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**FOR IMMEDIATE RELEASE**

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## **\$10 MILLION LAWSUIT AGAINST CITY DISMISSED; DAICHENDTS AGREE TO PAY CITY'S STATUTORY COURT COSTS**

**Rancho Santa Margarita** – Less than 45 days after the City of Rancho Santa Margarita filed two motions to dismiss the two zoning and damages lawsuits brought against it by Gary and Joe Daichendt of Theory R Properties through their company Rancho Canyon LLC, on the grounds that both lawsuits were meritless, the Daichendts dismissed their cases and have agreed to pay the City's statutory court costs. “The litigation filed against the City by the Daichendts has been successfully defended, resulting in a dismissal in favor of the City,” said Mayor Brad McGirr.

This ends the Daichendts' litigation against the City, one year after they originally filed suit claiming that the City acted improperly by denying their request for a zone change on their property (the former Nissan dealership site), and five months after their sponsored ballot measure to attempt to reverse that denial, “Measure Z”, was rejected and defeated by Rancho Santa Margarita voters in last November's election.

The Daichendts, developers with no auto-related experience, purchased the former Nissan dealership site on Santa Margarita Parkway in May 2012, and acknowledged the existing auto center zoning on the property. From the time first occupied, the site had

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been an auto dealership, and the zoning for the site is Auto Center with an Auto Center Overlay that allows for expanded auto-related uses.

The Daichendts requested the City Council to change the zoning on the property in order to establish a commercial strip mall shopping center. The uses proposed by the Daichendts included a gym, car wash, dry cleaner, coffee/sandwich shop and a drive-thru restaurant. The question presented to the City Council was whether or not the zoning on the property should be changed to accommodate this proposal. Joe Daichendt publicly stated that "he made a calculated risk in purchasing the property and was wrong" and had also threatened to file litigation against the City prior to the public hearing if the City did not agree to change the zoning on his property.

At the January 8, 2014 City Council public hearing, the Daichendts presented their information, including examples of their efforts to attract an auto-related use. City staff presented the recommendation made by the Planning Commission to deny the requested zone change. Both the applicant and City staff had experts to discuss the economic viability of the site. Compelling points were made by many people, both in support of and opposed to the change.

Ultimately, after an 8-hour public hearing, the City Council voted 3-1 to deny the requested zone change on the grounds that zoning is long-term and should not be changed based on the opinions, preferences or economic circumstances of a single developer. Among the reasons cited, a change would have a detrimental impact on the synergy of the existing RSM Auto Center and reduce its overall size; the change would facilitate future zoning changes that could dismantle the Auto Center; the change would reduce the job and salary opportunities to the residents (projected at a \$40 million dollar loss over 10 years); an offer to purchase the former Nissan dealership property for an auto dealership use was pending; and the residents of the City of Rancho Santa Margarita should not be under any obligation

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to correct a real estate investor's mistake by changing the City's established land use policies.

"Zoning and land use decisions are fundamental to our community's much envied quality of life and financial stability. As your representatives, the City Council has only one task - to do what is best for the residents and the City. The City will continue to defend against lawsuits like this to preserve our community's character and balance of land uses," stated Mayor McGirr.

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