

ORDINANCE NUMBER O-18704 (NEW SERIES)

ADOPTED ON NOV 01 1999

AN ORDINANCE AUTHORIZING THE SUBSTITUTION OF AN ALTERNATE SECURITY AND A TRANSFER OF A 368-UNIT MULTIFAMILY RENTAL HOUSING PROJECT KNOWN AS CORAL POINTE TO A NEW OWNER, APPROVING AND AUTHORIZING THE EXECUTION OF A SUPPLEMENTAL INDENTURE WITH RESPECT TO SUCH PROJECT AND APPROVING AND AUTHORIZING THE EXECUTION OF RELATED DOCUMENTS, AGREEMENTS AND ACTIONS.

WHEREAS, by Ordinance No. 17937 (New Series), adopted on May 3, 1993, the City Council of The City of San Diego (the "City Council") authorized the issuance, sale and delivery of its Multi-Family Housing Revenue Refunding Bonds (Coral Pointe Apartments Project) in the aggregate principal amount of \$31,265,000 (the "Bonds") for the purpose of making a loan to provide funds to refinance the cost of developing a 368-unit multifamily rental housing project known as Coral Pointe (the "Project"); and

WHEREAS, the City of San Diego (the "City") has previously executed and delivered with respect to the Bonds that certain Indenture (the "Indenture") dated as of July 1, 1993, between the City and U.S. Bank Trust National Association (formerly known as First Trust of California, National Association), as trustee (the "Trustee"); and

WHEREAS, the City, in connection with the Bonds and the Indenture, has also executed (i) that certain Loan Agreement (the "Loan Agreement") dated as of July 1, 1993, among the City the Trustee and Coral Point Apartments, Inc. (the "Borrower"), (ii) that certain Regulatory

Agreement dated as of April 15, 1985, as amended by that certain Amendment No. 1 to Regulatory Agreement dated as of July 1, 1993, (collectively, the "Regulatory Agreement") among the City, the Trustee and the Borrower and (iii) that certain Intercreditor Agreement (the "Intercreditor Agreement") dated as of July 1, 1993, among the City, the Trustee and Continental Casualty Company ("Continental"); and

WHEREAS, all capitalized terms not defined in this ordinance shall have the meanings ascribed to them in the Indenture; and

WHEREAS, the Borrower desires to transfer the Project (the "Transfer") to LBK, L.P., a Delaware limited partnership (the "New Owner"); and

WHEREAS, to credit enhance the Bonds Continental issued its Surety Bond No. 1667155-A as the Credit Facility for the Bonds and its Surety Bond 1667155-B as the Liquidity Facility of the Bonds (collectively, the "Surety Bonds") to provide for the payment of any Deficiency (as that term is defined in the Surety Bonds); and

WHEREAS, Section 2.11 and Section 2.12 of the Indenture provide that, subject to certain criteria, the Borrower may substitute an Alternate Security and an Alternate Liquidity Facility, respectively, for the Credit Facility and the Liquidity Facility; and

WHEREAS, the New Owner desires, pursuant to Section 2.11 and Section 2.12 of the Indenture, respectively, to provide an Alternate Security and an Alternate Liquidity Facility issued by Cooperative Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland," New York Branch ("Rabobank") in the form of a direct pay letter of credit (the "Letter of Credit") in substitution for the Surety Bonds (the "Substitution"); and

WHEREAS, the City desires to approve the Transfer and the Substitution; and

WHEREAS, pursuant to Section 12.02(h) of the Indenture, the Indenture may be amended without the consent of the registered owners of the Bonds to provide for the substitution of an Alternate Security or an Alternate Liquidity Facility; and

WHEREAS, the Substitution requires the amendment and modification of the Indenture; and

WHEREAS, there have been prepared and presented to the City Council for consideration at this meeting the form of First Supplemental Indenture dated as of December 1, 1999 between the City, the Trustee and the New Owner (the "First Supplement");

WHEREAS, it appears the First Supplement which is now before this meeting is in appropriate form and is the appropriate instrument to be executed and delivered for the purposes intended; and NOW, THEREFORE,

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

Section 1. Finding and Determination. It is found and determined that it is necessary and desirable for the City (i) to authorize the Substitution, (ii) to authorize the Transfer, and (iii) to approve the First Supplement.

Section 2. Approval of Substitution and Transfer. The Substitution and the Transfer are authorized and approved; the Chief Executive Officer of the Housing Authority of the City or her designee are authorized to execute and deliver any consent required of the City for the Transfer upon satisfaction of the condition that the New Owner assume all obligations of the Borrower with respect to the Bonds.

Section 3. Approval of First Supplement. To provide for the details of the Substitution, and to prescribe the terms and conditions upon which the Bonds are to be secured

following the Substitution, the City Manager or a Deputy City Manager and the City Clerk or a Deputy City Clerk are authorized to execute and deliver the First Supplement, a copy of which is on file in the office of the City Clerk as Document No. 18704, 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 First Supplement presented to this meeting, which form of First Supplement is in all respects approved and incorporated by reference and made a part hereof.

Section 4. Actions Ratified and Authorized. All actions heretofore taken by the officers and agents of the City with respect to the Substitution and Transfer are approved, confirmed and ratified, and the officers of the City are 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, amendments to the Loan Agreement, the Regulatory Agreement, the Intercreditor Agreement and other agreements or instruments necessary to affect the Substitution and Transfer and carry out the intention of this ordinance, which they, or any of them, may deem necessary or advisable in order to consummate the Substitution or Transfer.

Section 5. Conflicting Resolutions Repealed. All ordinances and resolutions or parts thereto in conflict herewith are, to the extent of such conflict, repealed.

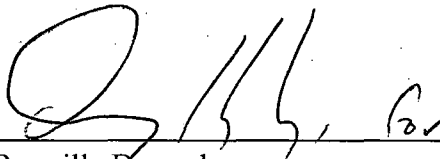
Section 6. Severability. If any section, paragraph or provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any remaining provisions of this ordinance.

Section 7. 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 official City newspaper within fifteen (15) days after the adoption of this ordinance pursuant to Section 18 of the City Charter.

Section 8. Effective Date. This ordinance shall take effect on the thirtieth day after its adoption by the City Council, and no business tax certificate for commercial activities inconsistent with the provisions of this ordinance shall be issued unless application therefor was made prior to the date of adoption of this ordinance.

Section 9. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

APPROVED: CASEY GWINN, City Attorney

By 
Prescilla Dugard
Deputy City Attorney

PD:cdk
10/01/99
Or.Dept:SDHA
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