

BEST, BEST & KRIEGER

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

LAWYERS

400 MISSION SQUARE

3750 UNIVERSITY AVENUE

POST OFFICE BOX 1028

RIVERSIDE, CALIFORNIA 92502

TELEPHONE (714) 686-1450

TELECOPIER (714) 686-3083

PALM SPRINGS
(619) 325-7264

RANCHO MIRAGE
(619) 668-2611

ONTARIO
(714) 969-8584

September 7, 1989

HAND DELIVERED

Valery Pilmer
Deputy Planning Officer
San Bernardino County Land
Management Department-EPWA
385 North Arrowhead Avenue
San Bernardino, CA 92415-0181

Re: County of San Bernardino Tract No. 12777

Dear Ms. Pilmer:

As you are aware, on June 7, 1989, the City of Redlands sent a letter to the County stating that the County should not rely on the City's February 6, 1989 letter in making a determination on whether City water or sewer service would be available to Tract 12777, or whether Redlands would have the capacity to serve the tract. As noted in the June 7th letter, the owner/developer of the tract had not submitted to the City any calculations on whether the tract satisfied the "slope-density" requirements of the City's voter-approved initiative Measure "N," or its implementing ordinances and resolutions. Since the date of that letter, because of factors unique to this tract and the timing of and manner in which the request for utility services was made, the City entered into an agreement with the owner/developer which now allows the City to advise the County as follows:

Valery Pilmer
September 7, 1989
Page Two

1. The County may disregard the City's February 6, 1989 and June 7, 1989 letters as to whether the City has capacity to serve Tract No. 12777 or whether water or sewer service will be available for the tract when needed.

2. By this letter, the City is hereby informing the County that it now has the capacity to serve water and sewer service to Tract No. 12777.

3. The provision of service to Tract No. 12777 is expressly conditioned upon the owner/developer's compliance with the terms and conditions of the agreement between the owner/developer and the City dated August 31, 1989. A copy of that agreement is enclosed for your review.

4. Provided the terms and conditions of the enclosed agreement are complied with, the City of Redlands will not review Tract 12777 to determine the tract's compliance with the "slope-density" requirements of Measure "N," nor will it review individual applications for water and sewer allocations for any of the lots of Tract 12777 for compliance with the "slope-density" requirements of Measure "N."

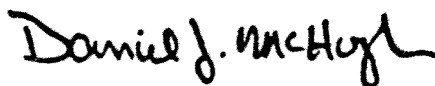
The City emphasizes that it has not changed any of its rules or regulations regarding the provision of utility services to development projects located within the County, or the requirement that such projects comply with the City's general plan and its

Valery Pilmer
September 7, 1989
Page Three

voter-approved initiatives, Measure "N" and Proposition "R." Further, the County should not rely on this letter in making a determination on whether City water or sewer service will be available for any other development project proposed within the County. Before conditioning a development project on receiving water or sewer service from the City, the County, at the earliest date possible, should require the developer to contact the City's planning and utility departments to ensure that the developer is made aware of all conditions of the City for receiving such service.

If you have any questions about this letter or the City's position on the provision of utility services to development projects located within the County, please feel free to telephone the undersigned.

Very truly yours,



Daniel J. McHugh
for Best, Best & Krieger
City Attorneys for the
City of Redlands

DJM/ph
Enclosure

cc: John E. Holmes, City Manager
Gary Phelps, Utilities Engineer

COMPROMISE AGREEMENT

This Compromise Agreement (this "Agreement") is entered into effective August 31, 1989 by and between S. R. Venture, a joint venture ("Developer"), and the City of Redlands, California (the "City") with reference to the following facts:

RECITALS

A. Developer is the owner of Tentative Tract Number 12777 ("Tract 12777"), which is located in the County of San Bernardino ("the County") adjacent to the City. For several years, Developer has sought the approval of the County for the development of Tract 12777, and in particular has sought the approval of the County for the recording of a final tract map.

B. Tract 12777 is located within the "sphere of influence" of the City, and in 1988, the City requested that the County approve Tract 12777 subject to said tract being served by water and sewer from the City. In response, the County made such water and sewer service a condition of the approval of the final tract map for Tract 12777.

C. Disputes have arisen between Developer and the City regarding the provision of water and sewer services to Tract 12777. In the disputes, (hereafter collectively called "the Disputes") the parties contend, or may contend, as follows:

1. Developer contends:

- (a) that the ballot measure enacted on November 3, 1987, known as "Measure N" ("Measure "N") does not apply to Tract 12777, and in particular, the provision added as a new Section 11 to Proposition "R", commonly referred to as the "slope\density requirement", does not apply to Tract 12777;
- (b) that the provisions of City Resolution Number 4352 ("Resolution 4352") to the extent that they apply to Tract 12777, do not apply the "slope\density requirement" to Tract 12777;
- (c) that Tract 12777 is in compliance with all provisions of Resolution 4352;
- (d) that by its conduct, including, but not limited to, the issuance of 30 provisional allocations to Tract 12777, the issuance of a capacity letter dated February 6, 1989 and the issuance of a letter to the County confirming that water and sewer bonding requirements have been met, the City is estopped from now asserting that Measure "N" applies to Tract 12777, and in particular from asserting that the "slope/density" provisions of Measure "N" apply to Tract 12777;
- (e) that Developer reasonably relied upon the conduct of the City, including the above described conduct, in incurring substantial and irrevocable financial expenses which, if Tract 12777 is compelled to comply with the "slope/density" requirements of Measure "N")

will cause damages impossible to accurately calculate, but which Developer estimates to be in the millions of dollars;

(f) that the City acted improperly when it notified the County on June 7, 1989 that the County could no longer rely upon the capacity letter of February 6, 1989.

(g) that Tract 12777 has been approved by the County and such approval does not require provision for equestrian trails;

(h) that Tract 12777 does not create a drainage problem to downstream properties for which Developer is responsible; and

(i) that Developer has exhausted its administrative remedies.

2. City contends:

(a) that Section 6 of Measure "N" requires that any development outside the City's boundaries and within its sphere of influence comply with the City's general plan and plan for development for the sphere of influence as a condition of and prior to receiving any extension of utility service from the City;

(b) that the City's ordinances and resolutions implementing Measure "N" require the owners/developer of Tract No. 12777 to

submit a "slope-density" calculation as a condition of obtaining water and sewer service from the City;

(c) that through the reasonable exercise of its police powers, the City has the authority to refuse to extend utility service outside its boundaries to carry out the purposes and goals of its general plan;

(d) that the letter dated February 6, 1989, to the County of San Bernardino expressly states that the City makes no commitment to provide water or sewer service to Tract No. 12777;

(e) that the letter dated June 7, 1989, to the County reaffirmed the lack of commitment by the City to provide water or sewer service to Tract No. 12777 and that the letter properly notified the County of the owners/developer's failure to comply with the City's conditions for obtaining water or sewer service;

(f) that the owners/developer of Tract No. 12777 acted unreasonably and to its own detriment by incurring financial expenses in developing Tract No. 12777 with knowledge that the tract might not receive water or sewer

service from the City;

(g) the owners/developer of Tract No. 12777 failed to exhaust its administrative remedies by pursuing a revision to the conditions of its map relating to water and sewer service;

(h) that the City's conduct has been reasonable, in accordance with law, and that it has done nothing to result in an estoppel;

(i) that approval of the County notwithstanding, the owners/developer of Tract No. 12777 is required to provide for equestrian trails as Tract No. 12777 is in the sphere of influence of the City and the City's general plan requires such trails; and

(j) that the development of Tract No. 12777 poses a threat to the public health, safety and welfare in that, if the final map for Tract No. 12777 is allowed to record and its lots thereafter are sold and approved, the resulting surface drainage will exceed the existing capacity of City's drainage system and result in property damage and environmental harm to downstream properties.

D. As a result of the June 7, 1989 letter from the City to the County, the County has stopped processing the final map for Tract 12777, and will not permit the final map to be recorded.

Developer has already expended approximately \$750,000 in grading Tract 12777, and has reservations for all of the proposed lots. Developer further contends that if the final map is not recorded, it will not be able to sell the lots, and will lose all profits anticipated, plus will be damaged in the amount of the expenses, including grading, already incurred.

E. As a result of these events and disputes, Developer has notified the City that unless a compromise can be reached, Developer will be compelled to instigate litigation against the City for appropriate extraordinary relief and damages. The parties desire to avoid litigation, and by this Agreement, intend to forever resolve the disputes between them without any admission of liability or responsibility.

NOW, THEREFORE, IT IS AGREED:

1. Incorporation of Recitals. The above Recitals are incorporated by this reference as a part of this Agreement.

2. Agreement to Compromise. Without any admission of liability on their part, Developer and City hereby agree to compromise the disputes between them in consideration for the agreements set forth below.

3. Agreements of the Developer. In consideration for the promises of the City as set forth in this Agreement:

(a) Developer hereby forever waives all claims for damages against the City with respect to the Disputes, including, but not limited to, delay damages, lost profits, lost opportunity costs, consequential damages, exemplary damages,

and/or attorneys fees and costs;

(b) Developer hereby agrees to forever forbear from instituting any action of any type against the City with respect to the Disputes including, but not limited to, civil damage actions, administrative mandamus proceedings, declaratory relief actions and/or administrative proceedings of any type;

(c) effective only upon execution of this Agreement by the City and Developer, Developer admits, and will thereafter continue at all times to admit, that all portions of Measure "N" except that portion adding Section 11 to Measure R apply to Tract 12777.

(d) Developer agrees to modify Tract 12777 to provide such easements for equestrian trails as it deems necessary to meet City and/or County criteria for such trails;

(e) Developer agrees to share with the City the cost of constructing a portion of the City's drainage system in accordance with the City's master plan for storm drains from the termination of Valley View to the commencement of the Ford Street storm drain which shall be adequate to handle the surface drainage from Tract 12777 only, provided:

- (1) the City shall alone bear the costs of a drainage system which exceeds that required for Tract 12777;
- (2) the City shall waive all other storm drain fees applicable to Tract 12777 or its individual lots;

(3) Developer's share of such cost shall be Three Hundred Twenty Thousand Six Hundred Seventy Dollars (\$320,670); Developer shall pay its share of such cost within twenty (20) days of the recordation of the final map for Tract No. 12777.

(f) Developer shall not oppose annexation of Tract 12777 to the City.

4. Agreements of the City. In consideration for the promises of the Developer as set forth herein:

(a) The City shall not require compliance with that portion of Measure "N" adding Section 11 to Proposition R as a condition of any person or entity receiving a water and sewer allocation for all or any portion of Tract No. 12777;

(b) the City agrees to assist Developer in the design of equestrian trails and to process the application for annexation of Tract 12777; and

(c) the City agrees to share equally with Developer the cost of constructing a portion of the City's storm drains in accordance with the City's master plan for storm drains from the termination of Valley View to the commencement of the Ford Street Storm drain which shall be adequate to handle the surface drainage for Tract 12777 and further agrees:

(1) to bear the costs of a drainage system which exceeds that required for Tract 12777; and

(2) to waive all other storm drain fees related to Tract 12777 or its lots; and

(3) that Developers share of the cost is Three Hundred Twenty Thousand Six Hundred Seventy Dollars (\$320,670).

(d) the City shall forever refrain from instituting any administrative or court action against Developer as a result of the Disputes, and to waive any claim for damages and or attorneys fees it may have against the Developer as a result of the Disputes.

(e) to send a written communication to the County, substantially in the form of the attached letter, said letter to be sent to the County not later than September 1, 1989.

(f) in the event a dispute arises between Developer and/or the City and Western Heights Water Company with respect to the provision of water to Tract 12777, and said dispute cannot be reasonably resolved, in Developer's sole discretion, Developer shall be released, at no cost to it, from the City's requirement that it provide water to Tract 12777.

(g) City agrees it shall increase its pool of 'availability of sewer connections' for minor projects under Resolution No. 4352 for the 1990 calendar year from 25 to 87. These 62 additional 'availability' shall be reserved and made available to purchasers of

lots within County of San Bernardino Tract 12777 at the times requested by such purchasers and upon the purchasers' compliance with the City's rules and regulations governing sewer service connections. City shall thereafter continue to reserve and make available to purchasers of lots in Tract 12777 'availability' in such numbers as will ensure that sewer connections are available to the purchasers at times requested by the purchasers.

5. Contingency of Map Recordation. In the event the County fails to approve or refuses to allow recordation of the final map for Tract 12777 for reasons relating solely to the issues of the capacity of the City to provide water and sewer and/or the application of Section 11 of Measure "N" to Tract 12777, this Agreement shall become null and void. Developer and City shall thereafter immediately be released from the terms and conditions of this Agreement and shall be free to pursue any and all legal remedies it may have or may have had, prior to execution of this Agreement, against the City.

6. Release of All Claims. Each party hereto hereby absolutely and forever releases and discharges all other parties hereto and, each of them, from the following:

(a) Any and all claims, demands, damages, debts, liabilities, accountings, obligations, costs, expenses, liens, actions and causes of action, of every kind and nature whatsoever, whether known or unknown, all of which are hereafter

referred to as "Released Matters" which all or any one of them presently own, hold or ever owned or held against each other, or any one of them, related to or by reason of any contract, lien, liability, matter, cause, fact, thing, act or omission occurring or existing at any time prior to and including the date hereof in connection with or in any manner relating to the Disputes; and

(b) All Released Matters which each or any one of them could ever own or hold against the other or any one of them, at any time in the future related to or arising out of the matters, causes, facts, things, acts or omissions alleged in the Disputes.

(c) Without in any way limiting the generality of this release, each party hereto, and each of them, hereby releases and absolutely and forever discharges all other parties hereto, and each of them, and their agents, employees and officers, of and from any and all Released Matters which are or might have been the subject of the Disputes;

7. Release of Unknown Claims. It is the intention of each party hereto in executing this Agreement that this instrument shall be effective as a full and final accord and satisfaction and release of each and every Released Matters described herein. In furtherance of this intention, each party hereto acknowledges that they are familiar with Section 1542 of the Civil Code of the State of California which provides as follows:

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

settlement with the debtor.

Each party hereto waives and relinquishes every right or benefit which they might have or may have under Section 1542 of the Civil Code of the State of California to the full extent they may lawfully waive such right or benefit pertaining to the subject matter of this Agreement. In connection with this waiver and relinquishment, each party acknowledges that they are aware that they may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention hereby fully, finally and forever to settle and release each and ever Released Matters described herein. In furtherance of such intention, the agreements given herein shall be and remain in effect as full and complete general releases with respect to the subject matter of this Agreement, notwithstanding the discovery or existence of any such additional or different facts.

8. Binding on Successors. The agreement contained herein shall release, in addition to each party hereto and each of them, (a) their legal successors, assigns and licensees, (b) each of their respective attorneys, officers, directors, shareholders, agents, and employees; (c) each of their past present and future parent, subsidiary or affiliated entities and their respective attorneys, officers, directors, shareholders, agents and employees; and (d) the heirs, executors, administrators, legal successors and assigns of each of the foregoing set forth in (a)

through (d) hereof.

9. Authority to Execute. Each party hereto hereby warrants and represents to the other, and each of them, that they have the sole right and exclusive authority to execute this Agreement; that no other person or entity has any right whatsoever in connection with any Released Matters; and that they have not heretofore assigned, transferred or purported to assign or transfer to any person whosoever not a party hereto any Released Matters which they have released in this Agreement. Each party hereto will indemnify and hold the others and each of them harmless from and against any claim, demand, damage, debt, liability, accounting, obligation, cost, expense, lien, action or cause of action (including the payment of attorney's fees and costs actually incurred whether or not litigation be commenced) based on, in connection with or arising out of any breach of the aforementioned representations and warranties or any claim of right or assignment or transfer of any Released Matters which they have released in this Agreement.

10. Representation by Counsel. Each party hereto acknowledges and warrants that they have been represented by independent counsel of their own choice throughout all negotiations which preceded the execution of this Agreement. Each party has read or had read to them all of this Agreement and had it explained to them by their attorney. Each party fully understands all of the terms used herein and understands their significance.

11. Entire Agreement. This Agreement constitutes the entire agreement and understanding concerning the subject matter hereto between the parties and supercedes and replaces all prior negotiations, proposed agreements and agreements, whether oral or written. Each of the parties hereto acknowledges that neither any other party, any agent or attorney of any other party, nor any other person whomsoever has made any promise, representation or warranty whatever, express or implied, not contained herein concerning the subject matter hereof to induce them to execute this Agreement, and each of the parties hereto acknowledges and warrants that they are not executing this Agreement in reliance on any promise, representation, or warranty not set forth herein.

12. Governing Law. This Agreement shall in all respects be interpreted, enforced and governed by the laws of the State of California.

13. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be a part of the original. This Agreement shall not be effective for any purpose until signed by all parties hereto.

14. No Amendment or Modification Without Prior Approval. This Agreement may not be amended and/or modified in any manner,

including, but not limited to, unilateral action, oral understanding and/or legislative action without the express written agreement of all parties to this Agreement.

SR VENTURES

By: 
Henry Stickney

By: 
Phillip R. Broderick, as
President of Redlands
Financial Services, Inc.,
a California corporation

CITY OF REDLANDS

By: 
Carole Beswick, Mayor

ATTEST:


City Clerk