

283398

WHEN RECORDED MAIL TO:

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

RECEIVED FOR RECORD
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JUL 22 1993

Recorded in Official Records
of Riverside County, California

Recorder
Fees \$ 32-

Project: Tract 25486-2, Lots 1, 2, 19 and 20

**COVENANT AND AGREEMENT AND
DECLARATION OF RESTRICTIONS**

32
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64

(Cross-Lot Drainage and Private Drainage Facilities)

This Covenant and Agreement is made and entered into this 1st day of July, 1993, by BEREN, a limited partnership (the "Declarant") with reference to the following facts:

A. Declarant is the owner of the real property ("the Property"), consisting of four lots ("Lot 1," "Lot 2," "Lot 19," and "Lot 20," respectively) located in the City of Riverside, County of Riverside, State of California, described as follows:

DESCRIPTION APPROVAL 7/16/93
by
Walter R. Jones
SURVEYOR, CITY OF RIVERSIDE

Lot 1

Lot 1 of Tract 25486-2, as shown by map on file Book 245 of Maps, at Pages 59 through 63 thereof, Records of Riverside County, California.

Lot 2

Lot 2 of Tract 25486-2, as shown by map on file Book 245 of Maps, at Pages 59 through 63 thereof, Records of Riverside County, California.

Lot 19

Lot 19 of Tract 25486-2, as shown by map on file Book 245 of Maps, at Pages 59 through 63 thereof, Records of Riverside County, California.

Lot 20

Lot 20 of Tract 25486-2, as shown by map on file Book 245 of Maps, at Pages 59 through 63 thereof, Records of Riverside County, California.

B. Declarant desires to improve and develop the Property as a part of a residential subdivision including the provision for cross-lot drainage and the construction of private cross-lot drainage facilities in accordance with plans on file with the Public Works Department of the City of Riverside, California, in order to accept and dispose of surface water runoff and storm water and to carry such waters to a discharge point within public street right-of-way. 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 are 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.

- C. The City of Riverside (the "City") as a condition to the approval of Tract Map 25486-2 requires that a means be provided for disposing of surface runoff water and storm water onto and from the Property.

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 approval by the City of a final map for Tract 25486-2. 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 the provisions of this Covenant and Agreement and Declaration of Restrictions, including, but not limited to all the covenants, conditions, restrictions, limitations, grants of easements, rights, rights-of-way and equitable servitudes contained herein.

1. Definitions. In addition to the definitions herein-before 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. "Declaration" shall mean this Covenant and Agreement and Declaration of Restrictions.
- b. "Established Drainage Facilities" shall mean all improvements constructed or installed by Declarant for drainage of surface or storm waters in accordance with the Grading Plan for Tract 25486-2 on file with the Public Works Department of the City of Riverside.
- c. "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 heirs, 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, than all such persons

shall be jointly and severally liable for all obligations herein of the owner of a lot.

d. "Lot" or "Lots" shall mean the lot or lots of the Property described hereinabove.

2. Construction of Established Drainage Facilities. The Declarant shall construct or cause to be constructed, Established Drainage Facilities consisting of concrete "V" ditches on Lots 1 and 2, and underground storm drain piping on Lot 20, all in accordance with the grading plan for Tract Map 25486-2 on file with the Public Works Department of the City of Riverside, California. The established drainage facilities shall be constructed prior to the sale or development of any lot of the Property.

3. Acceptance of Surface Water Runoff. The Declarant acknowledges that the natural drainage flow of surface water runoff and storm water is not directly to a public street or public storm drain from each lot of the Property. Therefore, Lot 1 accepts drainage flow from Lot 2, and Lot 20 accepts the drainage flow from Lot 19.

4. Interference with Established Drainage Facilities and Natural Water Drainage. 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. No wall, fence or other structure shall be placed on or near the property lines of the lots which would block the natural drainage flow of surface water runoff and storm water as accepted in Paragraph 3 above.

5. Maintenance of Established Drainage Facilities. 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 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.

6. Establishment of Drainage Facility Easements. Declarant hereby establishes, grants and reserves nonexclusive easements at the location and for the purposes setforth as follows:

- 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 Lot 2 of Tract 25486-2, as shown by map on file in Book 245 of Maps, at Pages 59 through 63 thereof, Records of Riverside County, California, over, along and across the southerly 5 feet of Lot 1 of Tract 25486-2, as shown by map on file in Book 245 of Maps, at Pages 59 through 63 thereof, Records of Riverside County, California.

DESCRIPTION APPROVAL

2/6/23
Walter R. Bruce
 for SURVEYOR, CITY OF RIVERSIDE

DESCRIPTION APPROVAL 7/6/23

Walter R. Inyo by _____
SURVEYOR, CITY OF RIVERSIDE

- 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 Lot 19 of Tract 25486-2, as shown by map on file in Book 245 of Maps, at Pages 59 through 63 thereof, Records of Riverside County, California, over, along and across that portion described in Exhibit "A" of Lot 20 of Tract 25486-2, as shown by map on file in Book 245 of maps, at Pages 59 through 63 thereof, Records of Riverside County, California.

7. 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 8 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.

8. Notice from the City. Any remedy granted to the City pursuant to Paragraph 7 hereof shall be exercisable by the City only if the Owner shall fail to cure a violation of breach hereof after five days' written notice from the City, or, if such cure cannot be completed within such five-day period, if the Owner shall fail to commence to cure the same within such five-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.

9. 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 lot whether due to natural surface water and storm water runoff or to the construction and maintenance of the private cross-lot drainage facilities and the diversion of water into such facilities. Declarant agrees that the matters released herein are not limited to matters which are known or disclosed, and Declarant, for itself and each successive Owner, waives any and all rights and benefits which it now has, or in the future may have, conferred upon it 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, and Declarant further agrees, represents and warrants that this Release has been negotiated and agreed upon in light of that realization and that Declarant nevertheless intends to release, discharge, and acquit the City from any such unknown claims, which are in any way related to the water flooding, flowing over, or remaining on any lot whether due to natural surface water and storm water runoff or to the construction and maintenance of the private cross-lot drainage facilities and the diversion of water into such facilities.

10. Indemnification. Each Owner of a Lot hereby agrees 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 whether due to natural surface water or storm water runoff or to the construction and maintenance of the private cross-lot drainage facility on said Lot and the diversion of water into such facility.

11. 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 6 hereof, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Property.

12. 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 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.

June 16, 1993

W.O. # 9112517

EXHIBIT "A"

Private Drainage Easement
Lot 20 -- Tract 25486-2

That portion of Lot 20 of Tract 25486-2, as shown by map on file in Book 245 of Maps, at Pages 59 through 63 thereof, Records of Riverside County, California, lying within a strip of land 10.00 feet wide, the centerline being described as follows:

Commencing at the Northeast corner of said Lot 20;

Thence S.89°52'52"W. along the Northerly line of said Lot 20, a distance of 79.00 feet to the point of beginning of said centerline description.

Thence S.18°17'29"E., a distance of 101.60 feet;

Thence S.20°07'08"E. a distance of 88.82 feet to the Southerly line of said Lot 20, also being the termination of said centerline description.

The sidelines of said 10.00 foot wide strip of land shall be prolonged or shortened as to terminate in the Northerly and Southerly lines of said Lot 20.

DESCRIPTION APPROVAL 7/6/93
Walter R. Inuc by
SURVEYOR, CITY OF RIVERSIDE



J. F. DAVIDSON ASSOCIATES, INC.
Prepared under the supervision of:

Stephen M. O'Malley
Stephen M. O'Malley PLS NO. 4718

Date: 6/01/93

MWC/yb
leg:leg/gz6

12. Termination and Modification. Subject to the prior written approval of the Public Works Director of the 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 only upon the written agreement of the Owner of all of the lots of the Property. 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 acting through its Public Works Director.

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

BEREN, a limited partnership

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

By: *Alvin Bergum*

Title: Vice President

By: _____

Title: _____

jds:bergum:AF8

APPROVED AS TO CONTENT:
W.C. Krinsky
Public Works Department

APPROVED AS TO FORM:
Barbara
Assistant City Attorney