

RELEASE OF EXISTING CLAIMS

This Release of Existing Claims is entered into this 22nd day of January, 1991 by and between the City of Redlands, a municipal corporation, (the "City"), and Lantern Bay Associates (the "Developer").

RECITALS

WHEREAS, Developer is the owner and developer of Tract No. 13103, a residential subdivision located within the City; and

WHEREAS, on November 16, 1988, City and Developer entered into a stipulated judgement in Lantern Bay Associates v. City of Redlands, et al (San Bernardino County Superior Court Case No. 24-31-09) which set forth certain rights and duties of the City and Developer with respect to the development of Tract No. 13103; and

WHEREAS, a dispute has arisen between City and Developer with regard to the obligation to pay certain costs associated with the oversizing and replacement of offsite water improvements for Tract 13103 pursuant to the terms of the stipulated judgement;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the City of Redlands and Lantern Bay Associates agree as follows:

AGREEMENT

1. In addition to the monies previously paid by City to Developer, the City shall pay to Developer the sum of \$22,842 as full reimbursement to Developer for all costs incurred by Developer to which it may be entitled under the Stipulated Judgement for Tract No. 13103 for the construction of offsite water system improvements.

2. Lantern Bay Associates, on its behalf and on behalf of its successors and assigns does hereby relieve, release, and forever discharge and remise City and its elected officials, officers and employees from any and all claims, demands, debts, obligations, accounts, liabilities, promises, acts, covenants, costs, expenses (including, without limitation, attorneys' fees), damages, suits, causes of action, and judgements (collectively referred to as "Claims"), of whatever kind or nature, in law, equity or otherwise, whether known or unknown, connected with or related to the subject matter of this Release Agreement.

3. Should any legal action be brought for the purpose of protecting or enforcing its rights under this Release Agreement, the prevailing party shall recover, in addition to all other relief, its attorneys' fees, costs, and reasonable expenses as set by the court.

4. Each party hereto agrees that it will forever refrain and forebear from commencing, instituting or prosecuting a lawsuit, action or other proceeding against any other party hereto based on,

arising out of or in connection with any claims, released and discharged by this settlement agreement.

5. It is expressly understood that Section 1542 of the California Civil Code provides as follows:

"Section 1542. General Release; Extent. A general release does not extend to claims which a 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 of the parties waives and relinquishes any right or benefit which it has or may under Section 1542 of the Civil Code or any analogous statute or rule of law, and each of the parties hereby acknowledges that this waiver is an essential and material term of this release and without which the consideration relating hereto would not have been delivered by any party hereto.

6. Each of the parties hereto has received independent legal advise from their respective attorneys with respect to the advisability of making the settlement provided herein, and with respect to the advisability of executing this release.

7. The parties agree that this Release Agreement contains the entire agreement of the parties hereto, and supersedes all

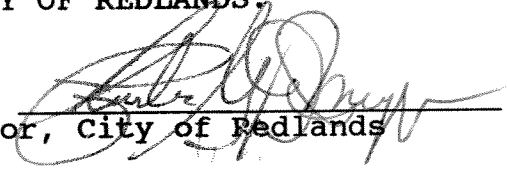
other agreements and understanding whether written or oral covering the subject matter hereof.

8. This agreement may be executed in counterparts and the collective counterparts shall be treated as a single original.

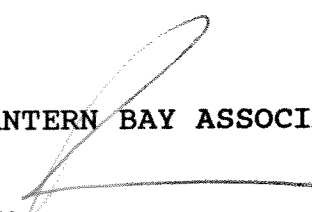
IN WITNESS WHEREOF, the parties hereto have executed this Release Agreement.

DATED: January 22, 1991

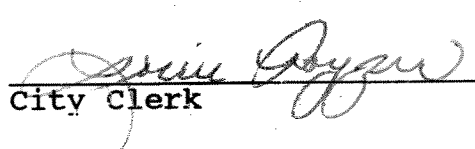
CITY OF REDLANDS:

By: 
Mayor, City of Redlands

LANTERN BAY ASSOCIATES:

By: 
Robert E. Osborne,
General Partner

ATTEST:


City Clerk

RECEIVED

JAN 28 1991

RUTAN & TUCKER

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

CENTRAL BANK TOWER, SUITE 1400

611 ANTON BOULEVARD

COSTA MESA, CALIFORNIA 92626

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A. W. RUTAN (1880-1972)

JAMES B. TUCKER, SR. (1888-1950)

MILFORD W. DAHL, SR. (1919-1988)

H. RODGER HOWELL (1925-1983)

ELIZABETH L. HANNA
DAVID H. HOCHNER
DUKE F. WAHLQUIST
M. KATHERINE JENSON
SCOTT R. PINZONE
DIRCK J. EDGE
RICHARD G. MONTEVIDEO
MARK SMITH FLYNN
LORI SARNER SMITH
JAMES P. FINERTY
ERNEST W. KLATTE, III
GUY E. MAILLY
KATHY FORBATH ESFAHANI
LEE M. STRAUS
KIM D. THOMPSON
JAYNE TAYLOR KACER
HANS VAN LIGTEN
MATTHEW K. ROSS
STEPHEN A. ELLIS
LARRY H. GOLDBRUM
JEFFREY WERTHEIMER
MICHAEL D. TURNER
ROBERT O. OWEN
ADAM N. VOLKERT
JEFFREY A. GOLDFARB

SANFORD SHATZ
STEPHEN B. OTTO
F. KEVIN BRAZIL
LAYNE H. MELZER
PATRICK K. RAFFERTY
L. SKI HARRISON
STACY M. BLUMBERG
SCOTT M. SCHOENWALD
DAVID M. REAVES
STEVEN W. SPRECHER
SARAH J. KNECHT
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JAMES S. WEISS
DANIEL L. BRANSTINE
JAMES R. ROUSE
DAVID T. WARD
DARWIN KINGHORN
CAROL L. DEMMLER
JENNIFER L. KURZON
STEWART PRESSMAN
PATRICK D. MCCALLA
RICHARD K. HOWELL
A. PATRICK MUNOZ

*A PROFESSIONAL CORPORATION

DAVID J. GARIBALDI, III
OF COUNSEL

January 25, 1991

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Riverside, California 92502

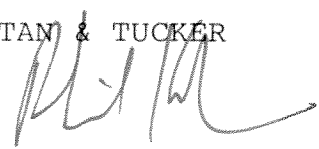
Re: City of Redlands
Release Agreement with Lantern Bay Associates
Tract No. 13103 Water Improvements

Dear Dan:

I have enclosed for your files one of the fully executed originals of the release agreement. Thank you (and the City staff) for your cooperation and assistance in resolving the matter.

Very truly yours,

RUTAN & TUCKER


Philip D. Kohn

PDK/jb
Enclosure
cc: Mr. Robert E. Osborne

RUTAN & TUCKER
PHILIP D. KOHN
DAVID B. COSGROVE
Central Bank Building
Post Office Box 1950
611 Anton Boulevard, Suite 1400
Costa Mesa, California 92628-1950
Telephone: (714) 641-5100

Attorneys for Petitioner
LANTERN BAY ASSOCIATES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

LANTERN BAY ASSOCIATES, a California
general partnership consisting of
McMahon-Oliphant Properties, Inc.,
a California corporation,
and Robert E. Osborne, an individual,

Petitioner,

vs.

CITY OF REDLANDS, a California
municipal corporation; CITY COUNCIL
OF THE CITY OF REDLANDS; CITY CLERK
OF THE CITY OF REDLANDS; and DOES 1
through 25, inclusive,

Respondents.

WHEREAS, on August 21, 1987, LANTERN BAY ASSOCIATES ("Land-owner") filed an action in the U.S. District Court for the Central District of California (Case No. 87-5568-RJK) against the CITY OF REDLANDS, CITY COUNCIL OF THE CITY OF REDLANDS, CAROLE BESWICK, CHARLES D. DE MIRJYN and BARBARA C. WORMSER (hereinafter collectively referred to as the "City"), alleging the violation of certain constitutional rights relating to the development of real

1 property owned by Landowner (hereinafter referred to as the "Fed-
2 eral Court Action"); and

3 WHEREAS, on April 18, 1988, the City's motion for abstention
4 in the Federal Court Action was granted; and

5 WHEREAS, on April 25, 1988, Landowner filed the above-cap-
6 tioned action against the CITY OF REDLANDS, CITY COUNCIL OF THE
7 CITY OF REDLANDS and CITY CLERK OF THE CITY OF REDLANDS (herein-
8 after also collectively referred to as the "City"), seeking a writ
9 of mandamus, declaratory relief and damages relating to the same
10 essential matters alleged in the Federal Court Action; and

11 WHEREAS, on September 29, 1988, the Honorable Bob N. Krug,
12 Judge of the Superior Court, ruled from the bench granting
13 Landowner's motion for a peremptory writ of mandate with regard to
14 tentative tract map approval, final map approval and recordation,
15 and the issuance of building permits in accordance with the City's
16 applicable regulations in effect on October 14, 1985; and

17 WHEREAS, Landowner is seeking \$2 million in monetary damages,
18 together with punitive and exemplary damages, from the City's
19 public funds as a result of the alleged actions of the City which,
20 if such a Judgment was rendered, would represent a serious impact
21 on the City's financial condition; and

22 WHEREAS, Landowner contends that it has certain vested and
23 guaranteed rights pursuant to land use authorizations heretofore
24 granted by the City and Landowner's reliance thereon; and

25 WHEREAS, Landowner further contends that the City's Southeast
26 Redlands Development Moratorium (adopted on June 3, 1986 and
27 extended on July 15, 1986 and June 2, 1987) is unconstitutional on
28 its face and as applied to Landowner's real property which, if

1 such a Judgment was rendered, would represent a serious
2 the City's land use planning efforts; and

3 WHEREAS, the land use and environmental documentat
4 pared in connection with Landowner's project, as describ
5 Judgment, demonstrates that the project is consistent w
6 City's applicable planning regulations and that the proj
7 not have adverse unmitigated environmental impacts; and

8 WHEREAS, the parties now consider it desirable and
9 best interests to compromise and settle the disputes inv
10 the above-captioned action and the Federal Court Action,
11 any party admitting liability of any kind to any other p
12 order to avoid the expense, inconvenience, uncertainty a
13 distraction of burdensome and protracted litigation; and

14 WHEREAS, the parties have met and stipulated that J
15 entered as provided herein.

16 IT IS HEREBY ADJUDGED, ORDERED AND DECREED as follo

17 1. Real Property Affected.

18 The real property which is the subject matter of th
19 tion between the parties consists of approximately sixty
20 acres of land located in the south-easterly portion of t
21 Redlands on Edgemont Drive near Sunset Drive and Fairmon
22 and is sometimes referred to as Tract No. 13103 and as S.
23 Bernardino County Assessor's Parcel No. 294-111-02 (here
24 referred to as the "Subject Property").

25 2. Overriding Intent of the Parties.

26 On October 14, 1985, the City accepted as complet
27 owner's development applications for a forty (40)-lo
28 residential subdivision, a preliminary development

1 negative declaration for which were approved by the City on
2 January 21, 1986. Consistent with the provisions of this
3 Judgment, it is the agreement of both Landowner and the City that
4 by this Judgment, Landowner shall be entitled to develop and
5 market the Subject Property as a forty (40)-lot planned
6 residential development of single family homes in accordance with
7 the Final Map (in the form attached hereto as Exhibit "A" and
8 incorporated herein by this reference) and the applicable
9 ordinances, policies, rules, regulations and standards as set
10 forth in Paragraph 3 below. The parties agree and the Court finds
11 that the Final Map shall be and hereby is approved, and the City
12 shall cause the prompt recordation of the Final Map. Within
13 thirty (30) days from the date of this Judgment, the City agrees
14 to review and approve the improvement plans and rough grading
15 permits for Landowner's project. The posting of improvement bonds
16 and other securities shall be in accordance with the regulations
17 and schedule of bond amounts in effect on January 21, 1986. It is
18 the further intent of the parties and the Court finds that
19 Landowner shall be and hereby is entitled to, and the City shall
20 make available, the ultimate issuance of a total of forty (40)
21 building permits upon Landowner's application(s) therefor subject
22 to RDA approval as provided for below. The parties acknowledge
23 that while Landowner desires to develop the Subject Property as
24 quickly as possible, Landowner cannot at this time predict when or
25 at the rate at which or the order in which the Subject Property
26 will be developed. Such decisions depend upon numerous factors
27 which are not within Landowner's control, such as market
28 orientation and demand, interest rates, competition and other

1 similar matters. It is the parties' intent that Landowner shall
2 have the right to develop the Subject Property in such order and
3 at such rate and at such times as Landowner deems appropriate
4 within the exercise of its subjective business judgment. It is
5 Landowner's current anticipation that the project will entail two
6 phases: Phase 1 consisting of 3 model homes and 17 production
7 homes, and Phase 2 consisting of 20 production homes. The City
8 agrees to reserve 20 building permits for Landowner during the
9 first half of the 1989 calendar year and 20 building permits for
10 the second half of the 1989 calendar year; provided that on or
11 before June 30, 1989, Landowner must notify the City in writing of
12 its good faith intention to apply for and utilize the 20 permits
13 reserved for the second half of the 1989 calendar year. In the
14 absence of such notification, the City is authorized to reallocate
15 those 20 permits to other applicants; in which case, the City
16 agrees to reserve 20 building permits for Landowner during the
17 1990 calendar year. Landowner agrees to submit its project to the
18 City's "RDA process" and the standards and evaluation system which
19 were in place on January 21, 1986. The City's review and approval
20 of Landowner's project under the RDA process shall be completed
21 within sixty (60) days after Landowner's submittal of required
22 plans and specifications. The City agrees to diligently process
23 Landowner's applications for building permits and other
24 entitlements and authorizations necessary for commencement and
25 completion of the construction of the project upon Landowner's
26 submittal of required materials for plan check. The City will
27 plan check Landowner's building permit applications concurrent
28 with the RDA process, although building permits may not issue

1 until the RDA process has been completed.

2 3. Development Limitations.

3 Except as otherwise provided for herein, and to the extent
4 not inconsistent with this Judgment, the City's ordinances, pol-
5 icies, rules, regulations and standards with respect to all
6 aspects of development, including but not limited to permitted
7 uses, density, setbacks, building sizes and heights, grading,
8 subdivision improvements and utilities, phasing and entitlements
9 to building permits in effect as of the date Landowner's
10 development applications were accepted by the City as complete
11 (i.e., October 14, 1985) shall govern the development of
12 Landowner's project. More particularly, the development
13 limitations shall include the following:

- 14 a. Except as otherwise provided for herein, and to the
15 extent not inconsistent with this Judgment, the
16 City's January 21, 1986 conditions of approval for
17 the preliminary development plan shall apply to
18 Landowner's project.
- 19 b. With respect to streets, Landowner shall smooth out
20 the present configuration of Fairmont Drive and
21 install a 2-1/2" paved cap. If the City wishes to
22 change the alignment, then the City shall be
23 responsible for all costs therefor (e.g., obtaining
24 additional easements, grading, paving, etc.),
25 except that Landowner shall then contribute a share
26 corresponding to the projected expense of smoothing
27 out the current street and installing the paved cap
28 described above.

- 1 c. With respect to water service, Landowner shall
2 install 8" lines from the point of connection to
3 the subdivision and within the subdivision. All
4 upsizing required to meet adequate fire flow
5 standards to the project site shall be borne by the
6 City. Landowner shall, at the City's election,
7 install 3000' of 12" main in Sunset Drive, and
8 install a temporary street patch thereover,
9 provided that Landowner is timely reimbursed (by
10 the City or other third parties) for the costs of
11 upsizing beyond 8" lines.
- 12 d. With respect to sewers, Landowner shall install a
13 private septic system if such is acceptable to the
14 Regional Water Quality Control Board. No sewer
15 extension fees shall be required of Landowner.
16 Landowner shall comply with all City ordinances
17 pertaining to private septic systems. If a private
18 septic system is not acceptable to the Regional
19 Water Quality Control Board, Landowner shall extend
20 sewer lines along the present alignment
21 configuration of Fairmont Drive from the
22 subdivision property line to the existing pavement
23 on Fairmont Drive, connect with the existing dry
24 sewer in place, and take other steps as required by
25 the January 21, 1986 conditions of approval on the
26 project, with the exception that it would be the
27 City's responsibility to make whatever connections
28 and lay whatever line may be necessary to ensure

1 sewer service from the existing pavement on
2 Fairmont Drive into the active system.

3 All taxes, fees, rates and charges with respect to development of
4 the project on the Subject Property, conditions of approval,
5 permits and other entitlements and authorizations shall be
6 determined pursuant to the schedule of such taxes, fees, rates and
7 charges in effect on January 21, 1986. Any processing fees
8 heretofore paid by Landowner shall not be duplicated. Further,
9 nothing herein shall prevent the City in subsequent actions
10 applicable to the Subject Property, from applying new ordinances,
11 policies, rules, regulations and standards not inconsistent or in
12 conflict with the intent, terms and purpose of this Judgment and
13 which do not materially interfere with the development of the
14 Subject Property for the proposed uses, density, or rate of devel-
15 opment.

16 4. Nature of Landowner's Rights.

17 It is the intent of the Court and the parties that the rights
18 granted to Landowner pursuant to this Judgment shall be and hereby
19 constitute a protected, enforceable property and contract right
20 and entitlement to develop the Subject Property in accordance with
21 the intent of the parties expressed in Paragraph 2 above and the
22 terms and conditions set forth in Paragraph 3 above.

23 5. Covenants Run With the Land.

24 All of the provisions, agreements, rights, powers, standards,
25 terms and obligations contained in this Judgment shall be binding
26 upon the parties and their respective heirs, successors, assigns,
27 nominees, representatives and all other persons acquiring the
28 Subject Property or any portion thereof or any interest therein,

1 whether by operation of law or in any manner whatsoever, and shall
2 inure to the benefit of the parties and their respective heirs,
3 successors, assigns, nominees, representatives and all other per-
4 sons acquiring the Subject Property or any portion thereof or any
5 interest therein. All of the provisions of this Judgment shall
6 constitute covenants running with the land pursuant to applicable
7 law.

8 6. Full Resolution of Dispute.

9 The parties desire to compromise, resolve and settle any and
10 all disputes that presently exist between them, including the
11 claims for relief arising out of the underlying complaint in the
12 above-captioned action and the Federal Court Action. The parties
13 consenting to and executing this stipulation for Judgment each
14 recognize and agree that the terms and conditions of this Judgment
15 constitute an accord and satisfaction of contested matters and do
16 not represent an admission of liability or responsibility on the
17 part of any party. Upon the entry of this Judgment, Landowner
18 shall promptly cause the dismissal of the Federal Court Action
19 with prejudice. Except as may be required by law or a property
20 obtained court order, neither party shall do anything which shall
21 have the effect of harming or injuring the right of the other
22 party to receive the benefits of this Judgment; each party shall
23 refrain from doing anything which would render its performance
24 under this Judgment impossible or impractical; and each party
25 shall do everything which this Judgment describes that such party
26 shall do.

27 7. Costs.

28 Each of the parties shall bear all of its, his or her own

1 costs, attorneys' fees and related expenses associated with the
2 above-captioned action and the Federal Court Action.

3 8. Authorization.

4 Each party hereto has expressly authorized its, his or her
5 attorney to execute this stipulation for Judgment on its, his or
6 her behalf and to bind said party to this Judgment.

7 9. Release.

8 Except for the rights and obligations of the parties arising
9 from this Judgment, each party executing this stipulation for
10 Judgment with respect to each other party, by the issuance of this
11 Judgment, for itself, and for its respective heirs, executors,
12 administrators, officers, directors, city council members, city
13 clerk, shareholders, divisions, subsidiaries, nominees, agents,
14 employees, successors, assigns, principals, partners, joint
15 venturers, insurance carriers and for any others who may claim
16 through it, or its heirs, executors, administrators, officers,
17 directors, city council members, city clerk, shareholders,
18 divisions, subsidiaries, nominees, agents, employees, successors,
19 assigns, principals, partners, joint venturers, or insurance
20 carriers, DOES HEREBY RELEASE AND FOREVER DISCHARGE each and every
21 other party hereto and its heirs, executors, administrators,
22 officers, directors, city council members, city clerk,
23 shareholders, divisions, subsidiaries, nominees, agents,
24 employees, successors, assigns, principals, partners, joint ven-
25 turers and attorneys of and from all manner of action, suit, lien,
26 damage, claim or demand of whatsoever nature, kind or description,
27 monetary or otherwise, whether known or unknown, suspected or
28 unsuspected, which any party ever had, now has or hereinafter can,

1 shall or may have against the other, arising out of any manner or
2 thing or in any way connected with, directly or indirectly, the
3 matters set forth in this action. The parties to this Judgment
4 expressly, knowingly and voluntarily waive all rights under
5 Section 1542 of the Civil Code of California which provides as
6 follows:

7 "A general release does not extend to claims
8 which the creditor does not know or suspect to
9 exist in his favor at the time of executing of
10 the release, which if known by him must have
11 materially affected his settlement with the deb-
12 tor."

13 10. Project Modifications.

14 The parties acknowledge that the provisions of this Judgment
15 require a close degree of cooperation between the City and Land-
16 owner, and that the refinements and further development of the
17 project hereunder may demonstrate that changes are appropriate
18 with respect to the details of performance of the parties here-
19 under. The parties desire, therefore, to retain a certain degree
20 of flexibility with respect to the details of the project develop-
21 ment with respect to those items covered in general terms under
22 this Judgment. If and when, from time to time, the parties find
23 that such changes or adjustments are necessary or appropriate,
24 they shall effectuate such changes or adjustments through operat-
25 ing memoranda approved by the parties, and may be further changed
26 and amended from time to time as necessary, with further approval
27 by the City and Landowner.

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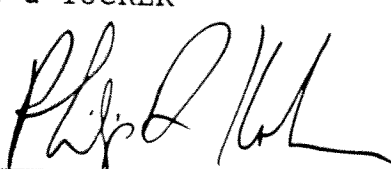
11. Time is of the Essence.

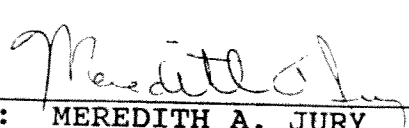
Time is of the essence of this Judgment and of each and every
term and condition hereof.

IT IS SO STIPULATED:

RUTAN & TUCKER

BEST, BEST & KRIEGER


BY: PHILIP D. KOHN
Attorneys for Petitioner


BY: MEREDITH A. JURY
Attorneys for Respondents

IT IS SO ORDERED.

DATED: _____

HONORABLE BOB N. KRUG
JUDGE OF THE SUPERIOR COURT

8/130/063099-0002/049