

12-10-2013

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

RESOLUTION NO. 1314-29

RESOLUTION OF THE BOARD OF TRUSTEES OF THE CAPISTRANO UNIFIED SCHOOL DISTRICT APPROVING AGREEMENT BETWEEN CAPISTRANO UNIFIED SCHOOL DISTRICT AND COMMUNITY FACILITIES DISTRICT NO. 87-1 OF THE CAPISTRANO UNIFIED SCHOOL DISTRICT REGARDING SCHOOL FACILITIES, RETIREMENT OF BONDS AND CESSATION OF SPECIAL TAXES, MAKING CERTAIN DETERMINATIONS AND TAKING RELATED ACTIONS

WHEREAS, the Capistrano Unified School District ("District") is a public school district organized and operating pursuant to the provisions of the Constitution and the laws of the State of California ("State"); and

WHEREAS, the Board of Trustees ("Board") of the District has previously approved and entered into that certain Agreement between the Capistrano Unified School District and the Mission Viejo Company, on or about March 2, 1987 (hereinafter the "CFD No. 87-1 Mitigation Agreement"), as applicable to certain property located within the boundaries of the District; and

WHEREAS, the District previously established Community Facilities District No. 87-1 of the Capistrano Unified School District (Mission Viejo/Aliso Viejo) ("CFD No. 87-1"), annexed additional territory thereto and designated Improvement Area No. 1 of CFD No. 87-1 ("Improvement Area"), all pursuant to the terms and provisions of the Mello-Roos Community Facilities Act of 1982, as amended ("Act") ("Formation Proceedings"); and

WHEREAS, CFD No. 87-1 issued its Series 1989 Special Tax Bonds in the amount of \$44,370,000 pursuant to Resolution No. 89-56, adopted by the Board of the District acting as the legislative body of CFD No. 87-1 ("Series 1989 Special Tax Bonds") and its Series 1990 Special Tax Bonds in the amount of \$36,170,000 pursuant to Resolution No. 90-103, adopted by the Board acting as the legislative body of CFD No. 87-1 ("Series 1990 Special Tax Bonds") and issued its Series 1996A and Series 1996B Special Tax Refunding Bonds in the respective principal amounts of \$42,640,000 and \$38,910,000 pursuant to Resolution No. 9697-06, adopted by the Board acting as the legislative body of CFD No. 87-1 (collectively, "Series 1996 Bonds") to refund the Series 1989 Special Tax Bonds and the Series 1990 Special Tax Bonds; and

WHEREAS, on June 8, 2006, CFD No. 87-1 issued its Series 2006 Special Tax Refunding Bonds in the amount of \$71,810,000 pursuant to Resolution No. 0506-74, adopted by the Board acting as the legislative body of CFD No. 87-1 (hereafter "Series 2006 Bonds") to refund the Series 1996 Bonds; and

WHEREAS, the Board, acting as the legislative body of CFD No. 87-1 and the Improvement Area, pursuant to the Act has adopted its Resolution No. 94-82 calling for a public

hearing and such public hearing was duly held on November 21, 1994, to consider the annexation of certain territory to the District and to the Improvement Area, as described in Resolution No. 94-82 and the maps of such territory recorded on November 4, 1994, as Instrument Nos. 94-0649221 and 94-0649222, respectively, in the "Book of Maps and Assessments and Community Facilities Districts" maintained in the office of the County Recorder for the County of Orange ("Annexed Territory"); and

WHEREAS, the Board, acting as the legislative body of CFD No. 87-1, called and duly held an election on November 21, 1994 in CFD No. 87-1 and the Improvement Area for the purpose of presenting to the qualified electors within the Annexed Territory Propositions A and B authorizing the levy of a "Special Tax" within the Annexed Territory, which Propositions were approved by more than two-thirds of the votes cast at said election, thereby authorizing the Board to levy the Special Taxes described in Propositions A and B, respectively, for the purposes described therein and to take the necessary steps to levy the Special Taxes authorized by Propositions A and B; and

WHEREAS, the Board acting as the legislative body of CFD No. 87-1 and the Improvement Area is authorized pursuant to Resolution Nos. 87-38 and 87-39 and Ordinance No. 87-1-1 ("Ordinance") to levy a Special Tax on property in CFD No. 87-1, including the Annexed Territory, which shall be sufficient, together with certain Special Taxes levied within CFD No. 87-1, to pay Debt Service, as defined in the CFD No. 87-1 Mitigation Agreement to include, but not limited to, principal of and interest on the "Bonds" of CFD No. 87-1, amounts needed to replenish the bond reserve fund for the Bonds, amounts needed to establish and replenish a special reserve that may be needed to balance the receipt of **Special Taxes and the payment of Debt Service on the bonds, amounts to pay the administrative cost of issuing and servicing the Bonds and amounts necessary to collect the Special Taxes, as well as to pay for the construction and acquisition of those facilities described in the proposed Agreement Between Capistrano Unified School District and Community Facilities District No. 87-1 of the Capistrano Unified School District regarding School Facilities, Retirement of Bonds and Cessation of Special Taxes to be funded by Special Taxes of CFD No. 87-1 levied prior to September 1, 2016;** and

- Deleted: taxes
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- Deleted: of certain public facilities authorized to be financed by the levy of Special Taxes of CFD No. 87-1 and to pay all expenses incidental thereto

WHEREAS, the CFD No. 87-1 Mitigation Agreement contemplated the financing of mitigating the impact on school facilities of the District resulting from the development of the property now known as CFD No. 87-1 as described in the Formation Proceedings ("School Facilities"); and

WHEREAS, the Series 2006 Bonds allow for optional redemption of outstanding maturities on or after September 1, 2016, pursuant to the terms of issuance contained in the Bond Indenture, dated as of June 1, 2006; and

WHEREAS, it is the intention of the Board, acting as the legislative body of CFD No. 87-1, to exercise the optional redemption of the outstanding Series 2006 Bonds pursuant to the terms of issuance, should funds be available at such time; and

WHEREAS, subject to the anticipated exercise and accomplishment of the optional redemption relating to the outstanding Series 2006 Bonds, and the intention of the Board, acting as the Legislative Body of CFD No. 87-1, to conclude the levy, collection and accomplish a recordation of Notice of Cancellation of Special Taxes not applicable to any unpaid or delinquent Special Taxes of CFD No. 87-1; and

WHEREAS, the Board, on the basis of the facts herein above set forth, desires to enter into the Agreement between Capistrano Unified School District and Community Facilities District No. 87-1 of the Capistrano Unified School District Regarding School Facilities, Retirement of Bonds and Cessation of Special Taxes, in the form attached hereto as Exhibit A, to memorialize the intentions and obligations contained herein.

NOW THEREFORE BE IT RESOLVED that the Board of Trustees of the Capistrano Unified School District does hereby resolve, determine, and order as follows:

Section 1. The above recitals are true and correct and are incorporated herein.

Section 2. This Board approves the Agreement Between Capistrano Unified School District and Community Facilities District No. 87-1 of the Capistrano Unified School District Regarding School Facilities, Retirement of Bonds and Cessation of Special Taxes and authorizes its execution by the President and Clerk of the Board.

Section 3. The intention of the Board will be effectuated by future required actions.

Section 4. This resolution shall be effective upon adoption by the Board.

Section 5. That the Board consents to the concurrent representation of CFD No. 87-1 as to this matter by Bowie, Ameson, Wiles & Giannone.

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ADOPTED, SIGNED, AND APPROVED this 11th day of December, 2013.

CAPISTRANO UNIFIED SCHOOL DISTRICT

By: _____

**President of the Board of Trustees of the
Capistrano Unified School District**

By: _____

**Clerk of the Board of Trustees of the Capistrano
Unified School District**

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

I, Clerk of the Board of Trustees of the Capistrano Unified School District, do hereby certify that the foregoing resolution was duly adopted by the Board of Trustees of said District at a meeting of the Board of Trustees held on the 11th day of December, 2013, and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

By: _____

Clerk of the Board of Trustees of the Capistrano
Unified School District

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, Clerk of the Board of Trustees of the Capistrano Unified School District, do hereby certify that the foregoing Resolution was duly passed, approved, and adopted by the Board of Trustees of the Capistrano Unified School District at a regular meeting of said Board held on the 11th day of December, 2013.

Clerk of the Board of Trustees of the
Capistrano Unified School District

EXHIBIT "A"

*Agreement Between Capistrano Unified School District and
Community Facilities District No. 87-1 of the Capistrano Unified School District
Regarding School Facilities, Retirement of Bonds and Cessation of Special Taxes*

Exhibit A

12-10-2013

**AGREEMENT BETWEEN CAPISTRANO UNIFIED SCHOOL DISTRICT
AND COMMUNITY FACILITIES DISTRICT NO. 87-1 OF THE CAPISTRANO
UNIFIED SCHOOL DISTRICT REGARDING SCHOOL FACILITIES, RETIREMENT
OF BONDS AND CESSATION OF SPECIAL TAXES**

THIS AGREEMENT BETWEEN CAPISTRANO UNIFIED SCHOOL DISTRICT AND COMMUNITY FACILITIES DISTRICT NO. 87-1 OF THE CAPISTRANO UNIFIED SCHOOL DISTRICT REGARDING SCHOOL FACILITIES, RETIREMENT OF BONDS AND CESSATION OF SPECIAL TAXES ("Agreement") is entered into this 11th day of December, 2013, by and between the CAPISTRANO UNIFIED SCHOOL DISTRICT (hereinafter referred to as "CUSD") and COMMUNITY FACILITIES DISTRICT NO. 87-1 OF THE CAPISTRANO UNIFIED SCHOOL DISTRICT (hereinafter referred to as ("CFD No. 87-1").

RECITALS

1. The Board of Trustees ("Board") of CUSD located in Orange County, California, previously entered into that certain agreement between Capistrano Unified School District, acting on behalf of itself and CFD No. 87-1, Mission Viejo Company and Aliso Viejo Company entitled "Agreement Between Capistrano Unified School District and Mission Viejo Company," dated February 23, 1987 ("CFD No. 87-1 Mitigation Agreement"), and pursuant thereto established CFD No. 87-1 as provided by the "Mello-Roos Community Facilities Act of 1982," as amended, being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State of California ("Act").

2. CFD No. 87-1 was formed pursuant to the resolution entitled "RESOLUTION OF THE BOARD OF TRUSTEES OF CAPISTRANO UNIFIED SCHOOL DISTRICT ESTABLISHING COMMUNITY FACILITIES DISTRICT NO. 87-1, AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 87-1 AND CALLING AN ELECTION" ("Resolution No. 87-38" or "Formation Resolution") adopted by the Board on April 20, 1987, which together with other actions taken, established CFD No. 87-1 and authorized the levy of special taxes for CFD No. 87-1 to fund authorized

public facilities, as described in such proceedings and the CFD No. 87-1 Mitigation Agreement (collectively, "Formation Proceedings").

3. CFD No. 87-1 is authorized to levy the described "Special Taxes" and issue "Bonds" as described in the Formation Proceedings on the terms and conditions set forth therein for the purpose of providing financing for and funds for the constructing, acquiring, modifying or rehabilitating of certain real and other tangible property with an estimated useful life of five years or longer, all as more fully described in the Formation Proceedings ("School Facilities").

4. The Board as the legislative body of CFD No. 87-1 has undertaken proceedings to authorize the issuance of Bonds on behalf of CFD No. 87-1 pursuant to the terms and provisions of the Act, by adopting the resolution entitled "RESOLUTION OF THE BOARD OF TRUSTEES OF THE CAPISTRANO UNIFIED SCHOOL DISTRICT DETERMINING THE NECESSITY TO INCUR BONDED INDEBTEDNESS IN THE AMOUNT OF \$120,110,000 WITHIN COMMUNITY FACILITIES DISTRICT NO. 87-1 OF THE CAPISTRANO UNIFIED SCHOOL DISTRICT AND CALLING AN ELECTION" ("Resolution No. 87-39" or "Bond Authorization Resolution"), which authorized CFD No. 87-1 to issue Bonds secured by CFD No. 87-1 Special Taxes to finance and construct the School Facilities.

5. Pursuant to the Formation Proceedings and the Bond Authorization Resolution, a special election was duly and legally held and conducted within CFD No. 87-1 on April 20, 1987, at which there were submitted to the qualified voters of CFD No. 87-1 certain propositions. More than two-thirds of the votes cast at said election were cast in favor of incurring said indebtedness, issuing said Bonds, levying the described Special Taxes, and as applicable, acquiring, constructing, modifying and rehabilitating the described School Facilities. CFD No. 87-1 also was authorized to levy the described Special Taxes and issue such Bonds for the purposes set forth in the propositions up to an aggregate principal amount as set forth in the propositions.

6. In accordance with the Act, the Board acting as the "Legislative Body" of CFD No. 87-1 adopted Ordinance No. 87-1-1 on November 6, 1989 ("Ordinance"), providing for the levy of the Special Taxes within CFD No. 87-1 to provide for specified purposes, including funding debt service on authorized and issued bonds of CFD No. 87-1.

7. On December 1, 1989, CFD No. 87-1 issued and sold the first series of authorized bonds of CFD No. 87-1 "\$44,370,000 Series 1989 Special Tax Bonds of Community Facilities

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District No. 87-1 of the Capistrano Unified School District (Aliso Viejo)" ("1989 Bonds") in order to finance School Facilities as authorized by the Formation Proceedings and the Bond Authorization Resolution, which were designated to mature on September 1, 2014.

8. On November 28, 1990, CFD No. 87-1 issued and sold the second series of authorized Bonds of CFD No. 87-1 "\$44,370,000 Series 1989 Special Tax Bonds of Community Facilities District No. 87-1 of the Capistrano Unified School District (Aliso Viejo)" ("1989 Bonds") in order to finance facilities as authorized by the Formation Proceedings and the Bond Authorization Resolution, which were designated to mature on September 1, 2020.

9. On August 29, 1996, CFD No. 87-1 issued and sold the third series of authorized bonds of CFD No. 87-1 "Capistrano Unified Public Financing Authority Special Tax Revenue Bonds \$64,265,000 1996 Series A (First Lien Bonds) \$17,285,000 1996 Series B (Second Lien Bonds)" ("1996A & 1996B Bonds") in order to refund the 1989 Bonds, refund the 1990 Bonds, and finance facilities as authorized by the Formation Proceedings and the Bond Authorization Resolution, which were designated to mature on September 1, 2020.

10. On June 8, 2006, CFD No. 87-1 issued and sold the fourth series of authorized bonds of CFD No. 87-1 "\$71,810,000 Community Facilities District No. 87-1 of the Capistrano Unified School District Series 2006 Special Tax Refunding Bonds" ("2006 Bonds") in order to refund the 1996A Bonds, refund the 1996B Bonds, and finance facilities as authorized by the Formation Proceedings and the Bond Authorization Resolution, which are designated to mature on September 1, 2020.

11. CFD No. 87-1 has not issued any other Bonds, notes or other securities.

NOW, THEREFORE, in consideration of the terms and conditions set forth, CUSD and CFD No. 87-1 DO HEREBY AGREE AS FOLLOWS:

Section 1.0 CFD No. 87-1 School Facilities. Residential development within CFD No. 87-1 has occurred and is occurring substantially as described in the CFD No. 87-1 Mitigation Agreement and Formation Proceedings. The School Facilities addressed in the CFD No. 87-1 Mitigation Agreement have been and are being constructed as provided in the CFD No. 87-1 Mitigation Agreement. The School Facilities and the use thereof have been accomplished consistent with the provisions of the CFD No. 87-1 Mitigation Agreement.

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Section 2.0 Termination of the Levy of Annual Special Taxes. All of the property in CFD No. 87-1, except property exempted by law or by the Formation Proceedings, shall be or has been levied upon for the purposes, and to the extent and in the manner provided in the Formation Proceedings and the CFD No. 87-1 Mitigation Agreement. The Special Taxes have been levied to pay debt service for the Bonds issued by CFD No. 87-1 and to construct the School Facilities described in the CFD No. 87-1 Mitigation Agreement. The term "Debt Service" includes, but is not limited to, amounts needed to pay principal of and interest on the Bonds, amounts needed to replenish the bond reserve fund for the Bonds, amounts needed to establish and replenish a special reserve that may be needed to balance the receipt of Special Taxes and the payment of Debt Service on the bonds, amounts to pay the administrative cost of issuing and servicing the Bonds, and amounts necessary to collect the Special Taxes.

All property within CFD No. 87-1, not excepted nor exempt from the Special Taxes, shall be or has been subject to the annual Special Tax levy, as calculated pursuant to the Rate and Method of Apportionment of Community Facilities District Special Tax for Community Facilities District No. 87-1 of Capistrano Unified School District ("Rate and Method"), as referenced in the Formation Proceedings. All property within CFD No. 87-1, not excepted nor exempt from the Special Taxes, shall continue to be levied at the current authorized rate pursuant to the Rate and Method, without the annual escalation of two-percent (2%) permitted under the Rate and Method or any reduction in the current rate of such Special Taxes.

At the time of this Agreement, the Board finds that the School Facilities authorized by the Formation Proceedings and CFD No. 87-1 Mitigation Agreement will be funded as provided in the CFD No. 87-1 Mitigation Agreement and the Formation Proceedings. Special Tax funds of CFD No. 87-1, ~~levied at the herein specified current rate of the Rate and Method and any available funds from prior annual levies of Special Taxes,~~ shall be used to exercise optional redemption of the 2006 Bonds, retiring outstanding maturities thereof on or after September 1, 2016 prior to the scheduled maturity date, as permitted under the provisions of the covenants of the 2006 Bonds to the extent that such funds of CFD NO. 87-1 are available. ~~Any remaining Special Tax funds of CFD No. 87-1 levied prior to September 1, 2016 not expended for the redemption and defeasance of the 2006 Bonds and permitted costs related thereto shall be expended by CFD No. 87-1 pursuant to the authorized uses in the Formation Proceedings and the CFD No. 87-1 Mitigation Agreement, including not by way of limitation the Lunch Pavilion~~

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and Theater at Capistrano Valley High School as well as security cameras at School Facilities described in the Formation Proceedings and CFD No. 87-1 Mitigation Agreement

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The provisions hereof notwithstanding, the Special Taxes of CFD No. 87-1 levied on or before September 1, 2016 that are unpaid as delinquent Special Taxes shall be payable by all applicable taxable property within CFD No. 87-1.

Section 3.0 Notice of Cessation. Upon the successful defeasance of the outstanding 2006 Bonds on September 1, 2016, the Legislative Body of CFD No. 87-1 shall direct the Superintendent of CUSD or designee except as otherwise herein provided to execute and record a Notice of Cessation of Future Special Tax against all parcels within the boundaries of CFD No. 87-1 on or before October 1, 2016. Nothing in this provision shall apply to parcels that are unpaid or delinquent regarding the Special Taxes of CFD No. 87-1.

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Section 4.0 Modification or Rescission. Any modification or ~~rescission~~ hereof shall be subject to the favorable two-thirds vote of the registered voters of CFD No. 87-1.

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Section 5.0 Successors. All of the covenants, stipulations, and promises contained in this Agreement by or on behalf of, or for the benefit of, either of the parties hereto, shall bind or inure to the benefit of the successors of the respective parties.

Section 6.0 Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions thereof shall not in any way be affected or impaired thereby.

Section 7.0 Enforceability. Any owner of a parcel within the boundaries of CFD No. 87-1, subject to the special tax lien at the time of this Agreement, as discussed herein, shall have the right to enforce this Agreement against the signed parties to this Agreement.

Section 8.0 Indemnification. CFD No. 87-1 hereby indemnifies CUSD for any and all claims, expenses, and costs derived from or related to the CFD No. 87-1 Mitigation Agreement Formation Proceedings, the provisions of this Agreement and any other matters related to CFD

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No. 87-1 as to which all the hereinabove specified obligations are subordinate.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CAPISTRANO UNIFIED SCHOOL DISTRICT

By: _____
President of the Board of Trustees of the
Capistrano Unified School District

By: _____
Clerk of the Board of Trustees of the
Capistrano Unified School District

COMMUNITY FACILITIES DISTRICT NO. 87-1
OF THE CAPISTRANO UNIFIED SCHOOL
DISTRICT

By: _____
President of the Board of Trustees of the
Capistrano Unified School District, acting as
the Legislative Body of CFD No. 87-1

By: _____
Clerk of the Board of Trustees of the
Capistrano Unified School District, acting as
the Legislative Body of CFD No. 87-1

Approved as to form:

By: _____
Bowie, Arneson, Wiles & Giannone,
Counsel to Capistrano Unified School
District and Community Facilities
District No. 87-1 of the Capistrano
Unified School District

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