

(O-96-77)

ORDINANCE NUMBER O- 18250 (NEW SERIES)

ADOPTED ON JAN 08 1996

AN ORDINANCE AUTHORIZING AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED INDENTURE OF TRUST, AN AMENDED AND RESTATED LOAN AGREEMENT, A SECOND AMENDED AND RESTATED REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, AND AN AMENDED AND RESTATED REMARKETING AGENT AGREEMENT WITH RESPECT TO THE CITY OF SAN DIEGO VARIABLE RATE DEMAND MULTIFAMILY HOUSING REFUNDING REVENUE BONDS (LAS FLORES PROJECT) 1991 ISSUE A, DETERMINING AND PRESCRIBING CERTAIN MATTERS RELATING THERETO, AND APPROVING AND AUTHORIZING THE EXECUTION OF RELATED DOCUMENTS, AGREEMENTS AND ACTIONS

WHEREAS, the City, acting under and pursuant to the powers reserved to the City under Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, and under and pursuant to Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and Section 2 of a freeholder charter adopted April 7, 1931, as amended, has enacted The City of San Diego Multifamily Residential Mortgage Revenue Bond Law (the "Law") constituting Division 24 of Article I of Chapter VI of the Municipal Code of the City, in order to establish a procedure for the authorization, issuance and sale of multifamily residential mortgage revenue bonds by the City for the purpose of making construction loans and mortgage loans, to provide funds to encourage the availability of adequate housing and home finance for persons and families of low or moderate incomes and to

develop viable communities by providing decent housing, enhanced living environment, and increased economic opportunities for persons and families of low or moderate income; and

WHEREAS, the City has heretofore issued its \$28,485,000 Multifamily Housing Revenue Bonds, 1985 Issue A (the "Prior Bonds"), to enable the making of a mortgage loan to provide financing for a multifamily residential development located within the City, to be occupied partially (at least 20 percent) by persons of low or moderate income within the meaning of Section 103(b)(12)(c) of the Internal Revenue Code of 1954, as amended, all for the public purpose of assisting persons of low or moderate income within the City to obtain decent, safe and adequate housing at rentals they can afford (the "Program"); and

WHEREAS, the City Council of the City expressly determined in 1991 that the issuance of the Bonds for the purpose of refinancing the Project and refunding the Prior Bonds would accomplish a valid public purpose of the City by assisting persons of low or moderate income in the City in obtaining decent, safe and adequate housing; and

WHEREAS, the City issued, sold and delivered its Multifamily Housing Refunding Revenue Bonds, 1991 Issue A, in the aggregate principal amount of \$27,235,000, pursuant to an indenture of trust, dated as of June 1, 1991 (the "Original Indenture") the proceeds of which Bonds were loaned to SLW Holdings No. 2, Inc. ("SLW") and loaned by the SLW to Lincoln La Jolla, a California limited partnership ("Lincoln") exclusively for the purpose of refinancing the Project and thereby effecting refunding of the Prior Bonds, all for the public purpose of providing decent, safe

and sanitary housing for persons of low and moderate income; and

WHEREAS, in order to implement the refinancing of the Project and the refunding of the Prior Bonds, the City entered into a loan agreement dated as of 1991 (the "Original Loan Agreement") with SLW pursuant to which the City agreed to make, and SLW agreed to accept, a loan to enable the SLW to make a mortgage loan to refinance the Project; and

WHEREAS, Project ownership was transferred to LBK, L.P., a Delaware limited partnership ("LBK"), on or about September 15, 1995 and in connection therewith LBK agreed to assume certain of the obligations of SLW and Lincoln set forth in the Original Loan Agreement and the Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants dated as of May 1, 1991 (the "Original Regulatory Agreement") by and among the City, Bankers Trust as the trustee, and Lincoln; and

WHEREAS, remarketing of the Bonds was accomplished through a Remarketing Agent Agreement, dated as of May 1, 1991, by and among the City, Lincoln, and Newman and Associates, Inc. (the "Original Remarketing Agent Agreement," and, together with the Original Indenture, the Original Loan Agreement, the Original Regulatory Agreement and the Original Remarketing Agent Agreement, the "Original Bond Documents"); and

WHEREAS, LBK has elected to convert the interest rate on the Bonds to a Variable Rate as of December 1, 1995; and

WHEREAS, the present letter of credit which is providing credit enhancement on the Bonds expires on December 1, 1995, and, in order to keep the Bonds outstanding, a substitute letter of credit must be provided; and

WHEREAS, in connection with such conversion of the interest rate to a Variable Rate, and at the request of, and in order to obtain a Letter of Credit (the "Substitute Letter of Credit") from, Swiss Bank Corporation, there is being delivered (a) an Amended and Restated Indenture of Trust, dated as of November 1, 1995, by and between the City and First Trust of California, National Association, as Trustee, which amends, supplements and restates in its entirety the Original Indenture; (b) an Amended and Restated Loan Agreement dated as of November 1, 1995, by and among the City, the Trustee and LBK, which amends, supplements and restates in its entirety the Original Loan Agreement; (c) a Second Amended and Restated Regulatory Agreement and Declaration of Covenants, dated as of November 1, 1995, by and among the City, the Trustee and LBK, which amends, supplements and restates in its entirety the Original Regulatory Agreement; and (d) an Amended and Restated Remarketing Agent Agreement, dated as of November 1, 1995, by and among the City, the Developer and the remarketing agent (the "Amended and Restated Remarketing Agreement") which amends and restates the Original Remarketing Agent Agreement (the Amended and Restated Indenture, the Amended and Restated Loan Agreement, the Amended and Restated Regulatory Agreement and the Amended and Restated Remarketing Agent Agreement being sometimes referred to collectively herein as the "Amended and Restated Bond Documents"); NOW, THEREFORE,

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

Section 1. Finding had Determination. It is hereby found and determined that, in order to obtain a replacement letter of

credit for the Bonds, and because Swiss Bank Corporation is willing to provide such letter of credit if the Original Bond Documents are amended and restated to reflect the revised security structure of the bonds, it is necessary and desirable for the City to amend and restate the Original Bond Documents in order to obtain the substitute Letter of Credit to assist in the availability of dwelling units to be occupied by low and moderate income persons in the community.

Section 2. Approval of Amended and Restate Indenture of Trust. The Amended and Restated Indenture of Trust is to provide for the details of the Bonds, and to prescribe the terms and conditions upon which they are to be held with respect to the Substitute Letter of Credit. To provide for the amendment and restatement of the Original Indenture, the City Manager or a deputy City Manager and the City Clerk or deputy City Clerk are hereby authorized to execute and deliver the Amended and Restated Indenture of Trust, a copy of which is on file in the office of the City Clerk as Document No. OO-18250-1, 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 the Amended and Restated Indenture of Trust presented to this meeting, which form of Indenture is hereby in all respects approved and incorporated by reference and made a part hereof.

Section 3. Approval of Amended and Restated Loan Agreement. The Amended and Restated Loan Agreement is to provide for the

duties and obligations of the entity that has borrowed the funds from the City pursuant to the Original Loan Agreement. To provide for the amendment and restatement of the Original Loan Agreement, the City Manager or a deputy City Manager and the City Clerk or deputy City Clerk are hereby authorized to execute and deliver the Amended and Restated Loan Agreement, a copy of which is on file in the office of the City Clerk as Document No. 18250 - 2 OO-_____, 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 Amended and Restated Loan Agreement presented at this meeting, which form of Amended and Restated Loan Agreement is hereby in all respects approved and incorporated by reference and made a part hereof.

Section 4. Approval of Regulatory Agreement. To provide for certain conditions and terms of the operation of the Project, 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 the Second Amended and Regulatory Agreement and Declaration of Restrictive Covenants, the form of which is on file in the office of the City Clerk as Document No. OO- 18250 - 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 Second Amended and Regulatory Agreement and Declaration of Restrictive Covenants presented to this meeting, which form of Second Amended and Regulatory Agreement and Declaration of Restrictive Covenants is in all respects approved and incorporated by reference and made a part hereof.

Section 5. Approval of Amended and Restated Remarketing Agent Agreement. The form of Amended and Restated Remarketing Agent Agreement presented to this meeting, a copy of which is on file in the office of the City Clerk as Document No. OO-18250-4, is hereby approved 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 Amended and Restated Remarketing Agent Agreement presented to this meeting, which form of Amended and Restated Remarketing Agent Agreement is in all respects approved and incorporated by reference and made a part hereof.

Section 6. Actions Ratified and Authorized. All actions heretofore taken by the officers and agents of the City with respect to the Amended and Restated Bond Documents are hereby approved, confirmed and ratified, and the officers of the City are hereby authorized, 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 an intercreditor agreement, which they, or any of them, may deem necessary or advisable in order to consummate the lawful execution and

delivery of the Amended and Restated Bond Documents.

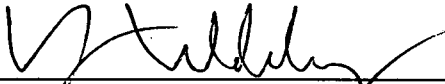
Section 7. Conflicting Resolutions Repealed. All ordinances and resolutions or parts thereto in conflict herewith are, to the extent of such conflict, hereby repealed.

Section 8. 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 9. 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 10. Effective Date. This ordinance shall take effect and be in force on the thirtieth day after its adoption.

APPROVED: JOHN W. WITT, City Attorney

By 

Harold O. Valderhaug
Chief Deputy City Attorney

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Or.Dept:Hsg.Comm.
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