
MENTONE MATTERS

Published When We Have News

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MENTONE SUES REDLANDS!

At the Redlands City council meeting, Tuesday evening, March 5, Raul Madrid, who has been trying to develop property in Mentone for several years, gave a 3 ½ minute speech and handed a copy of the lawsuit, titled “C.O.M.E.T. v. City of Redlands,” etc., to the City Clerk. The text of Madrid’s prepared speech reads:

“Hello, Mayor, City Council. During the last City Council meeting, Council considered a pre-annexation agreement so the Dollar General store planned in Mentone could receive City water. The City Attorney made comments regarding measure U and the necessity of the pre- annexation agreements. I want to clarify for the record how Measure U and the pre- annexation agreements effect Mentone property owners.

“In 1987 pursuant to State assembly Bill AB 1600, known as the Mitigation fee act, cities and municipalities were allowed to adopt and assess on new development, impact fees to fund for city facilities and infrastructure. These fees were to be adopted thru a set procedure stated in the act. The act was clear to restrict cities and municipalities to imposing the new development impact fees, only on developments that lie within their own jurisdiction.

“Since then Redlands has adopted impact fees for transportation, police facilities, fire protection, parks, community centers, libraries, general government and has properly assessed them to projects within city limits.

“In the mid 1990's the city of Redlands contacted an Orange county Law firm to look into ways the city could assess their developer impact fees to projects located outside, city limits in adjacent Mentone and county areas. The law firm created an initiative called ‘establishing principles of managed development’. The document contained provisions requiring nearby Mentone property owners who desire to hook up to city water to sign pre annexation agreements, and agree that in addition to paying a water connection fee, they pay fees for other city infrastructure although they are located outside city limits. That document, is known as measure U and was adopted and made effective in December 1997.

“In summary: when the Mentone property owner applies for a water connection to the city of Redlands, they are told they must sign a pre annexation agreement which strips them of the right to vote in the annexation process. They are also told they must pay fees for other facilities In addition to the water connection fee. The applicant is told if they do not comply and pay the extra fees and sign the pre annexation agreement they will be denied water service.

“California Penal Code states in part, instilling fear upon one to promote some monetary gain is extortion. Civil extortion is exactly what the city of Redlands does to the nearby Mentone property owner applying for water service. The assessment of these unlawful fees amounts to an overreach by Redlands government and are unlawful per the California government code. Redlands’ assessment of these unlawful development fees exist today because nobody has challenged them or pursued any judicial action to overturn them. You have given us no choice: consider yourself served on behalf of Mentone. Thank you.”

The Statement of Facts in the seven-count Complaint (initial document in the lawsuit), which was filed last week, gives the history of how Redlands has been forcibly taking Mentone territory into its city limits in exchange for water and – where available – sewer service to new developments since at least since 1997, when Redlands enacted its Measure U, which became part of the City’s General Plan and Municipal Code. Measure U requires annexation or “pre-annexation” into its city limits if a developer wants water and sewer service, which has been eroding Mentone’s borders for many years, with the assistance of a local or two. The Complaint charges Redlands with civil extortion, and seeks a court order prohibiting Redlands from continuing to force annexation to it in exchange for water and sewer and to nullify all previous such “agreements,” returning the areas to Mentone territory.

As further alleged in the Complaint, Redlands also charges developers for fire, police, library and other services it doesn’t provide but which are provided by the County. Additionally, it requires developers to reimburse it for legal fees and costs incurred in a lawsuit, *even if that lawsuit is instituted by a third party – over whom the signer has no control.*

The Complaint also details that Redlands charges other fees, such as for “traffic” studies for leaving and entering on the State Highway (see the 2009 list of fees charged to Tom’s Burgers in the August 2018 issue), and fees for necessary improvements that are in excess of the actual estimated costs. Other allegations include that it does not require Environmental Impact Reports when agricultural land is converted to residences or hazardous waste exists on developments, as in the recent Wabash annexation which contained leaky underground fuel storage tanks (see MM’s September issue II), among other allegations contained in the Complaint’s paragraph 17 below. (Please see “*LAWSUIT*”, p. 2)

OP-ED

MM has waited a long time to publish this headline story: 1 1/2 years. We know it's late - other papers have already reported it - but computer problems prevented it from going out until today. The Daily Facts reported on March 7 that Mayor Foster had stated on February 19 that Redlands had no plans to take over Mentone in the foreseeable future, perhaps raising the question "then why are we doing this?"; however, that article omitted to mention that, immediately after his comment, the City Council voted to approve the very Annexation "Agreement" that is attached to the Complaint. When asked about the "need" for the annexation "agreement," the City Attorney's statement was basically that "we're doing this because we voted to do it," and - inexplicably - "otherwise Mentone would get a free ride." Moreover, this paper gives interested readers the actual allegations contained in the Complaint and attaches the latest actual "agreement" in its last pages so readers can see for themselves all of what Redlands demands.

The City has 30 days to answer the complaint or file other documents challenging the lawsuit. In the past it has hired many high-powered and expensive lawyers – seemingly everyone who is anyone from here to and including the San Fernando Valley and Orange County – so we can expect Redlands to employ any and all kinds of tactics. However, *Mentone is in it for the duration.*

The many "Whereas" paragraphs in the infamous "Agreement" contain legislature-enacted code sections which, however, do not give it the authority to violate the law against extortion. What attorney would draft such a document as Measure U, advising the violation of law? Extortion is like "Criminal Law 101" second or third year in law school, depending on where you go. Or maybe MM is missing something somewhere. Of course, we will keep you posted as to the case's progress.

As always, if you know someone who doesn't receive Mentone Matters, please ask them to send their e-mail address to mentonematters@aol.com. When the website is up and running, soon, it appears, everyone in the world will be able to read Mentone's news but, until then, we are limited to this e-mail newspaper. MM

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"LAWSUIT" (Cont'd)

All of Redlands' demanded fees are passed along to the subsequent buyers of the development, raising housing prices and impeding commercial development, the suit charges. The lawsuit also seeks a court order that Redlands only charge the actual cost of improvements and require Environmental Impact Reports in appropriate situations, such as when agricultural land is converted to residential.

MM recently met with a developer of part of the vacant lot on the corner of Crafton and the Boulevard; he plans to build a Western-style carwash and gas station. His project may or may not be within the 200-foot distance (excluding the Boulevard and Crafton roads) from the Boulder Creek residential section on Crafton; that distance would be considered "contiguous," or next-door, as legally required for full annexation now. That is, if Boulder Creek and the carwash/gas station were "contiguous," it would put at least some part – if not all - of Mentone's "downtown" into Redlands city limits. The other neighborhoods would then follow by the same tactics.

The Dollar General store is planned for just west of the Dodge House on the Boulevard between Crafton and Agate. There are four parcels in that vacant area, each consisting of several lots. Although the annexation "Agreement" was signed by the seller, Mayer Bassirat, the County gave the Dollar General parcel a new Assessor's Parcel Number so Redlands decided that the purchasers of the parcels needed to sign a new annexation "Agreement." As of the February 19, 2019 City Council meeting, the Dollar General developer apparently had not signed the "Agreement."

The lawsuit seeks the Court's order that it nullify all "Agreements" that have been previously signed.

For those who are interested, the full history in the Complaint's Statement of Facts reads as follows (after identification of the parties):

"7. Over the years, Redlands purchased all of the water companies located in Mentone; additionally, it diverts Mill Creek and the Santa Ana River water a mile above Mentone's former diversion point. Thus, Mentone is dependent on Redlands for all of its potable water; its remaining agricultural land receives only non-potable water from the Bear Valley Water District.

"8. Redlands' water department is not governed by the California Public Utilities Commission; Plaintiff has no recourse other than to this Court in order to protect their rights set forth herein below.

Demanded Annexations in Exchange for Water and Sewer

"9. In or about the 1970s, LAFCO placed Mentone in Redlands' "sphere of influence," pursuant to state statute.

"10. At all times, Redlands had provided the requested water service outside its city limits, with the only requirement that recipients pay for the water and sewer service. However, in November 1997 Redlands' voters enacted its Measure U, effective in December 1997 (hereinafter 'Measure U') incorporated into its general plan, which reads, in pertinent part, as follows: '1A.20 PRINCIPLE TWO - . . . (a) Development Agreements- All development agreements entered into by the City and developers pursuant to California Government Code sections 65864 et seq. after the Effective Date of this initiative measure as defined in Section 3 hereof, shall conform to the policies contained in The City General Plan. (b) Extension of Public Utilities Outside the City Limits- No extension of City-provided utility services to areas outside the City limits shall occur until such areas are properly annexed to the City, except that utility services may be extended to areas outside the City limits without prior annexation if all of the following conditions are met: '1. The area to be served is not contiguous to the City of Redlands; and, '2. The City and the land owner have entered into a properly recorded and binding pre-annexation agreement establishing covenants running with the land that assure full compliance with all development standards of the City of Redlands, payment of all capital improvement and other development fees

which would be applicable to the property if it were within the City limits at the time of extension of such services, and immediate processing of annexation to the City at the City's request. . . .” [Emphasis is added.]

“11. Thus, without the developer’s written ‘agreement’ to said annexation or pre-annexation, (hereinafter ‘Agreement,’ a copy of which is attached hereto as Ex. A), Redlands will not provide those services to Mentone; its demand violates California Penal Code §§ 518, et seq., and case law thereon; and is exactly opposite of the Legislature’s intent in enacting Government Code section 65864, invoked in said ‘Agreement.’

“12. California’s Government Code § 56133(b) provides for annexation in anticipation of a later change of organization. However, annexation is not automatic; nor is it required by other any law. Indeed, Plaintiff should have other options: detach from Redlands’ Sphere of Influence through LAFCO, then incorporate as a city; form their own special water district; or dig a well. Plaintiff does not presently possess any of these capabilities.

“13. In contrast to Redlands’ Measure U demand, annexation elsewhere is usually requested by the property owner, not demanded by the providing city.

“14. Plaintiff is informed and thereupon allege that they legally possess the right to vote whether or not they wish their property to be included within Redlands’ city limits. Redlands bypasses Mentone’s options and rights by demanding such ‘Agreements’ without Plaintiff’s vote and over plaintiff’s objections and its ‘Agreement’ provides that said annexation is binding on ‘any and all successors in interest, assigns, heirs and executors.’

“15. Plaintiff is informed and believe and thereupon alleges that Redlands’ demanded annexations or pre-annexations has created islands of less than 150 acres, a process known as ‘piecemealing,’ which it intends to use forcibly to annex Mentone to itself; Plaintiff would have no votes against such process.

“16. Thus, Redlands’ extortionate demand to annex Mentone is also a taking, in violation of the U.S. Constitution and Article XI, §7 of the California Constitution, under economic duress.

“17. Additionally, the ‘Agreement,’ provides that - even if the property is not yet located within the City limits and may never be so located: a) the property must be developed in accordance with Redlands’ General Plan and the development standards of its Municipal Code, which may or may not approve the ‘Western’ style favored by Mentonites; b) if the developer challenges this ‘agreement’ the City will cease to provide water and sewer services; c) the developer must hold the City harmless for any and damages arising out of the development, even if the City supplied the plans; d) if any third party, challenges the ‘Agreement’s’ Redlands’ [extortionate] demands, based on Measure U, a signatory thereof will indemnify Redlands from any and all lawsuits, etc.; e) a waiver of any claims pursuant to Civil Code §1542; f) said ‘agreement’ is binding on all successors in interest, assigns, heirs and executors, even though they may not wish the property to be in Redlands’ city limits; g) any ambiguities not be resolved against the drafter of the agreement; and h) the City’s attorney fees include in-house counsel fees, which is otherwise unsupported by California case law.

“18. Plaintiff is informed and believes that all of Redlands’ said acts have impeded Mentone’s commercial and other progress, raised its housing costs as well as depriving it of territory and potential revenue, should it incorporate.

“19. All of Redlands’ said Agreements and other acts have been ratified by LAFCO.

“20. Plaintiff needs this Court’s order preliminarily and permanently enjoining Redlands from further requiring and/or enforcing said ‘Agreements,’ or any other such demands, and also enjoining any of LAFCO’s further approval of said provisions.

“21. Redlands now surrounds Mentone on 3.5 sides. Redlands City officials have publicly stated their intention to take over Mentone, which wishes to remain outside Redlands’ city limits and possibly incorporate as a city; however, in order to do so it is required to be detached from Redlands’ sphere of influence. Plaintiff is informed and believes and thereon alleges that Redlands would not agree to, nor cooperate with, detachment of Mentone from its sphere of influence. Thus, plaintiff needs this Court’s order so detaching it.

“22. In 1959, Redlands annexed the northernmost part of Mentone’s territory, beginning at its westerly point at Wabash, eastward through the Santa Ana Riverbed and Mill Creek to a point just west of Bryant in Yucaipa (hereinafter ‘the Strip’), under questionable circumstances such that Redlands now surrounds Mentone on 3 ½ sides. The Court is requested to order Redlands to provide any and all authority for, and records of, said annexation.

“23. Plaintiff also requests an order of this Court returning to Mentone territory any and all properties taken from it by Redlands, beginning in 1959, by any means and at any time.

REDLANDS’ “DEVELOPMENT IMPACT FEES”

“24. Redlands demands payment of ‘development impact fees,’ e.g. for its police, fire and library service before it will provide water or sewer service; however, according to its own General Plan and Municipal Codes, Redlands does not provide said services, which are actually are provided by San Bernardino County, thus subjecting Mentone to double fees. Further, said fees are passed along to future homeowners, thus raising the cost of housing in Mentone.

“25. Government Code § 66001 provides that ‘(a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency, the local agency shall do all of the following: (1) Identify the purpose of the fee. (2) the use to which the fee is to be put. . . (3) Determine how there is a reasonable relationship between the fee’s use and the type of development project on which the fee is imposed.’ Redlands’ fees violate this section.

“26. Thus, this Court is requested to issue a preliminary and permanent injunction against any further requirement of payment of fees for services that Redlands does not provide, as further set forth in § 66001.

“27. Further, Plaintiff is informed and believes and thereupon alleges that Redlands’ other development fees greatly exceed the actual costs and impacts to Redlands, in violation of the Mitigation Fee Act, Government Code § 66000, et seq., particularly §66013.

“28. Government Code § 66001(d) further provides: ‘ (1) For the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the local agency shall make all of the following findings with respect to

that portion of the account or fund remaining unexpended, whether committed or uncommitted: (A) Identify the purpose to which the fee is to be put. (B) Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.’

“29. The Court is further requested to order that any development impact fees Redlands further imposes must constitute the estimated reasonable cost of providing the service for which the fee or charge is imposed and further that Redlands demonstrate the reasonable relationship for each development in Mentone territory since its 1997 enactment of Measure U and account for all fees demanded and collected in said violation of the Mitigation Fee Act, and based thereon to order a refund of all such fees collected.

“30. Plaintiff is further informed and believes and thereupon alleges that Redlands has treated developers disparately, in the amounts it has required of different developers for the same fees, for its own purposes and for no demonstrable need, further impeding Mentone’s commercial and other development, raising the cost of housing in Mentone and depriving it of revenue should it incorporate. CEQA Violations

“31. LAFCO was formed ‘to encourage “ ‘planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space [and agricultural] lands within those patterns’ [citation], and to discourage urban sprawl” ’: Community Water Coalition v. Santa Cruz County Local Agency Formation Comm., 200 Cal. App. 4th 1317, 1133-1134. (6th App. Dist. 2011). Much of Mentone was agricultural but now is developed into residential neighborhoods and other developments and forcibly included in Redlands’ residential urban sprawl, in violation of the Legislature’s intent. Said developments were approved by LAFCO.

“32. Additionally, plaintiff is informed and believes and thereupon alleges that the required amount of similar land is purchased in other Counties, in further violation of the spirit and intent of the law to preserve San Bernardino County land from urban sprawl.

“33. Finally, Redlands fails and refuses to prepare or require Environmental Impact Reports (EIRs) for Mentone’s agricultural land converted to residential or commercial use; instead Redlands submits ‘Mitigated Negative Declarations,’ (‘MNDs’), which do not satisfy its legal responsibilities. In particular, it does not require, nor provide any details of, the cleaning up of hazardous waste sites; instead, more than one of the sites which have been annexed to Redlands were located adjacent to a schools, residences and a water supply, in violation of law and its own general plan, at least one of which was required to clean up the hazardous waste and pay a fine. Nor do such MNDs address this County’s considerable loss of agricultural land.

“34. Over residents’ objections, LAFCO has endorsed, and will continue to endorse, such MNDs.

“35. Plaintiff is informed and believes and thereupon alleges that Redlands and LAFCO will continue to approve such projects without a proper EIR, unless and until enjoined by this Court.”

The Complaint concludes with the details of the seven causes of action and a “prayer,” listing C.O.M.E.T’s requests for Court relief.

LOCAL ORGANIZATIONS:

MACA: Tuesday, March 12 at 6:30: Mill Creek Restaurant (in the Diamond Jim’s Saloon)

C.O.M.E.T./Chamber of Commerce: Last Tuesday of the month, Rocky Point Church fellowship hall, 2116 Mentone Blvd., at 7 p.m. **EVERYONE IS ELIGIBLE: INDIVIDUALS AND BUSINESSES ARE INVITED TO JOIN.** Dues are \$25/year.

OTHER LOCAL ORGANIZATIONS*: (Religious organizations meet on Sundays unless otherwise noted)

Rocky Point Fellowship
2116 Mentone Blvd.,
Mentone, 92359

Avodah Fellowship
(Friday nights)
Rocky Point Fellowship (in the fellowship hall)
2116 Mentone Blvd., Mentone, 92359

Faith Chapel
1259 Agate Ave.,
Mentone, CA 909-863-8145

Seventh-Day Adventist Church of Mentone
(English and Spanish)
(Saturdays 8:30 and 11:00 a.m.)
1230 Olivine Ave., Mentone
Mentone, CA 909-799-3521
Mentonechurch.org

Mentone Indonesian-American SDA Church
(Saturdays)
1331 Turquoise Ave.,
Mentone, CA 909-799-3521

New Life Christian Women’s Luncheon
Mill Creek Cattle Co.,
1st Thursday of the month

AA/NA
Rocky Point Fellowship,
2116 Mentone Blvd.,
Mentone, 92359,
Tuesdays

Republican Committee Tea Party,
Mill Creek Cattle Company,
1874 Mentone Blvd., Mentone,
1st Wednesday of the month, 10 AM - 2 PM

*Organizations that aren’t listed here are welcome to contact mentonematters@aol.com to have their information included.

*Please scroll down for the scanned-in copy of the annexation “agreement” forced on property developers. MM is sorry about the line; it’s not in the original and we don’t know where it came from. If this software allowed it, MM would detail all of the problematic paragraphs developers are **required** to “agree” to.*

Recording requested by
and when recorded mail to:

City Clerk
City of Redlands
P.O. Box 3005
Redlands, CA 92373

**AGREEMENT FOR ANNEXATION AND PROVISION
FOR CITY UTILITY SERVICES**

This Agreement for Annexation and Provision of City Utility Services ("Agreement") is made and entered into this 19th day of February, 2019, by and between the City of Redlands, a municipal corporation organized and existing under the laws of the State of California ("City") and CD DG Mentone, LLC ("Property Owner"). The City and Property Owner are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

RECITALS

WHEREAS, to provide for orderly planning, the City (1) has the authority pursuant to Government Code sections 65300 and 65301 to include in its General Plan property outside its boundaries which is in the City's sphere of influence or, which in the City's judgment, bears a relation to its strategic planning, and (2) also has the authority pursuant to Government Code section 65859 to pre-zone property within its sphere of influence for the purpose of determining the zoning designation that will apply to such property in the event of a subsequent annexation of the property to the City; and

WHEREAS, Property Owner owns a vacant parcel of land located on the south side of Mentone Boulevard, approximately 300 feet east of Agate Avenue and approximately 655 feet west of Crafton Avenue, and currently identified as County of San Bernardino Assessor's Parcel Number 0298-411-96-0000 (the "Property"), and formerly identified by Assessor's Parcel Number 0298-411-95-0000, in the unincorporated area of the County of San Bernardino within the City's sphere of Influence, and has provided evidence satisfactory to the City that Property Owner is the fee owner of the Property; and

WHEREAS, Property Owner desires to connect to the City's domestic water system to develop one retail store on the Property; and

WHEREAS, Government Code section 56133 authorizes the City to provide new or extended services by contract outside its jurisdictional boundaries if it first receives written approval from the Local Agency Formation Commission for San Bernardino County ("LAFCO"), and provides that LAFCO may authorize the City to provide such services within the City's sphere of influence in anticipation of a later change of organization; and

WHEREAS, the City's General Plan and Chapter 13.62 of the Redlands Municipal Code establish policies and procedures for the approval of City utility services to land located within the City's sphere of influence and require, among other things, the owner of the property to be served

to enter into an agreement and record the same in the official records of the county of San Bernardino requiring the owner to annex the land to the City upon certain conditions; and

WHEREAS, the City has prepared a General Plan for the unincorporated area in which the Property is located to provide for the orderly planning of such area and has determined that the Property is consistent with the goals and policies of the City's General Plan; and

WHEREAS, it is the policy and goal of the City to discourage and not facilitate development in the City's sphere of influence which is unwilling and/or fails to comply with the City's General Plan and the City's development standards by refusing to extend utility services in such instances; and

WHEREAS, pursuant to the requirements of Chapter 13.62 of the Redlands Municipal Code and in consideration for the City's agreement to extend utility services outside its jurisdictional boundaries to the Property, Property Owner has entered into this Agreement to provide assurances to the City that connection to the City of Redlands domestic water system will occur in accordance with the Redlands General Plan and the Development Standards of the Redlands Municipal Code, and that the Property shall be annexed to the City in accordance with this Agreement's terms, provisions and conditions;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the City of Redlands and the CD DG Mentone, LLC, agree as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct.
2. **Provision of Utility Services.** The City agrees to provide domestic water service to the Property consistent with the terms and conditions of this Agreement, provided that the connection complies with all rules and regulations of the City governing the extension and provision of utility services to properties located outside the City's boundaries at the time a request by the Property Owner for application for a water connection is approved by the City's Municipal Utilities and Engineering Department. Nothing herein represents a commitment by the City to provide such service unless and until Property Owner complies with all such rules and regulations. As a condition of approval of an application for water connection, and prior to receiving any service, the Property Owner agrees to pay the full cost of such service as established by the City for the extension of utility services to the Property.
3. **Agreement to Develop by City Standards.** In consideration of the City's agreement to provide City water service to the Property, Property Owner shall develop the Property in accordance with the Redlands General Plan and any applicable development standards of the Redlands Municipal Code.
4. **Agreement to Annex.** In consideration of the City's agreement to provide City water service to the Property, Property Owner hereby irrevocably consents to annexation of the Property to City and agrees it shall take any and all reasonable and necessary actions, and fully and in good faith cooperate with City, to cause the annexation of the Property to the City. Property

Owner and the City agree that in the event City initiates an annexation of the Property, the City shall be responsible for the costs of such annexation. In all other instances where the annexation of the Property is proposed to the City, Property Owner shall be responsible for such costs.

5. Taxes and Assessments. Property Owner hereby consents to the imposition of, and agrees that the Property Owner shall pay, all taxes and assessments imposed and/or levied by the City which may be applicable to the Property at the time the Property is annexed to the City.

6. Recordation. By entering into this Agreement, Property Owner and the City acknowledge and agree that, among other things, it is the express intention of the Parties that any and all successors in interest, assigns, heirs and executors of Property Owner shall have actual and constructive notice of Property Owner's obligations under, and the benefits and burdens of, this Agreement. Therefore, this Agreement and any amendments hereof, shall be recorded in the official records of the County of San Bernardino. Property Owner further agrees that the City shall, at the sole cost of Property Owner, have the right to cause the recordation of this Agreement.

7. Breach/Failure to Annex In the event Property Owner fails to comply with its obligations under this Agreement or takes any action to protest, challenge, contravene or otherwise breach any of its obligations or representations under this Agreement, the City shall have the right to, without any liability whatsoever, cease the provision of City utility services to the Property. This right shall be in addition to any other legal or equitable relief available to the City.

8. Not a Partnership. The Parties specifically acknowledge that Property Owner's development of the Property is a private project, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint-venture or other association of any kind is formed by this Agreement. The only relationship between the City and Property Owner is that of a governmental entity regulating the development of private property and the owner of such property.

9. Indemnity and Cost of Litigation.

a. Hold Harmless - Development. Property Owner agrees to and shall hold the City, and its elected and appointed officials, officers, agents and employees free and harmless from any and all liability for damage or claims for damage for personal injury, including death, and claims for property damage which may arise from the operations, errors, or omissions of Property Owner or those of its contractors, subcontractors, agents, employees or any other persons acting on Property Owner's behalf which relate to development of the Property. Property Owner agrees to and shall defend, indemnify and hold harmless the City, its elected officials, officers, agents, employees and representatives from all actions for damages caused or alleged to have been caused by reason of Property Owner's acts, errors or omissions in connection with the development of the Property. This hold harmless agreement applies to all damages and claims for damages suffered or alleged to have been suffered by reason of Property Owner's or its representatives' acts, errors or omissions regardless of whether or not the City supplied, prepared or approved plans or specifications relating to the development of the Property and regardless of whether or not any insurance policies of Property Owner relating to such development are applicable.

b. Third Party Litigation Concerning Agreement. Property Owner shall

defend, at its expense, including attorneys' fees, indemnify and hold harmless the City, and its elected and appointed officials, officers, agents and employees from any claim, action or proceeding against any of them to attack, set aside, void or annul the approval of this Agreement or the approval of any permit or entitlement granted in furtherance of this Agreement. The City may, in its sole discretion, participate in the defense of any such claim, action or proceeding.

10. Liquidated Damages In the event that the property is not annexed to the City in accordance with the terms of the Agreement, the owner of the Property shall pay each year to the City, as liquidated damages, a sum equal to the property taxes and any sales taxes the City would have received had the Property been annexed. Failure to make such liquidated damages payments shall be cause for the City to cease water and/or sewer service to the Property.

11. Section Headings All section headings and sub-headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

12. Governing Law This Agreement and any dispute arising hereunder shall be governed by and construed in accordance with the laws of the State of California.

13. Attorneys' Fees In the event any action is commenced to enforce or interpret the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees.

14. Binding Effect The burdens of this Agreement bind and the benefits of this Agreement inure to the successors in interest of the Parties.

15. Authority to Execute The person or persons executing this Agreement warrant and represent that they have the authority to execute this Agreement on behalf of the legal, fee title owner of the Property.

16. Waiver and Release Property Owner hereby waives and releases any and all claims it may have against the City, and its elected and appointed officials, officers, employees and agents with respect to any City actions or omissions relating to the development of the Property and Property Owner's and the City's entry into and execution of this Agreement. Property Owner makes such waiver and release with full knowledge of Civil Code Section 1542, and hereby waives any and all rights thereunder to the extent of this waiver and release, of such Section 1542 is applicable. Civil Code Section 1542 provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

19. Construction The Parties agree that each Party and its counsel have reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement. The Parties further agree that this Agreement represents an "arms-length" transaction agreed to by and between the Parties and that each Party has had the opportunity to consult with legal counsel regarding the terms, conditions and effect of this Agreement.

20. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the Parties as to the matters contained herein, and there are no oral or written representations, understandings or ancillary covenants or agreements which are not contained or expressly referenced herein, and no testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

PROPERTY OWNER:

[Redacted Signature]
[Redacted Name]
Date: _____

CITY OF REDLANDS:

Paul W. Foster, Mayor
Date: _____

ATTEST:

Jeanne Donaldson, City Clerk
Date: _____