

(O-85-141)

ORDINANCE NUMBER O- 16393 (New Series)

ADOPTED ON MAR 18 1985

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF MULTIFAMILY MORTGAGE REVENUE BONDS IN A PRINCIPAL AMOUNT NOT TO EXCEED \$40,000,000 FOR THE PURPOSE OF MAKING A LOAN TO PROVIDE FUNDS TO LUSK-SMITH/MIRA MESA NORTH TO PROVIDE THE INTERIM AND PERMANENT FINANCING OF THE COST OF DEVELOPING AN APPROXIMATELY 825-UNIT MULTIFAMILY RENTAL HOUSING PROJECT TO BE LOCATED ON THE NORTH AND SOUTH SIDES OF MIRA MESA BOULEVARD, DETERMINING AND PRESCRIBING CERTAIN MATTERS RELATING THERETO, AND APPROVING AND AUTHORIZING THE EXECUTION OF RELATED DOCUMENTS, AGREEMENTS AND ACTIONS.

WHEREAS, by Ordinance No. O-15746 (New Series), adopted on May 3, 1982, the City Council of The City of San Diego (the "City Council") has adopted The City of San Diego Multi-family Residential Mortgage Revenue Bond Law (as amended to the date hereof, referred to herein as the "Law") in order to establish a procedure for the authorization, issuance and sale of multifamily mortgage revenue bonds by The City of San Diego (the "City") for the purpose of making loans or otherwise providing funds to finance the development of affordable multifamily rental housing in order to meet a substantial housing need identified in the community; and

WHEREAS, the City desires to make a loan (the "Developer Loan") to Lusk-Smith/Mira Mesa North, a California limited partnership, (the "Developer"), to finance an 825-unit multifamily rental housing development to be located on the north and south sides of Mira Mesa Boulevard, (the "Development") and

in order to do so intends to sell and issue not to exceed \$40,000,000 of its Multifamily Mortgage Revenue Bonds, 1985 Issue E (the "Bonds"); and

WHEREAS, the City Council has now determined to make the Developer Loan to provide funds to assist in the financing of the Development for the purpose of providing housing for low and moderate income persons or families; and

WHEREAS, there have been prepared and presented to the City Council for consideration at this meeting the following instruments:

- (1) The form of Indenture, including the form of Bond;
- (2) The form of Loan Agreement;
- (3) The form of Regulatory Agreement and Declaration of Restrictive Covenants;
- (4) The form of Intercreditor Agreement;
- (5) The form of Bond Purchase Agreement;
- (6) The form of Official Statement relating to the Bonds;
- (7) The form of Administration Agreement relating to the Bonds;
- (8) The form of Remarketing Agent Agreement; and
- (9) The form of First Deed of Trust, Security Agreement and Memorandum of Assignment of Deed of Trust; and

WHEREAS, it appears that each of the documents and instruments above referred to which are now before this meeting is in appropriate form and is an appropriate instrument to be executed and delivered for the purposes intended; and

WHEREAS, Security Pacific Capital Markets Group, Newman and Associates, Inc. and Fiser Financial and Investment Services, Inc. (collectively, the "Underwriter") have expressed their intention to purchase the Bonds, and the City Council finds that the public interest and necessity require that the City at this time make arrangements for the sale of the Bonds; and

WHEREAS, pursuant to Section 103(k) of the Internal Revenue Code of 1954, as amended, this City Council has held a public hearing regarding the issuance of the Bonds and now desires to authorize the issuance of the Bonds; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. Finding and Determination. It is hereby found and determined that it is necessary and desirable for the City to assist in the financing of the Development through the issuance and sale of the Bonds in order to assist in the development of dwelling units to be occupied by low and moderate income persons in the community.

Section 2. Authorization of the Bonds. For the purpose of raising moneys with which to make the Developer Loan in order to effectuate the construction and permanent financing of the Development, the City hereby determines to issue the Bonds, in a principal amount not to exceed \$40,000,000, said principal amount to be such amount as is necessary to finance the Developer Loan for the Development. The Bonds shall bear interest at a rate of interest producing a net interest cost on the Bonds not to exceed nine and nine-tenths percent (9.9%) per annum, maturing as

provided in the Indenture, but not later than 22 years from the date of issue. The Bonds shall be in substantially the forms set forth in the Indenture, with such appropriate variations, omissions, insertions and provisions as are permitted or required by the Indenture, which shall be appropriately completed when the Bonds are prepared.

The Bonds shall be limited obligations of the City and shall be payable as to principal, premium, if any, and interest, and the obligations of the City under the Indenture shall be paid and satisfied solely from the revenues, receipts and other moneys pledged therefor under the Indenture.

Section 3. Execution and Delivery of the Bonds. The Bonds shall be executed on behalf of the City by the manual or facsimile signature of the Mayor or Deputy Mayor, and the official seal of the City, or a facsimile thereof, shall be impressed or imprinted thereon and attested with the manual or facsimile signature of the City Clerk.

Section 4. Approval of Indenture. To provide for the details of the Bonds, and to prescribe the terms and conditions upon which they are to be issued, secured, executed, authenticated and held and upon which the Developer Loan is to be made and serviced, the City Manager or a deputy City Manager and the City Clerk or a deputy City Clerk are hereby authorized to execute and deliver the Indenture, a copy of which is on file in the office of the City Clerk as Document No. 00 16333-1, in substantially the form presented to this meeting or with such changes as may be approved by the officers of the City executing

the same, upon consultation with the City Attorney, their execution thereof to constitute conclusive evidence of their approval of all changes from the form of Indenture presented to this meeting, which form of Indenture is hereby in all respects approved and incorporated by reference and made a part hereof.

Section 5. Approval of Loan Agreement. To provide for the details of the making of the Developer Loan, and the duties and obligations of the Developer, the City Manager or a deputy City Manager and the City Clerk or a deputy City Clerk are hereby authorized to execute and deliver the Loan Agreement, a copy of which is on file in the office of the City Clerk as Document No. 00-16393-2, in substantially the form presented to this meeting or with such changes as may be approved by the officers of the City executing the same, upon consultation with the City Attorney, their execution thereof to constitute conclusive evidence of their approval of all changes from the form of Loan Agreement presented to this meeting, which form of Loan Agreement is hereby in all respects approved and incorporated by reference and made a part hereof.

Section 6. Approval of Regulatory Agreement and Declaration of Restrictive Covenants. To provide for certain conditions and terms of the operation of the Development and the duties and obligations of the Developer, the City Manager or a deputy City Manager and the City Clerk or a deputy City Clerk are hereby authorized to execute and deliver the Regulatory Agreement and Declaration of Restrictive Covenants, a copy of which is on file in the office of the City Clerk as Document No. 00-16393-3,

in substantially the form presented to this meeting or with such changes as may be approved by the officers of the City executing the same, upon consultation with the City Attorney, their execution thereof to constitute conclusive evidence of their approval of all changes from the form of Regulatory Agreement and Declaration of Restrictive Covenants presented to this meeting, which form of Regulatory Agreement and Declaration of Restrictive Covenants is hereby in all respects approved and incorporated by reference and made a part hereof.

Section 7. Approval of Intercreditor Agreement. The form of Intercreditor Agreement substantially in the form submitted to this meeting, is hereby approved, and the City Manager or a deputy City Manager and the City Clerk or a deputy City Clerk are hereby authorized to execute and deliver an Intercreditor Agreement, a copy of which is on file in the office of the City Clerk as Document No. 00-16393-7, in substantially such form or with such changes therein as may be approved by the officers of the City executing the same, upon consultation with the City Attorney, their execution thereof to constitute conclusive evidence of their approval of all changes from the form of Intercreditor Agreement presented to this meeting, which form of Intercreditor Agreement is hereby in all respects approved and incorporated by reference and made a part hereof.

Section 8. Approval of Bond Purchase Agreement. The form of Bond Purchase Agreement presented to this meeting, a copy of which is on file in the office of the City Clerk as Document No. 00-16393-5, is hereby approved in all respects and

incorporated herein by reference and made a part hereof, and the City Manager or a deputy City Manager is hereby authorized to execute and deliver to the Underwriter a Bond Purchase Agreement in substantially such form or with such changes as may be approved by the officer of the City executing the same, upon consultation with the City Attorney, such execution to constitute conclusive evidence of the approval by such officer of all changes from the form of Bond Purchase Agreement presented to this meeting, which form of Bond Purchase Agreement is in all respects approved and incorporated by reference and made a part hereof.

Section 9. Approval of Official Statement. The form of Preliminary Official Statement relating to the Bonds, in substantially the form presented to this meeting, a copy of which is on file with the City Clerk as Document No. 00-16393-6, is hereby in all respects approved and incorporated herein by reference and made a part hereof, and the Underwriters are authorized to distribute the Preliminary Official Statement in connection with the sale of the Bonds, and the City Manager or a deputy City Manager of the City is hereby authorized to execute and deliver a final Official Statement in substantially such form or with such changes therein as may be approved by the officer of the City executing the same, upon consultation with the City Attorney, such execution to constitute conclusive evidence of the approval by such officer of all changes from the form of Preliminary Official Statement presented to this meeting, which form of Preliminary Official Statement is in all respects approved and incorporated by reference and made a part hereof.

Section 10. Approval of Remarketing Agreement. The form of Remarketing Agreement substantially in the form submitted to this meeting, a copy of which is on file in the office of the City Clerk as Document No. 00-16393-7, is hereby approved, and the City Manager or a deputy City Manager and the City Clerk or a deputy City Clerk are hereby authorized to execute and deliver a Remarketing Agreement in substantially such form or with such changes therein as may be approved by the officers of the City executing the same, upon consultation with the City Attorney, such execution to constitute conclusive evidence of the approval by such officers of all changes from the form of Remarketing Agreement presented to this meeting, which form of Remarketing Agreement is in all respects approved and incorporated by reference and made a part hereof.

Section 11. Approval of Administration Agreement. The form of Administration Agreement by and between the City and the San Diego Housing Commission, substantially in the form submitted to this meeting, a copy of which is on file in the office of the City Clerk as Document No. 00-16393-8, is hereby approved, and the City Manager or a deputy City Manager is hereby authorized to execute and deliver an Administration Agreement in substantially such form or with such changes therein as may be approved by the officer of the City executing the same, upon consultation with the City Attorney, such execution to constitute conclusive evidence of the approval by such officer of all changes from the form of Administration Agreement presented to this meeting, which form of Administration Agreement is in all respects approved and incorporated by reference and made a part hereof.



Section 12. Approval of First Deed of Trust, Security Agreement and Memorandum of Assignment of Deed of Trust. The forms of First Deed of Trust, Security Agreement and Memorandum of Administration of Deed of Trust, copies of which are on file in the office of the City Clerk as Document Nos. 00-16393-9, 00-16393-10 and 00-16393-11, respectively, are hereby approved, and the City Manager or a deputy City Manager and the City Clerk or a deputy City Clerk are hereby authorized to execute and deliver the Memorandum of Assignment of Deed of Trust, in substantially the form presented to this meeting or with such changes as may be approved by the officers of the City executing the same, upon consultation with the City Attorney, their execution thereof to constitute conclusive evidence of their approval of all changes from the form of Memorandum of Assignment of Deed of Trust presented to this meeting, which form of Memorandum of Deed of Trust is hereby in all respects approved and incorporated by reference and made a part hereof.

Section 13. Selection of Trustee. The City Manager or a deputy City Manager is hereby authorized to select a trustee to serve as Trustee under the Indenture, provided that such Trustee must comply with the qualification requirements set forth in Section 901 of the Indenture. The Trustee is hereby requested and directed to authenticate the Bonds by executing the Trustee's Certificate of Authentication and Registration appearing thereon and to deliver the Bonds, when duly executed and authenticated, to the parties named in the Bond Purchase Agreement, in accordance with written instructions executed on behalf of the

City by the City Manager, a deputy City Manager or a duly authorized representative of the San Diego Housing Commission, which instructions said officer is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Trustee. Such instructions shall provide for the delivery of the Bonds in accordance with the Bond Purchase Agreement, upon payment of the purchase price thereof.

Section 14. Actions Ratified and Authorized. All actions heretofore taken by the officers and agents of the City with respect to the sale and issuance of the Bonds are hereby approved, confirmed and ratified, and the officers of the City are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents, including but not limited to those described in the Bond Purchase Agreement, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Bonds and the making of the Developer Loan in accordance with the Law and this ordinance.

Section 15. Conflicting Resolutions Repealed. All ordinances and resolutions or parts thereto in conflict herewith are, to the extent of such conflict, hereby repealed.

Section 16. Severability. If any section, paragraph or provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any remaining provisions of this ordinance.

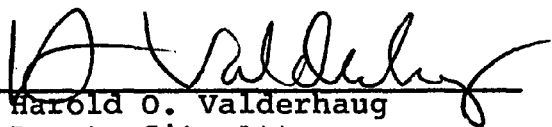
Section 17. Ordinance Constitutes Approval. It is the purpose and intent of this City Council that this ordinance constitute approval of the Bonds by the applicable elected representative in accordance with Section 103(k) of the Internal Revenue Code of 1954, as amended.

Section 18. Publication of Notice. The City Clerk is hereby authorized and directed to cause a digest or a copy of this ordinance to be published at least once in "The San Diego Daily Transcript" within fifteen (15) days after the adoption of this ordinance pursuant to Section 18 of the City Charter.

Section 19. Effective Date. This ordinance shall take effect on the thirtieth day after its adoption.

APPROVED: John W. Witt, City Attorney

By

  
Harold O. Valderhaug  
Deputy City Attorney

HOV:ps:559  
02/20/85  
Or.Dept:Hsg.Comm.  
O-85-141  
Form=o.hsg

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MAR 18 1985

Passed and adopted by the Council of The City of San Diego on \_\_\_\_\_  
by the following vote:

Councilmen	Yeas	Nays	Not Present	Ineligible
Bill Mitchell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bill Cleator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gloria McColl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
William Jones	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Struiksma	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Gotch	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dick Murphy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Uvaldo Martinez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Roger Hedgecock	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

ROGER HEDGECOCK

Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

(Seal)

By Barbara Bayer, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

MAR 4 1985

MAR 18 1985

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

(Seal)

By Barbara Bayer, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number 0-16393 Adopted

MAR 18 1985

RECEIVED  
CITY CLERK'S OFFICE  
1985 MAR 13 PM 4:04  
SAN DIEGO, CALIF.

RECEIVED  
CITY CLERK'S OFFICE  
1985 FEB 22 AM 9:09  
SAN DIEGO, CALIF.

MAR 7 1985

00412

CERTIFICATE OF PUBLICATION

RECEIVED  
1985 APR -5 AM 11:28  
SAN DIEGO, CALIF.

CITY OF SAN DIEGO  
202 C Street, 12th Fl.  
San Diego, CA 92101

IN THE MATTER OF

NO.

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF  
MULTIFAMILY MORTGAGE REVENUE BONDS IN A PRINCIPAL AMOUNT NOT  
TO EXCEED \$40,000,000 FOR THE PURPOSE OF MAKING A LOAN TO  
PROVIDE FUNDS TO LUSK-SMITH/MIRA MESA NORTH

**ORDINANCE NUMBER 0-16393 (New Series)**  
AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF MULTIFAMILY MORTGAGE REVENUE BONDS IN A PRINCIPAL AMOUNT NOT TO EXCEED \$40,000,000 FOR THE PURPOSE OF MAKING A LOAN TO PROVIDE FUNDS TO LUSK-SMITH/MIRA MESA NORTH TO PROVIDE THE INTERIM AND PERMANENT FINANCING FOR THE COST OF DEVELOPING AN APPROXIMATELY 225-UNIT MULTIFAMILY RENTAL HOUSING PROJECT TO BE LOCATED ON THE NORTH AND SOUTH SIDES OF MIRA MESA BOULEVARD; DETERMINING AND PRESCRIBING CERTAIN MATTERS RELATING THERETO; AND APPROVING AND AUTHORIZING THE EXECUTION OF RELATED DOCUMENTS, AGREEMENTS AND ACTIONS.  
This ordinance authorizes the issuance, sale and delivery of multifamily mortgage revenue bonds in a principal amount not to exceed \$40,000,000 for the purpose of making a loan to provide funds to Lusk-Smith/Mira Mesa North to provide the interim and permanent financing for the cost of developing an approximately 225-unit multifamily rental housing project to be located on the north and south sides of Mira Mesa Boulevard, determines and prescribes certain matters relating thereto, and approves and authorizes the execution of related documents, agreements and actions. The foregoing ordinance, together with related documents, is on file in the office of the City Clerk and available for public inspection.  
Adopted and adopted by the Council of The City of San Diego March 4, 1985.  
CERTIFICATED BY:  
RICHARD HEDGECOCK  
City Clerk of The City of San Diego, California  
ALEX G. ABDELNOUR  
City Clerk of The City of San Diego, California  
BARBARA BAXTER, Deputy  
Witnessed April 1, 1985

I, Michael L. Ungashick, am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the San Diego Daily Transcript, a newspaper of general circulation, printed and published daily, except Saturdays and Sundays, in the City of San Diego, County of San Diego, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 23, 1909, Decree No. 14894; and the

ORDINANCE NUMBER 0-16393 (NEW SERIES)

is a true and correct copy of which the annexed is a printed copy and was published in said newspaper on the following date(s), to wit:

April 1, 1985

I certify under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California this 1st day of Apr., 19 85.

Michael L. Ungashick  
(Signature)

3 1/2 x 2 x 9.76 = 68.32

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