

WHEN RECORDED MAIL TO:

City Clerk
City of Riverside
City Hall, 3900 Main Street
Riverside, California 92522

Project: Tract No. 20329-1

266024

RECEIVED FOR RECORD
Min: Past 12 o'clock P.M.

SEP 14 1987
Recorded in Official Records
of Riverside County, California
Blalock E. Smith
RECORDER
Fee: 19

19/7

COVENANT AND AGREEMENT AND
DECLARATION OF RESTRICTIONS

(Private Drainage Facilities and Easements)

This Covenant and Agreement and Declaration of Restrictions is made and entered into this 29th day of July, 1987, by BEREN, a limited partnership (hereinafter called the "Declarant") with reference to the following facts:

A. Declarant is the owner of the real property (the "Property") in the City of Riverside, County of Riverside, State of California, described as follows:

Lots 1 through 9 of Tract No. 20329-1, as shown by map on file in Book 173 of Maps, at Pages 54 through 58 thereof, Records of Riverside County, California.

B. Declarant desires to improve and develop the Property as a part of a residential subdivision including the construction of private cross-lot drainage facilities in accordance with plans on file with the City of Riverside, California, to accept surface water runoff and storm water and to carry such waters to public storm drain facilities. Declarant desires to impose upon the Property a plan for the development and maintenance of such drainage facilities and to adopt and establish covenants, conditions, restrictions and easements upon and with respect to the Property for such purpose, all of which is in the furtherance of a general plan for the subdivision and improvement of the Property, and for the purpose of enhancing, maintaining and protecting the value, desirability and attractiveness of the Property, and upon and subject to which all of the Property shall be held, improved and conveyed.

First American Title Company has recorded this instrument by request as an accommodation only and has not examined it for regularity or sufficiency or as to its effect upon the title to any real property that may be described herein.

THIS DOCUMENT IS BE RE-RECORDED TO
CORRECT PARAGRAPH 5, SUB-PARAGRAPHS
A THROUGH F.

DESCRIPTION APPROVAL 8/24/87
George P. Hutchinson by W
SURVEYOR, CITY OF RIVERSIDE

- c. The City of Riverside (the "City") as a condition to the issuance of a grading permit for the Property requires that a means be provided for disposing of surface runoff water and storm water.

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NOW, THEREFORE, Declarant declares that the Property is, and shall hereafter be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following covenants, conditions, restrictions and easements, all of which are declared and agreed to be in furtherance of a general plan for the subdivision, development, improvement, protection, maintenance, and sale of the Property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value, desirability and attractiveness of the Property, and all of which are in consideration for the issuance by the City of a grading permit for the grading of the Property. All of the covenants, conditions, restrictions and easements shall run with the land, shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in the Property or any Lot or portion thereof, and shall be binding on and inure to the benefit of each successor and assignee in interest of each such party. Any conveyance, transfer, sale, assignment, lease or sublease made by Declarant of a lot of the Property shall be and hereby is deemed to incorporate by reference all of the provisions of this Covenant and Agreement and Declaration of Restrictions, including, but not limited to all the covenants, conditions, restrictions, limitations, grants of easement, rights, rights-of-way and equitable servitudes contained herein.

1. Definitions. In addition to the definitions hereinbefore set forth, the following words or phrases where used in this Covenant and Agreement and Declaration of Restrictions (except when the context otherwise requires) shall have the following definitions.

a. "Declarant" shall mean BEREN, a limited partnership, its successors and assigns.

b. "Declaration" shall mean this Covenant and Agreement and Declaration of Restrictions.

c. "Drainage Facility Easement Areas" shall be the northerly ¹⁵ feet of lots 1 through 9, inclusive of Tract No. 20329-1 and the 10 foot easement on Lots 4 and 5 described as follows:

Commencing at the Northeast corner of said Lot 4;
Thence S.89° 52' 52"W. along the Northerly line of said Lot 4, a distance of 17.50 feet to the point of beginning of the parcel of land to be described;
Thence S.00° 07' 08"E., a distance of 55.00 feet;
Thence S.89° 52' 52"W., a distance of 55.00 feet;
Thence S.70° 21' 31"W., a distance of 7.54 feet to the Westerly line of said Lot 4;
Thence N.19° 38' 29"W. along said Westerly line, a distance of 10.00 feet;
Thence N.70° 21' 31"E., a distance of 9.26 feet;
Thence N.89° 52' 52"E., a distance of 46.72 feet;
Thence N.00° 07' 08"W., a distance of 45.00 feet to said Northerly line;
Thence N.89° 52' 52"E. along said Northerly line, a distance of 10.00 feet to the point of beginning.

DESCRIPTION APPROVAL 8/24/87
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SURVEYOR, CITY OF RIVERSIDE

266024

d. "Established Drainage Facilities" shall mean all improvements constructed or installed by Declarant for drainage of surface or storm waters in the Drainage Facility Easement Areas.

e. "Lot" or "Lots" shall mean the Lot or Lots of the Property described hereinabove.

f. "Mortgage" shall mean any security device encumbering all or any portion of the Property or any Lot therein, and as used herein the term "Mortgage" shall include a deed of trust.

g. "Mortgagee" shall mean the record owner of a beneficial interest under a Mortgage.

h. "Owner" shall mean any person, whether an individual, corporation, association or otherwise, in which title to a Lot is vested, as shown by the Official Records of the Office of the County Recorder of Riverside County, California. Declarant shall be deemed the Owner of all unsold or retained Lots until Declarant, its successors or assigns shall have executed and caused to be recorded in the Office of the County Recorder of Riverside County, California, an instrument of conveyance conveying the respective Lot. If more than one person is owner of a Lot, then all such persons shall be jointly and severally liable for all obligations herein of the owner of a Lot.

2. Construction of Drainage Facilities. The Declarant shall construct or cause to be constructed private cross-lot drainage facilities (Established Drainage Facilities) in the Drainage Facility Easement Areas consisting of concrete lined terrace drains as shown on the grading plan for Tract No. 20329-1 as approved by the Director of Public Works of the City of Riverside. The cross-lot drainage facilities shall be constructed prior to the sale or development of any Lot of the Property.

3. Interference with Drainage Facilities. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken on any Lot which may damage or interfere with, or obstruct or retard the flow of water through the Established Drainage Facilities located within the Drainage Facility Easement Areas.

4. Maintenance of Drainage Facilities Within Drainage Facility Easement Areas. The Owner of each Lot, for the benefit of every other Lot and the owners thereof, shall continuously maintain, repair, and replace, if necessary, any and all Established Drainage Facilities located within said Drainage Facility Easement Areas and this obligation for maintenance, repair and replacement of such Established Drainage Facilities shall be borne by each Owner of a Lot to the extent that such drainage facility is within the boundaries of such Lot.

5. Establishment of Drainage Facility Easements. Declarant hereby establishes, grants and reserves nonexclusive easements at the locations and for the purposes set forth as follows:

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 a. A nonexclusive easement for the construction, installation, maintenance, repair, replacement and use of drainage facilities for surface water runoff and storm water and for ingress and egress in connection with said facilities for the use and benefit of and as an easement appurtenant to Lots 9 through 5 and Lot 3 of Tract No. 20329-1, as shown by map on file in Book 173 of Maps, at Pages 54 through 58 thereof, Records of Riverside County, California, over, along and across the northerly 10.00 feet of Lot 4 of Tract No. 20329-1 as shown by map on file in Book 173 of Maps, at Pages 54 through 58 thereof, Records of Riverside County, California.

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 b. A nonexclusive easement for the construction, installation, maintenance, repair, replacement and use of drainage facilities for surface water runoff and storm water and for ingress and egress in connection with said facilities for the use and benefit of and as an easement appurtenant to Lots 9 through 6 of Tract No. 20329-1 as shown by map on file in Book 173 of Maps, at Pages 54 through 58 thereof, Records of Riverside County, California, over, along and across the northerly 10.00 feet of Lot 5 of Tract No. 20329-1 as shown by map on file in Book 173 of Maps, at Pages 54 through 58 thereof, Records of Riverside County, California.

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 c. A nonexclusive easement for the construction, installation, maintenance, repair, replacement and use of drainage facilities for surface water runoff and storm water and for ingress and egress in connection with said facilities for the use and benefit of and as an easement appurtenant to Lots 9 through 7 of Tract No. 20329-1 shown by map on file in Book 173 of Maps, at Pages 54 through 58 thereof, Records of Riverside County, California, over, along and across the northerly 10.00 feet of Lot 6 of Tract No. 20329-1 as shown by map on file in Book 173 of Maps, at Pages 54 through 58 thereof, Records of Riverside County, California.

d. A nonexclusive easement for the construction, installation, maintenance, repair, replacement and use of drainage facilities for surface water runoff and storm water and for ingress and egress in connection with said facilities for the use and benefit of and as an easement appurtenant to Lots 9 and 8 of Tract No. 20329-1 as shown by map on file in Book 173 of Maps, at Pages 54 through 58 thereof, Records of Riverside County, California, over, along and across

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the northerly ~~10.00~~ feet of Lot 7 of Tract No. 20329-1 as shown by map on file in Book 173 of Maps, at pages 54 through 58 thereof, Records of Riverside County, California.

e. A nonexclusive easement for the construction, installation, maintenance, repair, replacement and use of drainage facilities for surface water runoff and storm water and for ingress and egress in connection with said facilities for the use and benefit of and as an easement appurtenant to Lot 9 of Tract No. 20329-1 as shown by map on file in Book 173 of Maps, at pages 54 through 58 thereof, Records of Riverside County, California, over, along and across the northerly ~~10.00~~ feet of Lot 8 of Tract No. 20329-1 as shown by map on file in Book 173 of Maps, at pages 54 through 58 thereof, Records of Riverside County, California.

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f. A nonexclusive easement for the construction, installation, maintenance, repair, replacement and use of drainage facilities for surface water runoff and storm water and for ingress and egress in connection with said facilities for the use and benefit of and as an easement appurtenant to Lot 3 of Tract No. 20329-1 as shown by map on file in Book 173 of Maps, at pages 54 through 58 thereof, Records of Riverside County, California, over, along and across the northerly ~~10.00~~ feet of Lot 2 of Tract No. 20329-1 as shown by map on file in Book 173 of Maps, at pages 54 through 58 thereof, Records of Riverside County, California.

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g. A nonexclusive easement for the construction, installation, maintenance, repair, replacement and use of drainage facilities for surface water runoff and storm water and for ingress and egress in connection with said facilities for use and benefit of and as an easement appurtenant to Lot 5 of Tract No. 20329-1 as shown by map on file in Book 173 of Maps, at pages 54 through 58 thereof, Records of Riverside County, California, over, along and across the following described portion of Lot 4 of Tract No. 20329-1 as shown by map on file in Book 173 of Maps, at pages 54 through 58 thereof, Records of Riverside County, California:

Commencing at the Northeast corner of said Lot 4;

Thence S.89°52'52"W. along the Northerly line of said Lot 4, a distance of 17.50 feet to the point of beginning of the parcel of land to be described;

Thence S.00°07'08"E., a distance of 55.00 feet;

Thence S.89°52'52"W., a distance of 55.00 feet;

Thence S.70°21'31"W., a distance of 7.54 feet to the Westerly line of said Lot 4;

Thence N.19°38'29"W. along said Westerly line, a distance of 10.00 feet;

Thence N.70°21'31"E., a distance of 9.26 feet;

Thence N.89°52'52"E., a distance of 46.72 feet;

Thence N.00°07'08"W., a distance of 45.00 feet to said Northerly line;

Thence N.89°52'52"E. along said Northerly line, a distance of 10.00 feet to the point of beginning.

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266024

6. Enforcement. The provisions of this Declaration shall be enforceable at law and in equity by Declarant, each successive Owner and, subject to the provisions of Paragraph 7 below, the City. In the event of any legal or equitable proceeding for the enforcement of or to restrain the violation of this Declaration or any provision hereof, the prevailing party therein shall be entitled to reasonable attorneys' fees in addition to any other costs to which such party is entitled therein. The failure of Declarant, any Owner or the City to enforce any provision of this Declaration shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other provision hereof.

7. Notice from the City. Any remedy granted to the City pursuant to Paragraph 6 hereof shall be exercisable by the City only if the Owner shall fail to cure a violation or breach hereof after ten days' written notice from the City, or, if such cure cannot be completed within such ten-day period, if the Owner shall fail to commence to cure the same within such ten-day period and to diligently prosecute such cure to completion. Any notice given by the City pursuant to this paragraph shall be delivered to the Owner in person, or sent by U. S. mail, registered or certified, return receipt requested, postage prepaid, addressed to the Owner at the last known mailing address of the Owner.

8. Release. Declarant and each successive Owner of a Lot hereby release the City of Riverside, its officers, employees and agents from any and all claims, demands, suits or actions that the Declarant or Owner and their heirs, successors or assigns may now or in the future have arising out of or incurred as a result of water flooding, flowing over, or remaining on any Lots due to the construction and maintenance of the private cross-lot drainage facilities and the diversion of water into such facilities.

9. Indemnification. Each Owner of a Lot hereby agree to defend, indemnify and hold harmless the City of Riverside, its officers, employees and agents from any and all liabilities, expenses, claims or causes of action arising out of or alleged to be caused by or resulting from water flooding, flowing over, or remaining on any property due to the construction and maintenance of the private cross-lot drainage facility on said Lot and the diversion of water into such facility.

10. Effect of Declaration. Any person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property shall be deemed (a) to have consented and agreed to every covenant, condition, restriction and easement contained herein; and (b) to have been granted and be subject to each applicable easement described in Paragraph 5 hereof, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Property.

11. Mutuality, Reciprocity, Run with Land. All of the provisions contained herein are made for the direct, mutual and reciprocal benefit of each and every portion of the Property and create mutual, equitable servitudes upon each Lot as the servient

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tenement in favor of every other Lot as the dominant tenement and create reciprocal rights and obligations among the respective Owners of all of the Lots, and privity of contract and estate among all grantees of the Lots, their successors and assigns in interest. In addition, each of the provisions hereof shall operate as covenants running with the land for the benefit of the Property and each Lot, and shall inure to the benefit of all Owners thereof, their successors and assigns in interest, and shall apply to and bind each successive Owner of each Lot or portion thereof, their successors and assigns in interest.

12. Rights of Mortgagees. The provisions of this Declaration shall be subject and subordinate to any mortgage or deed of trust now existing or hereafter executed affecting all or any portion of the Property, made in good faith and for value, and no provision of this Declaration shall supersede or in any way reduce the security or affect the validity of any such mortgage or deed of trust; provided, however, that if any portion of the Property is sold under a foreclosure of any mortgage or under the provisions of any deed of trust, any purchaser at such sale, and the successors and assigns of such purchaser, shall hold any portion of the Property so purchased subject to all of the provisions of this Declaration.

13. Termination and Modification. Subject to the prior written approval of the City Council of City of Riverside, this Declaration, and any provision contained herein, may be terminated, modified or amended as to all of the Property or any portion thereof, upon the written consent of the Owners of 75% of the total number of square feet of land area contained in the Property; provided, however, that as long as Declarant owns at least 25% of the total square feet contained in the Property, no such termination, modification or amendment shall be effective without the prior written approval of Declarant. No such termination, modification or amendment shall be effective until there shall have been executed, acknowledged and recorded in the office of the recorder of Riverside County, California, an appropriate instrument evidencing the same including the consent thereto by the City.

IN WITNESS WHEREOF, the Declarant has executed this Declaration on the day and year first above written.

BEREN, a limited partnership

By: BERGUM CONSTRUCTION COMPANY
a California corporation,
as the general partner

By: [Signature]
Title PRESIDENT

By: [Signature]
Title Secretary

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APPROVED AS TO FORM
[Signature]
ASST. CITY ATTORNEY

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RECEIVED FOR RECORD
AT 8:30 O'CLOCK A.M.
AT Request of
FIRST AMERICAN TITLE COMPANY
OF RIVERSIDE

AUG - 8 1991

Recorded in Official Records
of Riverside County, California

W. J. [Signature] Recorder
Fees \$ 27

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