

(O-98-151)

ORDINANCE NUMBER O- 18558 (New Series)

ADOPTED ON AUG 03 1998

AN ORDINANCE AUTHORIZING CERTAIN AMENDMENTS TO AND A REMARKETING OF THE \$33,800,000 VARIABLE RATE DEMAND MULTIFAMILY HOUSING REVENUE BONDS, ISSUE E OF 1985 (LUSK MIRA MESA APARTMENTS) 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 [City Council] adopted The City of San Diego Multifamily 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 [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 [Program]; and

WHEREAS, on March 18, 1985, the City adopted Ordinance No. O-16393 (New Series) authorizing the issuance of the City's Variable Rate Demand Multifamily Housing Revenue Bonds, Issue E of 1985 (Lusk Mira Mesa Apartments) in the aggregate principal amount of \$33,800,000 (the "Prior Bonds"), pursuant to the terms of that certain Indenture of Trust dated as of April 1, 1985, [Indenture] by and between the City and The Bank of California, N.A., as predecessor-in-interest to U.S. Bank Trust National Association, as trustee [Trustee] in order to

finance a multifamily residential project currently known as "Summerset Village Apartments" [Project] which is now owned by LBK, L.P., a Delaware limited partnership [Owner]; and

WHEREAS, the Owner has requested the City to extend the maturity of the Bonds to March 1, 2032, and to remarket the Bonds to Merrill Lynch & Co. without the requirement for a Bank Letter of Credit (as defined in the Indenture) and to make various other amendments to the Indenture and certain other financing documents related to the Bonds; and

WHEREAS, the City Council has now determined to permit the extension of maturity of the Bonds, the requested amendments to the Indenture and other financing documents related to the Bonds and the remarketing of the Bonds to Merrill Lynch & Co., provided that the affordable income and rent limitations for the Project are extended as set forth in the First Amendment to Regulatory Agreement and Declaration of Restrictive Covenants [First Amendment to Regulatory Agreement] presented at this meeting; and

WHEREAS, there have been prepared and presented to the City Council for consideration at this meeting an Amended and Restated Indenture of Trust [Amended and Restated Indenture] dated as of August 1, 1998, an Amended and Restated Loan Agreement [Amended and Restated Loan Agreement] dated as of August 1, 1998, the First Amendment to Regulatory Agreement and a First Supplement to Indenture of Trust [First Supplement]; and

WHEREAS, it appears that each of the documents and instruments referred to above that 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, Stradling Yocca Carlson & Rauth and Robinson & Pearman will act as co-bond counsel for the City [Co-Bond Counsel] in connection with the amending and remarketing

of the Bonds, and the City Council finds that the remarketing of the Bonds to Merrill Lynch & Co. will further the purposes of the Program; and

WHEREAS, in order for interest on the Bonds to be tax-exempt upon the extension of the maturity of the Bonds, Section 147(f) of the Internal Revenue Code of 1986 and the Treasury Regulations promulgated thereunder [collectively, the Code] requires that the Bonds be approved by the City Council as the applicable elected representative after a public hearing following reasonable public notice; and

WHEREAS, a notice of public hearing with respect to the proposed amendments to an extension of maturity of the Bonds was published in a newspaper of general circulation in the City on June 24, 1998; and

WHEREAS, the hearing was held on this day and an opportunity was provided for interested persons to express their views on the extension of the maturity of the Bonds and on the nature and location of the Project; and

WHEREAS, all acts, conditions and things required by the Law, and by all of the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the amendments to the Bonds as described herein exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to amend the terms of the Bonds for the purpose, in a manner and upon the terms provided herein; NOW, THEREFORE,

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

Section 1. *Finding and Determination.* The City Council finds and determines that it is necessary and desirable and in furtherance of the purposes of the Program for the City to assist in

the financing of the Project by amending the Bonds as described in the Amended and Restated Indenture, the Amended and Restated Loan Agreement and the First Supplement and by executing the First Amendment to Regulatory Agreement which will result in dwelling units in the Project being more affordable to low and moderate income persons in the community.

Section 2. *Authorization of Extension of Maturity of the Bonds.* This City Council, as the applicable elected representatives under Section 147(f) of the Code, approves the extension of the maturity of the Bonds to March 1, 2032, or such earlier date as Co-Bond Counsel determines is necessary to maintain the tax exemption on the Bonds.

Section 3. *Execution and Delivery of the Bonds.* The Bonds, in their amended form, 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 Amended and Restated Indenture, Amended and Restated Loan Agreement and First Supplement.* To provide for the extension of the maturity of the Bonds, to amend various provisions of the documents pursuant to which the Bonds were issued, and to prescribe the terms and conditions upon which the Bonds are to be remarketed to Merrill Lynch & Co., the forms of the Amended and Restated Indenture, the Amended and Restated Loan Agreement and the First Supplement, copies of which are on file in the office of the City Clerk as Document Nos. OO- 18558 -1, OO- 18558 -2, and OO- 18558 -3, are approved in all respects and incorporated herein by reference and made a part hereof, and the City Manager or a Deputy City Manager and the City Clerk or Deputy City Clerk are hereby authorized to execute and deliver the documents 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, the execution thereof to constitute conclusive evidence of the approval of such officer of all changes from the forms presented to this meeting, which forms are in all respects approved and incorporated by reference and made a part hereof.

Section 5. *Approval of First Amendment to Regulatory Agreement.* The form of First amendment to Regulatory Agreement presented to this meeting, a copy of which is on file in the office of the City Clerk as Document No. OO- 18557-2, is approved in all respects and incorporated herein by reference and made a part hereof, and the City Manager or a Deputy City Manager is authorized to execute and deliver the First Amendment to Regulatory Agreement in substantially such form with such changes as may be approved by the officer of the City executing the same, upon consultation with the City Attorney, the execution to constitute conclusive evidence of the approval by the officer of all changes from the form of First amendment to Regulatory Agreement presented to this meeting, which form of First Amendment to Regulatory 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 sale, issuance, amendment and remarketing of the Bonds are 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 documents referenced in Sections 4 and 5 above, which they, or any of them, may deem necessary or advisable in order to consummate the extension of the maturity of the Bonds and the remarketing of the Bonds to Merrill Lynch & Co. in accordance with the Law and this ordinance.

Section 7. *Conflicting Resolutions Repealed.* All ordinances and resolutions or parts thereof in conflict herewith are, to the extent of such conflict, 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 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 on the thirtieth day after its adoption.

APPROVED: CASEY GWINN, City Attorney

By Prescilla Dugard
Prescilla Dugard
Deputy City Attorney

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Or.Dept:Dev.Svcs.
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