

|   |  |
|---|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):<br><b>Bradford C Floyd</b> 136459<br><b>Floyd Law Firm</b><br><b>819 Seventh Street</b><br><b>Eureka CA 95501</b><br>TELEPHONE NO.: (707) 445-9754 FAX NO. (Optional): (707) 445-5915<br>E-MAIL ADDRESS (Optional): bcfloyd@floydlawfirm.net<br>ATTORNEY FOR (Name): <b>Magan and Sarla Natha</b> | <b>FOR COURT USE ONLY</b><br><br><br><br><br><br><br><br><br><br><br>CASE NUMBER:<br><b>CVPT-2021-1184</b> |
| <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF DEL NORTE</b><br>STREET ADDRESS: <b>450 H Street</b><br>MAILING ADDRESS:<br>CITY AND ZIP CODE: <b>Crescent City CA 95531</b><br>BRANCH NAME:   |  |
| PLAINTIFF/PETITIONER: <b>Magan L. Natha and Sarla M. Natha</b><br><br>DEFENDANT/RESPONDENT: <b>City of Crescent City, a Municipal Corporatio of the State of California</b>   |  |
| <b>NOTICE AND ACKNOWLEDGMENT OF RECEIPT - CIVIL</b>   |  |

TO (insert name of party being served): City of Crescent City

**NOTICE**

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: July 8, 2021

Gina M. Emery  
(TYPE OR PRINT NAME)

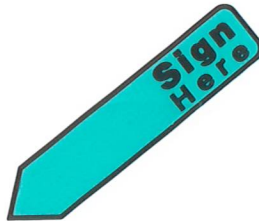


(SIGNATURE OF SENDER-MUST NOT BE A PARTY IN THIS CASE)

**ACKNOWLEDGMENT OF RECEIPT**

This acknowledges receipt of (to be completed by sender before mailing):

- 1.  A copy of the summons and of the complaint.
- 2.  Other (specify):



(To be completed by recipient):

Date this form is signed:

\_\_\_\_\_  
(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY, ON WHOSE BEHALF THIS FORM IS SIGNED)

\_\_\_\_\_  
(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

|  |                                       |
|--|---------------------------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):<br><b>Bradford C Floyd</b> 136459<br><b>Floyd Law Firm</b><br><b>819 Seventh Street</b><br><b>Eureka CA 95501</b><br>TELEPHONE NO.: (707) 445-9754 FAX NO. (Optional): (707) 445-5915<br>E-MAIL ADDRESS (Optional): <b>bcfloyd@floydlawfirm.net</b><br>ATTORNEY FOR (Name): <b>Magan and Sarla Natha</b> | FOR COURT USE ONLY                    |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>DEL NORTE</b><br>STREET ADDRESS: <b>450 H Street</b><br>MAILING ADDRESS:<br>CITY AND ZIP CODE: <b>Crescent City CA 95531</b><br>BRANCH NAME:  |                                       |
| PLAINTIFF/PETITIONER: <b>Magan L. Natha and Sarla M. Natha</b><br><br>DEFENDANT/RESPONDENT: <b>City of Crescent City, a Municipal Corporatio of the State of California</b>  |                                       |
| <b>NOTICE AND ACKNOWLEDGMENT OF RECEIPT - CIVIL</b>  | CASE NUMBER:<br><b>CVPT-2021-1184</b> |

TO (insert name of party being served): City of Crescent City

**NOTICE**

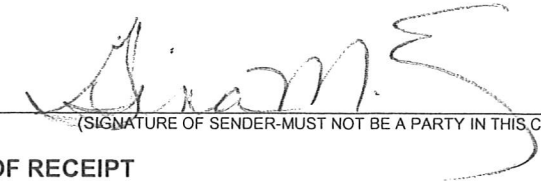
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Date of mailing: **July 8, 2021**

Gina M. Emery

(TYPE OR PRINT NAME)

  
 (SIGNATURE OF SENDER-MUST NOT BE A PARTY IN THIS CASE)

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2.  Other (specify) :

(To be completed by recipient) :

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 (TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY, ON WHOSE BEHALF THIS FORM IS SIGNED)

  
 (SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

**SUMMONS**  
**(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ENDORSED  
FILED**

**JUL 01 2021**

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF DEL NORTE**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**  
City of Crescent City, a Municipal Corporation of the  
State of California and Does 1-10

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**  
Magan L. Natha and Sarla M. Natha

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Superior Court of California, County of Del Norte  
450 H Street  
Crescent City CA 95531

CASE NUMBER  
(Número del Caso):

CVPT-2021-1184

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Bradford C Floyd (SBN 136459)  
Floyd Law Firm, 819 Seventh Street (707) 445-9754  
Eureka CA 95501

ESPERANZA ESPARZA

Clerk, by  
(Secretario)

H. FLESHMAN

, Deputy  
(Adjunto)

DATE: JUL 01 2021  
(Fecha)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

- 1.  as an individual defendant.
- 2.  as the person sued under the fictitious name of (specify):

- 3.  on behalf of (specify): **CITY OF CRESCENT CITY**

- under:  CCP 416.10 (corporation)  CCP 416.60 (minor)
- CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)
- other (specify):

- 4.  by personal delivery on (date):



1 Bradford C Floyd (SBN 136459)  
E-mail: [bcfloyd@floydlawfirm.net](mailto:bcfloyd@floydlawfirm.net)  
2 Carlton D. Floyd (SBN 275958)  
E-mail: [cdfloyd@floydlawfirm.net](mailto:cdfloyd@floydlawfirm.net)  
3 FLOYD LAW FIRM  
819 Seventh Street  
4 Eureka, California 95501  
Telephone: (707) 445-9754  
5 Facsimile: (707) 445-5915

6 Attorneys for Petitioner

**ENDORSED  
FILED**

JUL 01 2021

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF DEL NORTE

7  
8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF DEL NORTE

9  
10 MAGAN L. NATHA AND SARLA M.  
11 NATHA,

12 Petitioners,

13 v.

14 CITY OF CRESCENT CITY, A  
15 MUNICIPAL CORPORATION OF THE  
STATE OF CALIFORNIA AND DOES  
1-10,

16 Respondents.  
17

Case No. *CVPT-2021-1184*

**PETITION FOR REFORMATION OF  
CONTRACT, DECLARATORY  
RELIEF AND INJUNCTIVE RELIEF**

18  
19 Petitioners Magan L. Natha and Saria M. Natha (hereinafter "Natha" or "Petitioners")  
20 allege as follows:

21 **THE PARTIES**

22 1. Petitioners are, and at all times mentioned herein, were residents of the  
23 County of Humboldt, State of California and doing business as Anchor Beach Inn in Del  
24 Norte County, California.

25 2. Respondent City of Crescent City (hereinafter "City") is a municipal  
26 corporation of the State of California and is located within Del Norte County (hereinafter  
27 "County"), California.  
28



1           8.       On or about August 23, 1999, City and Natha entered into the Agreement  
2 which allowed Anchor Beach to be connected to City's wastewater service. On or after  
3 August 23, 1999, Anchor Beach was in fact connected to City's wastewater service.

4           9.       Since Anchor Beach was connected to City's wastewater service City has  
5 charged Natha a monthly fee for its wastewater service, which, on information and belief,  
6 was similar to other motels situated within the City or outside the City in the  
7 unincorporated area of Del Norte County. However, in addition to this monthly fee City  
8 has charged Natha a fee in lieu of the transitory occupancy tax in the amount of 2 percent  
9 of the gross revenues received by Anchor Beach. This in lieu fee is set forth in the  
10 Agreement at page 5, subsection 3.2. This section is as follows:

11               **3.2 In Lieu Fee.** Owner and any "Operator" as defined in Crescent  
12 City Municipal Code § 3.20.010(C), shall pay to the City of Crescent  
13 City, California, a fee in lieu of the transitory occupancy tax as  
14 defined by Crescent City Municipal Code § 3.2.010, et. Seq.  
15 Provided, however, that (1) the amount shall at all times applicable  
16 be two percent (2%) of gross revenues generated by the Motel but  
17 only those gross revenues which would be subject to the City's  
18 Transient occupancy tax as if the Motel were located within the City;  
19 and (2) this two percent fee shall cease upon annexation of the Natha  
20 Motel property to the City, at which time Nathas shall pay such  
21 transitory occupancy tax as generally applicable to like businesses  
under the City's ordinances. The "in lieu" fee shall be reported and  
remitted in that same manner that transient occupancy taxes are to be  
reported and remitted under the Crescent City Municipal Code. In  
the event the premises are not annexed to City the obligation to pay  
the "in lieu" fee shall terminate sixty years after the last execution of  
this Agreement. Nothing herein shall be construed to infer that,  
absent this agreement, businesses outside the City's territorial limits  
are or are not subject to the City's transient occupancy tax and Natha  
hereby waives any defense to payment of aforesaid 2% in lieu fee  
which may be based, in whole or in part, on such an inference.

22          10.       Since entering into this Agreement, and continuing to the present, Natha has paid  
23 this in lieu fee to City which has amounted to hundreds of thousands of dollars.

24          11.       In February 2019, and continuing thereafter, Natha has paid the in lieu fee, under  
25 protest because this fee is an improper and illegal fee and in violation of, among other  
26 statutes and common law, the California Health and Safety Code sections 5040, 5043 and  
27 5471.

1 12. On or about September 9, 2019, Natha's attorney sent a letter to City's attorney  
2 requesting that City "... immediately cease charging the Nathas the 2 percent [transient  
3 occupancy tax] since it [was] an illegal tax. A copy of this letter is attached hereto as  
4 **Exhibit B** and incorporated herein by reference.

5 13. On or about January 3, 2020, City's attorney authored a letter declining to rescind  
6 the 2 percent in lieu fee claiming the fee was based upon a contract City entered into with  
7 Natha and that the fee was not illegal. A copy of this letter is attached hereto as **Exhibit**  
8 **C** and incorporated herein by reference.

9 14. In addition to the Agreement, the parties also entered into a Settlement  
10 Agreement and General Release of Litigation Claims (hereinafter "Settlement  
11 Agreement"). A copy of the Settlement Agreement is attached hereto as **Exhibit D** and  
12 incorporated herein by reference.

13 15. Paragraph 19 of the Settlement Agreement provides:

14 19. The payment of "in lieu" fees and Nathas commitment to  
15 annexation is integral to this Agreement and may not be severed from  
16 the remainder of the provisions of this Agreement. In the event any  
17 portion of this Agreement is invalid or inoperable or any party is  
18 denied the full benefits conferred under this Agreement as set forth  
19 herein, in whole or in part, then Natha on behalf of the Nathas' own  
20 selves and on behalf of all persons or legal entities hereafter  
21 succeeding to Nathas' interest in and to the Premises and any part  
22 thereof, and City agree to reform this Agreement and any and all  
23 documents attached hereto or executed concurrently herewith to  
24 accomplish the intent of Nathas and City as set forth herein. In the  
25 event Nathas and City cannot reach an understanding in regard to the  
26 reformation of this Agreement within six months, then Nathas and/or  
27 City may file a petition with the Del Norte County superior Court to  
28 judicially reform this Agreement.

22 16. Natha and City have attempted for more than six months to resolve this dispute  
23 and reform the Agreement and the Settlement Agreement without success. For this  
24 reason Natha is filing this Petition.

25 **FIRST CAUSE OF ACTION**  
26 (Reformation of Contract)

26 17. Petitioners hereby incorporate by reference the allegations set forth in paragraphs  
27 1 through 16, above.

1 18. Petitioners seek, in the interests of justice and/or the policy of the law, to reform  
2 the Agreement and the Settlement Agreement in that the 2 percent in lieu fee being  
3 charged by City, in addition to its monthly fee for wastewater service, was, and is, an  
4 illegal tax imposed on Natha by City. By this Petition Natha seeks to have this illegal in  
5 lieu fee severed from the Agreement and Settlement Agreement but that the remaining  
6 legal portions of those agreements be enforced.

7 19. Petitioners also seek the disgorgement by City to Natha of the illegal in lieu fees  
8 paid by Natha to City in an amount to be determined at trial.

9 WHEREFORE, Natha prays for judgment against City and the Doe respondents as set  
10 forth below.

11 **SECOND CAUSE OF ACTION**  
12 **(Declaratory Relief)**

13 20. Petitioners hereby incorporate by reference the allegations in paragraphs 1  
14 through 19.

15 21. An actual controversy presently exists between Natha and City regarding their  
16 respective rights, title and interests with regard to the in lieu fees. Natha contends that the  
17 in lieu fee Anchor Beach is being charged by City for use of City's wastewater service, in  
18 addition to the wastewater service fee is an illegal tax/fee and contrary to the laws of  
19 California. City contends that the in lieu fees are proper and not contrary to the law.

20 22. A judicial declaration of the rights and responsibilities of the parties is necessary  
21 and appropriate at this time because City threatens to terminate Anchor Beach's  
22 wastewater service, revoke the wastewater connection permit, disconnect the wastewater  
23 lateral line connecting Anchor Beach, and charge a 10 percent penalty if Natha fails to  
24 pay the in lieu fee.

25 23. Petitioners have no plain, speedy, or adequate remedy in the course of ordinary  
26 law.



1 WHEREFORE, petitioners pray for relief as set forth below.

2 **THIRD CAUSE OF ACTION**  
3 **(Injunctive Relief)**

4 24. Petitioners hereby incorporate by reference the allegations in paragraphs 1  
5 through 23.

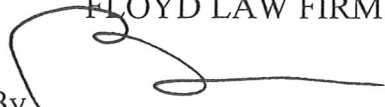
6 25. Unless and until enjoined and restrained by order of this Court, City will most  
7 likely continue its threats to terminate Anchor Beach's wastewater service, revoke the  
8 wastewater connection permit, disconnect the wastewater lateral line connecting Anchor  
9 Beach, and charge a 10 percent penalty if Natha fails to pay the in lieu fee.

10 26. Petitioners have no adequate remedy at law for the injuries being suffered as the  
11 result of Respondent's conduct, as described above, and petitioners will be forced to  
12 institute a multiplicity of suits to obtain adequate compensation and relief for their  
13 injuries.

14 WHEREFORE, petitioners pray for relief as follows:

- 15 1. For judgment that reforms the Agreement and Settlement Agreement by severing  
16 the illegal in lieu fees from these agreements;
- 17 2. For judgment that requires City to disgorge the in lieu fees paid by Natha to City in  
18 an amount to be proven at trial;
- 19 3. A declaration that the in lieu fees in the Agreement and Settlement Agreement are  
20 an illegal fee or tax;
- 21 4. For injunctive relief as requested;
- 22 5. For attorney's fees and costs of suit herein;
- 23 6. For other such relief as this Court may deem just and proper.

24 Dated: June 29, 2020

25 FLOYD LAW FIRM  
26 By   
27 Bradford C Floyd, Attorneys for Natha

Pursuant to §6103 and §27383 of the California Government Code, the City of Crescent City is not required to pay Del Norte County recording fees

Recording requested by and after recording, return to:  
City Manager  
City of Crescent City  
377 "J" Street  
Crescent City, CA 95531

99 4443

Assessor's Parcel No. 117-180-20

RECORDED AT REQUEST OF  
*Crescent City - City of*  
OFFICIAL RECORDS  
AUG 23 9 23 AM '99  
DEL NORTE COUNTY, CA  
COUNTY CLERK-RECORDER  
BY *LS*  
DEPUTY  
*No fee*

(Space above for recorder's use)

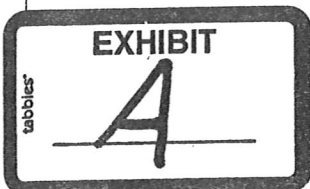
### Annexation, Subordination, Easement and Secondary Easement Agreement

This agreement is made and executed on the last date noted below, by and between (a) the City of Crescent City, a municipal corporation of the State of California, (hereinafter referred to as "City") and (b) Sacramento Commercial Bank (hereinafter referred to as "Lender") and (c) Magan L. Natha and Sarla M. Natha, husband and wife, (on behalf of Owners' own selves and on behalf of all persons or legal entities hereafter succeeding to Owners' interest in and to the Premises and any part thereof) the owners of certain property located in the County of Del Norte, State of California (hereinafter referred to as "Owner") with reference to the following facts:

WHEREAS, Owner owns the real property and the motel improvements thereon (hereinafter referred to as the "Property" or "Servient Tenement") commonly referred to as 880 Highway 101, South, Crescent City located in the unincorporated area of Del Norte County (and within the unincorporated portion of the Crescent City Sphere of Influence), State of California, more particularly described as:

Lots 1 through 16 in Block 2 of Walton docks according to the map thereof filed in the office of the County recorder of Del Norte County, California on July 13, 1915, in book 2 of Maps, page 35.

EXCEPTING therefrom that portion thereof conveyed to the State of California in



deed recorded July 29, 1959, in Book 58 of Official Records, page 275, Del Norte County Records.

WHEREAS, Sacramento Commercial Bank is the beneficiary of an existing first deed of trust for construction purposes held by in the original principal balance of \$1,944,000, which deed of trust is recorded in the Official Records of the Del Norte County Recorder on October 29, 1998 at Book 497, pages 282-292 inclusive (hereinafter referred to as the "Trust Deed").

WHEREAS, Owner has applied to City for a permit authorizing connection of the plumbing facilities serving the motel buildings and structures now constructed on the Property to the sewer system owned and operated by City; and

WHEREAS, City adopted a policy intended to encourage annexation into the city of properties located within the unincorporated area desiring to have the benefit of city utility infrastructure; and

WHEREAS, the County of Del Norte has a Community Service Area that has jurisdiction over the provision of wastewater services to the area that the Property is located but does not have effluent facilities that immediately extent to the Property, and

WHEREAS, City presently provides wastewater treatment services to the Crescent City Harbor District and City's effluent facilities are located much nearer to the Property so that it would be significantly more cost effective for the Property to connect to City's effluent lines rather than those of the county's Community Service Area, and

WHEREAS, Nathas desire to annex to the City so that both City and the Property may benefit therefrom but Nathas have been advised that they can not occupy the Property and commence business operations unless they have a satisfactory means of wastewater disposal available and the immediate connection to City's wastewater facilities would allow the Nathas to commence business operations, and

WHEREAS, City desires to cooperate with Natha to in such a manner that insures that Natha can commence business operations and that City will receive a fee in lieu of Transient Occupancy Tax which otherwise would be lost to City until the Motel annexes into the city limits; and

WHEREAS, Lender desires to protect its security by facilitating the expeditious commencement of business operations of the Property through ensuring City that Lender's rights under the Trust Deed shall be subordinate to the obligations and waivers imposed in this agreement.

NOW, THEREFORE, it is agreed as follows:

**Waiver of Protest of Annexation.** In consideration of City issuing a permit to Owner

authorizing connection of the Property to the sewer system owned and operated by City, Owner agrees with City, on behalf of Owner's own self and on behalf of all persons or legal entities hereafter succeeding to Owner's interest in and to the Property and any part thereof, as follows:

- 1.1 Owner and City agree that at any time proceedings are commenced to annex the Property or any part thereof to the incorporated territory of City, Owner shall not oppose or protest such annexation proceedings before the Del Norte County Local Agency Formation Commission, the City Council of City, or any other legislative body, board, or commission, either pursuant to the provisions of the Cortese-Knox Local Government Reorganization Act of 1985 (commencing with Section 56000 of the California Government Code) or in any manner provided for by the laws of the State of California pertaining to city annexation proceedings. Owner and City understand and agree that this agreement and the covenants contained herein are intended to be and shall act as a complete and irrevocable waiver of all such protest rights, whether or not such protest rights are sought to be exercised either as an owner of the property which is the subject of City annexation proceedings, or as a registered voter residing on the property which is the subject of City annexation proceedings.
- 1.2. Owner and City also agree that any lease, rental agreement, or other agreement now or hereafter executed by Owner, or by any person succeeding to Owner's interest in the fee title to the Property or any part thereof, which grants to a natural person or persons the right to possess and occupy the Property or any part thereof as a personal residence shall contain the following covenant:

"This agreement and the right of lessee or tenant to possess and occupy the property leased or rented pursuant to this agreement shall be subject to the provisions of the Sewer Service and Annexation Agreement which was executed and recorded against such property at the time of and as a condition of connecting the property to the sewer system owned and operated by the City of Crescent City. That agreement contains a complete and irrevocable waiver of any legal right to protest annexation of the property leased or rented pursuant to this agreement to the incorporated territory of the City of Crescent City and is binding on all persons possessing and occupying such property. That agreement will preclude any person possessing and occupying the property leased or rented pursuant to this agreement from protesting annexation of such property to the incorporated territory of the City of Crescent City either before the Del Norte County Local Agency Formation Commission, the City Council of the City of Crescent City, or in any other manner authorized by the laws of the State of California pertaining to city annexation proceedings."
- 1.3. Owner and City further agree that in the event that Owner and/or any other person or legal entity hereafter succeeding to Owner's interest in and to the

Property or any part thereof seek to protest annexation of the Property or any part thereof to the incorporated territory of City contrary to and in breach of the provisions of this agreement, City shall be entitled to take the following actions:

- 1.3.1. In the event a protest to the annexation of the Property or any part thereof to the incorporated territory of the City is filed with City; such protest shall be null and void and shall be disregarded by City in determining the value of all protests to such annexation.
- 1.3.2. In the event a protest to the annexation of the Property or any part thereof to the incorporated territory of the City is filed with the Del Norte County Local Agency Formation Commission or any other board or commission, this agreement shall act as a complete bar to the acceptance and consideration of such protest by the Del Norte County Local Agency Formation Commission or other board or commission at such time as City files a copy of this agreement with the Del Norte County Local Agency Formation Commission or other board or commission.

**2. Floating Easement.** Owners and their grantees, heirs, successors and assigns hereby grant the City of Crescent City a blanket easement upon, across, over and under all the property at the address indicated for all acts necessary to maintain the functional existence of the wastewater system, including but not limited to, ingress, egress, installation, replacing, repairing and maintaining all wastewater laterals and utilities. City agrees to execute a substitute utility easement designating a specific for the wastewater utility easement, the legal description of which easement shall then be established in customary width and location where the wastewater connection line is actually constructed, upon presentation by Owner of such form together with adequate proof that the location is accurate. After the recording of said substitute easement, the aforesaid floating easement shall no longer be floating.

**3. Secondary Easements.** The property benefited by the reservation of this easement hereinafter referred to as the "dominant tenement" is the property within the jurisdictional limits of the City of Crescent City, California. The covenants granted in this deed are expressly stated to be for the benefit of the dominant tenement designated herein, the City of Crescent City. The acceptance of a deed of all or any portion of the Servient Tenement by Owner or any subsequent grantee constitutes herein his/her/their covenant binding upon all parties and all persons claiming under them for a period of 60 years from the date these covenants are recorded, unless an instrument signed by the City of Crescent City has been recorded, agreeing to change said covenants in whole or in part. Excepting for the maintenance covenant and the utility easement (or substituted fixed easement) these secondary easements shall terminate as to the Property or any part thereof at such time as the Property or such part thereof is annexed to the incorporated territory of the City. Owner on behalf of Owner s' own selves and on behalf of all persons or legal entities hereafter succeeding to Owner s' interest in and to the Property and any part thereof and City agree as follows:

- 3.1 **Maintenance.** Owner shall remain responsible to repair all wastewater improvements located at the Property.
- 3.2 **In Lieu Fee.** Owner, and any "Operator" as defined in Crescent City Municipal Code § 3.20.010(C), shall pay to the City of Crescent City, California, a fee in lieu of the transitory occupancy tax as defined by Crescent City Municipal Code § 3.2.010, et. Seq. Provided, however, that (1) the amount shall at all times applicable be two percent (2%) of gross revenues generated by the Motel but only those gross revenues which would be subject to the City's Transient occupancy tax as if the Motel were located within the City; and (2) this two percent fee shall cease upon annexation of the Natha Motel property to the City, at which time Nathas shall pay such transitory occupancy tax as generally applicable to like businesses under the City's ordinances. The "in lieu" fee shall be reported and remitted in that same manner that transient occupancy taxes are to be reported and remitted under the Crescent City Municipal Code. In the event the premises are not annexed to City the obligation to pay the "in lieu" fee shall terminate sixty years after the last execution of this Agreement. Nothing herein shall be construed to infer that, absent this agreement, businesses outside the City's territorial limits are or are not subject to the City's transient occupancy tax and Natha hereby waives any defense to payment of aforesaid 2% in lieu fee which may be based, in whole or in part, on such an inference.
- 3.3 Owner shall ensure that any lease, rental agreement, or other agreement now or hereafter executed by Owner, or by any person succeeding to Owner's interest in the fee title to the Property or any part thereof, which grants to a natural person or persons the right to possess and occupy the Property or any part thereof as a personal residence shall include the language contained in paragraph 7.1 above
- 3.4 Owner shall comply with all terms and conditions applicable to sewers, wastewater connections, public sewer permits and wastewater pretreatment set forth in the Crescent City Municipal Code (and its Appendixes) from time to time amended and supplanted, resolutions of the City Council and administrative rules and procedures set out by the City of Crescent City, now in effect or hereafter promulgated and to pay all costs, charges, penalties, fees, levies and assessments from time to time so imposed.
- 4 **Subordination.** Lender agrees that its rights under the Trust Deed are subordinate and junior to City's rights under this agreement.
- 5 This agreement shall be recorded against the Property, shall run with the Property and each part thereof until terminated in the manner provided for herein, and shall be binding on all persons or legal entities succeeding to Owner's interest in and to the Property and any part thereof.
6. Excepting for the maintenance covenant and the utility easement (or substituted

fixed easement) this agreement shall terminate as to the Property or any part thereof at such time as the Property or such part thereof is annexed to the incorporated territory of the City.

In the event City is the prevailing party in any action brought to enforce the covenants of this agreement, City shall be entitled to all costs of suit incurred therein, including, but not limited to, reasonable attorneys' fees as determined by the court.

IN WITNESS WHEREOF, the parties have executed this agreement on the date first set forth above.

OWNER(S)

Magan L. Natha.  
MAGAN L. NATHA

Sarla M. Natha.  
SARLA M. NATHA

Lender

[Signature]  
ROBERT O'NEIL, Vice-President  
Sacramento Commercial Bank

CITY OF CRESCENT CITY

[Signature]  
By: David M. Wells  
City Manager

\*All signatures must be acknowledged by a notary

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
 County of SACRAMENTO } ss.

On AUGUST 18, 1999, before me, MARGARET A. DURLAP, NOTARY PUBLIC  
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")  
 personally appeared ROBERT O'NEIL  
Name(s) of Signer(s)

personally known to me  
 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/it~~ 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.



Place Notary Seal Above

WITNESS my hand and official seal  
*Margaret A. Durlap*  
 Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: ANNEXATION, SUBORDINATION, EASEMENT & SECONDARY EASEMENT AGREEMENT

Document Date: AUGUST 17, 1999 Number of Pages: SIX

Signer(s) Other Than Named Above: HAGAN L. NATHA, SARLA M. NATHA AND DAVID M. WELLS

**Capacity(ies) Claimed by Signer**

Signer's Name: ROBERT O'NEIL  
 Individual  
 Corporate Officer — Title(s): VICE PRESIDENT  
 Partner —  Limited  General  
 Attorney in Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_



Signer is Representing: SACRAMENTO COMMERCIAL BANK





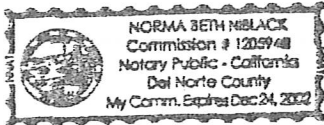
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Del Norte } ss.

On 8/20/99 before me, Norma Beth Tibblack, Notary Public  
Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared David M. Wells  
Name(s) of Signer(s)

personally known to me  
 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.

Norma Beth Tibblack  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document  
Title or Type of Document: Annexation Subordination Agreement

Document Date: August 17, 1999 Number of Pages: 6

Signer(s) Other Than Named Above: Margen L. Nathan, Sara H. Nathan, Robert A. L. C.

Capacity(ies) Claimed by Signer  
Signer's Name: David M. Wells

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: City Manager

Signer is Representing: City of Crescent City



FLOYD LAW FIRM

819 Seventh Street

Eureka, California 95501

Telephone:(707) 445-9754

Facsimile:(707) 445-5915

E-mail: [bcfloyd@floydlawfirm.net](mailto:bcfloyd@floydlawfirm.net)

Attorneys:

Bradford C Floyd  
Carlton D. Floyd

September 9, 2019

Martha D. Rice, Esq.  
City of Crescent City  
Black & Rice LLP  
710 H Street  
Crescent City, CA 95531

**Re: Anchor Beach Inn**

Dear Ms. Rice,

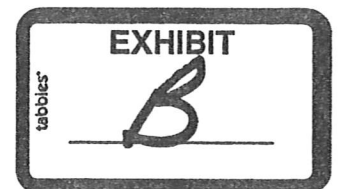
As I indicated to you by telephone last week, I represent Magan and Sarla Natha, the owners of Anchor Beach Inn located just South of Crescent City.

In 1999, Mr. And Mrs. Natha entered into an Annexation, Subordination, Easement and Secondary Easement Agreement ("Agreement") with the City of Crescent City ("City") related solely the Nathas connecting to the City sewer. In fact, issuance of a building permit for the construction of what was to become Anchor Beach Inn was contingent upon the Nathas entering into this Agreement. Among other things, the Agreement called for a 2% transitory occupancy tax ("TOT"), paid by the Nathas quarterly to City, as consideration (a tax) for the Nathas connecting to City's sewer services. (Agreement p. 5, para. 3.2.) Since 1999 the Nathas have annually paid between \$16,000 and \$20,000 to City for this 2% TOT. The Agreement signed by the Nathas contemplates this tax lasting for as many as 60 years. (Id.)

Recently, the Nathas and City entered into negotiations for the City to cease payment this 2% TOT. Last week the Nathas met with me regarding this 2% TOT. Based upon my understanding of the facts, in conjunction with the legal research I preformed, I believe the 2% tax being charged by the City is illegal.

Health & Safety Code § 5471(a) states:

In addition to the powers granted in the principal act, any entity shall have power, by an ordinance or resolution approved by a two-thirds vote of the members of the legislative body thereof, to prescribe, revise and collect, fees, tolls, rates, rentals, or other charges for services and facilities furnished by it, either within or without its territorial limits, in connection with its water, sanitation, storm drainage, or sewerage system." In 1991 Health & Safety Code § 5471 did not have the term "or resolution" in its body. In other words, for an entity to charge any type of fee,



Martha D. Rice, Esq.  
September 9, 2019  
Page 2

toll, rate or other service charge, the City had to have an ordinance approved by a two-thirds vote of the members before it could legally charge the Nathas a 2% fee.

Health & Safety Code § 5471(a) has been the subject of much litigation. See for instance *Pinewood Investors v. City of Oxnard* (1982) 133 Cal.App.3d 1030; *Cavalier Acres Inc. v. San Simeon Acres Community Services District* (1984) 151 Cal.App.3d 798. In both the *Pinewood Investors* and *Cavalier Acres* cases the governing public body failed to pass an ordinance before it collected fees from the plaintiffs. The Courts specifically found that since no ordinance had been passed no fee could be collected.

In the instant matter, it is my understanding that the Nathas are the only individuals or entity being charged a 2% TOT for connecting to City's sewer regardless of whether the individuals or entity were located in or out of the City. Per Health and Safety Code section 5471(a), this conduct by City is precluded by law.

At this time my clients are requesting City to immediately cease charging the Nathas the 2% TOT since it is an illegal tax. Then there is the issue of disgorgement of past payments made by the Nathas to City. We would like to discuss with you and perhaps the City fathers resolution of this unfortunate matter. If we cannot reach a resolution then my clients are prepared to file litigation against the City and as part of that litigation seek disgorgement of the improper taxes paid as well as costs and attorney fees. All payments by the Nathas in the future, as well as their past payments, are/were made under protest.

After you have had an opportunity to review this letter and the authorities cited please contact me to discuss this matter further.

Sincerely,

Bradford C Floyd  
Attorney at Law

BCF/hla

**BLACK RICE & LUNA LLP**

Robert N. Black, Partner  
rblack@attyblack.com

Autumn E. Luna, Partner  
aluna@attyblack.com

Attorneys at Law  
The McNulty House  
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Crescent City, CA 95531

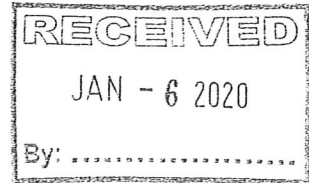
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acarpenter@attyblack.com

Martha D. Rice, Partner  
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Michael T. Taney, Associate  
mtaney@attyblack.com

January 3, 2020

Bradford Floyd  
The Floyd Law Firm  
819 Seventh Street  
Eureka, CA 95501



SCANNED

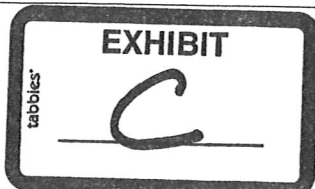
Re: Anchor Beach Inn – Letter dated September 10, 2019

Mr. Floyd:

I have received and reviewed your letter dated September 10, 2019 regarding the Annexation, Subordination, Easement and Secondary Easement Agreement (“Agreement”) entered into between the City of Crescent City (“City”) and your clients, Magan and Sarla Natha (“Nathas”) and recorded on August 23, 1999 at Book 511, Page 387 in the Official Records of Del Norte County. Your letter contends that the 2% in lieu of TOT fee is invalid and unlawful under Health & Safety Code § 5471(a). I disagree with your conclusion as to the validity of the fee described in the Agreement and I will explain why in this letter. I will also give you some additional background on how the parties came to this Agreement as it is not clear that you have any of this information.

The Annexation, Subordination, Easement and Secondary Easement Agreement is an integral part of a Settlement Agreement and General Release of Litigation Claims entered into between the parties on August 17, 1999 to resolve a lawsuit filed by the Nathas against the City on July 2, 1998 as Del Norte County Superior Court Case No. 980336. The lawsuit alleged three causes of action: (1) administrative mandamus, (2) inverse condemnation for regulatory taking and (3) deprivation of rights under color of state law. All three causes of action were based upon the Nathas’ assertion that they were entitled to a wastewater service connection to their motel, the Anchor Beach Inn. At the time of the complaint, the Nathas were approved to receive a wastewater connection from County Service Area No. 1, but not directly from the City as City policy was to require properties outside of the incorporated area to connect via the appropriate County Service Area. The dispute arose because the City service line was much closer to the property than the CSA service line and, therefore, much less costly to tie into.

The settlement also came on the heels of an Appellate Court decision upholding the City’s policy decision to not allow new water service connections outside the city limits. *County of Del Norte v. City of Crescent City*, 71 Cal. App. 4th 965 (First App. Dist. 1999). The city had the same policy when it came to sewer service connections. The appellate court, quoting *Dateline Builders*,



Phone: 707-464-7637  
Fax: 707-464-7647

*Inc. v. City of Santa Rosa* (1983 146 Cal.App.3d 520 at 530, stated “[n]either common law nor constitutional law inhibits the broad grant of power to local government officials to refuse to extend utility service so long as they do not act for personal gain nor in a wholly arbitrary or discriminatory manner.” The appellate court found that the City’s policy was not arbitrary and was in fact grounded upon a reasonable basis in that the City was using utility connection policies as a means to manage the growth of the City and capacity of the system. The same policy was applied to sewer connections. At the time in question, the City Council approved a policy to not allow sewer connections directly to the City’s sewer lines unless the property was within city limits. This was a valid policy and purpose, which has already been litigated.

Following the determination of the appellate court, the parties came to an agreement to resolve the lawsuit between them. The fact is that the City was not required to allow the Nathas to hook up to the City sewer line because their property was outside the city limits. That could have killed the project. Clearly, the major benefit to the City of having the motel property annexed was the TOT revenue (10%). The Nathas were charged the same connection fees for water and sewer as everyone else. However, unlike everyone else at the time, the settlement allowed them to connect directly to the City sewer line without being inside the city limits. As a settlement of a lawsuit that had already dragged on for a year and gotten literally nowhere, each party gave some. The City gave up 8% TOT (for up to 60 years) and the Nathas gave up 2% fee in lieu of TOT (for up to 60 years) but also gained the savings in not hooking into the CSA line at a much steeper price.

The City and the Nathas entered into this settlement agreement more than 20 years ago. About a year ago, after the County raised its TOT to 10% to meet the City TOT and the Nathas approached the City to see if there was anything that could be done to lessen the 2% fee in lieu of TOT they were paying under the settlement agreement. The Nathas put forth their plans to improve a hotel property within the city limits (and perhaps more in the future). Such improvements are beneficial to both the Nathas and the City. The improvements the Nathas were suggesting would almost certainly result in increased revenue and TOT at that particular hotel. The City was quite amenable to the Nathas requests to be allowed to “offset” the 2% fee in lieu of TOT with increased TOT at their hotel property within the city limits.

I have included a copy of the settlement agreement for your review. Please note that it was signed by both your clients and their attorney Thomas Becker. I draw your attention to the following paragraphs: (i) paragraph 3 (TOT in lieu fee is a material inducement for City entering into agreement and allowing Nathas to connect to City sewer line, failure to pay TOT in lieu fee will result in disconnection to sewer collection system); (ii) paragraph 7 (Nathas waived all defense to payment of TOT in lieu fee); and (iii) paragraph 18 (Nathas waive right to seek injunction or writ of mandate or other process to challenge the TOT in lieu fee or any other charges laid out in the agreement).

Regardless of how current city staff or council feel about the terms of the settlement agreement, the fact remains that it is a contract which obligates your client to pay the City a percentage of annual revenue. These are funds owed to the City. The City cannot simply “forgive” the obligation. To do so would be a “gift” of public funds, which the California Constitution prohibits in no uncertain terms. The City was willing to be a little creative so as to not create a “gift of public

funds" problem and to encourage the Nathas to invest in properties within the city limits thereby increasing TOT elsewhere to the City - creating a win-win situation. It is disappointing to see that things have turned adversarial.

If your client desires to continue working with the City on an agreement similar to that which the parties had already been negotiating, I am sure that the City Manager would be amenable to reopening those conversations.

Sincerely,



Martha D. Rice

CITY ATTORNEY  
CITY OF CRESCENT CITY, CALIFORNIA

Enc.

CC: Client

Settlement Agreement  
and General Release of Litigation Claims

This Agreement (the "Agreement") is effective August 17, 1999, by and between the following, who are hereinafter sometimes referred to as "parties": (a) MAGAN L. NATHA and SARLA M. NATHA hereinafter sometimes "Natha" or "Nathas"); (b) CITY OF CRESCENT CITY, a municipal corporation (hereinafter sometimes "City").

WHEREAS, Natha owns that real property and the motel improvements thereon (hereinafter referred to as the "Premises") described in the Petitioner for Writ of Mandamus filed in Del Norte County Superior Court Case No. 980336 on July 2, 1998, ¶ 1, and commonly referred to as 880 Highway 101, South, Crescent City located in the unincorporated area of Del Norte County, State of California, more particularly described as:

Lots 1 through 16 in Block 2 of Walton docks according to the map thereof filed in the office of the County recorder of Del Norte County, California on July 13, 1915, in book 2 of Maps, page 35.

EXCEPTING therefrom that portion thereof conveyed to the State of California in deed recorded July 29, 1959, in Book 58 of Official Records, page 275, Del Norte County Records.

WHEREAS, the Premises is commonly known as The Anchor Beach Inn, consisting of 55 units, more or less, and related facilities (hereinafter the "Motel"), and

WHEREAS, Natha has filed an action in Del Norte County Superior Court entitled "Natha v. City of Crescent City", Case No. 980336, grounded on three causes of action, being administrative mandamus, a second cause of action for inverse condemnation for regulatory taking, and a third cause of action for deprivation of rights under color of state law. These three causes of action centered around Nathas' assertion that it is entitled a service connection for wastewater service to the Motel to be provided by the City of Crescent City's effluent system, and



WHEREAS, the City disputes the claims of Nathas and contends that Natha claims have no legal or factual basis, and

WHEREAS, the County of Del Norte has a Community Service Area that has jurisdiction over the provision of wastewater services to the area that the Motel is located but does not have effluent facilities that immediately extent to the Premises, and

WHEREAS, City presently provides wastewater treatment services to the Crescent City Harbor District and City's effluent facilities are located much nearer to the Premises so that it would be significantly more cost effective for the Premises to connect to City's effluent lines rather than those of the county's Community Service Area, and

WHEREAS, on July 10, 1997, City adopted a policy to promote annexation to the City by restricting its infrastructure to properties located within the city limits, and

WHEREAS, Nathas desire to annex to the City so that both City and the Premises may benefit therefrom but Nathas have been advised that they can not occupy the Premises and commence business operations unless they have a satisfactory means of wastewater disposal available and the immediate connection to wastewater facilities would allow the Nathas to commence business operations, and

WHEREAS, City desires to cooperate with Natha to in such a manner that insures that Natha can commence business operations and that City will receive a fee in lieu of Transient Occupancy Tax which otherwise would be lost to City until the Motel annexes into the city limits, and

WHEREAS, the City, in the public interest of the City and its citizens, desires to resolve the claims of Natha, and to extend sewer service to Nathas' motel development under the terms and conditions contained in this Agreement, and

WHEREAS, this Agreement pertains to Nathas' disputed claims and does not constitute an admission by Natha or by the City of any liability, claim or allegation of any party in Case No. 980336.

NOW, THEREFORE, in consideration of the claim promises made herein, and in consideration of the parties' intent to resolve the pending litigation disputed among them, the parties agree as follows:

I.

Wastewater Connection

1. Nathas, on behalf of Nathas' own selves and on behalf of all persons or legal entities hereafter succeeding to Nathas' interest in and to the Premises and any part thereof, agree to comply with all terms and conditions applicable to sewers, wastewater connections, public sewer permits and wastewater pretreatment set forth in the Crescent City Municipal Code (and its Appendixes) from time to time amended and supplanted, resolutions of the City Council and administrative rules and procedures set out by the City of Crescent City, now in effect or hereafter promulgated and to pay all costs, charges, penalties, fees, levies and assessments from time to time so imposed. Nathas and their grantees, heirs, successors and assigns hereby grant the City of Crescent City a blanket easement upon, across, over and under all the property at the address indicated for all acts necessary to maintain the functional existence of the wastewater system, including but not limited to, ingress, egress, installation, replacing, repairing and maintaining all wastewater laterals and utilities. Nathas, on behalf of Nathas' own selves and on behalf of all persons or legal entities hereafter succeeding to Nathas' interest in and to the Premises and any part thereof, hereby irrevocably dedicate to the City of Crescent City all wastewater effluent improvements constructed, including but not limited to lateral lines. Nathas, on behalf of Nathas' own selves and on behalf of all persons or legal entities hereafter succeeding to Nathas' interest in and to the Premises and any part thereof, agree to remain responsible to repair all improvements located at the Premises.

2. Subject to revocation as hereinafter provided, and further provided that all terms and conditions of this Agreement to be met by Natha and all lienholders of record upon the Premises are satisfied, City shall issue its standard permit authorizing connection of the plumbing facilities serving the Motel building constructed on the Premises to the sewer system owned and operated by City. A material inducement to City agreeing to

allow a direct connection to its effluent system is Natha's representation that it will support and do all acts necessary to annex into the jurisdictional limits of City and so that City's Transient Occupancy Tax pursuant to Chapter 3.20 of the Crescent City Municipal Code becomes applicable to the Motel's occupancy. A further material inducement to City to enter this agreement is the representation that the Motel's operation shall generate, in favor of City, revenue in lieu of the Transient Occupancy Tax while the Premises are not annexed into City's jurisdictional boundaries. It is expressly understood that, so long as the Premises are not annexed into the City of Crescent City, that should, for any reason, the City not receive the fee in lieu of the Transient Occupancy Tax that City shall have after 30 days written notice to Natha the absolute and unequivocal right to revoke the wastewater connection permit and to disconnect the wastewater lateral connecting the Premises directly to the City's effluent facility and that the then present owners of the Premises shall have no further right to such direct connection nor to any refund of any monies paid to City in connection with this agreement or the provision of wastewater service to the Premises. Natha shall have the right to cure said revocation and disconnection by payment to the City of said in lieu fee within 30 days after service of said written notice.

3. City consents to Natha's connection to City's existing wastewater system at the intersection of Anchor Way and Starfish Road, Del Norte County, California.

## II.

### Costs of Sewer Connection

4. In addition to the other fees provided for in this Agreement, Natha's shall pay City the sum of \$18,400. City waives any further sewer connection charges or sewer capacity charges that could potentially be imposed by city in conjunction with or as a condition of approving this permit for wastewater service. Further development on Natha's property may result in additional connection fees for the further capacity to serve later development which fees will be imposed by the City on the terms and conditions applicable at the time of that development. Nothing in this Agreement is intended to commit City to permit any further utility connections other than as specified in paragraph 2 above. Nothing in this Agreement is intended to divest City of its discretion to impose sewer service fees, sewer standby fees, or special assessments levied in accordance with one or a

combination of the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code), the Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code), or the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code.

5. Nathas shall pay all costs incurred to connect by pipeline and related equipment the Motel to the City's wastewater system.

### III.

#### Annexation Commitment

6. Nathas agree to execute, in a form sufficient for recordation with the Del Norte Recorder's Office, the Annexation, Subordination, Easement and Secondary Easement Agreement attached hereto as Exhibit "A" and incorporated herein by this reference. Said Annexation, Subordination, Easement and Secondary Easement Agreement shall be executed by the authorized representative of each lienholder holding a Deed of Trust secured by the Premises and each such lienholder shall agree to subordinate their rights under their respective Deeds of Trust to the obligations imposed in the Annexation, Subordination, Easement and Secondary Easement Agreement. Failure by a lienholder to so subordinate and execute the Annexation, Subordination, Easement and Secondary Easement Agreement shall constitute a default terminating any right of Natha (on behalf of Nathas' own selves and on behalf of all persons or legal entities hereafter succeeding to Nathas' interest in and to the Premises and any part thereof) to directly connect to City's effluent facilities or to remain connected in the event such connection has already occurred. Fees charged for the recordation of the Annexation, Subordination, Easement and Secondary Easement Agreement shall be the responsibility of City.

### IV.

#### Transitory Occupancy Tax

7. Nathas on behalf of Nathas' own selves and on behalf of all persons or legal entities hereafter succeeding to Nathas' interest in and to the Premises and any part

thereof, agree to pay to the City a fee in lieu of the transitory occupancy tax as defined by Crescent City Municipal Code § 3.2.010, et. Seq. Provided, however, that (1) the amount shall at all times applicable be two percent (2%) of gross revenues generated by the Motel, but only those gross revenues which would be subject to the City's Transient occupancy tax as if the Motel were located within the City; and (2) this two percent fee shall cease upon annexation of the Natha Motel property to the City, at which time Nathas shall pay such transitory occupancy tax as generally applicable to like businesses under the City's ordinances. The "in lieu" fee shall be reported and remitted in that same manner that transient occupancy taxes are to be reported and remitted under the Crescent City Municipal Code. In the event the premises are not annexed to City the obligation to pay the "in lieu" fee shall terminate sixty years after the last execution of this Agreement. Nothing herein shall be construed to infer that, absent this agreement, businesses outside the City's territorial limits are or are not subject to the City's transient occupancy tax and Natha hereby waives any defense to payment of aforesaid 2% in lieu fee which may be based, in whole or in part, on such an inference.

## VII.

### Acts Upon Execution

8. Nathas will forthwith execute and deliver to the City a Request for Dismissal with Prejudice of the above-described Case No. 980336 with each party bearing its own fees and costs therein.

## VIII.

### Releases

9. Nathas, on behalf of their heirs, executors, administrators and assigns, hereby fully release the City and its successors and all other persons and associations, known or unknown from all claims and causes of action by reason of any injury or damage which has been sustained, or may be sustained, as a result of Nathas' claims made in the complaint in Case No. 980336.

10. The City on behalf of its heirs, executors, administrators and assigns, hereby fully releases Nathas and their successors, and all other persons and associations, known or unknown, from all claims and causes of action by reason of any injury or damage which has been sustained, or may be sustained, as a result of any claims made in Case No. 980336.

11. All parties acknowledge and agree that this release applies to all claims in existence at the time of execution of this Agreement that any party may have against any other party arising out of Natha's motel property, except any obligations arising under the terms of this Agreement.

12. Waiver of California Civil Code Section 1542. All parties certify that they have read Section 1542 of the California Civil Code, set out below, and indicates that fact by signing their initials here:

City: By: 

Nathas: BA / S.M.

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

13. All parties hereby waive application of § 1542 of the Civil Code. All parties understand and acknowledge that the significance and consequence of this waiver of § 1542 of the Civil Code is that even if any party should eventually suffer additional damages arising out of the above-described transaction, such party will not be permitted to make any claim for those damages. Furthermore, all parties acknowledge that said party intends these consequences even as to claims for injury or damages that may exist as of the date of this release but which such party does not know exist, and which, if known, would materially affect such party's decision to execute this release, regardless of whether

Releasor's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

IX.

Miscellaneous Provisions

14. If any action or proceeding, arising out of or relating to this Agreement is commenced by any party to this Agreement, then the prevailing party shall be entitled to receive from any party upon whom liability is imposed, in addition to any other relief that may be granted, the reasonable attorney fees, costs, and expenses incurred in the action or proceeding by the prevailing party.

15. Any notice, tender, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered, mailed, or sent by wire or other telegraphic communication in the manner provided in this paragraph, to the following persons:

(a) If to Natha:

933 Fourth Street  
Eureka, CA 95501

(c) If to City:

City Manager  
City of Crescent City  
377 J Street  
Crescent City, CA 95531

Either party may change that party's address for these purposes by giving written notice of the change to the other party in the manner provided in this section.

If sent by mail, any notice, delivery, or other communication shall be effective or deemed to have been given 48 hours after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above.

16. This agreement shall be binding on and shall inure to the benefit of the parties hereto and their heirs, successors, assigns, grantees, and administrators.

17. This Agreement constitutes the entire agreement between the parties concerning settlement of the dispute referred to herein. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by all parties.

18. Nathas on behalf of Nathas' own selves and on behalf of all persons or legal entities hereafter succeeding to Nathas' interest in and to the Premises and any part thereof, give up and waive all right to seek injunction or writ of mandate or other legal or equitable process (including the assertion of an affirmative defense) in any suit, action, or proceeding in any court against City or against any officer or employee of City to prevent or enjoin the collection by City or the payment to City of the "in lieu" fee or any other charges required to be paid hereunder.

19. The payment of the "in lieu" fees and Nathas commitment to annexation is integral to this Agreement and may not be severed from the remainder of the provisions of this Agreement. In the event any portion of this Agreement is invalid or inoperable or any party is denied the full benefits conferred under this Agreement as set forth herein, in whole or in part, then Natha on behalf of Nathas' own selves and on behalf of all persons or legal entities hereafter succeeding to Nathas' interest in and to the Premises and any part thereof, and City agree to reform this Agreement and any and all documents attached hereto or executed concurrently herewith to accomplish the intent of Nathas and City as set forth herein. In the event Nathas and City cannot reach an understanding in regard to the reformation of this Agreement within six months, then Nathas and/or City may file a petition with the Del Norte County Superior Court to judicially reform this Agreement.

20. The nonprevailing party agrees to pay the following costs, expenses, and attorneys' fees paid or incurred by prevailing party, or adjudged by a court: (1) reasonable costs of collection, costs, and expenses, and attorneys' fees paid or incurred in connection with the collection of the "in lieu" fees or enforcement of this Agreement, whether or not suit is filed; and (2) costs of suit and such sum as the court may adjudge as attorneys' fees in any action to enforce payment of the "in lieu" fees or any part of them.



In addition to the foregoing award of attorneys' fees, the prevailing party shall be entitled to its attorneys' fees incurred in any postjudgment proceedings to enforce any judgment in connection with this Agreement and/or the Sewer Service and Annexation Agreement. This provision is separate and separate and shall survive the merger of this provision into the judgment.

Executed the last date written below at Crescent City, California.

Dated: 8/19/99

Magan L. Natha  
MAGAN L. NATHA

Dated: 8/19/99

Sarla M. Natha  
SARLA M. NATHA

Dated: 8/26/99

CITY OF CRESCENT CITY  
a California municipal corporation

By: David Wells  
DAVID WELLS, City Manager

#### DECLARATION OF NATHA'S ATTORNEY

I, Thomas Becker, a member of the State Bar of California and attorney for MAGAN L. NATHA and SARLA M. NATHA, certify that I am satisfied that the Nathas fully understand the effect, significant and consequences of the release set forth above.

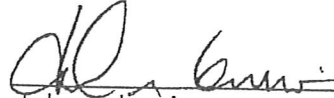
Date: 8-19-'99

Thomas Becker  
Thomas Becker  
Attorney for Nathas

DECLARATION OF CITY OF CRESCENT CITY ATTORNEY

I, dohn r. henion, a member of the State Bar of California and attorney for The City of Crescent City, certify that I am satisfied that the officials of the City of Crescent City fully understand the effect, significant and consequences of the release set forth above.

Date: \_\_\_\_\_

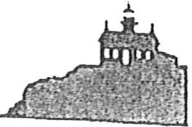
  
\_\_\_\_\_

dohn r. henion  
Attorney for City of Crescent City



**City of Crescent City**  
*Where the Redwoods Meet the Sea*

377 J Street, Crescent City, CA 95531 • 707.464.7483 • Fax 707.465.4405 • [www.crescentcity.org](http://www.crescentcity.org)



December 9, 2020

Anchor Beach Inn  
Attn: Mr. Magan Natha  
880 Hwy 101 S  
Crescent City, CA 95531

Re: Past Due Transient Occupancy Tax Return

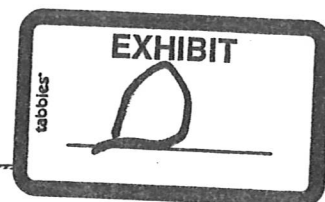
Dear Mr. Natha:

According to our records, we have not received your Transient Occupancy Tax (TOT) Return for the quarters ending March 31, 2020, June 30, 2020, and September 30, 2020. If you have already submitted the reports and payments, please let me know.

Under the settlement agreement between yourself and the City of Crescent City dated August 17, 1999, you agreed "to pay to the City a fee in lieu of the transitory occupancy tax as defined by Crescent City Municipal Code 3.2.010 et seq." and that "the in lieu fee shall be reported and remitted in that same manner that transient occupancy taxes are to be reported and remitted under the Crescent City Municipal Code."

These reports were due on the last day of the month following the close of the quarter (Muni Code Section 3.20.060). For the quarter ended March 31, 2020, the due date was April 30, 2020, although the City Council passed an urgency ordinance waiving late fees for that quarter if paid by August 31, 2020. For the quarter ended June 30, 2020, the due date was July 31, 2020 and for the quarter ended September 30, 2020, the due date was October 31, 2020. Please remit the report and fees in lieu of TOT for the quarters ended March 31, 2020, June 30, 2020, and September 30, 2020 as soon as possible.

A penalty of 10% of the tax due is incurred on returns filed up to 30 days late. Returns filed more than 30 days late incur a second penalty of 10%. In addition to penalties, you owe interest on the past due tax. Interest is calculated as 0.5% of the past due tax for each month or fraction of a month past the due date (Muni Code Section 3.20.120). Penalties and interest for the quarter ended March 31, 2020 began on September 1, 2020 (due to the urgency ordinance passed by the City Council). Penalties and interest for the quarter ended June 30, 2020 began on August 1, 2020.



The settlement agreement states in paragraph 2 that should “the City not receive the fee in lieu of TOT within 30 days after written notice, then the City shall have the absolute and unequivocal right to revoke the wastewater connection permit and to disconnect the wastewater lateral connecting the Premises to the City’s effluent facility and that the then present owners of the premises shall have no further right to such direct connection nor to any refund of any monies paid to City in connection with this agreement or the provision of wastewater services to the Premises.”


Additionally, you have waived your right to challenge the validity or legality in fees in the settlement agreement. Should litigation be pursued for enforcement of the agreement, the prevailing party will be entitled to an award of attorney’s fees.

Please file your TOT returns and remit the total amount due, including interest and penalties, on or before January 8, 2021 to avoid further penalties and legal action by the City.

As a reminder, the TOT report and fees for the quarter ending December 30, 2020 are due by January 31, 2021.

If you have any questions or concerns, you can contact Linda Leaver, City Finance Director at 707-464-7483 ext. 224 or [lleaver@crescentcity.org](mailto:lleaver@crescentcity.org).

Sincerely,



Eric Wier  
City Manager