

SETTLEMENT AND GENERAL RELEASE AGREEMENT AND
AGREEMENT TO PURCHASE PROPERTY

1. Parties. The parties to this settlement and general release agreement and agreement to purchase property ("Agreement") are the Redevelopment Agency of the City of Redlands, a public agency ("Agency"), and George F. Elmendorf, dba Libros Latinos ("Elmendorf").

2. Recitals. This Agreement is made with reference to the following facts:

(A) Elmendorf is the owner of an undivided one-half interest in certain real property located in the City of Redlands, San Bernardino County, California ("the property"), and more particularly described in Exhibit "A" attached hereto.

(B) On or about January 9, 1987, the Agency filed a complaint in eminent domain against Elmendorf (Redevelopment Agency of the City of Redlands v. Dill, et al. Case No. 235921, San Bernardino Superior Court) relating to what is described in the complaint as subject property 19.

(C) On or about February 13, 1987, Elmendorf filed an answer to this complaint.

(D) The Agency desires to resolve and settle, once and for all times, all present, past and future controversies, claims, causes of action or purported causes

of action, differences or disputes, both real and potential, arising between the Agency and Elmendorf in the litigation between them described in these recitals.

(E) This Agreement is a compromise in settlement of the claims and liabilities arising from the aforesaid litigation as it relates to subject property 19 and the parties and shall never be treated as an admission of liability or value by the Agency or Elmendorf for any purpose.

3. Agreement to Sell and Purchase the Property.

(A) General Terms of Sale and Purchase of the Property

(i) Escrow shall be opened for the purpose of consummating the sale and purchase of the property as hereinafter provided. The Agency and Elmendorf shall, during the escrow period, execute all documents, in recordable form if necessary, and shall perform all acts reasonably necessary and appropriate to consummate the purchase and sale of Elmendorf's entire rights, title and interest in and to the property pursuant to the terms of this Agreement.

(ii) Elmendorf shall deposit into the escrow, at least three business days prior to the close of escrow, a duly executed grant deed in recordable form transferring his entire interest in the property to the Agency.

(iii) The Agency shall deposit into the escrow, on or before the close thereof, the sum of \$66,500.00 for the property. Elmendorf acknowledges that he and Stuart Avenue Properties withdrew the deposit of probable compensation made by the Agency under Section 1255.010 of the Code of Civil Procedure. The amount withdrawn was \$347,000.00, plus interest. One half of this sum (including interest) was received by or on behalf of Elmendorf, receipt of which is hereby acknowledged by Elmendorf.

(iv) Elmendorf represents that Redlands Financial Services, Inc., was a trustee under a deed of trust, through which Redlands Federal Savings and Loan Association, a federal association, was the beneficiary. Elmendorf further represents that the aforementioned deed of trust has been reconveyed and released and that (with the exception of Stuart Avenue Properties, a limited partnership) no other person or entity, including Redlands Financial Services, Inc. and Redlands Federal Savings and Loan Association, possesses an interest, including by way of encumbrance, in the property. If any person or entity other than Stuart Avenue Properties does have an interest in the property, escrow may not close unless counsel for the Agency waives this condition in writing.

(v) Real and personal property taxes and interest on any assessments shall be prorated as of the close of escrow but only with respect to taxes that accrued

on the property as of April 13, 1987 (the date the Agency's order for possession took effect). The unpaid principal amount of any unpaid assessments, penalties or taxes due prior to the close of escrow shall be credited to the Agency and shall reduce the total amount to be deposited in escrow. All such taxes shall be prorated based upon Elmendorf's undivided one-half interest.

(vi) Elmendorf shall be responsible for any costs incurred in removing any and all liens on the property incurred during the time of Elmendorf's ownership of the property, including, but not limited to, the lien of any deeds of trust or mortgage encumbering the property, as well as any prepayment penalties.

(vii) The Agency shall receive and pay for a CLTA Owner's Policy of Title Insurance in the amount of \$240,000.00, showing title for an undivided one-half interest vested in the Agency.

(B) Escrow Instructions

(i) Within five business days after the execution of this Agreement by Elmendorf and the Agency, the parties shall open an escrow at First American Title Company (FATCO), through which the purchase and sale of the property shall be consummated. Executed counterparts of this Agreement shall be deposited with Escrow Holder to act as escrow instructions to Escrow Holder.

(ii) Escrow Holder is authorized and instructed to deliver, pursuant to the terms of this Agreement, the documents and monies to be deposited into the escrow. The following terms and conditions shall apply to such escrow:

a. The Agency and Elmendorf hereby agree to be bound by each of the terms, covenants, conditions and agreements contained in Escrow Holder's standard printed conditions and stipulations with respect to escrows concerning the purchase and sale of real property. In the event of a conflict between the Escrow Holder's printed form and this Agreement, this Agreement shall govern.

b. The term "opening of escrow" as used herein shall be deemed to be the date upon which Escrow Holder receives copies of this Agreement signed by all of the parties hereto.

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c. Close of escrow shall occur on or before July 15, 1988.

d. The Agency shall pay all cost of escrow and recording fees incurred in this transaction, and title insurance policy expenses. Escrow and recording costs shall not, however, include reconveyance fees, trustee's fees, forwarding fees, or penalty for any full reconveyance of deed of trust or full release of mortgage paid.

e. If the Escrow Holder is unable to comply with the escrow instructions contained in this agreement it shall do so as soon thereafter as it is able to do.

(C) Representations, Covenants and Agreement of Elmendorf.

Elmendorf hereby warrants and represents to and covenants and agrees with the Agency each of the following, all of which shall be true, accurate and correct as of the date hereof, and as of the close of escrow:

(i) Elmendorf owns the property and has full power and authority to transfer the property and to enter into and fully perform and comply with all of the terms of this Agreement.

(ii) This Agreement and performance of each of the covenants and agreements of Elmendorf hereunder do not and will not violate any other agreement to which Elmendorf is a party.

(iii) To the best knowledge of Elmendorf, after due inquiry, there are no actions, suits or proceedings pending against the property or any portion thereof before any court or before any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality, nor are there any such actions, suits or proceedings pending which could or would affect his ability to perform his obligations under this

Agreement, except for those actions that are described in the recitals herein.

(iv) Elmendorf shall deliver, at the close of escrow, good and marketable fee title to the property.

(v) There are not and will not be any contracts, or agreements, whether written or oral, with respect to the ownership, maintenance or operation of the property which will be binding upon or any way affect, impair, or diminish any of the Agency's rights, title and interest in, to and under the property.

4. Settlement and General Release.

(A) Upon the close of escrow, the Agency shall cause its attorneys to file with the San Bernardino County Superior Court a dismissal of any action it has against Elmendorf in San Bernardino Superior Court Case No. 235921 as it relates to subject property 19.

(B) Elmendorf and the Agency, and each and all of their individual and collective agents, representatives, attorneys, principals, predecessors, successors, assigns, administrators, executors, heirs, and beneficiaries, hereby release the other party, and each and all of the other's agents, representatives, attorneys, principals, predecessors, successors, assigns, and each of them, from any and all obligations, liabilities, claims, costs, expenses, demands, debts, controversies, damages, causes of

action, including without limitation those relating to just compensation, relocation assistance, attorneys fees, interest, fixtures and equipment, good will, and precondemnation damages, under state and federal law, which any of them now have, or might hereafter have by reason of any matter or thing arising out of or in any way relating to San Bernardino Superior Court Action No. 235921 as it relates to subject property 19.

(C) Elmendorf and the Agency recognize that it is the intent of the parties in entering into this Agreement to resolve all claims, litigation, disputes and controversies that Elmendorf and the Agency have with each other, and each and all of their individual and collective agents, representatives, attorneys, principals, predecessors, successors, assigns, administrators, executors, heirs, and beneficiaries, may have relating to or arising out of San Bernardino Superior Court Action No. 235921 as such action relates to subject property 19, and Elmendorf and the Agency, on behalf of themselves and the aforementioned persons and entities, warrant and represent as follows: Elmendorf and the Agency, and each and all of their individual and collective agents, representatives, attorneys, principals, predecessors, successors, assigns, administrators, executors, heirs, and beneficiaries, have not assigned any right, title, or interest in or to any claim or cause of action which may presently exist or may

have existed in the past or may exist in the future against the other or their assigns and related persons and entities.

(D) Elmendorf and the Agency represent and warrant that in agreeing to the terms of this Agreement they have read the Agreement, they have had the Agreement explained to them by counsel of their choice, they are aware of the content and legal effect of this Agreement, they are acting on the advice of counsel of their choice and they are not relying on any representations made by the other, or by any of the employees, agents, representatives or attorneys of the other, or any of them, except as expressly set forth in this Agreement.

(E) Elmendorf and the Agency, on behalf of themselves, and each and all of their individual and collective agents, and representatives, attorneys, principals, predecessors, successors, assigns, administrators, executors, heirs and beneficiaries, agree and covenant not to enter into any lawsuit which is based on any claims to be released or resolved by this Agreement, or is in derogation of this Agreement.

(F) Elmendorf acknowledges that they have been advised by their attorneys concerning, and are familiar with, the provisions of California Civil Code Section 1542, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in its

favor at the time of executing the release, which if known by him must have materially affected the settlement with the debtor."

(G). Elmendorf acknowledges that he and the others that they are acting on behalf of herein may have sustained damage, loss, cost or expenses that are presently unknown and unsuspected, and such damage, loss, cost or expenses which may have been sustained may give rise to additional damages, loss, costs or expenses in the future. Nevertheless, Elmendorf acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights which he or those that he is acting on behalf of herein have or may have under California Civil Code Section 1542, or under any statute or common law principle of similar effect.

5. Additional General Terms.

(A) Elmendorf and the Agency hereby agree to indemnify the other and save and hold the other harmless from and against damages (which term shall mean actual cash expenditures arising out of, resulting from or related to any damage, liability, loss, cost or deficiency, including but not limited to, reasonable attorney fees and other costs and expenses incident to proceedings or investigations or the defense of any claim) arising out of, resulting from or relating to:

(i) Any inaccuracy in the representation or the breach of any warranty under this Agreement; and

(ii) Any failure to duly perform and observe any term, provision, covenant or agreement to be performed or observed pursuant to this Agreement.

(B) Agency shall, in addition to all other rights provided herein or as may be provided by law, be entitled to the remedies of specific performance and injunction to enforce its rights hereunder in the event of a breach by Elmendorf, it being understood because of the special and unique character of the property and the proposed project thereon, a remedy at law may be insufficient to reimburse Agency for any default of Elmendorf under this Agreement.

(C) Each provision contained in this Agreement shall survive the close of escrow.

(D) This Agreement constitutes the entire agreement between the parties. No modification of this Agreement shall be valid, unless in writing, signed by the parties. The parties shall not be bound by any representation, warranty, promise, statement or information, unless it is specifically set forth in this Agreement.

(E) Failure of any party to insist upon strict observance of or compliance with any term of this Agreement in one or more instances shall not be deemed to be a waiver of any party's rights to insist upon such obser-

vance or compliance with the other terms hereof, or in the future.

(F) Time shall be of the essence as to all dates and times of performance contained in this Agreement.

(G) The Agency and Elmendorf agree to execute and file and to join in the execution and filing of any and all agreements, consents, or other documents reasonably necessary to effect the consummation of this Agreement, as either party may reasonably require.

(H) This Agreement shall bind and inure to the benefit of the heirs, executors, administrators, successors and assigns of Elmendorf and the Agency.

(I) Elmendorf and the Agency in signing this Agreement on behalf of themselves, and each and all of their individual and collective agents, representatives, attorneys, principals, predecessors, successors, assigns, administrators, executors, heirs, and beneficiaries, hereby represent and warrant that they are duly authorized to sign this Agreement and act on behalf of said persons and entities.

(J) The parties may execute duplicate originals of this Agreement.

(K) This Agreement shall be construed under the laws of the State of California. Elmendorf and the Agency agree that any action relating to this Agreement shall be instituted and prosecuted in the County of San

Bernardino, California. Elmendorf and the Agency consent to the personal jurisdiction of the courts in the County of San Bernardino and waive the right to a change of venue.

(L) Elmendorf and the Agency each agree that they will not look to any other party for payment of any or all attorney fees and other costs heretofore incurred by them.

AGREED:

REDEVELOPMENT AGENCY
OF THE CITY OF REDLANDS

By: Carol R. Dumas
Chair

By: Barbara C. Wormser

ATTEST:

Dorrie Bygones
Secretary

Dated this 5th day of July,
1988.

Approved as to Form and Content:

Kendall H. MacVey
Kendall H. MacVey
Best, Best & Krieger
Counsel for the Redevelopment
Agency of the City of Redlands

AGREED:

GEORGE F. ELMENDORF

By: George F. Elmendorf
George F. Elmendorf
dba Libros Latinos

Approved as to Form and Content:

Allen Gresham
Allen Gresham
Gresham, Varner, Savage,
Nolan & Tilden
Counsel for George F. Elmendorf

EXHIBIT A

PROPERTY SUBJECT TO AGREEMENT

Undivided one-half interest in fee simple absolute for the real property situated in the County of San Bernardino described as follows:

Lots 1 to 6, inclusive, Block "C", of Balcom's Addition to the City of Redlands, in the City of Redlands, County of San Bernardino, as per plat recorded in Book 13, page 4 of Maps, in the office of the recorder of said County.

EXCEPT therefrom that portion of Lot 6, conveyed to the State of California by deed recorded February 20, 1961, in Book 5356, page 129, Official Records.