

ORDINANCE NO. 92-11

AN ORDINANCE OF THE RIDGECREST CITY COUNCIL APPROVING CASE #92-014, AN AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR PARCEL MAP 8533.

BE IT ORDAINED BY THE RIDGECREST CITY COUNCIL as follows:

Section 1. Purpose

This ordinance is adopted pursuant to Government Code Section 65867.5 to approve an amendment to the development agreement for Parcel Map 8533, hereinafter called "subject agreement" for property owned by Mike Ferguson, Deana Ferguson, Bill Ferguson, Louise Ferguson, John Michael Parlet, Betty Darlene Parlet, Terrel Diane Campbell, and Adrain Campbell.

Section 2. Findings

The council finds, determines and declares:

(a) The Planning Commission and the Council have conducted duly-noticed public hearings in connection with the subject agreement.

(b) The provisions of the subject agreement are consistent with the general plan and any applicable specific plan.

Section 3. Adoption

The subject agreement, attached hereto and hereby incorporated by this reference, is hereby approved.

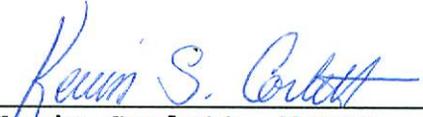
PASSED, APPROVED AND ADOPTED this 3rd day of June, 1992 by the following vote:

AYES: Mayor Corlett, Council Members Auld, Bitney, Bryan, and Parode.

NOES: None.

ABSTAIN: None.

ABSENT: None.

  
\_\_\_\_\_  
Kevin Corlett, Mayor

ATTEST:

  
\_\_\_\_\_  
Joyce M. Taft, City Clerk

EXHIBIT A  
DEVELOPMENT AGREEMENT  
TPM 8533

Section I. INTRODUCTION

THIS AGREEMENT is entered into this \_\_\_\_\_, 1992, between Mike Ferguson, Deana Ferguson, Bill Ferguson, Louise Ferguson, John Michael Parlet, Betty Darlene Parlet, Terrel Diane Campbell, and Adrain Campbell ("Property Owner") and the City of Ridgecrest ("City"), a municipal corporation, organized and existing under the laws of the State of California. This agreement is deemed entered into in the County of Kern, City of Ridgecrest, California.

This amendment to the Development Agreement adopted by City of Ridgecrest Ordinance No. 90-06 and recorded in Book 6399, Pages 2086 through 2097 in the office of the Kern County Recorder is predicated upon the following facts:

SECTION II. RECITALS

This agreement is predicated upon the following facts:

Whereas, Government Code Sections 65864-65869.5 authorize City to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property; and

WHEREAS, under Government Code Section 65865 the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements; and

WHEREAS, the conditions of the Development Agreement adopted on April 18, 1990 by Ordinance No. 90-06 provide that the agreement may be amended in whole or in part by the mutual consent of the parties and in the manner provided for in Government Code § 65868, § 65867 and § 65867.5; and

WHEREAS, the Property Owners as requested by City to consider entering into a development agreement and proceedings have been taken into accordance with City's rules and regulations; and

WHEREAS, the Property Owners have requested City to consider amending the development agreement and proceedings have been taken in accordance with the City's rules and regulations; and

WHEREAS, the City Council of the City of Ridgecrest has found that the amendment to the development agreement is consistent with the General Plan and the Municipal Code.

SECTION III. NOW THEREFORE, the parties agree:

THEREFORE, City hereby rescinds, repeals and replaces in its entirety that document known as City of Ridgecrest Ordinance No. 90-06, commonly referred to as the Ferguson, Parlet, Campbell and Ferguson Development Agreement.

THEREFORE, on \_\_\_\_\_, 1992, the City Council of the City of Ridgecrest adopted Ordinance No. \_\_\_\_\_ approving this amendment to the aforementioned development agreement with the Property Owners and the ordinance thereafter took effect on \_\_\_\_\_, 1992.

1. Definitions. In this Agreement, unless the context otherwise requires

(a) "City" is the City of Ridgecrest.

(b) "Project" is Parcel Map 8533 and Tentative Parcel Map 9593 approved by the City of Ridgecrest.

(c) "Property Owner" means the person(s) having a legal or equitable interest in the real property as described in paragraph (4) and includes the Property Owner's successor in interest.

(d) "Real Property" is the real property referred to in paragraph (4).

2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

<u>Exhibit Designation</u>	<u>Description</u>	<u>Referred to in Paragraph</u>
A	Real Property	4

3. Reference to other documents. Reference is made to the following additional documents and proceedings relating to the project to which reference is made for further particulars:

- (a) Minutes of the Planning Commission, March 27, 1990.
- (b) City of Ridgecrest Ordinance 90-06.

4. Description of real property. The real property which is the subject of this agreement is described as Parcels 1 through 15 of Parcel Map 8533 and Parcel 3 and 4 of Tentative Parcel Map 9593.

5. Interest of Property Owner. Property Owner represents that he has a legal interest in the real property and that all

other persons holding legal or equitable interests in the property are to be bound by the agreement.

6. Binding effect of Agreement. The burdens of this agreement bind and the benefits of the Agreement inure to the successors in interest to the parties to it.

7. Relationship of parties. It is understood that the contractual relationship between the City and Property Owner is such that the owner is an independent contractor and not the agent of the City.

8. Changes in project. This agreement shall be recorded against the properties. No change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance. A change, modification, revision or alteration in the approved development plan is not effective until the parties amend this Agreement to incorporate it.

9. Effect of transfer of real property to another jurisdiction. If all or a portion of the real property which is the subject of this Agreement is annexed to or otherwise becomes a part of a city or another County, this Agreement terminates.

10. Hold Harmless. Property Owner agrees to and shall hold the City, its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death and claims for property damage which may arise from the direct or indirect operations of the Property owner or those of his contractor, subcontractor, agent, employee or other person acting on his behalf which relate to the project. Property owner agrees to and shall defend the City and its officers, agents, employees and representatives from actions for damages caused or alleged to have been caused by reason of Property Owner's activities in connection with any project.

This hold harmless agreement applies to all damages and claims for damages suffered or alleged to have been suffered by reason of the operations referred to in this paragraph, regardless of whether or not the City of Ridgecrest prepared, supplied or approved plans or specifications or both for the project and regardless of whether or not the insurance policies referred to in paragraph 12 are applicable.

11. Insurance. Before beginning work on the project, Property owner shall obtain the insurance required under this paragraph and received the approval of the City Attorney as to form, amount and carrier. Property Owner shall maintain the insurance during the term of this Agreement. The insurance shall extend to the City of Ridgecrest, its elective and appointive

board, commissions, officers, agents, employees and representatives and to the Property owner and each contractor and subcontractor performing work on the project.

(a) Contractual liability insurance. Property Owner shall maintain an insurance policy in the amount of \$ N/A insuring applicant against damages sustained by reason of any action, claim or demand made by reason of breach or claim for breach of contract or by reason of any contractual liability on any contract or alleged liability on any contract entered into by Property Owner or his contractor, subcontractor, agent or employee.

12. Evidence of Insurance. Property Owner shall furnish the City prior to permits being pulled, satisfactory evidence of the insurance required and evidence of the cancellation or reduction in coverage of a policy.

13. Specific restrictions on development of real property. In addition to zoning classification, the following specific restrictions shall also govern the use of the property:

(a) Permitted uses of the property are limited to the following: Commercial and Residential.

(b) The following dedications of land shall be made for the public purposes specified:

1. The Property Owner shall dedicate to the City of Ridgecrest Parcel 15 of TPM 8533, to be used as parking and a park.

(c) Biotic - Natural desert or drought tolerant vegetation to be used as the predominant landscaping material for the commercial zoned parcels and parcel 7.

(d) Cultural - If subsurface cultural resources or other such resources are discovered during the construction of future development projects, construction in the area of discovery will be terminated until a professional archeologist examines the resources and determines the appropriate strategy for managing such a find.

(e) Hydrology - The flood protection recommended by the Master Drainage Plan shall be part of the development of street alignments within the development of the 140 acres. The use of water carrying street to intercept and conduct drainage and flood flows through the site is required.

(f) Noise - Site design should incorporate the following measures. Outdoor activity areas can be shielded from the

roadway noise by locating buildings between the outdoor activity and the roadway. Examples include placing outdoor activity areas in a central courtyard shielded by a building complex or locating balconies and patios on the side of a building opposite noise sources. This is to be applied to the mobilehome court and multiple family zoned area.

The use of barriers for the shielding of noise shall be on conformance with city ordinances and the EIR certified for this property. The required height, location and barrier material shall be addressed at the site plan review stage.

(g) Parks - As specified in the EIR the approximate 5-acre site south of the existing ball park on Downs Street shall be offered to the city for parking for the ball park and future recreational uses.

The mobilehome park shall include a large recreational area to be included in the site plan review.

The city may request that the future property owners enter a park Mello-Roos district which would provide funding for development and maintenance of recreational and park facilities within this development. Commitments from the developers may be required at the time of Tentative Tract Map or Site Plan Review approval. The actual assessment district would go into effect when an adequate development base is available to sustain park development and operation.

(h) Site Plan Review requirements--Residential development shall be required to comply with the city ordinance requiring adequate reflective house signage.

Lighting along walkways and streets shall be approved at the site plan review stage in accordance with city ordinances.

Water conserving practices and equipment shall be selected and used by future developers for all irrigation systems and onsite facilities in the multi-family and mobilehome park residential areas.

All power lines shall be placed underground within all developments. All local customer service lines to future development shall be placed underground, unless this conflicts with local Southern California Edison Co. policies or requirements.

The EIR and the mitigation measures contained therein shall be monitored and used as design guidelines for development. The subject property is affected by assessments from Assessment District No. 9. Any proposed development of the property would be subject to reapportionment or payoff of the assessments prior to recording any parcel splits.

14. Public Improvements Facilities and services. Property Owner agrees to provide the following public improvements, facilities and services:

(a) Ridgecrest Blvd. & Downs Street - 55' of improved right-of-way to be put in on Ridgecrest Blvd. to the Downs St. intersection from the westerly property line of either parcel 1, 2, 3, 4, 5 or 6 when under development.

(b) Mahan Street - Two full lanes of pavement from the centerline of Upjohn Avenue to the centerline of Ridgecrest Boulevard, including curb and gutter and sidewalk in its entirety when Parcel 7 of Parcel Map 8533 is developed.

~~Mahan Street and Upjohn Avenue - Two lanes (to centerline of Mahan Street with development of Parcels 7, 8, 9 and 10 being responsible for curb, gutter and sidewalk on the east side of Mahan); left turn lane installed with residential development of Parcels 7, 8, 9, and 10.~~

(c) Access street at Mono Street to Church Avenue - All to be on development property cul-de-sac to be constructed between parcel 8 and parcel 15.

(d) Southern California Edison will be required to improve their property at Ridgecrest Boulevard and Downs Street intersection upon 50 percent completion of Ridgecrest Boulevard from Inyo Street to Downs Street.

Developer to be responsible for off-site improvements on Parcel 15, curb, gutter and paving on Church Avenue.

(e) Ridgecrest & Downs and Downs & Upjohn - Traffic lights to be installed at both intersections. 50 percent of the total cost of two signals (\$200,000) to be borne by this development, proportioned by parcel acreage payable at the time of filing of Tract Map or issuance of building permit for development.

(f) Upjohn Avenue - To be developed in phases; phase one to be with the development of Parcels 7 and 9 (one-half of the Upjohn frontage), phase two to be developed with

the development of Parcel 10 (one-half of the Upjohn frontage); Upjohn Avenue to be two full lanes plus curb, gutter and sidewalk.

(g) Downs Street - To be developed with parking lane plus one lane of paving with curb, gutter and sidewalk on parcels 6, 10, 11, 12, 13 and 14 as they develop.

15. Effect of Agreement on land use regulations. The rules, regulations and official policies governing permitted uses of the property, the density of the real property, the design, improvement and construction standards and specification applicable to development of the real property are those rules, regulations and official policies in force at the time of the execution of this Agreement.

This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of existing or new rules, regulations and policies.

16. Periodic review of compliance with Agreement.

(a) The City shall review this Agreement at least once every 12-month period from the date this Agreement is executed.

(b) During this periodic review by the City, the Property Owner is required to demonstrate good faith compliance with the terms of the Agreement. The Property Owner agrees to furnish such evidence of good faith compliance as the City in the exercise of its discretion may require. Evidence of good faith compliance may include, but is not necessarily limited to the following:

1. Right-of-way dedication as fee simple.
2. Dedication of Parcel 15 of TPM 8533 to the City of Ridgecrest as a parking lot and a park.
3. All fees and bonds for required public improvements.
4. \$100,000 towards the cost of two traffic lights.

17. Amendment or cancellation of Agreement. This Agreement may be amended or canceled in whole or in part only by mutual consent of the parties and in the manner provided for in Government Code sections 65868, 65867 and 65867.5.

18. Enforcement. Unless amended or canceled as provided in paragraph (19), this agreement is enforceable by any party to it

notwithstanding a change in the applicable general or specific plan, zoning, subdivision or building regulations or policies governing permitted uses of the land, density, design, improvement and construction standards and specifications.

19. Events of Default. Property Owner is in default under this Agreement upon the happening of one or more of the following events or conditions:

- (a) if a warranty, representation or statement made or furnished by property owner to the City is false or proves to have been false in any material respect when it is made;
- (b) a finding and determination by the City, made following a periodic review under the procedure provided for in Govt. Code Section 65865.1 that upon the basis of substantial evidence that Property owner has not complied in good faith with one or more of the following terms or conditions of this agreement as specified in paragraph 18.

20. Procedure upon default.

- (a) Upon the occurrence of an event of default, the City may terminate or modify this Agreement in accordance with the procedure adopted by the City.
- (b) City does not waive any claim of defect in performance by property owner implied if on periodic review the City does not propose to modify or terminate the agreement.
- (c) Non-performance shall not be excused because of a failure of a third person.
- (d) An expressed repudiation, refusal or renunciation of this contract, if the same is in writing and signed by the property owners, shall be sufficient to terminate this agreement and a hearing on the matter shall not be required.
- (e) That adoption of a law or other governmental activity making performance of the applicant unprofitable or more difficult or more expensive does not excuse the performance of the obligation by the Property Owner.
- (f) Non-performance shall be excused only when it is caused or delayed by act of God or an emergency declared by the Governor of the State of California.
- (g) All other remedies at law or in equity which are not otherwise provided for in the agreement or in city's

regulations governing development agreements are available to the parties to pursue in the event there is a breach.

21. Damages upon termination. In no event shall Property Owner be entitled to any damages against city upon termination of this agreement.

22. Attorneys fees and costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorneys fees and court costs.

23. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notice required to be given to the City of Ridgecrest shall be addressed as follows:

City of Ridgecrest  
Community Development Department  
100 W. California Avenue  
Ridgecrest, CA 93555

Notices required to be given to Property Owner shall be addressed as follows:

John Parlet - 153 Monte Vista, Ridgecrest, CA 93555

Bill Ferguson - 204 Hayden, Ridgecrest, CA 93555

Mike Ferguson - 408 Laurkris, Ridgecrest, CA 93555

Dave Campbell - 821 Inyokern Road, Ridgecrest, CA 93555

A party may change the address by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

24. Rules of construction and miscellaneous terms.

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive.

(b) If a part of this Agreement is held invalid, the remainder of the Agreement is not affected.

(c) If there is more than one signer of this Agreement their obligations are joint and several.

(d) The time limit set forth in this Agreement may be

extended by mutual consent of the parties in accordance with the procedures for adoption of an agreement.

25. Duration of Agreement. This Agreement shall expire on January 1, 2010.

IN WITNESS WHEREOF this Agreement has been amended and reaffirmed to be executed by the parties on the day and year first above written.

Approved as to form:

City of Ridgecrest

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

Acknowledgements

By: \_\_\_\_\_

By: \_\_\_\_\_