

ORDINANCE NO. 202312B

ORDINANCE AUTHORIZING THE ISSUANCE OF THE HANCOCK COUNTY, INDIANA, TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS (GATEWAY CONFERENCE AND CONVENTION CENTER PROJECT) AND AUTHORIZING AND APPROVING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, Hancock County, Indiana (the "County") is a municipal corporation and political subdivision of the State of Indiana and by virtue of Indiana Code 36-7-11.9 and Indiana Code 36-7-12 (collectively, the "Act"), is authorized and empowered to adopt this ordinance (this "Bond Ordinance") and to carry out its provisions; and

WHEREAS, Mt. Comfort Lodging Associates, LLC, an affiliate of Sun Development & Management Corp. (together with any other of their affiliates, the "Developer") proposes to construct an approximately 26,000 sq. ft. conference and convention center (the "Conference and Convention Center"), together with certain infrastructure necessary to support the development of the Conference and Convention Center (collectively, the "Conference and Convention Center Project"); and

WHEREAS, the Developer has further committed to construct an approximately 184 room hotel adjacent to the Conference and Convention Center (the "Related Hotel Development"); and

WHEREAS, in order to finance a portion of the Conference and Convention Center Project, the Developer has requested the County issue its Taxable Economic Development Revenue Bonds (Gateway Conference and Convention Center Project), in one or more series, in an amount not to exceed Four Million Dollars (\$4,000,000) (the "Bonds") under the Act and the provision of the proceeds of such Bonds to the Developer for the purpose of financing a portion of the Project and the costs of issuance of or other financing costs related to the Bonds; and

WHEREAS, the financing of the Conference and Convention Center Project results in the diversification of industry, the creation or retention of jobs, and the creation of business opportunities in the County; and

WHEREAS, pursuant to Indiana Code § 36-7-12-24, the Hancock County Economic Development Commission (the "Commission") published notice of a public hearing (the "Public Hearing") on the proposed issuance of the Bonds to finance the Conference and Convention Center Project; and

WHEREAS, on January 8, 2024, the Commission held the Public Hearing on the Conference and Convention Center Project and received uncontroverted evidence that the Conference and Convention Center Project will have no adverse competitive effect on similar facilities already constructed or operating in the County; and

WHEREAS, the Commission has performed all actions required of it by the Act preliminary to the adoption of this Bond Ordinance and has approved and forwarded to the Hancock County Council (the "Council") the forms of: (1) a Loan Agreement, between the County and the Developer (the "Loan Agreement"); (2) a Trust Indenture, with respect to the Bonds, between the County and a trustee to be selected (the "Trustee") (the "Indenture"); (3) the Bonds; and (4) this Bond Ordinance (the Loan Agreement, the Indenture, the Bonds and this Bond Ordinance, collectively, the "Financing Agreements"); and

WHEREAS, pursuant to Indiana Code 6-9-18, the County levies a tax (the "Innkeepers Tax") on every person engaged in the business of renting or furnishing, for periods of less than thirty (30) days, any room or rooms, lodgings, or accommodations; and

WHEREAS, pursuant to the Indiana Code 6-9-18, the County Treasurer has established a convention, visitor, and tourism promotion fund (the "Tourism Promotion Fund") to receive collected Innkeepers Tax revenues, and the County Treasurer from time to time transfers amounts on deposit in the Tourism Promotion Fund to the Hancock County Tourism Commission (the "Tourism Commission") to be expended by the Tourism Commission to promote and encourage conventions, visitors, and tourism within the County; and

WHEREAS, on December 12, 2023, the Tourism Commission (i) determined that the development of the Conference and Convention Center Project will promote and encourage conventions, visitors, and tourism within the County, and (ii) pursuant to a Contribution and Funding Agreement will direct the County Treasurer, for and on behalf of the Tourism Commission, Innkeepers Tax generated by the Related Hotel Development (the "Related Hotel Innkeepers Tax Revenue") from the Tourism Promotion Fund to the Bond Trustee for the purposes of making payment on the Bonds.

NOW, THEREFORE, BE IT ORDAINED BY THE HANCOCK COUNTY COUNCIL, THAT:

Section 1. Findings; Public Benefits. The Council hereby finds and determines that the Conference and Convention Center Project involves the acquisition, construction and equipping of an "economic development facility" as that phrase is used in the Act; that the Conference and Convention Center Project will create employment opportunities and diversification of economic development in the County, will improve and promote the economic stability, development and welfare in the County, will encourage and promote the expansion of industry, trade and commerce in the County and the location of other new industries in the County; that the public benefits to be accomplished by this Bond Ordinance, intending to overcome insufficient employment opportunities and insufficient diversification of industry, are greater than the cost of public services (as that phrase is used in the Act) which will be required by the Conference and Convention Center Project; and, therefore, that the financing of the Conference and Convention Center Project by the issue of the Bonds under the Act: (a) will be of benefit to the health and general welfare of the County; and (b) complies with the Act.

Section 2. Approval of Financing. The proposed financing of a portion of the Conference and Convention Center Project and the financing of certain costs related to the issuance of the Bonds, including the costs of issuance of or other financing costs related to the

WHEREAS, the Commission has performed all actions required of it by the Act preliminary to the adoption of this Bond Ordinance and has approved and forwarded to the Hancock County Council (the "Council") the forms of: (1) a Loan Agreement, between the County and the Developer (the "Loan Agreement"); (2) a Trust Indenture, with respect to the Bonds, between the County and a trustee to be selected (the "Trustee") (the "Indenture"); (3) the Bonds; and (4) this Bond Ordinance (the Loan Agreement, the Indenture, the Bonds and this Bond Ordinance, collectively, the "Financing Agreements"); and

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Bonds, as further described in the Financing Agreements, by the issuance of the Bonds, in one or more series, under the Act, in the form that such financing was approved by the Commission, is hereby approved.

Section 3. Authorization of the Bonds. The issuance of the Bonds, payable solely from revenues and receipts derived from the Financing Agreements, including Related Hotel Innkeepers Tax Revenue received by the Bond Trustee, is hereby authorized.

Section 4. Terms of the Bonds. The Bonds, in one or more series and in the aggregate principal amount not to exceed Four Million Dollars (\$4,000,000), shall (i) be executed at or prior to the closing date by the manual or facsimile signatures of the Board of Commissioners and Auditor of the County; (ii) be dated as of the date of issuance or the first (1st) day of the month in which the Bonds are issued; (iii) mature on a date not later than twenty-five (25) years after the date of issuance; (iv) bear interest at a rate not to exceed (A) eight and one half percent (8.5%) per annum if the Bonds are purchased by a financial institution or other independent third party or (B) six and one half percent (6.5%) per annum if the Bonds are purchased by the Developer or any affiliate thereof, the exact rates as determined through a competitive process and negotiation with the purchaser thereof and in consultation with the County's financial advisor and the President of the Council, with such interest to be payable as provided in the Financing Agreements (including from Related Hotel Innkeepers Tax Revenue received by the Bond Trustee) and to be taxable or tax-exempt as determined with the advice of bond counsel on the date of issuance of the Bonds; (v) be issuable in such denominations as set forth in the Financing Agreements; (vi) be issuable only in fully registered form; (vii) be subject to registration on the bond register as provided in the Indenture; (viii) be payable in lawful money of the United States of America; (ix) be payable at an office of the Trustee as provided in the Indenture; (x) be subject to optional redemption prior to maturity and subject to redemption as otherwise provided in the Financing Agreements; and (xi) contain such other terms and provisions as may be provided in the Financing Agreements.

The Bonds and the interest thereon do not and shall never constitute an indebtedness of, or a charge against the general credit or taxing power of, the County, but shall be special and limited obligations of the County, payable solely from revenues and other amounts derived from the Financing Agreements, including Related Hotel Innkeepers Tax Revenues received by the Bond Trustee. Forms of the Financing Agreements are before this meeting and are by this reference incorporated in this Bond Ordinance, and the Auditor of the County is hereby directed, in the name and on behalf of the County, to insert them into the minutes of the Council and to keep them on file.

Section 5. Sale of the Bonds. The Board of Commissioners and Auditor of the County are hereby authorized and directed, in the name and on behalf of the County, to sell the Bonds to the Developer or its designee (the "Purchaser") at such prices and on such terms as may be determined at the time of sale and approved by the Board of Commissioners and Auditor of the County. The Board of Commissioners of the County are hereby authorized to approve and execute a bond purchase agreement for the Bonds with the Purchaser, in a form approved by such officers, such approval to be conclusively evidenced by the execution thereof.

Section 6. Execution and Delivery of Financing Agreements. The Board of Commissioners and Auditor of the County are hereby authorized and directed, in the name and on behalf of the County, to execute or endorse and deliver the Financing Agreement, the Indenture and the Bonds, submitted to the Council, which are hereby approved in all respects. The Board of Commissioners and Auditor of the County are hereby authorized and directed, to select a financial institution to serve as the Trustee.

Section 7. Changes in Financing Agreements. The Board of Commissioners and Auditor of the County are hereby authorized, in the name and on behalf of the County, without further approval of the Council or the Commission, to approve such changes in the Financing Agreements as may be permitted by the Act, such approval to be conclusively evidenced by their execution thereof.

Section 8. Public Approval. The Council hereby approves the issue of the Bonds and the Project to be financed by the Bonds, which facilities are described in the published notice of the Public Hearing.

Section 9. General. The Board of Commissioners and Auditor of the County, and each of them, are hereby authorized and directed, in the name and on behalf of the County, to execute or endorse any and all agreements, documents and instruments, perform any and all acts, approve any and all matters, and do any and all other things deemed by them, or either of them, to be necessary or desirable in order to carry out and comply with the intent, conditions and purposes of this Bond Ordinance (including the preambles hereto and the documents mentioned herein), the Project, the issuance and sale of the Bonds, and the securing of the Bonds under the Financing Agreements, including, but not limited to, such agreements, documents and instruments as are contemplated under the Economic Development Agreement, and any such execution, endorsement, performance or doing of other things heretofore effected be, and hereby is, ratified and approved.

Section 11. Binding Effect. The provisions of this Bond Ordinance and the Financing Agreements shall constitute a binding contract between the County and the holders of the Bonds, and after issuance of the Bonds this Bond Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of the holders of the Bonds as long as the Bonds or interest thereon remains unpaid.

Section 12. Repeal. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 13. Effective Date. This Bond Ordinance shall be in full force and effect immediately upon adoption.

Section 14. Copies of Financing Agreements on File. Two (2) copies of each of the Financing Agreements incorporated into this Bond Ordinance were duly filed in the office of the Auditor of the County, and are available for public inspection in accordance with Indiana Code § 36-1-5-4.

Adopted this 10th day of January, 2024.

COUNTY COUNCIL OF
HANCOCK COUNTY, INDIANA

James Shultz

Mary A. Joe

Jessie Gray

Bob D. Lowe

Kent Gust

ABSTAIN - Lett Woodliff

Attest:

Debra A. Barnes

County Auditor