

RESOLUTION NUMBER R- 300072

ADOPTED ON JAN 25 2005

WHEREAS, the City and General Dynamics Properties, Inc. entered into a Development Agreement and First Amendment to the Development Agreement (referenced collectively as "Development Agreement") on file in the Office of the City Clerk as Document Numbers 00-18848 and 00-18867, respectively, contemplating development of a mixed-use retail, commercial, and industrial/business park project on certain real property in the Kearny Mesa area of the City; and

WHEREAS, the Development Agreement requires LNR Kearny Mesa, Inc. [LNR] as successor-assignee to General Dynamics Properties, Inc. to advance fund certain improvements to the Clairemont Mesa Boulevard/I-163 Interchange [Project]; and

WHEREAS, Exhibits B and C of the Development Agreement require LNR to complete the following improvements: (1) the Balboa Avenue/Kearny Villa Road Improvements; (2) the Balboa Avenue/View Ridge Avenue Intersection Improvements; and (3) the Balboa Avenue/Sportsmart Entrance Intersection (referenced collectively as "Zero ADT obligations"); and

WHEREAS, the Council of the City of San Diego authorized the City Manager, via Resolution No. R-299586, to execute for and on behalf of said City, an agreement in furtherance of LNR's advance funding obligations for the Project, under the terms and conditions set forth in the Assurance Agreement on file in the Office of the City Clerk as Document No. RR-299586-1; and

WHEREAS, the Assurance Agreement contemplates the release of the Zero ADT obligations, subject to the approval of the Council of the City of San Diego; and

WHEREAS, the City Manager has determined that the release of the Zero ADT obligations constitutes a minor or insubstantial change to the Development Agreement in that the release will not result in a change in use, an increase in density or intensity of use, cause new, substantial environmental impacts, or violate any applicable health and safety regulations; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego that in furtherance of LNR's advance funding obligations for the Project under the Assurance Agreement, the City releases LNR from performance of the Zero ADT obligations; and

BE IT FURTHER RESOLVED, that the City Manager is directed to release any and all securities held by City in the form of letters of credit pertaining to the released Zero ADT obligations.

APPROVED: CASEY GWINN, City Attorney

By



Susan V. Cola
Deputy City Attorney

SYC:sc
11/17/04
Aud.Cert.: N/A
Or.Dept: E&CP
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