

RESOLUTION NO. 53 -1986

RESOLUTION OF THE CITY COUNCIL APPROVING THE  
ISSUANCE OF BONDS BY THE ABILENE HEALTH FACILITIES  
DEVELOPMENT CORPORATION TO FINANCE A PROJECT FOR  
MESA SPRINGS RETIREMENT VILLAGE, INC.

WHEREAS, by resolution the City Council (the "Governing Body") of the City of Abilene, Texas (the "Unit"), authorized and approved the creation of the Abilene Health Facilities Development Corporation (the "Issuer") as a nonprofit health facilities development corporation under the provisions of the Health Facilities Development Act, Article 1528j, Vernon's Annotated Texas Civil Statutes, as amended (the "Act"); and

WHEREAS, the Issuer now desires to provide for the issuance and sale of its Variable Rate Weekly Demand Health Facilities Revenue Bonds, Series 1986 (Mesa Springs Retirement Village Project) (the "Bonds"), in a maximum aggregate principal amount not to exceed \$6,000,000, in order to finance the cost of facilities (the "Project") for Mesa Springs Retirement Village, Inc. (the "User"), to accomplish the specific public purpose for which the Issuer was created, and will do so by adopting a resolution substantially in the form attached hereto as Exhibit "A" (the "Resolution"); and

WHEREAS, on February 24, 1986, the Issuer filed with the Governing Body of the Unit a Notice to the City Council of the City of Abilene, Texas, of Intent to Issue Bonds and Providing Certain Information Relating Thereto; and

WHEREAS, the Bylaws of the Issuer require that the Governing Body approve the issuance of bonds of the Issuer; and

WHEREAS, by resolution adopted on May 22, 1986 (the "May 22nd Resolution"), the Governing Body approved a resolution to be adopted by the Issuer, approving the Project and the bonds described therein; and

WHEREAS, the Governing Body has been notified by the User that the bonds, as approved by the May 22nd Resolution, were not issued and delivered, but that the User desires that the financing for the Project be provided by the Bonds; and

WHEREAS, the Governing Body now desires to approve by resolution the issuance of the Bonds and the Project;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, THAT:

1. The Governing Body hereby finds, determines, recites and declares that a public hearing with respect to the Bonds and the Project was held on May 22, 1986; that notice of such public hearing was published no less than 14 days before such date in a newspaper of general circulation available to residents within the Unit; that such notice included the date, time and place of the public hearing, the location, general nature and the initial owner, operator or manager of the Project and the maximum aggregate principal amount of the Bonds; and that all comments from interested persons were taken at such public hearing.

2. The Resolution of the Issuer to be adopted by the Issuer providing for the sale and issuance of the Bonds, substantially in the form attached hereto as Exhibit "A", is hereby approved.

3. The May 22nd Resolution is hereby rescinded, except to the extent that by such resolution the Governing Body approved the Project and the amount of the Bonds following a public hearing.

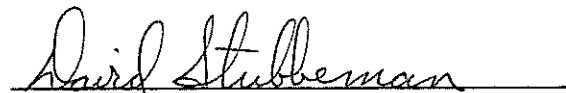
4. Vinson & Elkins, Houston, Texas, is hereby authorized and approved to serve as Bond Counsel in connection with the issuance of the Bonds, and any inconsistent provision of the Bylaws of the Issuer is hereby waived, but such waiver is effective and applicable only with respect to the issuance, sale and delivery of the Bonds and shall not apply to any other issue of bonds by the Issuer without the specific prior authorization of the Governing Body. This waiver and approval is given in reliance upon the fact that McCall, Parkhurst & Horton, Dallas, Texas is serving as Counsel to the Unit and the Issuer in connection with the Bonds and First Southwest Company, Abilene, Texas, is serving as Financial Advisor to the Unit and the Issuer in connection therewith.

5. To the extent that the provisions contained in H.R. 3638, 99th Congress, First Session, as agreed to by the Conference Committee of the United States House of Representatives and Senate on August 16, 1986, relating to the deductibility of bank interest paid on debt incurred to carry tax-exempt obligations may be applicable to the Bonds, the Governing Body authorizes the Issuer to take any action as may be required to qualify the Bonds for the small issue exception for small governmental units which expect to issue bonds (including bonds issued on behalf of organizations existing under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended) in an amount not to exceed \$10,000,000 per calendar year.

6. The Governing Body has considered evidence of the posting of notice of the meeting at which this resolution was adopted and officially finds, determines, recites and declares that a sufficient written notice of the date, hour and place of such meeting and of the subject of

this resolution was posted on a bulletin board at a place convenient to the public in the City Hall of the Unit for at least 72 hours preceding the convening of such meeting; such place of posting was readily accessible to the general public at all times from such time of posting until the convening of such meeting; and such meeting was open to the public as required by law at all times during which this resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Law, Article 6252-17, Vernon's Annotated Texas Civil Statutes, as amended.

PASSED AND APPROVED this 25th day of September, 1986.

  
\_\_\_\_\_  
Mayor  
City of Abilene

(SEAL)

ATTEST:

  
\_\_\_\_\_  
City Secretary

APPROVED:


  
\_\_\_\_\_  
City Attorney

Exhibit "A"

RESOLUTION OF ABILENE HEALTH FACILITIES  
DEVELOPMENT CORPORATION AUTHORIZING  
ISSUANCE OF BONDS AND APPROVING DOCUMENTS

WHEREAS, the Health Facilities Development Act, Article 1528j, Vernon's Annotated Texas Civil Statutes, as amended (the "Act"), authorizes and empowers the Abilene Health Facilities Development Corporation (the "Issuer") to issue revenue bonds on behalf of the City of Abilene, Texas (the "Unit") to finance the "cost" of a "health facility," as such terms are defined in the Act; and

WHEREAS, the Board of Directors (the "Board") of the Issuer has determined, at the request of Mesa Springs Retirement Village, Inc., a Texas nonprofit corporation (the "User"), to provide for the financing of the cost of a project (the "Project") for the User, which Project is more fully described in Exhibit A to the Loan Agreement between the Issuer and the User referenced below, in accordance with the provisions of the Act; and

WHEREAS, on February 24, 1986, the Issuer filed with the City Council (the "Governing Body") of the Unit a Notice to the City Council of the City of Abilene, Texas, of Intent to Issue Bonds and Providing Certain Information Relating Thereto; and

WHEREAS, for purposes of financing the cost of the Project, the Issuer now desires (i) to authorize the issuance of its Variable Rate Weekly Demand Health Facilities Revenue Bonds, Series 1986 (Mesa Springs Retirement Village Project) (the "Bonds"), in a maximum aggregate principal amount not to exceed \$6,000,000, pursuant to the terms and provisions of a trust indenture, (ii) to provide for the sale of the Bonds pursuant to a bond purchase agreement, (iii) to provide for the payment of the principal of and premium, if any, and interest on the Bonds with revenues derived from the loan of proceeds of the sale of the Bonds to the User to finance the costs of the Project pursuant to the terms and provisions of a loan agreement and (iv) to take and authorize certain other actions in connection with the foregoing; and

WHEREAS, the Board has been presented with and has examined proposed forms of a trust indenture, a loan agreement and a bond purchase agreement, and the Board finds that the form and substance of such documents are satisfactory and the recitals and findings contained therein are true, correct and complete and hereby adopts and incorporates by reference such recitals and findings as if set forth in full in this resolution, and finds that it is in the best interest of the public and the Issuer and assists in carrying out the public purpose of the Issuer and of the Act to authorize the execution and delivery of such documents; and

WHEREAS, the Board has also been presented with and has examined the proposed form of a deed of trust, security agreement, assignment of leases and rents and financing statement, from the User to the mortgage trustee named therein, for the equitable and ratable use and benefit of the Trustee (as hereinafter defined) (for the benefit of the holders of the Bonds) and the Bank (as hereinafter defined); and

WHEREAS, the Board understands that the Underwriter (as hereinafter defined) has distributed a Preliminary Official Statement (as hereinafter defined) and intends to distribute an Official Statement (as hereinafter defined) in connection with the public offering and sale of the Bonds; and

WHEREAS, in connection with the preparation of the Preliminary Official Statement and the Official Statement, under the heading "The Issuer," the Issuer has furnished the information to the Underwriter set forth in the Preliminary Official Statement concerning itself, and the Board now desires to ratify the use of such information in the Preliminary Official Statement and to authorize the use of such information in the Official Statement;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ABILENE HEALTH FACILITIES DEVELOPMENT CORPORATION THAT:

1. The Board hereby finds, determines, recites and declares that a Notice to the City Council of the City of Abilene, Texas, of Intent to Issue Bonds and Providing Certain Information Relating Thereto was filed with the Unit no less than 30 calendar days before this date, and that a description of the Project including an explanation of projected costs of, necessity for, and name of the proposed user of the Project were set forth in such Notice of Intent. The Board hereby ratifies its intent to issue bonds for the Project as set forth on February 24, 1986 in the Notice of Intent.

2. The Issuer hereby authorizes and directs the issuance of the Bonds in a maximum aggregate principal amount not to exceed \$6,000,000, in accordance with a trust indenture substantially in the form of the Trust Indenture, dated as of October 1, 1986 (the "Indenture"), by and between the Issuer and InterFirst Bank Fort Worth, N.A., as trustee (the "Trustee"), a copy of which was presented to the Board, the form, terms and provisions of such Indenture and the Bonds being hereby authorized and approved, and the President and any Vice President of the Issuer are hereby severally authorized and directed to execute and deliver such Indenture and the Bonds on behalf of the Issuer, and the Secretary of the Issuer is hereby authorized to attest and affix the Issuer's seal thereto, with such changes therein as the officers executing the same may approve, such approval to be conclusively evidenced by such execution thereof.

3. The loan of the proceeds of the sale of the Bonds by the Issuer to the User in order to provide financing of the costs of acquiring and constructing the Project shall be effected pursuant to the terms and provisions of a loan agreement substantially in the form of the Loan Agreement, dated as of October 1, 1986 (the "Loan Agreement"), by and between the Issuer and the User, a copy of which was presented to the Board, the form, terms and provisions of such Loan Agreement being hereby authorized and approved, and the President and any Vice President of the Issuer are hereby severally authorized and directed to execute and deliver such Loan Agreement on behalf of the Issuer, and the Secretary of the Issuer is hereby authorized to attest and affix the Issuer's seal thereto, with such changes therein as the officers executing the same may approve, such approval to be conclusively evidenced by such execution thereof.

4. The sale and delivery of the Bonds by the Issuer is hereby approved in accordance with a bond purchase agreement substantially in the form of the Bond Purchase Agreement, dated the date of the adoption of this resolution (the "Bond Purchase Agreement"), among the Issuer, the User and E.F. Hutton & Company Inc. (the "Underwriter"), a copy of which was presented to the Board, the form, terms and provisions thereof being hereby authorized and approved, and the President and any Vice President of the Issuer are hereby severally authorized to signify the Issuer's acceptance of such Bond Purchase Agreement and the Indemnity Letter of the User attached thereto as Exhibit A by executing the same on behalf of the Issuer, with such changes therein as the officer executing the same may approve, such approval to be conclusively evidenced by such execution thereof. The bond purchase agreement dated June 16, 1986 among the Issuer, the User and the Underwriter is hereby rescinded and terminated.

5. As a condition to the actions authorized in Paragraphs 2 through 4 and Paragraph 7 of this resolution, the User shall have executed a deed of trust, security agreement, assignment of rents and financing statement substantially in the form of the Deed of Trust, Security Agreement, Assignment of Leases and Rents and Financing Statement, dated as of October 1, 1986 (the "Mortgage"), from the User to the mortgage trustee named therein, for the equal and ratable use and benefit of the Trustee (for the benefit of the holders of the Bonds) and the Bank.

6. To further secure the Bonds, the User will cause to be delivered to the Trustee an irrevocable letter of credit, dated the date of the Bonds (the "Letter of Credit"), issued by AmeriTrust Company National Association (the "Bank").

7. The Board hereby authorizes and ratifies the use of the information described in the last recital of this resolution in the preliminary official statement dated \_\_\_\_\_, 1986 (the "Preliminary Official Statement"), a copy of which was presented to the Board, and

authorizes the use of such information in the final official statement (the "Official Statement"), and the President and any Vice President of the Issuer are hereby severally authorized and directed to execute such Official Statement on behalf of the Issuer, with such changes therein as any officer of the Issuer may approve; provided that, in adopting this resolution the Issuer does not accept responsibility for the Preliminary Official Statement or the Official Statement except for the information described as having been provided by it in the last recital of this resolution and expressly does not accept any responsibility for the information included in the Appendices contained as part of the Preliminary Official Statement and the Official Statement.

8. The actions and obligations authorized in Paragraphs 2 through 4 and Paragraph 7 of this resolution shall be subject to and conditioned upon the receipt by the Issuer, at the date of delivery and payment for the Bonds (the "Issue Date"), of (i) the purchase price for the Bonds; (ii) evidence, satisfactory to Bond Counsel, of receipt by the Trustee of the Letter of Credit; and (iii) such opinions, evidences, certificates, instruments or other documents as shall be requested by the Issuer's Counsel or by Bond Counsel, to evidence due performance or satisfaction by the User at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by them.

9. Vinson & Elkins, Houston, Texas, is hereby authorized and approved to serve as Bond Counsel in connection with the issuance of the Bonds, and any inconsistent provision of the Bylaws of the Issuer is hereby waived, but such waiver is effective and applicable only with respect to the issuance, sale and delivery of the Bonds and shall not apply to any other issue of bonds by the Issuer without the specific prior authorization of the Board and of the Governing Body of the Unit. This waiver and approval is given in reliance upon the fact that McCall, Parkhurst & Horton, Dallas, Texas, is serving as counsel to the Unit and the Issuer in connection with the bonds and First Southwest Company, Abilene, Texas, is serving as Financial Advisor to the Unit and the Issuer in connection therewith.

10. The officers, employees and agents of the Issuer, and each of them, shall be and each is expressly authorized, empowered and directed from time to time and at any time to do and perform all acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the Issuer all certificates, financing statements, instruments and other papers, whether or not herein mentioned, as they may determine to be necessary or desirable in order to carry out the terms and provisions of this resolution and of the Bonds to be issued hereunder, as well as the terms and provisions of the Indenture, the Letter of Credit, the Bond Purchase Agreement and the Loan Agreement hereby authorized and approved, such determination to be conclusively evidenced by the performance of such acts and things and

the execution of any such certificate, financing statement, instrument or other paper. The Issuer hereby agrees to take whatever reasonable action may be requested by the User as required in order to comply with the requirements of federal tax legislation that may become applicable to the Bonds in order to continue the tax-exempt status of interest on the Bonds.

11. The Board directs that an officer of the Issuer submit to the Secretary of the Treasury, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Bonds are issued, a statement containing the information required by Section 103(1) of the Internal Revenue Code of 1954, as amended.

12. The Board hereby rescinds its resolution adopted on June 16, 1986 and entitled "Resolution of Abilene Health Facilities Development Corporation Authorizing Issuance of Bonds and Approving Documents."

13. To the extent that the provisions contained in H.R. 3838, 99th Congress, First Session, as agreed to by the Conference Committee of the United States House of Representatives and Senate on August 16, 1986, relating to the deductibility of bank interest paid on debt incurred to carry tax-exempt obligations may be applicable to the Bonds, the Board hereby elects to qualify the Bonds for the small issue exception for small governmental units which expect to issue bonds (including bonds issued on behalf of organizations existing under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended) in an amount not to exceed \$10,000,000 per calendar year.

14. The Board hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this resolution was adopted was posted and that such meeting was open to the public as required by the Bylaws of the Issuer at all times during which this resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Bylaws of the Issuer.



15. This resolution shall take effect and be in full force and effect upon and after its passage.

PASSED AND APPROVED this \_\_\_\_ day of October, 1986.

ABILENE HEALTH FACILITIES  
DEVELOPMENT CORPORATION

By \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

(SEAL)

APPROVED:

*Harry Cargill*  
\_\_\_\_\_  
City Attorney