

WHEN RECORDED MAIL TO:

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

Project: TM 32948



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**COVENANT AND AGREEMENT AND  
 DECLARATION OF RESTRICTIONS FOR  
 ACCEPTANCE OF DRAINAGE WATERS AND EASEMENT**

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THIS COVENANT AND AGREEMENT AND DECLARATION OF RESTRICTIONS is made and entered into this 5<sup>th</sup> of January, 2010, by Ether Dragon Company LLC, a California Limited Liability Co. ("Declarant"), with reference to the following facts:

- A. Declarant is the fee owner of the following described real property situated in the city of Riverside, County of Riverside, State of California, hereinafter referred to as Tract Map 32948 ("TM 32948") more particularly described in Exhibit "A", which is attached hereto and incorporated herein by Reference.
- B. TM 32948 consists of approximately 5.71 acres which are or will be subdivided into 8 single family lots.
- C. Declarant desires to improve and develop the lots contained within TM 32948. In connection with that development, declarant has submitted to the City of Riverside ("City") certain grading plans for TM 32948, which propose that the storm flow and nuisance water (Collectively "Drainage water") shall flow across lots contained therein for the benefit of the entire project, and that all lots, where necessary, will be graded so as to establish concrete v-gutters to channel the flow of the drainage water on and across certain lots onto the interior street of the project.
- D. Declarant desires to create an easement across lots 1,2,3,4,5 and 8 for the acceptance of Drainage Water, as depicted on grading permit PW 06-0600, on file with City's Public Works Department.
- E. As a condition for the acceptance of Declarants grading plan for TM 32948 and the issuance of building and grading permits, City is requiring that an agreement be executed and recorded for cross-lot drainage to provide for the acceptance or Drainage Waters across 6 lots within TM 32948 and to provide for the maintenance of the drainage swales by the recording of a covenant
- F. Declarant desires to provide for the acceptance of Drainage Waters across Lots 1,2,3,4,5 and 8 and is willing to record this covenant and agreement for acceptance of

Drainage Waters ("Covenant") to put future owners and successors-in- interest on notice of such conditions and restrictions.

Now, THEREFORE, for the purposes of complying with the conditions imposed by the City under TM 32948 and for the issuance of building and grading permits, Declarant hereby covenants and agrees with the City that the following restrictions shall apply:

1. **Recitals:** The forgoing recitals are true and correct and are hereby incorporated into this covenant by reference.

2. **Construction of Drainage Swales/Facilities:** Declarant shall construct of cause to be constructed the drainage swales in accordance with the gracing plans for TM 32948 filed with and accepted by the Public Works Department of City under grading permit PW 06-0600.

3. **Easement and Acceptance of Drainage Waters:** Declarant, as owner and developer of all lots within TM 32948, for itself and its successors and assigns, hereby grants, conveys and accepts an easement for Drainage Waters as depicted on grading permit PW 06-0600 over, along and across lots 1,2,3,4, 5 and 8 of TM 32948.

4. **Noninterference with Drainage Facilities/Swales or Catch Basin:** No Structure, planting or other material shall be placed or permitted to remain or other activities undertaken within TM 32948 which may damage, interfere with obstruct, or retard the flow of Drainage Waters through the drainage facilities/Swales constructed in accordance with grading plans filed with and accepted by the Public Works Department of City.

5. **Maintenance of Drainage Facilities/Swales and catch basin:** Declarant Shall Continuously maintain, and repair if necessary, any and all of the cross-lot drainage facilities/swales described above and this obligation for maintenance and repair shall be borne by the successors and assigns of Declarant. All swales and slopes , including slopes landscaping and irrigation systems should be property maintained to minimize impacts to downhill properties, by Declarant , his heirs, assigns, successors, or future lot owner; and any future grading on any lots within TM 32948 by Declarant, his heirs, assigns, successor or future lot owners should be in compliance with the Grading Code of the City of Riverside and be approved by the City prior to any grade changes.

6. **Release:** Declarant and it's respective successors and assigns, hereby release City, its officers and employees from any and all claims, demands, suits or other actions that they may now or in the future have arising out of or incurred as result of the drainage water flooding flowing over, or remaining on the parcels, whether due to natural surface water and storm water runoff or to construction or maintenance of the drainage facilities/swales described above and the diversion of water into such facilities/swales. Declarant and it's respective successors and assigns, waives any and all rights and benefits which they now have, or in the future may have, conferred upon them by virtue of the provisions of section 1542 of the Civil Code of the state of California, which provides as follows:



**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.**

In this connection, Declarant agrees, represents and warrants that it is familiar with, has read, and understands Civil Code Section 1542, and Declarant realizes and acknowledges that factual matters now unknown to it may have given, or may hereafter give rise to claims, which are presently unknown, unanticipated and unsuspected. Declarant further agrees, represents and warrants that this release has been negotiated and agreed upon in light of such realization and that Declarant nevertheless intends to release, discharge, and acquit City from any such unknown claims which are in any way related to water flooding, flowing over, or remaining on the parcels whether due to natural surface water or storm water runoff or the construction or maintenance of the drainage facilities/swales described above and the diversion of drainage waters into such facilities/swales.

7. **Enforcement:** The provisions of this covenant shall be enforceable at law or in equity by the City, its successors or assigns. Should the City bring an action to enforce the terms of the covenant, the prevailing party shall be entitled to reasonable attorney's fees, expert witness fees, and reasonable costs of suit. The failure of City to enforce any provision of this Covenant shall in no event be deemed to be a waiver of the right to do so thereafter nor the right to enforce any other provision hereof.

8. **Run with the land:** This Covenant shall run with the land each and all of its terms shall be binding upon Declarant, its heirs, successors and assigns, and shall continue in effect until such time as released by the Public Work Director of the City of Riverside, California, by a writing duly recorded.

9. **Non Merger:** This Covenant hereby shall not be subject to the doctrine of merger, even though the underlying fee ownership of the lots in TM 32948 described herein, are vested in one party or entity.

**FURTHER,** Declarant hereby represents and warrants that it has the legal power, right and actual authority to subject its property to the restrictions, terms and conditions stated herein.



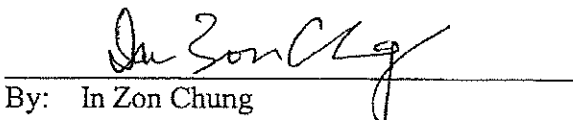
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IN WITNESS WHEREOF, Declarant has caused this Covenant to be executed as of the day and year first written above.

Ether Dragon Company, LLC  
A California Limited Liability Company

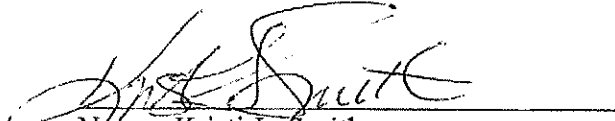


By: Tony Chia  
Its: Managing Member



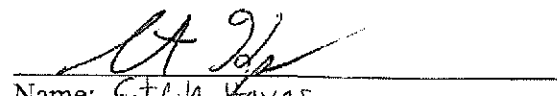
By: In Zon Chung  
Its: Managing Member

APPROVED AS TO FORM:



Name: Kristi J. Smith  
Deputy City Attorney

APPROVED AS TO CONTENT:



Name: Steve Hayes  
Public Works Department  
Planning



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ACKNOWLEDGMENT

Document Date: \_ January 5, 2010

STATE OF CALIFORNIA )  
COUNTY OF Los Angeles )

On January 5, 2010 before me, Mary Quan Tsui, a Notary Public  
personally appeared Tony Chia and In Zon Chung

who 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.

I certify under PENALTY OF PERJURY under the laws of State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
Mary Quan Tsui



This area for official notarial seal.

ACKNOWLEDGMENT

Document Date: \_

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
personally appeared \_\_\_\_\_

who 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.

I certify under PENALTY OF PERJURY under the laws of State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

This area for official notarial seal.



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EXHIBIT "A"



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C/A-1131

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of Riverside, City of RIVERSIDE, described as follows:

PARCEL 1:

LOT 11 OF ALGADENA, AS SHOWN BY MAP ON FILE IN BOOK 11 OF MAPS, AT PAGE 80 THEREOF, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED TO THE CITY OF RIVERSIDE BY DEED RECORDED MARCH 5, 1982 AS INSTRUMENT NO. 38721, OFFICIAL RECORDS OF SAID COUNTY.

PARCEL 2:

THE NORTH 83.79 FEET OF LOT 12 OF ALGADENA, AS SHOWN BY MAP ON FILE IN BOOK 11 OF MAPS AT PAGE 80 THEREOF, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED TO THE CITY OF RIVERSIDE BY DEED RECORDED MARCH 5, 1982 AS INSTRUMENT NO. 38721 OFFICIAL RECORD OF SAID RIVERSIDE COUNTY.

SAID LEGAL IS PURSUANT TO "CERTIFICATE OF COMPLIANCE PMW-51-834" RECORDED JULY 11, 1984 AS INSTRUMENT NO. 150069.

PARCEL 3:

THE SOUTHERLY 100 FEET OF LOT 10 OF ALGADENA, AS SHOWN BY MAP ON FILE IN BOOK 11 PAGES 80 AND 81 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

DESCRIPTION APPROVAL:

 7/1/2010  
MARK S. BROWN DATE  
CITY SURVEYOR



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