office until the expiration of the term of the replaced officer.

7. Responsibilities of Officers.

a. **Chair of the Board.** The Chair of the Board shall preside at Board meetings and shall exercise and perform such other powers and duties as the Board may assign from time to time. If a Chief Executive Officer has not been appointed by the Board, the Chair of the Board shall also be the Chief Executive Officer and shall, subject to the control of the Board, generally supervise, direct, and control the business and the officers of this corporation.

b. **Chief Executive Officer.** Subject to such powers as may be given by the Board to the Chair of the Board, the Chief Executive Officer shall, subject to the control of the Board, generally supervise, direct, and control the business and the officers of this corporation. The Chief Executive Officer shall have such other powers and duties as may be prescribed by the Board or these bylaws.

c. **Secretary.** The Secretary shall keep or cause to be kept, at this corporation's principal executive office or such other place as the Board may direct, a copy of the articles of incorporation and bylaws of this corporation, as amended to date, and a book of minutes of all meetings, proceedings, and actions of the Board, and of committees of the Board. The minutes of meetings shall include the time and place that the meeting was held; whether the meeting was general or special, and, if special, how authorized; the notice given; the names of persons present at Board meetings; and the proceedings of such meetings. The Secretary or any Assistant Secretary shall give, or cause to be given, all required notice of all meetings of the Board. The Secretary shall keep the corporate seal, if any, in safe custody and shall have such other powers and perform such other duties as the Board or these bylaws may require.

d. **Chief Financial Officer.** The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of this corporation's properties and transactions. The Chief Financial Officer shall send or cause to be given to the directors such financial statements and reports as are required to be given by law, by these bylaws, or by the Board. The books of account shall be open to inspection by any director at all reasonable times.

The Chief Financial Officer shall (i) deposit, or cause to be deposited, all money and other valuables in the name and to the credit of this corporation with such depositories as the Board may designate; (ii) disburse this corporation's funds as the Board may order; (iii) render to the Chair of the Board and the Board, when requested, an account of all transactions as Chief Financial Officer and of the financial condition of this corporation; and (iv) have such other powers and perform such other duties as the Board or these bylaws may require.

If required by the Board, the Chief Financial Officer shall give this corporation a bond in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of the office and for restoration to this corporation of all of its books, papers, vouchers, money, and other property of every kind in the possession or under the control of the Chief Financial Officer on his or her death, resignation, retirement, or removal from office.

Article VIII

Certain Transactions Prohibited

1. Contracts with Directors and Officers. No director or officer of this corporation nor any other corporation, firm, association, or other entity in which one or more of this corporation's directors or officers are directors or officers or have a material financial interest, shall be interested, directly or indirectly, in any contract or transaction, unless (a) the material facts regarding the financial interest of the director or officer in such contract or transaction or regarding such common directorship, officership, or financial interest are fully disclosed in good faith and noted in the minutes, or are known to all members of the Board prior to the Board's consideration of such contract or transaction; (b) such contract or transaction is authorized in good faith by a majority of the Board by a vote sufficient for that purpose without counting the votes of the interested directors; (c) before authorizing or approving the transaction, the Board considers and in good faith decides after reasonable investigation that this corporation could not obtain a more advantageous arrangement with reasonable effort under the circumstances; or (d) this corporation for its own benefit enters into the transaction, which is fair and reasonable to this corporation at the time the transaction is entered into.

2. Loans to Directors and Officers. This corporation shall not lend any money or property to, or guarantee the obligation of, any director or officer without the approval of the California Attorney General; provided, however, that this corporation may advance money to a director or officer of this corporation for expenses reasonably anticipated to be incurred in the performance of his or her duties if that director or officer would be entitled to reimbursement for such expenses by this corporation.

Article IX

Indemnity and Insurance

1. Indemnity. To the fullest extent permitted by law, this corporation shall indemnify its agents (as defined in Section 5238(a) of the California Nonprofit Public Benefit Law) against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding", as that term is used in that Section, and including an action by or in the right of this corporation, by reason of the fact that the person is or was a person described in that Section. "Expenses", as used in this bylaw, shall have the same meaning as in Section 5283(a) of the California Nonprofit Public Benefit Law.

On written request to the Board by any person seeking indemnification under Section 5238(b) or Section 5238(c) of the California Nonprofit Public Benefit Law, the Board shall promptly decide under Section 5238(e) of the California Nonprofit Public Benefit Law whether the applicable standard of conduct set forth in Section 5238(b) or Section 5238(c) of the California Nonprofit Public Benefit Law has been met and, if so, the Board shall authorize indemnification. If the Board cannot authorize indemnification because the number of directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of directors who are not parties to that proceeding, the court in which such proceeding is or was pending upon application made by this corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney, or other person is opposed by this corporation, shall determine under Section 5238(e) of the California Nonprofit Public Benefit Law whether the applicable standard of conduct set forth in Section 5238(b) or Section 5238(c) has been met and, if so, the court shall authorize indemnification.

To the fullest extent permitted by law and except as otherwise determined by the Board in a specific instance, expenses incurred by a person seeking indemnification under these bylaws in defending any proceeding shall be advanced by this corporation before the final disposition of the proceeding, on receipt by this corporation of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately found that the person is entitled to be indemnified by this corporation for those expenses.

2. Insurance. This corporation shall have the right to purchase and maintain insurance to the fullest extent permitted by law on behalf of its officers, directors, employees, and other agents, to cover any liability asserted against or incurred by any officer, director, employee, or agent in such capacity or arising from the officer's, director's, employee's, or agent's status as such.

Article X

Corporate Records

1. Maintenance of Corporate Records. This corporation shall keep:
 - a. Adequate and correct books and records of account.
 - b. Written minutes of the proceedings of the Board and each committee of the Board.
 - c. The original or a copy of the articles of incorporation and these bylaws, amended to the current date.

2. Directors' Right of Inspection. Every director shall have the absolute right at any reasonable time to inspect this corporation's books, records, documents of every kind, and physical properties. The inspection may be made in person, or by the director's agent or attorney. The right of inspection includes the right to copy and make extracts of documents.

Article XI

Reports and Budgets

1. Annual Report. ~~The~~For any fiscal year of this corporation in which this corporation owned any assets or properties, the Board shall cause an annual report to be sent to the Sacramento City Council and each of the directors within a reasonable period of time after the end of this ~~corporation's~~such fiscal year. That report shall contain the following information, in appropriate detail:
 - a. The assets and liabilities, including the trust funds, of this corporation as of the end of the fiscal year;
 - b. The principal changes compared to the end of the prior fiscal year in this corporation's assets and liabilities, including trust funds;
 - c. The corporation's revenue or receipts, both unrestricted and restricted to particular purposes during the fiscal year;
 - d. The corporation's expenses or disbursements for both general and restricted purposes during the fiscal year;
 - e. An independent accountants' report or, if none, the certificate of an authorized officer of this corporation that such statements were prepared without audit from this corporation's books and records.

2. Annual Statement of Certain Transactions and Indemnifications. As part of the annual report, this corporation shall, within a reasonable period of time after the end of this corporation's fiscal year, annually prepare and mail or deliver to each director a statement of any transaction or indemnification of the following kind:

a. Any transaction (i) in which this corporation was a party, (ii) in which an "interested person" had a direct or indirect material financial interest, and (iii) which involved more than \$50,000 or was one of several transactions with the same interested person involving, in the aggregate, more than \$50,000.

The statement shall include a brief description of the transaction, the names of interested persons involved, their relationship to this corporation, the nature of their interest in the transaction and, if practicable, the amount of that interest, provided that if the transaction was with a partnership in which the interested person is a partner, only the interest of the partnership need be stated.

b. Any indemnifications or advances aggregating more than \$10,000 paid during the fiscal year to any other officer or director of this corporation under Section 5238 of the California Nonprofit Public Benefit Corporation Law.

3. Annual Budget. For any fiscal year of this corporation in which this corporation owns or reasonably expects to own any assets or properties:

a. **Preparation of proposed budget.** The Chief Financial Officer shall present a proposed fiscal year budget to the Board on or before November 1 for the succeeding fiscal year. The proposed budget shall conform to all applicable accounting procedures and practices, and shall contain the recommendations of the Chief Financial Officer. Following public budget hearings, the Board shall adopt by resolution a budget of proposed expenditures and appropriations necessary therefor for the ensuing fiscal year, failing which the appropriations for current operations of the last fiscal year shall be deemed effective until the new budget and appropriation measures are adopted.

b. **Submission of proposed budget to the Sacramento City Council.** The proposed budget as adopted by the Board, together with the resolution of proposed expenditures and appropriations, shall be submitted to the Sacramento City Council for its approval at least thirty days prior to the commencement of the fiscal year covered by the proposed budget.

c. **Approval of final budget.** Upon approval of the proposed budget by the Sacramento City Council, the Board shall approve the budget in final form. In the event that the final budget presented to the Board contains any material differences between it and the budget as approved by the Sacramento City Council, the Board shall resubmit the budget to the Sacramento City Council for its approval prior to taking action on the final budget.

d. **Budget changes during the fiscal year.** Once finally adopted, the budget may be amended during the fiscal year in accordance with procedures established by the Board; provided, however, that in the event that the amendments constitute material changes to the final budget, such amendments shall be submitted to the Sacramento City Council for its approval prior to final approval by the Board.

Article XII

Separate Corporate Existence

Except as required by or pursuant to the Bond Documents:

1. This corporation shall maintain its principal executive office separate from that of the City of Sacramento and shall conspicuously identify such office as its office.

2. This corporation shall maintain its financial statements, accounting records and other corporate documents separate from those of the City of Sacramento or any other entity. The financial statements of this corporation shall be prepared in accordance with generally accepted accounting principles and make it clear that this corporation is separate from the City of Sacramento.

3. This corporation shall maintain its own separate bank accounts and correct, complete and separate books of account.

4. This corporation shall file its own tax returns, if any, as may be required under applicable law, to the extent (a) not part of a consolidated group filing a consolidated return or returns or (b) not treated as a division for tax purposes of another taxpayer, and pay any taxes so required to be paid under applicable law.

5. This corporation shall at all times hold itself out to the public (including the City of Sacramento's creditors) under this corporation's own name and as a separate and distinct corporate entity. This corporation must have a separate telephone number, stationery and other business forms.

6. All customary formalities regarding the corporate existence of this corporation, including holding meetings of the Board and maintaining separate current and accurate minute books, shall be observed.

~~7. This corporation shall retain as its accountants a nationally recognized firm of independent certified public accountants, provided that such accountants may also serve as accountants of the City of Sacramento.~~

7. ~~8.~~ All business transactions entered into by this corporation with the City of Sacramento shall be on such terms and conditions (including terms relating to amounts

paid thereunder) as would be generally available in a comparable arms-length transaction, and shall be approved by the Board.

8. 9.—This corporation shall not guarantee or assume or hold itself out or permit itself to be held out as having guaranteed or assumed any liabilities or obligations of the City of Sacramento.

9. 10.—This corporation shall not pledge its assets for the benefit of the City of Sacramento or any other entity.

10. 11.—This corporation shall not hold out its credit as being available to satisfy the obligations of others.

11. 12.—This corporation shall conduct its business in its own name.

~~13.— The financial statements of this corporation, reported in the annual financial report of the City of Sacramento, shall disclose the effects of all transactions contemplated by the Bond Documents (as defined in the Loan Agreement dated as of April 1, 1999 (the "Loan Agreement"), by and between the corporation and the Sacramento City Financing Authority (the "Authority")) in accordance with generally accepted accounting principles and make it clear that this corporation is separate from the City of Sacramento.~~

12. 14.—This corporation shall correct any known misunderstanding regarding its separate identity.

13. 15.—Other than organizational expenses, this corporation shall pay its own liabilities, indebtedness and obligations of any kind, including all administrative expenses, from its own separate assets.

14. 16.—Assets of this corporation shall be separately identified, maintained and segregated and shall not be commingled with the assets of any other entity except pursuant to the Bond Documents. This corporation's assets shall at all times be held by or on behalf of this corporation and, if held on behalf of this corporation by another entity including the City of Sacramento, shall at all times be kept identifiable (in accordance with customary usages) as assets owned by this corporation.

15. 17.— Notwithstanding any other provisions of these Bylaws and any provision of law that otherwise so empowers this corporation, this corporation shall not, without the affirmative vote of 100% of the Board of Directors, do any of the following:

Engage in any business or activity other than in accordance with Article III hereof;

Incur any indebtedness, other than (i) in connection with the activities described in Article III hereof and (ii) with the prior written consent of the Authority;

Dissolve or liquidate, in whole or in part (including a dissolution of the corporation at the request of a majority of the holders of the shares of stock of the corporation), unless as part of such dissolution, the amounts loaned to the corporation by the Authority pursuant to the Loan Agreement have been paid or have been otherwise provided for;

Institute proceedings to be adjudicated bankrupt or insolvent; or consent to the institution of bankruptcy or insolvency proceedings against it; or file a petition seeking, or consent to, reorganization or relief under any applicable federal or state law relating to bankruptcy; or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the corporation or a substantial part of its property; or make any assignment for the benefit of creditors; or admit in writing its inability to pay its debts generally as they become due; or take any corporate action in furtherance of any such action; or

Without the prior written approval, by resolution, of the Sacramento City Council and an opinion of bond counsel, adopt or repeal these bylaws.

Article XIII

Other Provisions

1. Endorsement of Documents; Contracts. Subject to the provisions of applicable law, any note, mortgage, evidence of indebtedness, contract, conveyance, or other instrument in writing and any assignment or endorsement thereof executed or entered into between this corporation and any other person, when signed by the Chair of the Board or the Chief Executive Officer, and the Secretary or the Chief Financial Officer shall be valid and binding on this corporation in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same. Any such instruments may be signed by any other person or persons and in such manner as from time to time shall be determined by the Board and, unless so authorized by the Board, no officer, agent, or employee shall have any power or authority to bind this corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or amount.

2. Representation of Shares of Other Corporations. The Chair of the Board, the Chief Executive Officer and any other officer or officers authorized by the Board are each authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority herein granted may be exercised either by any such officer in person or by any other person authorized so to do by proxy or power of attorney duly executed by said officer.

3. Construction and Definitions. Unless the context otherwise requires, the general provisions, rules of construction, and definitions contained in the General

Provisions of the California Nonprofit Corporation Law and in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these bylaws.

4. Fiscal Year. The corporation's fiscal year shall commence on January 1 of each calendar year, and end on December 31st of the following calendar year. The period of time between the date of incorporation and the immediately succeeding December 31st shall be deemed to be this corporation's first fiscal year.

Article XIII

Nonpartisan Activities

This corporation has been formed under the California Nonprofit Public Benefit Corporation Law as a charitable and public organization, and it shall be nonprofit and nonpartisan. No substantial part of the activities of this corporation shall consist of the public or dissemination of materials with the purpose of attempting to influence legislation, and this corporation shall not participate or intervene in any political campaign on behalf of any candidate for public office or for or against any cause or measure being submitted to the people for a vote.

The corporation shall not, except in an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes set forth in Article III hereof.

Article XIV

Dedication Of Assets

The properties and assets of this corporation are irrevocably dedicated to fulfillment of the objectives and purposes of this corporation as set forth in its articles of incorporation and these bylaws. No part of the net earnings, properties, or assets of this corporation, on dissolution or otherwise, shall inure to the benefit of any private person or individual, except that this corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its charitable purposes. On liquidation or dissolution, all properties and assets remaining after payment or provision for payment of all debts and liabilities shall be distributed to the City of Sacramento.

CERTIFICATE OF SECRETARY

I certify that I am the duly elected and acting Secretary of Sacramento Convention Center Hotel Corporation [_____], a California nonprofit public benefit corporation; that the foregoing bylaws, consisting of 16 pages, are the amended bylaws of this corporation as adopted by the board of directors as of ~~February 3, 2000~~ March 25, 2008 effective as of the date specified in such resolutions; and that the bylaws have not been amended or modified since that date.

Executed on March _____, 2008, at Sacramento, California.

Sharon Gerber
Secretary

RESOLUTION NO.

Adopted by the Sacramento City Council

APPROVING AMENDMENTS TO BYLAWS AND ARTICLES OF INCORPORATION OF THE SACRAMENTO HOTEL CORPORATION

BACKGROUND

- A. The City is considering using the Sacramento Hotel Corporation (the "Corporation") for other economic-development projects after the sale of the Hotel Project. Accordingly, on April 10, 2008, the Corporation amended its articles of incorporation and bylaws, in the form presented at this meeting and on file with the City Clerk (the "Amended Corporation Documents"). Among other things, the Amended Corporation Documents expand the purpose of the Corporation to include lessening the burdens of government by assisting the City, the Office of Economic Development, and the Redevelopment Agency of the City to revitalize areas within the City and to assist in economic growth within the City. They also allow for the distribution of the proceeds of the sale of the Sheraton Grand to the City without the dissolution of the Corporation.
- B. The Corporation's articles of incorporation and bylaws currently provide that the City Council must approve any change in their provisions.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. Based upon presentations made by the City Manager and other City staff to the City Council at the time of the adoption of this resolution, and upon such other matters as have previously been presented to the City Council, the City Council hereby determines that all statements set forth in paragraphs A and B above are true.

Section 2. The City Council hereby approves the Amended Corporation Documents.

RESOLUTION NO.

Adopted by the Sacramento City Finance Authority

**APPROVING AMENDMENTS TO BYLAWS AND ARTICLES OF
INCORPORATION OF THE SACRAMENTO HOTEL CORPORATION**

BACKGROUND

- A. The City is considering using the Sacramento Hotel Corporation (the "Corporation") for other economic-development projects after the sale of the Hotel Project. Accordingly, on April 10, 2008, the Corporation amended its articles of incorporation and bylaws, in the form presented at this meeting and on file with the City Clerk (the "Amended Corporation Documents"). Among other things, the Amended Corporation Documents expand the purpose of the Corporation to include lessening the burdens of government by assisting the City, the Office of Economic Development, and the Redevelopment Agency of the City to revitalize areas within the City and to assist in economic growth within the City. They also allow for the distribution of the proceeds of the sale of the Sheraton Grand to the City without the dissolution of the Corporation.
- B. The Corporation's articles of incorporation and bylaws provide that the Finance Authority must approve any change in their provisions.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE FINANCE
AUTHORITY RESOLVES AS FOLLOWS:**

Section 1. Based upon presentations made by the City Manager and other City staff to the Finance Authority at the time of the adoption of this resolution, and upon such other matters as have previously been presented to the Finance Authority, the Finance Authority hereby determines that all statements set forth in paragraphs A and B above are true.

Section 2. The Finance Authority hereby approves the Amended Corporation Documents.