

RESOLUTION NUMBER R- 274259

ADOPTED ON AUG 8 1989

BE IT RESOLVED, that the transfer of an additional \$1.25 million from Mira Mesa Area Facilities Benefit Assessment Fund 79006, C.I.P. 29-653.0, Carroll School Park Site, to C.I.P. 29-728.0, Acquisition of Canyon Hills Residential Development, to supplement funds previously authorized for the project by Council Resolution R-274144, adopted August 1, 1989, is hereby authorized and approved.

BE IT FURTHER RESOLVED, that the expenditure of not to exceed \$1.25 million from Facilities Benefit Assessment Fund 79006, C.I.P. 29-728.0, Acquisition of Canyon Hills Residential Development, as additional funds toward partial payment of the cost of the above property and related costs, is hereby authorized.

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a First Trust Deed and Note on the above described property in favor of BARRATT AMERICAN INCORPORATED, a Delaware corporation, in the amount of \$4,999,176, plus interest at a rate of ten percent (10%) per annum, payable \$1,685,000 plus accrued interest on January 2, 1990, a payment of \$2,136,000 plus accrued interest on January 2, 1991, and \$1,178,176 plus accrued interest on January 2, 1992, this being a modification of the original \$5.5 million Note and Trust Deed authorized by Council Resolution R-274144, adopted August 1, 1989.

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CLERK'S OFFICE
89 AUG 11 PM 1:37
SAN DIEGO, CALIF.

BE IT FURTHER RESOLVED, that an additional \$500,000 of the funds approved for the project to be used as a nonrefundable deposit to supplement the \$500,000 previously authorized by Council Resolution R-273882, adopted June 26, 1989, is hereby authorized and approved.

BE IT FURTHER RESOLVED, that the City Council hereby approves the City Manager's execution of modified agreements providing for the above expenditures and further providing for (i) the extension of all time expirations contained in the existing documents relating to the Canyon Hills Subdivision including but not limited to any existing engineering permit(s), the subdivision improvement agreements and the planned residential development permit, with any and all time expirations in such documents being extended and tolled for the period ending on the date (the "Tolling Date") which is the later of (a) the date upon which the above-referenced First Trust Deed is paid in full and (b) in the event that the First Trust Deed is foreclosed or the property is transferred in lieu of foreclosure to the beneficiary (or any assigns of the beneficiary) of the First Trust Deed, then two years from the date that the beneficiary (or any assigns of the beneficiary) acquires fee title to the property, which tolling and extended time provisions are necessary and required by the owners of the Canyon Hills property in order to protect their existing rights in the event the subject property is reacquired as a result of any default under the acquisition documents on the part of the City, and providing for such other terms and conditions as are contained in those documents

cumulatively on file in the office of the City Clerk as Document No. RR- 274259, (ii) the covenant of the City not to cause the acquired property to be reverted to acreage pursuant to the California Subdivision Map Act prior to the Tolling Date, (iii) the covenant of the City not to reclassify said property prior to the Tolling Date and (iv) the covenant of the City not to change, until the Tolling Date, the Mira Mesa Community Plan to show use of the acquired property for other than residential use.

BE IT FURTHER RESOLVED, that to the greatest extent legally possible, the City Council hereby agrees that in the event of such reacquisition of the property by the present owners and their assigns of the Canyon Hills development, such owners shall be required to comply only with such ordinances, policies and standards in effect as of the date of close of escrow on said property.


BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to direct the Facilities Financing Division to issue and deposit into escrow a letter crediting Jerry L. Elder \$957,824 in Facilities Benefit Assessment credits toward the cost of future Facilities Benefit Assessments due in connection with the residential development of Lots 121-125 of Canyon Hills PRD, Map 11833, owned by Mr. Elder, notwithstanding any language in City Council Policy 600-36; said letter, by an agreement with Barratt American Incorporated shall be issued in lieu of \$957,824 in cash down payment owed Barratt under the terms of the City's agreement to purchase that portion of Canyon Hills PRD, Map 11833, southwesterly of the centerline of Mercy Road. In the

alternative, the City Manager is authorized to deposit not to exceed \$957,824 in escrow as part of the down payment subject to a letter of agreement which provides that Jerry Elder will return the \$957,824 to the City at the close of escrow as prepayment for Facilities Benefit Assessment credits.

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to use not to exceed \$547,500 in funds from the American Newland Associates Mercy Mira Mesa Development Agreement to reimburse Barratt American Incorporated for any additional remedial work as deemed necessary by the City Manager.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
08/04/89
08/08/89 COR.COPY NO.2
08/08/89 REV.1
Or.Dept:Prop.
Aud.Cert.9000143- 9000192 REV 5/9
R-90-277
Form=r.none

R-274259

RECEIVED
C. F. OLENA'S OFFICE
89 AUG 11 PM 1:38
SAN DIEGO, CALIF.

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE AC 9000192 REVISED

ORIGINATING DEPT. NO.: 070

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount \$ _____ Fund _____

Purpose _____

Date _____, 19__

By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said moneys now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed \$ 547,500.00

Vendor Barratt American Incorporated

Purpose Authorizing the expenditure of additional funds to supplement funds previously authorized for acquisition of Canyon Hills Residential Development, CIP 29-728.

Date August 9, 19 89

By: *Kimberly Rice*
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/EQUIP	FACILITY	AMOUNT
2		30244			9544					\$ 547,500.00
TOTAL AMOUNT										\$ 547,500.00

FUND OVERRIDE

AUG 8 1989

R 274259

5501

Passed and adopted by the Council of The City of San Diego on AUG 8 1989,
by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gloria McColl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Wes Pratt	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ed Struiksma	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Bruce Henderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Filner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Maureen O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

MAUREEN O'CONNOR,
Mayor of The City of San Diego, California.

(Seal)

CHARLES G. ABDELNOUR,
City Clerk of The City of San Diego, California.

By Ellen Boward, Deputy.

Office of the City Clerk, San Diego, California

Resolution Number R-274259 Adopted AUG 8 1989