

(O-2000-81)

ORDINANCE NUMBER O- 18743 (NEW SERIES)

ADOPTED ON JAN 18 2000

AN ORDINANCE PURSUANT TO SECTION 99 OF THE SAN DIEGO CHARTER OF THE CITY OF SAN DIEGO AUTHORIZING THE AMENDMENT AND RESTATEMENT OF THE INDENTURE RELATING TO THE CITY OF SAN DIEGO VARIABLE RATE MULTIFAMILY MORTGAGE REVENUE DEMAND BONDS, 1984 ISSUE D; AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCING AGREEMENT, REGULATORY AGREEMENT AND CERTAIN OTHER DOCUMENTS RELATING TO THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL INDENTURE PROVIDING FOR THE PURCHASE IN LIEU OF REDEMPTION OF THE BONDS; DETERMINING AND PRESCRIBING CERTAIN MATTERS RELATED THERETO, AND AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS AND AGREEMENTS AND RELATED 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") 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 (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, by Ordinance No. O-16245 (New Series), adopted on July 16, 1984, the City Council authorized the issuance and sale of The City of San Diego Variable Rate Multifamily Mortgage Revenue Demand Bonds, 1984 Issue D (the "Bonds"); and

WHEREAS, pursuant to the terms of that certain Indenture (the "Original Indenture"), dated as of August 1, 1984, between The City of San Diego (the "City") and Crocker National Bank (the "Original Trustee"), as amended by a First Supplemental Indenture (the Supplemental Indenture"), dated as of June 1, 1994, between the City and First Trust of California National Association, as successor trustee (the "Trustee"), the City issued and secured the Bonds and made a loan (the "Loan") of the proceeds of the Bonds to Mayer-San Diego, Ltd., a California limited partnership (the "Original Owner"), to finance the acquisition, construction, equipping and development of a multifamily residential rental development located in the City (the "Project"); and

WHEREAS, the Original Owner executed and delivered a promissory note (the "Original Note") to evidence the Original Owner's obligation to repay the Loan; and

WHEREAS, the City, the Original Owner and the Trustee executed and delivered that certain Regulatory Agreement, dated as of August 1, 1984, and recorded on August 2, 1984 as Instrument No. 84-317540 of the Official Records of San Diego County (the "Regulatory Agreement"), to evidence the requirements of the Law and the Internal Revenue Code of 1954, as amended, with respect to the Bonds and the Project; and

WHEREAS, as a condition precedent to the issuance of the Bonds and the making of the Loan to the Original Owner, the City required that the Original Owner deliver or cause to be delivered to the Trustee, for the benefit of the holders of the Bonds, an irrevocable letter of credit (the "Original Letter of Credit") to secure the payment of the principal of, and interest on, the Bonds and to provide for the payment of the principal of, and interest on, the Bonds and to

provide for the payment of the purchase price thereof in accordance with the terms of the Indenture; and

WHEREAS, the payment of principal and interest on the Bonds and the purchase price thereof was originally further secured by a surety bond (the "Original Surety Bond"); and

WHEREAS, in 1994, prior to the expiration of the Original Letter of Credit on August 7, 1994, in accordance with the provision of the Indenture, a replacement letter of credit and a confirmation thereof by the Federal Home Loan Bank of San Francisco were provided to the Trustee for the benefit of the Bondholders (collectively, the "First Replacement Letter of Credit"); and

WHEREAS, also in 1994, Financial Security Assurance Inc ("FSA") delivered to the Trustee its Financial Guaranty Insurance Policy (the "First FSA Surety Bond") guaranteeing the obligations under the First Replacement Letter of Credit to pay principal and interest on the Bonds and the purchase price thereof to the extent provided therein as a replacement for the Original Surety Bond; and

WHEREAS, in connection with this substitution of credit enhancement in 1994 the City executed and delivered a First Supplemental Indenture, dated as of June 1, 1994 (the "First Supplemental Indenture"), and certain amendments to various other agreements relating to the Bonds; and

WHEREAS, Security Capital Pacific Trust (together with its successors and assigns, the "Borrower") purchased the Project in 1997; and

WHEREAS, at the time of purchase of the Project and at the request of the Borrower and with the consent of the City, Commerzbank Aktiengesellschaft, acting through its Los Angeles

Branch ("Commerzbank"), issued its direct pay letter of credit (the "Second Replacement Letter of Credit") in favor of the Trustee in substitution for the First Replacement Letter of Credit, the First FSA Surety Bond was released and replaced by a new FSA Surety Bond (the "Second FSA Surety Bond"), and certain amendments of the Original Note and related documents were effectuated; and

WHEREAS, the Borrower has now requested that substitute credit enhancement for the Bonds be provided by Fannie Mae, and in order to induce Fannie Mae to provide substitute credit enhancement has requested the City to execute and deliver an Amended and Restated Trust Indenture, by and between the City and U.S. Bank Trust National Association, as Trustee (the "Indenture"), and a Financing Agreement, among the City, the Trustee and the Borrower (the "Financing Agreement"); and

WHEREAS, under the Financing Agreement, the Loan and related documents will be replaced by the Mortgage Loan (as defined in the Indenture), which will be evidenced by the Mortgage Note (as defined in the Indenture), secured by the Mortgage (as defined in the Indenture) and otherwise evidenced and secured by the other Mortgage Loan Documents (as defined in the Indenture); and

WHEREAS, in connection with the Mortgage Loan, the Mortgage Note, the Mortgage and certain other Mortgage Loan Documents will be executed by the Borrower in favor of the City and assigned (except for certain Reserved Rights (as defined in the Indenture)) by the City to the Trustee; and

WHEREAS, the City, the Trustee, Fannie Mae and the Borrower understand and intend that the substitution of the credit enhancement facility will be structured generally in the

following manner: the City will originate the Mortgage Loan to the Borrower pursuant to the terms and provisions of the Financing Agreement and the Mortgage Loan Documents; the City will assign and deliver the Mortgage Loan, including the Mortgage Note, the Mortgage and the other Mortgage Loan Documents, to the Trustee and Fannie Mae, as their interests may appear, to provide security for, respectively, the owners of the Bonds and the Credit Facility Provider; and the Fannie Mae will deliver the credit enhancement facility to provide credit enhancement for the Mortgage Loan and liquidity support for the Bonds; and

WHEREAS, in order to obtain the consent of the holders of the Bonds to the Amended and Restated Indenture, the Borrower has requested that the City execute and deliver a supplemental indenture providing for the purchase in lieu of redemption of the Bonds; and

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

- (1) The form of Indenture, including the form of the Bond;
- (2) The form of Financing Agreement;
- (3) The form of First Amended and Restated Regulatory Agreement (the "Regulatory Agreement") by and among the City, the Trustee and the Borrower;
- (4) The form of Assignment and Intercreditor Agreement (the "Intercreditor Agreement") by and between the City, the Trustee and Fannie Mae;
- (5) The form of disclosure document relating to the Bonds (the "Official Statement");
- (6) The form of Supplemental Indenture (the "Supplemental Indenture"), by and between the City and the Trustee; and

WHEREAS, the City is authorized to undertake all of the above pursuant to its Charter and the Constitution and other applicable laws of the State of California, NOW, THEREFORE, BE IT ORDAINED, by the Council of The City of San Diego, as follows:

1. Finding and Determination. The City Council finds and determines that the foregoing recitals are true and correct and that it is necessary and desirable for the City to take the actions requested by the Borrower in order to facilitate the acceptance of the substitute credit facility for the Bonds.

2. Authorization and Approval of Indenture. To provide for the amended and restated terms of the Bonds, to prescribe the amended and restated terms and conditions upon which they are to be secured and held and upon which the Mortgage Loan is to be made, and to reflect the substitute credit facility, the City Manager or any deputy thereof and the Chief Executive Officer of the Housing Authority of the City and the City Clerk or a deputy City Clerk, or the designee of any such officer (such officer and any of his or her respective designees are hereinafter referred to as the "Designated Officers") are each authorized to execute and deliver the Indenture (a copy of the form of which is on file in the offices of the City Clerk as Document No.

**18743-1**), in substantially the form presented to this meeting and with such changes as may be approved by the Designated Officers 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 in all respects approved and incorporated by reference and made a part hereof.

3. Authorization and Approval of Financing Agreement. To provide for the terms of the Mortgage Loan, and the duties and obligations of the Borrower, the Trustee and the City relating

to the Mortgage Loan, while reflecting the substitute credit facility, the Designated Officers are each authorized to execute and deliver the Financing Agreement (a copy of the form of which is on file in offices of the City Clerk as Document No. 18743<sup>2</sup>), in substantially the form presented to this meeting and with such changes as may be approved by the Designated Officers 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 Financing Agreement presented to this meeting, which form of Financing Agreement is in all respects approved.

4. Authorization and Approval of Regulatory Agreement. To continue to evidence the requirements of the Act and the Internal Revenue Code with respect to the Bonds and the Project, while reflecting the substitute credit facility, the Designated Officers are each authorized to execute and deliver with respect to the Project a Regulatory Agreement (a copy of the form of which is on file in the offices of the City Clerk as Document No. 18743<sup>3</sup>), in substantially the form presented to this meeting and with such changes as may be approved by the Designated Officers 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 presented to this meeting, which form of Regulatory Agreement is in all respects approved.

5. Authorization and Approval of the Intercreditor Agreement. To provide for the assignment by the City to the Trustee and Fannie Mae of certain rights under the Mortgage Loan, Mortgage Loan Documents and Financing Agreement and to provide for the respective interests of the City, the Trustee and Fannie Mae in the Mortgage Loan, the Designated Officers are each

authorized to execute and deliver the Intercreditor Agreement (a copy of the form of which is on file in offices of the City Clerk as Document No. 18743<sup>-4</sup>), in substantially the form presented to this meeting and with such changes as may be approved by the Designated Officers 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 in all respects approved.

6. Approval of Official Statement. The form of Official Statement relating to the Bonds, to be used in connection with the offer and sale of the Bonds, in substantially the form presented to the City Council (a copy of which is on file in the offices of the City Clerk as Document No. 18743<sup>-5</sup>), is approved. The City Council ratifies and approves distribution of the Official Statement to prospective purchasers of the Bonds. Any Designated Officer is authorized to execute and deliver the Official Statement, with such additions thereto or changes therein as such Designated Officer may approve or recommend.

7. Approval of Supplemental Indenture. To provide for the amendment of the 1993 Indenture to allow for the purchase of the Bonds in lieu of redemption, the Designated Officers are each authorized to execute and deliver the Supplemental Indenture (a copy of the form of which is on file in offices of the City Clerk as Document No. 18743<sup>-6</sup>), in substantially the form presented to this meeting and with such changes as may be approved by the Designated Officers 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 Supplemental



Indenture presented to this meeting, which form of Supplemental Indenture is in all respects approved.

8. Actions Ratified and Authorized. All actions heretofore taken by the officers and agents of the City with respect to the 1994 and 1997 amendments of the documents relating to the Bonds and with respect to the proposed amendment and restatement of documents in connection with the substitution of a new credit facility with respect to the Bonds are approved, confirmed and ratified, and the Designated Officers are each 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 those described in any of the documents approved, which they, or any of them, may deem necessary or advisable in order to consummate the lawful substitution of the new credit facility and the amendment and restatement of the documents, and execution and delivery of the Supplemental Indenture relating to the Bonds in accordance with the Law and this ordinance.

9. Further Consents, Approvals, Amendments and Other Actions. All consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents authorized by this ordinance or otherwise appropriate in the administration of the Bonds and the City's lending program financed thereby, including without limitation, any of the foregoing which may be necessary or desirable in connection with any amendment of such documents, any transfer of any Project, any substitution of security for the Bonds or any redemption of the Bonds, may be taken or given by the City Manager or the City Manager's designee without further authorization by the City Council, and the City Manager and the City Manager's designee are authorized and directed to give any such consent, approval, notice, order

or request, to execute and deliver any such amendment, and to take any such action which such officer may deem necessary or desirable to further the purposes of this ordinance and the City's lending program.

10. Conflicting Ordinances Repealed. All ordinances or parts thereto in conflict herewith are, to the extent of such conflict, repealed.

11. 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.

13. Effective Date. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By Prescilla Dugard  
Prescilla Dugard  
Deputy City Attorney

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Or.Dept:Plan & Dev. Rev.  
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