

Substitute Resolution No. RS2011-1

Resolution authorizing special assessments and a special assessment methodology related to the development of certain property located within the Metropolitan Government of Nashville and Davidson County (the "Metropolitan Government") acquired by Nashville Biltmore LP (the "Developer") and approving the forms of a development and acquisition agreement by and between the Metropolitan Government and the Developer, an interlocal governmental agreement by and between the Metropolitan Government and the Industrial Development Board of Nashville and Davidson County, and an installment agreement by and between the Metropolitan Government and the Developer.

NOW THEREFORE, BE IT RESOLVED BY THE METROPOLITAN COUNTY COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY (TENNESSEE) AS FOLLOWS:

WHEREAS, Nashville Biltmore LP (the "Developer") has acquired approximately 1,140 acres of real property located within the Metropolitan Government of Nashville and Davidson County (the "Metropolitan Government") near the intersection of Interstate 40 and McCrory Lane, on which the Developer is developing a mixed-use development known as Biltmore Ridges (the "Development") comprising retail shopping, restaurant, office, hotels, townhomes, single and multi-family housing and other uses; and

WHEREAS, pursuant to Tenn. Code Ann. §§ 7-32-101 *et seq.* and §§ 7-33-101 *et seq.* (collectively, the "Assessment Act"), the Metropolitan Government intends to construct, acquire and/or facilitate the public acquisition or public construction of certain public infrastructure improvements related to the Development; and

WHEREAS, the Metropolitan County Council (the "Metropolitan Council") of the Metropolitan Government intends to adopt this Resolution (the "Assessment Resolution") providing for, among other things, the assessment of certain property within the Development and the issuance of special assessment revenue bonds ("Bonds") to finance the construction and acquisition of such public infrastructure improvements (the "Public Improvements"); and

WHEREAS, pursuant to Section 7-33-121(b)(1) of the Assessment Act, a municipality may delegate to an industrial development corporation the authority to issue revenue bonds in connection with a special assessment financing, and in such case, the municipality must enter into an agreement with the industrial development corporation pursuant to which the municipality must agree to promptly pay to the industrial development corporation the special assessments, including any interest on the special assessments, as collected; and

WHEREAS, the Metropolitan Government intends to finance the costs of the Public Improvements by requesting that the Industrial Development Board of the Metropolitan Government of Nashville and Davidson County (the "IDB") issue the Bonds to be payable from special assessments imposed upon the properties in the Development identified in the assessment roll attached hereto as Exhibit A (the

“Initial Assessment Roll”) and identified on the map attached hereto as Exhibit B that will specially benefit from the Public Improvements (such area being the “Biltmore Ridges Assessment Area”); and

WHEREAS, the Metropolitan Government proposes to impose special assessments (the “Assessments”) upon the properties in the Biltmore Ridges Assessment Area identified on the Initial Assessment Roll in amounts sufficient to pay (1) up to \$18,166,987 of the costs of the Public Improvements (the “Public Improvements Costs”); (2) up to \$9,998,013 in legal and fiscal expenses relating to the Bonds, including reserve funds, capitalized interest and financing costs of the issuance of the Bonds (collectively, “Bond Issuance Costs”); (3) an annual amount up to five percent of maximum annual debt service to fund a supplemental debt service reserve fund (the “Supplemental Reserve Costs”); and (4) an annual amount necessary to fund the on-going legal and fiscal expenses of administering and enforcing the Assessments (estimated to initially be \$70,500 per year) (the “Administration Costs”); and

WHEREAS, the Metropolitan Government proposes to enter into a Development, Acquisition and Payment Agreement (Biltmore Ridges Assessment Area) (the “Acquisition Agreement”) with the Developer, a copy of which Acquisition Agreement is attached hereto as Exhibit C, pursuant to which, among other things, the Metropolitan Government will construct, acquire or arrange for the construction and/or acquisition of the Public Improvements, the costs of which will be paid solely from the proceeds of the Bonds; and

WHEREAS, pursuant to Section 7-32-115(b) of the Assessment Act, the Metropolitan Government is permitted to apportion the costs of the Public Improvements and other related costs among each parcel to be directly benefited thereby, as determined by the Metropolitan Government; and

WHEREAS, the Metropolitan Council, after giving public notice at least two weeks in advance of the date hereof and after delivering notice of such public hearing to each owner of property in the Biltmore Ridges Assessment Area, has held a public hearing on the date hereof, at which a reasonable opportunity was provided for persons with differing views on the Acquisition Agreement and Assessments to be heard; and

WHEREAS, there has been presented to the Metropolitan Council an initial Special Assessment Report prepared for the Metropolitan Government by David Taussig & Associates, Inc. (1) describing the benefits-received-basis pursuant to which the Assessments are to be imposed and allocating the Assessments accordingly, and (2) describing in more detail the levying of the Assessments to each parcel of property within the Biltmore Ridges Assessment Area (collectively, the “Initial Special Assessment Methodology”), a copy of which report is attached hereto as Exhibit D; and

WHEREAS, pursuant to Section 7-32-115 of the Assessment Act, the Metropolitan Council has determined that the parcels of property (collectively, the “Assessed Properties” and individually, each an “Assessed Property”) listed on the Initial Assessment Roll on Exhibit A attached hereto directly benefit from the Public Improvements acquired and/or constructed pursuant to the Acquisition Agreement and that the aggregate amount of \$18,166,987 of the Public Improvements Costs related to such Public Improvements should be apportioned among such parcels in the corresponding amounts listed on the Initial Assessment Roll; and

WHEREAS, in accordance with Section 7-32-115 of the Assessment Act, the Metropolitan Council has determined that the fair-basis upon which the apportionment of the costs related to such Public

Improvements among the Assessed Properties should be based is a benefits-received-basis as described in the Initial Special Assessment Report; and

WHEREAS, as described in the Initial Special Assessment Report, the Bond Issuance Costs, the Supplemental Reserve Costs and the Administration Costs will be apportioned to the parcels listed on the Initial Assessment Roll in proportion to the apportionment of Public Improvement Costs; and

WHEREAS, pursuant to Section 7-32-133(b) of the Assessment Act, the Metropolitan Government may permit the payment of the Assessments in installments, made not more frequently than monthly and amortized for a period not to exceed thirty (30) years from the date of the acquisition of any public facility and accruing interest, with respect to the Public Improvements Costs and the Bond Issuance Costs, at a rate determined by the Metropolitan Government, with such terms to be memorialized in a written agreement between the Metropolitan Government and the owner of the Assessed Property, in this case the Developer (an "Installment Agreement"), a copy of which is attached hereto as Exhibit E; and

WHEREAS, the Initial Special Assessment Methodology provides that the Assessments are payable in Annual Installments (as defined therein), which Annual Installments shall include an installment payment of the Assessment on each Assessed Parcel, interest on the unpaid Assessments related to Public Improvement Costs and Bond Issuance Costs, and a share of Administration Costs; and

WHEREAS, the Metropolitan Government requests that the IDB enter into an interlocal governmental agreement: the Assessment Collection and Pledge Agreement (the "Assessment Agreement"), a copy of which Assessment Agreement is attached hereto as Exhibit F, pursuant to which the Metropolitan Government agrees to collect the Annual Installments with respect to the Bonds (collectively, the "Biltmore Assessments") in trust for the benefit of the Bondholder Trustee in accordance with Section 7-33-121(b) of the Assessment Act and to promptly pay the Biltmore Assessments (including delinquent assessments) to the Bondholder Trustee for the benefit of the IDB as collected to secure payment of the Bonds; and

WHEREAS, prior to the confirmation of the Assessments as provided below, there shall be presented to the Metropolitan Council a final Special Assessment Methodology describing in detail the benefits received basis and the assessment methodology pursuant to which the Assessments are being imposed and the allocation thereof to specific parcels of Assessed Properties; and,

WHEREAS, it is to the benefit of the citizens of The Metropolitan Government of Nashville and Davidson County that the special assessment district and all attendant authorizations and agreements be approved.

NOW THEREFORE, BE IT RESOLVED BY THE METROPOLITAN COUNTY COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. The Metropolitan Council hereby approves the Acquisition Agreement in substantially the form attached hereto as Exhibit C, and the Metropolitan Government is authorized to enter into the Acquisition Agreement in substantially such form, with such changes, insertions and deletions as the Metropolitan Mayor, Director of Finance and the Director of Law may approve.

Section 2. The Metropolitan Council hereby determines that the acquisition of the public facilities described in the Acquisition Agreement will be a benefit to the general public in the Metropolitan Government in that it will, among other things, facilitate the re-routing of McCrory Lane from Interstate 40 in a manner that will allow for proper traffic flow and that will allow for the proper development of properties within the immediate vicinity thereof.

Section 3. The Metropolitan Council anticipates, based on the estimate of private investment provided by the Developer and attached hereto as Exhibit G, that not less than \$25,000,000 of private investment will be made on property benefitted by the Public Improvements.

Section 4. The Assessment listed on the Initial Assessment Roll for each of the Assessed Properties represents the apportionment on a benefits-received-basis of an amount equal to the Public Improvements Costs, which is the aggregate of eligible costs under the Assessment Act to be incurred, paid or reimbursed by the Metropolitan Government. Each of the Assessed Properties shown on the Initial Assessment Roll is hereby apportioned and assessed for such costs in the amount shown on the Initial Assessment Roll, including the Bond Issuance Costs and Administrative Costs relating thereto, which are apportioned in proportion to the apportionment of Public Improvement Costs, all as set forth on the Initial Assessment Roll attached as Exhibit A hereto.

Section 5. The Metropolitan Council hereby determines that the Assessed Properties, which are identified in the Initial Assessment Roll attached as Exhibit A and on the map attached as Exhibit B, directly and specially benefit from the costs of the public facilities described in the Acquisition Agreement in the proportions shown on the Initial Assessment Roll.

Section 6. The Metropolitan Council hereby authorizes the Metropolitan Clerk to publish a notice that the Initial Assessment Roll has been completed and that on a date to be determined by the Metropolitan Mayor and Metropolitan Clerk, the Metropolitan Council will consider any and all objections to the Initial Assessment Roll that have been filed with the office of the Metropolitan Clerk in accordance with Section 7-32-121 of the Assessment Act. Such notice shall further recite that the Initial Assessment Roll is in the office of the Metropolitan Clerk and may be inspected within the time specified by anyone interested. Upon the final confirmation of the Initial Assessment Roll by resolution of the Metropolitan Council (then, the "Final Assessment Roll"), the Metropolitan Government is authorized to enter into an Installment Agreement in substantially the form attached hereto as Exhibit E, with such changes, insertions and deletions as the Metropolitan Mayor, Director of Finance and the Director of Law may approve, and which shall in all respects conform to the Final Assessment Roll, pursuant to which the Developer shall agree to pay to the Biltmore Assessments in installments, as permitted by the Assessment Act, and as set forth in the Initial Special Assessment Methodology, which is hereby approved.

Section 7. The Metropolitan Council hereby authorizes the Metropolitan Clerk of the Metropolitan Government to deliver a written notice to each owner of an Assessed Property including (i) the method of apportionment of the Assessments among the Assessed Properties, which is set forth in the Initial Special Assessment Methodology, and (ii) the portion of the Assessments allocated to such owner's parcel, all in accordance with Section 7-32-115 of the Assessment Act.

Section 8. The Metropolitan Government hereby delegates to the IDB, pursuant to Section 7-33-121 of the Assessment Act, the authority to issue revenue bonds secured by the Biltmore Assessments as contemplated by the Initial Special Assessment Methodology; provided however that, if such revenue bonds are sold in separate series at separate times, then the issuance of each such series of

bonds, other than the first series and any refunding series, shall first be approved by resolution of the Metropolitan Council. The Assessment Agreement in substantially the form attached hereto as Exhibit F is hereby approved. The Metropolitan Government is authorized to enter into the Assessment Agreement, with such changes, insertions and deletions as the Metropolitan Mayor, Director of Finance and the Director of Law may approve, with the IDB, pursuant to which the Metropolitan Government will agree to pay to the IDB the Biltmore Assessments, including any delinquent assessments, as collected, and such agreement may include such other operative provisions as are necessary or desirable to properly secure the Bonds and comply with the provisions of the Assessment Act.

Section 9. The Metropolitan Mayor is hereby authorized and directed to execute and, where requested, the Metropolitan Clerk is authorized to attest, and any other officer of the Metropolitan Government, acting alone or in combination with one another (individually and collectively the "Authorized Officers"), is (are) hereby authorized and directed to execute, deliver and file such other certificates and instruments and to take all such further action as he/she/they may consider necessary or desirable in connection with the consummation of the transactions described above.

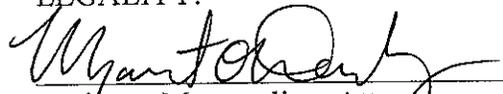
Section 10. Any authorization herein to execute any document shall include authorization to record such document as appropriate.

Section 11. This Resolution shall take effect from and after its adoption, the welfare of the Metropolitan Government requiring it.

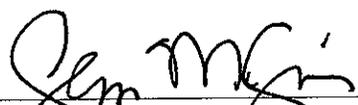
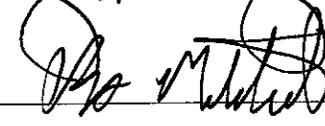
APPROVED AS TO SUFFICIENCY  
OF FUNDS BY:

  
\_\_\_\_\_  
Director of Finance

APPROVED AS TO FORM AND  
LEGALITY:

  
\_\_\_\_\_  
Assistant Metropolitan Attorney

INTRODUCED BY:

  
\_\_\_\_\_  
  
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MEMBERS OF COUNCIL