

Recording Requested By and
When Recorded Mail to:

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San Bernardino, Larry Walker, Recorder
No Fee

Doc No. 20010420256
11:30am 09/17/01

City Clerk
City of Redlands
PO Box 3005
Redlands, California 92373

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**FEEES NOT REQUIRED
PER GOVERNMENT CODE
SECTION 6103**

DEVELOPMENT AGREEMENT

This development agreement (this "Development Agreement") is made and entered into this 17th day of July, 2001, by and between CEMEX Construction Materials, Inc., a Texas Corporation (the "Developer") and the City of Redlands, a municipal corporation organized and existing under the laws of the State of California (the "City") (and together with the Developer referred to as the "Parties") pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code and otherwise.

RECITALS

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development, the Legislature of the State of California enacted Sections 65864 et seq. of the California Government Code (the "Development Agreement Legislation") which authorizes the City and any person or other legal entity having a legal or equitable interest in real property to enter into a development agreement establishing certain development rights in the real property which is the subject of the agreement. Pursuant to the Development Agreement Legislation, the City Council of the City (the "City Council") has adopted regulations establishing procedures and requirements for the consideration of development agreements, which are contained in Chapter 18.220 of the Redlands Municipal Code (the "Development Agreement Regulations").

B. Developer has a legal or equitable interest in certain real property located within the City, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"). Developer presently conducts mining and aggregate processing operations on the Property, and desires to enter into this Development Agreement to more formally memorialize and extend certain of the provisions of that particular agreement dated July 19, 2000, between Developer and the City (the "Original Agreement") which relates to both the establishment and collection of, and also the limitations on, a business license tax (the "Project") for mining and/or aggregate processing operations engaged in by the Developer in the City, including on the Property. When recorded in the Official Records of the County Recorder's Office of San Bernardino County, California, this Development Agreement will supercede the Original Agreement, which later agreement will then terminate and be of no further force or effect.

C. The Parties entered into the Original Agreement as a settlement and compromise of a dispute over proposed Ordinance No. 2441, a copy of which is attached to the Original Agreement as Exhibit "A" thereto. The Original Agreement temporarily resolved the dispute between the Parties and provided for the Parties to work in good faith to enter into this Development Agreement in order to memorialize a final settlement and compromise between the Parties.

D. The Parties understand that Developer may seek to expand and/or modify its mining and/or aggregate processing operations in the City in the future, including expansion and/or modification of those operations pursuant to the land use plan currently known as Plan "B," or otherwise, and the Parties intend that this Development Agreement will apply to and govern any such after-acquired property in the City put to mining and/or aggregate processing uses. Plan "B" is that certain Land Management and Habitat Conservation Plan for the Upper Santa Ana River Wash Planning Area in southwestern San Bernardino County, California, pursuant to which various governmental agencies and private parties are striving to coordinate and accommodate current and anticipated activities thereat, including, without limitation, the conservation of sensitive plant and wildlife species and the establishment of habitat preserves, the

expansion of privately owned aggregate extraction and processing operations, and the management of water resources, recreation opportunities, and utility and transportation corridors.

E. The Planning Commission of the City considered this Development Agreement after a duly noticed public hearing, made written findings and recommended its adoption to the City Council.

F. The City and Developer have taken all actions mandated by, and fulfilled all requirements set forth in, the Development Agreement Regulations. The City desires to enter into the Development Agreement to receive the business license taxes as described herein, which otherwise the Developer would challenge but for the protections provided by this Development Agreement, and the City Council has reviewed and hereby approves all of the provisions of this Development Agreement. It adopts the findings of the Planning Commission, and further finds that this Development Agreement is in conformance with the City's General Plan and Development Agreement Regulations, and that its implementation is in the best interest of the City and the health, safety and welfare of its residents.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Developer agree as follows:

AGREEMENT

Section 1. Property. All of the Property shall be subject to and entitled to the benefits of this Development Agreement. In addition, the Parties intend that any after-acquired legal or equitable interests in real property in the City to be used by the Developer to conduct mining and/or aggregate processing operations will be subject to this Development Agreement, and City and Developer will enter into an appropriate amendment to Exhibit "A" to reflect the same. The Parties intend that the provisions of this Development Agreement shall constitute covenants which shall run with the Property, and the benefits and burdens hereof shall bind and inure to all the successors in interest and assigns of the Parties hereto.

Section 2. Term. The term of this Development Agreement (the "Term") shall commence upon the effective date of the ordinance approving this Development Agreement (the "Effective Date") and shall continue for sixty-five (65) years, until July 17, 2066, unless extended or earlier terminated as provided for in this Development Agreement.

Section 3. Development of the Property. The permitted use of the Property, the density and intensity of use, the maximum height and size of proposed buildings, the provisions for the reservation or dedication of land for public purposes, the provisions for public improvements, the City's general plan, zoning ordinances and development plan and regulations, and other terms and conditions of development applicable to the Property, are unaffected by this Development Agreement.

Section 4. Definitions. For purposes of this Development Agreement, the following terms and phrases shall have the meanings indicated below:

- A. "aggregate" shall mean rock, sand and gravel;
- B. "Business Day" shall mean a day that is not a Saturday, Sunday or legal holiday in California. In the event that the date for the performance of any covenant or obligation under this Development Agreement shall fall on a Saturday, Sunday or legal holiday in California, the date for performance thereof shall be extended to the next day.
- C. "extracting" or "extraction" shall mean the extracting, mining or excavating of aggregate;
- D. "processing" shall mean the crushing and screening of aggregate;
- E. "tax" shall mean any tax, fee, charge, duty, levy, or other assessment of a similar nature, whether imposed directly or through withholding;

F. "ton" or "tonnage" shall mean a short ton or two thousand pounds (2000 lbs).

Section 5. Imposition of License Tax. The City and Developer agree that City may levy and collect a business license tax (the "License Tax") on aggregate extracted and/or processed on the Property; provided, however, that the License Tax shall be applied only once to any ton of aggregate (or portion thereof) so that no ton of aggregate (or portion thereof) is subjected to the License Tax both when extracted within the boundaries of the City and when processed within the boundaries of the City, or at different times or at different locations within the boundaries of the City.

5.1 Rate of Tax. The License Tax shall be imposed at the rate of Ten Cents (\$0.10) per ton, which rate shall be adjusted annually in January of each year in accordance with the percentage change in the Consumer Price Index for All Urban Consumers for the Los Angeles/Riverside/Orange County Area for All Items (the "CPI") since the last adjustment (or, if the CPI ever ceases to be published, in accordance with such substantially equivalent replacement index as the Parties shall agree to).

5.1.1 The License Tax shall be subject to adjustment during the term of this Development Agreement only in accordance with the express provisions of this Development Agreement.

5.1.2 The License Tax shall be the only tax levied by the City during the term of this Development Agreement against the extraction or processing of aggregate on the Property, or against any other aspect of Developer's aggregate business, with the sole exceptions of the sales tax that is levied against the retail sale of items generally and authorized by the laws of the State of California and such other taxes as are either: (i) levied on all or substantially all other businesses within the boundaries of the City generally; or (ii) of general applicability to an entire region of the City or to a major category of businesses within the City, and which does not have the effect of singling out any of Developer's business or type of business, and if the City

ever collects or attempts to impose any other tax on Developer in connection with the extraction or processing of aggregate (or any other aspect of Developer's aggregate business) during the term hereof, then in addition to all other remedies available to Developer in equity and at law for such breach of this Development Agreement, Developer shall have the option to terminate this Development Agreement by providing written notice to the City of such termination, it being agreed and understood that in the event the City, during the term of this Development Agreement, levies a tax in violation of the foregoing covenant that whether or not Developer elects to terminate this Development Agreement, Developer will be entitled to collect damages for breach of said covenant, which at a minimum will be measured by the difference between the tax that would have been paid pursuant to this Development Agreement, and the total tax actually levied by the City upon the Developer.

5.2 Commencement and Payment. Imposition of the License Tax shall begin on January 1, 2001, and be paid by Developer to the City on a quarterly basis, sixty (60) days after the end of each calendar quarter, beginning on May 31, 2001.

5.3 Reporting. Each License Tax payment shall be accompanied by the following information relating to aggregate extracting and processing activity during the prior quarter:

5.3.1 the tonnage of aggregate both extracted and processed at the Property;

5.3.2 the tonnage of aggregate extracted at the Property and processed outside the boundaries of the City;

5.3.3 the tonnage of aggregate processed at the Property and extracted outside the boundaries of the City;

5.3.4 the current rate of the License Tax;

5.3.5 the tonnage of aggregate described in clauses 5.3.2 and 5.3.3 that is subject to tax by any other governmental entity or agency (specifying such amounts by governmental entity and agency), and the rate(s) of such other governmental entity's(ies') or agency's(ies') tax(es); and

5.3.6 the amounts of any credits/offsets claimed in accordance with Section 5.4 below, and if necessary, an explanation of how the credit/offset was determined.

The Parties agree that whenever in this Development Agreement the amount of aggregate extracted or processed is to be calculated or reported, such amounts shall be determined at and as of the time such aggregate is sold, it being acknowledged by the Parties that this will result in the most accurate and easily verifiable calculations and reporting.

5.4 Credits/Offsets. The License Tax payable by Developer to the City for any quarter shall be reduced by an amount equal to the Non-Redlands Tax Credit. The "Non-Redlands Tax Credit" shall mean the amount of tax (with the sole exception of the sales tax that is levied against the retail sale of items generally) paid or payable by Developer to any governmental entity or agency other than the City (the "Non-Redlands Taxing Entities") and attributable to aggregate extracted or aggregate processed by Developer within the boundaries of the City during such quarter; provided, however, that the amount of such credit during any such quarter shall not exceed the following: (i) the amount of License Tax that would be payable by Developer to the City during such quarter if it were calculated prior to application of the Non-Redlands Tax Credit multiplied by (ii) the fraction that has as its numerator the number of Non-Redlands Taxing Entities imposing tax on the aggregate business of Developer that quarter, and as its denominator one plus the number of Non-Redlands Taxing Entities imposing tax on the aggregate business of Developer that quarter.

5.5 Reductions. Notwithstanding anything to the contrary contained in this Development Agreement, or in any other ordinance, law, statute, rule or regulation promulgated, passed, or enacted by the City or its populace, the City covenants and agrees with Developer that

Developer shall never be required to pay any License Tax at a rate per ton of aggregate extracted or processed that is in excess of the tax on the extraction and processing of aggregate actually paid (after taking into account all credits, rebates, offsets, and other reductions permitted in connection with the payment of such tax) by any other entity engaged in such business within the boundaries of the City (and the rate of License Tax payable by Developer shall automatically be reduced hereby (to zero if necessary) to effectuate this provision); it being the intention and agreement of the Parties that in partial consideration of Developer entering into this Agreement, Developer shall never suffer a competitive disadvantage with any other entity that extracts or processes aggregate within the boundaries of the City.

In connection therewith, the City further agrees to: (i) promptly advise Developer in writing if the tax per ton on the extraction and processing of aggregate actually paid (after taking into account all credits, rebates, offsets, and other reductions permitted in connection with the payment of such tax) by any other entity engaged in such business within the boundaries of the City is lower than that paid by Developer during any period; (ii) promptly return any portion of License Tax previously paid by Developer to the City as may be necessary to effectuate the provisions and intentions of this Section 5.5 and avoid the overpayment of such tax by Developer; (iii) require such reporting from and maintain such records for entities other than Developer that are engaged in the extracting and/or processing of aggregate within the City's boundaries as may be reasonably necessary to allow the Parties to implement this Section 5.5 (and in no event shall the City allow lesser reporting or maintenance of records than that required of Developer or the City pursuant to this Development Agreement); and (iv) permit independent audit of its records by a reputable certified public accounting firm to verify the City's compliance with the provisions of this Development Agreement; provided, however, that such firm shall first agree in writing to hold strictly confidential any non-public information acquired in that audit.

If the provisions of Sections 5.4 and 5.5 are both applicable to the calculation of License Tax for any period, the provisions of Section 5.4 shall be applied prior to the provisions of Section 5.5 in calculating License Tax owing for such period.

5.6 Covenant re Expanded Operations. City acknowledges that Developer may expand the scope of its activities within the boundaries of the City and/or modify those activities pursuant to Plan "B" or otherwise, and the importance to Developer of having the City timely respond to development, operational or other applications which may be presented to City for approval. Therefore, City covenants that it shall, in good faith, timely review and respond to all applications and inquires submitted by Developer to the City related to any such expanded operations.

Section 6. Record Keeping and Audits. Developer shall maintain detailed weight slips for all aggregate sold by it that is either extracted from or processed at the Property. Such information shall be maintained for a period of three (3) years. During such three (3) year period, the City shall be entitled to reasonable audits of the weight slips to verify the accuracy of the License Tax paid and the other information reported to it by Developer. Any such audits shall be conducted at the sole expense of the City; provided, however, that if any particular audit discloses a quarterly underpayment of License Tax in excess of 7.5% of the amount finally determined to be payable by Developer, the reasonable cost of such audit shall be borne by Developer.

Section 7. Penalties. Failure by Developer to timely pay any License Tax due hereunder shall cause the unpaid amount of License Tax to incur interest at the rate of ten percent (10%) per annum; provided, however, that if such failure is finally adjudicated by a competent court of law to be due to the fraud of Developer, then such unpaid License Tax shall be subject to an additional penalty equal to Twenty-Five percent (25%) of the amount of the fraudulently unpaid License Tax but in no event more than the maximum penalty permitted by law.

Section 8. Sole Recourse. Notwithstanding any other ordinance, law, statute, rule or regulation promulgated, passed or enacted by the City or its populace, the City agrees that the terms of this Development Agreement shall govern, and shall provide the basis for its sole recourse against Developer in respect of all matters relating to tax on the extraction and/or processing of aggregate (and other aspects of the aggregate business) within the boundaries of the

City, including the imposition of such tax and any reporting requirements, audits or penalties relating to such tax.

Section 9. Waivers of Right to Challenge. The City and Developer each waives its right to challenge the validity of this Development Agreement, or any of its provisions, for any and all legal or equitable reasons that may now, or hereafter exist. In addition: (i) Developer waives its right to challenge the imposition of the License Tax based on the provisions of Proposition 62 (Government Code section 53720 et seq.), Proposition 218 (Article XIII C of the California Constitution), or for any other legal or equitable reason that may now, or hereafter, exist; and (ii) the City acknowledges and agrees that it is the purpose of this Development Agreement to bind future City Councils to the terms and obligations specified herein, and to limit the future exercise of the City's ability to tax or similarly burden the Property (and the operations and businesses thereat) to the degree specified herein.

Section 10. Confidentiality. All non-public information relating to Developer's aggregate extraction, aggregate processing and other aggregate business that is provided to the City by Developer, including, without limitation, information provided to the City in accordance with this Development Agreement, or obtained by the City pursuant to any audit provided for by this Development Agreement, shall be held strictly confidential by the City and shall not be used for any purpose other than verification of Developer's performance under the terms of this Development Agreement. The City hereby acknowledges and agrees that any disclosure or improper use by the City of confidential information could cause Developer substantial damages, and also irreparable injury for which there is not an adequate remedy at law. Therefore, in the event of any such action, Developer shall be entitled, in addition to all other remedies which it may have hereunder or at law or in equity, to a temporary and/or permanent injunction with a decree for specific performance of the terms hereof without being required to furnish a bond or other security. Jurisdiction in any action for injunctive relief shall be in a court of competent subject matter jurisdiction in California, with venue in Riverside County.

Moreover, if the City or any party acting on its behalf is subpoenaed or otherwise ordered to produce any confidential information, the City shall promptly (and prior to such disclosure) notify Developer of such subpoena or demand whereupon Developer and the City shall cooperate and take all reasonable acts (provided the City shall not be required to expend any of its own funds in connection therewith) to exhaust the legal avenues available to maintain the confidentiality of such confidential information, unless Developer consents to the production and disclosure of the information. In all events, only that portion of the confidential information specifically requested by the tribunal or party compelling such disclosure shall be provided and no interpretation or analysis of such data shall be prepared by the City for the purpose of such disclosure unless approved by Developer or required by law.

Section 11. Default, Remedies, Termination.

11.1 Default. Subject to extensions of time by mutual consent in writing, or as otherwise provided herein, failure or delay by either party to perform any term or provision of this Development Agreement constitutes a default under this Development Agreement. In the event of default under this Development Agreement or any of its terms or conditions, the party alleging such default shall give the alleged defaulting party not less than thirty (30) days' notice in writing, measured from the date of certified mailing, return receipt requested, specifying in detail the nature of the alleged default and, when appropriate, the manner in which said default may be satisfactorily cured. During any such thirty (30) day period of curing, the party charged shall not be considered in default for purposes of termination of this Development Agreement or the institution of legal proceedings.

11.2 Failure to Cure. After proper notice and expiration of said thirty (30) day cure period without cure, or if such cure cannot be accomplished within such thirty (30) day period, without commencement of cure within such period and diligent effort to effect cure thereafter, the other party to this Development Agreement, at its option, may institute proceedings to enforce this Development Agreement and/or give notice of termination of this Development Agreement. Such notice of termination shall be by certified mail, return receipt requested.

Section 12. Referendum. In the event of the City's adoption of an ordinance approving this Development Agreement and the subsequent filing with the City of a petition qualifying a referendum thereof in compliance with the provisions of the California Elections Code, Developer may within 45 days of receiving written notice from the City of the filing of such a petition (the "Petition Notice"), either: (i) agree to pay Fifteen Thousand Dollars (\$15,000) toward the administrative and other costs incurred by the City in processing the referendum petition and conducting an election thereon, and if the Developer so agrees, the City shall process such petition and conduct such election in accordance with all governmental laws, rules and regulations relating thereto (provided, however, that if such petition and election apply to any matters other than this Development Agreement, then the City shall equitably apportion the costs of such petition and election among all such matters); or (ii) elect not to make such a payment, and it is expressly acknowledged and agreed that Developer's election not to make such payment shall be grounds for termination of this Development Agreement by the City, but only if the City provides written notice of such termination to Developer within 45 days of the City's receipt of Developer's response to the Petition Notice.

Section 13. Annual Review. During the term of this Development Agreement, the City shall annually review this Development Agreement in accordance with the Development Agreement Regulations, which review shall commence with Developer's submission to the City's Community Development Department (the "CDD") not less than thirty (30) days nor more than sixty (60) days prior to the first anniversary date of this Development Agreement and each anniversary date thereafter, of a letter setting forth Developer's good faith compliance with the terms and conditions of this Development Agreement. Because the City has been provided sufficient audit and other rights hereunder to enable it to verify Developer's compliance with all the terms hereof, the annual review of Developer's compliance with this Development Agreement shall be limited to ensuring that Developer has actually paid the License Tax reported by Developer to be owing pursuant to the terms of this Development Agreement. The actual reasonable costs of such annual review shall be borne by Developer and paid to the City upon demand by the City.

If, as a result of such annual review, the City finds and determines on the basis of substantial evidence that Developer has not actually paid the License Tax as provided in the prior paragraph, the City may elect to terminate this Development Agreement if, after allowing the notice and cure procedure set forth in Section 11 above, and Section 15, below, such License Tax has not then been properly paid.

Section 14. Applicable Law/Attorneys' Fees. This Development Agreement shall be governed by and constructed in accordance with the laws of the State of California without regard to principles of conflict of laws. If either the City or the Developer brings any suit or other proceeding with respect to the subject matter or the enforcement of this Development Agreement or any other document executed in connection herewith, the prevailing party (as determined by the court, an agency, or other authority before which such suit or proceeding is brought), in addition to such other relief as may be awarded, shall be entitled to recover reasonable attorneys' fees (including reasonable in-house counsel fees of the City and Developer at private rates prevailing in San Bernardino County); expenses, and costs of investigation actually incurred. The foregoing shall include, without limitation, reasonable attorneys' fees, expenses, and costs of investigation incurred in appellate proceedings and costs incurred in establishing the right to indemnification.

Section 15. Supersedure by Subsequent Laws. If any agency other than the City imposes any law or regulation ("Law") after the Effective Date of this Development Agreement which prevents or precludes compliance with one or more provisions of this Development Agreement, then the provisions of this Development Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Promptly after enactment of any such new Law, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Development Agreement. In addition, Developer and the City shall have the right to challenge the new Law preventing compliance with the terms of this Development Agreement, and, in the event such challenge is successful, this Development Agreement shall remain unmodified and in full force and effect. If, upon or after

enactment of a new Law preventing compliance with the terms of this Development Agreement, either the City or Developer loses a material portion of its benefits under this Development Agreement, such party shall have the right at any time thereafter to terminate this Development Agreement if it so chooses, by giving written notification of such termination to the other.

Section 16. Mortgage Protection; Certain Rights of Cure.

16.1 Mortgage Protection This Development Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, after the date of recording this Development Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Development Agreement shall be binding upon and effective against any person or entity having an interest in the Property, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

16.2 Notice of Default to Mortgagee. If the City receives notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then the City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by the City that Developer has committed an event of default, and if the City makes a determination of noncompliance hereunder, the City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on Developer. Each Mortgagee shall have the right to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in the City's notice, for a period of thirty (30) days from and after the Developer's cure period has expired.

Section 17. Transfers and Assignments.

17.1 Right to Assign. Developer shall have the unlimited right to sell, assign, or transfer this Development Agreement, and all of its rights, duties and obligations hereunder, to one or more persons or entities at any time or times during the Term of this Development Agreement; provided, however, that in no event shall the rights, duties and obligations conferred upon Developer pursuant to this Development Agreement be at any time so transferred or assigned except in connection with a transfer of Developer's interest in the Property or portion thereof. Each successive purchaser, assignee, or transferee will also have the unlimited right to sell, assign, or transfer this Development Agreement, and all of its rights, duties and obligations thereunder in connection with a transfer of such parties' interest in the Property or portion thereof.

17.2 Release Upon Transfer. Upon the sale, transfer or assignment of any portion of the Property or an interest therein, Developer shall be released from its obligations under this Development Agreement with respect to the Property or portion thereof or interest therein to the extent so transferred and to the extent arising subsequent to the effective date of such transfer (i) if Developer is not then in default under this Development Agreement, (ii) Developer has provided to the City notice of such transfer, and (iii) the transferee executes and delivers to the City a written agreement in which (A) the name and address of the transferee is set forth and (B) the transferee expressly and unconditionally assumes all of the obligations of Developer under this Development Agreement with respect to the Property, or portion thereof or interest therein, transferred to the extent arising subsequent to the effective date of such transfer.

17.3 Covenants Binding. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Development Agreement shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective successors (by merger, consolidation or otherwise) and assigns.

Section 18. Property is Privately Owned. It is specifically understood and agreed by the Parties that the Property subject to this Development Agreement is the private property of Developer, that the City has no interest or responsibility for or duty to third persons concerning any of the improvements located thereon, and that Developer has full power over and exclusive control of the Property. Developer hereby agrees to and shall defend, indemnify and hold the City, and its elected officials, officers, employees and agents free and harmless from any liability for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's willful misconduct or negligent acts or omissions under this Development Agreement, excepting suits and actions brought by Developer for default of this Development Agreement or arising from the negligence or willful misconduct of the City;

Section 19. General Provisions.

19.1 Notices. Except as otherwise provided in Section 11.1, above, any communication, notice, or demand of any kind whatsoever that either party may be required or may desire to give to or serve upon the other shall be in writing, addressed to the addresses set forth below, and delivered by personal service, by reputable overnight delivery service, by facsimile transmission, or by registered or certified mail, postage prepaid, return receipt requested:

If to Developer:

Cemex Construction Materials, Inc.
430 N. Vineyard Avenue, Suite 500
Ontario, California 91764
Attention: Environmental Manager
Facsimile: (909) 974-5525

With a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
300 South Grand Avenue, Suite 3400
Los Angeles, California 90071
Attention: Rand S. April, Esq.
Facsimile: (213) 687-5600

If to City:

City of Redlands
35 Cajon Street

Redlands, California 92373
Attention: City Attorney
Facsimile: (909) 798-7503

Any such notice shall be deemed delivered if sent as follows: (a) if personally delivered, on the date of delivery to the address of the person to receive such notice as evidence by a signed receipt or notice of refusal thereof; (b) if sent by reputable overnight courier service, on the date of delivery to the address of the person to receive such notice as evidenced by a signed receipt or notice of refusal thereof; (c) if sent by facsimile transmission, on the date transmitted to the person to receive such notice if sent by 5:00 p.m., Central time, and on the next day if sent after 5:00 p.m, Central time; or (d) if mailed, on the date of delivery to the address of the person to receive such notice as evidence by a signed receipt or notice of refusal thereof. Any notice sent by facsimile transmission must be supplemented by personally delivering, sending by courier, or mailing a copy of the notice sent by facsimile transmission. Any party may change its address for notice by written notice at least ten (10) days before the effective date of such change in the manner provided in this Section 17.1.

19.2 No Joint Venture or Partnership. The City and Developer agree that nothing contained in this Development Agreement or in any document executed in connection with this Development Agreement shall be construed as making the City and Developer joint venturer's or partners.

19.3 Severability. Any provision or part of this Development Agreement which is invalid or unenforceable in any situation or in any jurisdiction shall, as to such situation and such jurisdiction, be ineffective only to the extent of such invalidity and shall not affect the enforceability of the remaining provisions hereof or the validity or enforceability of any such provision in any other situation in any other jurisdiction, unless such invalidity materially changes the agreements set forth herein, in which event this Development Agreement shall terminate.

19.4 Attorneys' Fees. If a dispute of any type arises, or an action is filed relating to this Development Agreement, or this Development Agreement gives rise to any other legal or

administrative proceeding between the parties hereto, then the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and disbursements, including, but not limited to, all professional fees incurred in connection with the prosecution or defense of such action, whether or not the action is prosecuted to a final judgment. The terms "attorneys' fees" and "disbursements" shall include, without limitation, fees and costs incurred in the following proceedings: (i) mediations; (ii) bankruptcy proceedings; (iii) appeals; and (iv) post-judgment motions and collection actions. The prevailing party shall also be entitled to attorneys' fees and disbursements after any dismissal of an action.

19.5 Authority. Each party hereto represents and warrants to the other that the individual executing this Development Agreement on its behalf is duly authorized to execute and deliver this Development Agreement on its behalf. The City acknowledges that the City Council and the Planning Commission have approved the form and substance of this Development Agreement.

19.6 Non-Contravention. Each party hereto represents and warrants to the other that the execution, delivery, and performance of this Development Agreement does not violate any ordinance, law, statute, rule, regulation, judgment, injunction, order, or decree, application to it, or breach any agreement to which it is a party.

19.7 Amendment. Except as required by Sections 1 or 17.10, this Development Agreement may be amended only by mutual written consent of the Parties as provided for in this Development Agreement Legislation.

19.8 No Waiver. No waiver of any of the provisions of this Development Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. Except as provided herein, no waiver shall be binding unless executed in writing by the party making the waiver.

19.9 Covenant of Good Faith and Fair Dealing. City and Developer each agree that it shall act fairly and in good faith with the other in connection with this Development

Agreement, and for the entire Term of this Development Agreement it shall not, either directly or through any agent, official or other person or entity take, promote, encourage, instigate or support any action which would deprive, or which would as a natural consequence of such action result in depriving, the other party of the benefits to which the other party is entitled pursuant to this Development Agreement.

19.10 Time of the Essence. Time is of the essence with respect to all matters contemplated by this Development Agreement.

19.11 Further Acts. Each party, at the request of the other, shall execute, acknowledge (if appropriate), and deliver such additional documents, and do such other additional acts, as may be reasonably required in order to accomplish the intent and purpose of this Development Agreement, including, but not limited to, taking all actions necessary to amend Exhibit "A" of this Development Agreement to clarify that after-acquired property within the boundaries of the City to be used in the mining and/or processing of aggregate is included within the definition of "Property."

19.12 Counterparts. This Development Agreement may be executed in one or more counterparts, each of which shall constitute an original, but all of which when taken together shall constitute one and the same instrument.

19.13 No Intent to Benefit Third Parties. Except for any purchaser(s), manager(s), operator(s), subcontractor(s), lessee(s), and licensee(s) of the Property or of Developer's aggregate business located at the Property, which purchasers(s), manger(s), operator(s), subcontractor(s), lessee(s), and licensee(s) shall be entitled to all the benefits of this Development Agreement, Developer and City do not intend by any provision of this Development Agreement to confer any right, remedy, or benefit upon any third party, and no other third party shall be entitled to enforce, or otherwise shall acquire any right, remedy, or benefit by reason of, any provision of this Development Agreement.

19.14 No Obligation to Operate. Nothing in this Development Agreement (or otherwise) shall obligate or be deemed to require Developer to extract or process aggregate at the Property at any time.

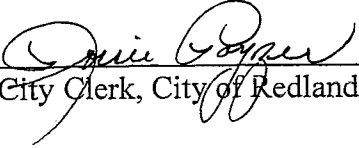
19.15 Expenses of Development Agreement. Except as otherwise provided in this Development Agreement, Developer and the City shall each bear its own direct and indirect expenses incurred in connection with the negotiation and preparation of this Development Agreement and the consummation and performance of the transactions contemplated hereby.

19.16 Entire Agreement. This Development Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Development Agreement, including the recitals and exhibits, constitutes the entire understanding and agreement of the Parties as to the matters described herein.

19.17 Recordation. This Development Agreement shall be recorded by the City in the Official Records of San Bernardino County, California. Upon expiration or earlier termination of this Development Agreement, with respect to all or any portion of the Property, a written statement acknowledging such expiration or earlier termination, signed by the appropriate representatives of the City and Developer, shall be recorded in the Official Records of San Bernardino County, California, with respect to such portion of the Property.

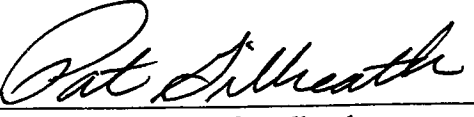
Executed the day and year first written above.

Attest:



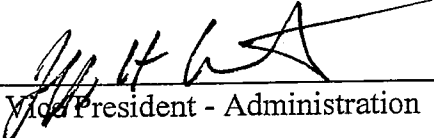
City Clerk, City of Redlands

CITY OF REDLANDS, a municipal
corporation

By: 

Mayor, City of Redlands

CEMEX Construction Materials, Inc.

By: 

Vice President - Administration

STATE OF California
: SS.
COUNTY OF San Bernardino

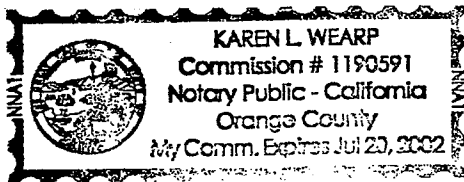
On the 9 day of August, 2001, before me,

Karen L. Wearp

personally appeared Jeff Smith,
personally known to me or proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)
acted, executed the instrument.

WITNESS my hand and official seal.

Karen L. Wearp
(SEAL)



ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) SS
CITY OF REDLANDS)

By the authority granted under Chapter 4, Article 3, Section 1181, of the California Civil Code, and Chapter 2, Division 3, Section 40814, of the California Government Code, on August 27, 2001, before me, Beatrice Sanchez, Deputy City Clerk, on behalf of Lorrie Poyzer, City Clerk of the City of Redlands, California, personally appeared Pat Gilbreath and Lorrie Poyzer { X } personally known to me - or - { } proved to me on the basis of satisfactory evidence to be the persons whose names) are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

LORRIE POYZER, CITY CLERK



By: [Signature]
Beatrice Sanchez, Deputy City Clerk
(909)798-7531

CAPACITY CLAIMED BY SIGNER(S)

- { } Individual(s) signing for oneself/themselves
{ } Corporate Officer(s)
Title(s)
Company
{ } Partner(s)
Partnership
{ } Attorney-In-Fact
Principal(s)
{ } Trustee(s)
Trust
{ x } Other
Title(s): Mayor and City Clerk
Entity Represented: City of Redlands, California

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:

Title or Type of Document: CEMEX Development Agreement
Date of Document: July 17, 2001
Signer(s) Other Than Named Above: Jeff Smith, Vice President-Administration

EXHIBIT A

LEGAL DESCRIPTION

Fee estates in the land located in the City of Redlands, County of San Bernardino, State of California, and described as follows:

1. Parcel No. 2 of Parcel Map No. 6127, as per plat recorded in Book 60 of Parcel Maps, Page 23, in the records of said county (APN 167-011-13).

Leasehold estates in the land located in the City of Redlands, County of San Bernardino, State of California, and described as follows:

A. The South One-Half of the Southeast Quarter of Section 11, Township 1 South, Range 3 West, San Bernardino Base and Meridian.

B. The North One-Half of the Northwest Quarter of the Southwest Quarter of Section 11, Township 1 South, Range 3 South, San Bernardino Base and Meridian; excepting therefrom the main canal of the lessor which crosses such property in an east-west direction.

C. The Northeast Quarter of the Southwest Quarter of Section 11, Township 1 South, Range 3 West, San Bernardino Base and Meridian; excepting therefrom the main canal of the lessor which crosses such property in an east-west direction.

D. The North One-Half of the Southeast Quarter of Section 11, Township 1 South, Range 3 West, San Bernardino Base and Meridian.

E. The North One-Half of the Southeast Quarter of Section 9, Township 1 South, Range 3 West, San Bernardino Base and Meridian.

F. The North One-Half of the Southeast Quarter of Section 10, Township 1 South, Range 3 West, San Bernardino Base and Meridian; excepting therefrom the Westerly 30 feet thereof and the Northerly 60 feet thereof.

EXHIBIT "A" CONTINUED

G. The Southwest 1/4, and the South 1/2 of the Northwest 1/4 of Section 9, T.1 S., R. 3 W., San Bernardino Meridian. (Assessor's Parcel Nos. 167-011-9,11)

EXCEPTING THEREFROM Parcel 1 and Parcel 2 of Parcel Map No. 6127 as recorded in Book 60 of Parcel Maps, Page-23 in the office of the County Recorder, County of San Bernardino, State of California. ALSO EXCEPTING therefrom that portion deeded from the City of Redlands to the State of California as per Official Records 83-153141. (Assessor's Parcel Nos. 167-011-12,13)

ALSO EXCEPTING therefrom that portion deeded from the San Bernardino County Flood Control District to the City of Redlands as recorded in Book 8045 of Deeds, Page 907. (Assessor's Parcel No. 167-011-04)

ALSO EXCEPTING therefrom that portion described as follows: The South 205 feet of the Southwest 1/4 of Section 9, T. 1 S., R. 3 W., San Bernardino Meridian, excepting therefrom that portion deeded from the San Bernardino County Flood Control District to the City of Redlands as recorded in Book 8045 of Deeds, Page 907. (Assessor's Parcel No. 167-011-10)

ALSO EXCEPTING therefrom that portion of the Northwest 1/4 of Section 9, T. 1 S., R. 3 W., described as commencing at the Southwest corner of land conveyed by deed recorded in Book 1521, Page 462 official records; thence S 89° 19' 42" E, along South line of land so conveyed 1095.37 feet; thence S 68° 52' 13" W, 420.62 feet; thence S 52° 41' 07" W, 886.70 feet to the West line of the Northwest 1/4 of said section; thence N 0° 11' 01" E, along said West line, 701.98 feet to the Point of Beginning, excepting street right-of-way. (Assessor's Parcel No. 167-011-08)

ALSO EXCEPTING therefrom Parcel 4 as shown on Exhibit "1" attached hereto.

