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WHEN RECORDED MAIL TO:

CITY CLERK
City of Riverside
City Hall, 3900 Main Street
Riverside, California 92522

Project: Design Review Case DR-034-923

RECEIVED FOR RECORD
AT 11:00 O'CLOCK

FEB - 3 1994

Recorded in Official Records
of Riverside County, California

Recorder

Fees \$

ME
W. J. Blum
X

COVENANT AND AGREEMENT
FOR MAINTENANCE OF STREET TREES AND LIGHTING

THIS COVENANT AND AGREEMENT is made and entered into this 27th day of January, 1994, by ROBERT J. NORTON, a married man as his sole and separate property ("Declarant"), with reference to the following facts:

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

Lots 7 through 12, inclusive, of John Hogan's Resubdivision of Block 4, Range 5 of the town of Riverside, as shown by map on file in Book 6, Page 42 of Maps, Records of San Bernardino County, California.

The Property is located at 3460 Orange Street, Riverside, California.

B. Declarant proposes to remodel an existing professional office building and adjacent parking lot located on Orange Street between Fourth and Fifth Streets. As required by Title 19 of the Riverside Municipal Code, Declarant has submitted landscape and irrigation plans to the City of Riverside in Case DR-034-923 for review and approval by its Design Review Board.

C. As a condition of approval of Design Review Board Case DR-034-923, Declarant must protect in place or replace street trees on Fourth, Fifth and Orange Streets in accordance with the Street Tree Policy of the City of Riverside as follows: On Fourth Street, protect in place three (3) Brazilian Peppers (*Schinus terebinthifolius*) and replace a dead pepper tree with one (1) 15 gallon Liquidambar (*Liquidambar styraciflua*); on Fifth Street, protect in place five (5) California Fan Palms (*Washingtonia filifera*); and on Orange Street, protect in place eight (8) California Fan Palms (*Washingtonia filifera*).

DESCRIPTION APPROVAL 1/31/94
Walter R. Ayres by _____
SURVEYOR, CITY OF RIVERSIDE

for

D. The Landscape Plan submitted by Declarant to the City of Riverside specifies the lighting of the street trees in the parkway along Orange Street, Fourth Street and Fifth Street. The Park and Recreation Department of the City of Riverside has requested that a covenant and agreement be recorded for the perpetual maintenance of the street trees by the adjacent property owner, to remove City liability for damage to the lighting system. A condition of approval of Design Review Case DR-034-923 requires that prior to final approval of the landscape and irrigation plans, Declarant must provide a covenant and agreement to Park and Recreation Department and Legal Department approval, for maintenance of the street trees, including the lighting of the street trees.

E. Declarant is willing to install and maintain up lights and down lights on the palm trees in the parkway along Orange Street and Fifth Street and the ground lights for the pepper trees on Fourth Street, and to execute and record a covenant and agreement assuming the liability relating to the trimming of the street trees by City on Orange Street, Fourth Street and Fifth Street adjacent to the Property due to the installation of the lighting in the parkway.

NOW, THEREFORE, incorporating the above recitals and in consideration of the approval for the lighting of the street trees granted in Design Review Case DR-034-923, Declarant hereby covenants and agrees with the City of Riverside as follows:

1. Declarant, at his sole cost and expense, shall install and maintain the lighting fixtures in the parkways of Fourth, Fifth and Orange Streets adjacent to the Property as shown on the Landscape Plan dated February 19, 1993, as revised on May 4, 1993, submitted to the City of Riverside Planning Department to light the street trees required in Design Review Case DR-034-923. Maintenance shall include the replacement of any light bulbs or fixtures or other repair work necessary to maintain the lighting system in good repair and order and in a safe condition, including, but not limited to, any replacement or repair due to weather conditions including damage due to falling tree limbs or palm fronds or any damage to the lighting system which may have been caused by City or its contractor while trimming the street trees or removing any dead street trees or replacing any such dead street tree.

2. Declarant shall be solely responsible for, and pay when due, all costs of the electricity used by the lighting system for the street trees maintained in the parkways of Fourth, Fifth and Orange Streets adjacent to the Property.

3. Following the installation of the street tree lighting in the parkways of Fourth, Fifth and Orange Streets adjacent to the Property, Declarant at his sole cost and expense shall be responsible for the payment of all water used for the street trees,

the installation, repair and maintenance of the irrigation system, and the periodic application of fertilizer in accordance with recognized horticultural standards.

4. City will periodically trim the street trees in the parkways adjacent to the Property in accordance with its usual procedures, remove any dead or diseased street tree if determined necessary by City, and replace any such tree if deemed appropriate by City. At any such time, Declarant will cooperate with City by removing the wiring and conduit to the lighting for the street tree if reasonably requested to do so by City, by affording access to the circuit breaker for the street tree lighting system, and by exposing the fixture and/or clearing the junction box if it is necessary for City or its contractor to work around the base of the street tree.

5. Declarant and each successive owner of the Property hereby release the City of Riverside and its officers and employees from any and all claims, demands, suits or actions that Declarant and his successors or assigns may now or in the future have arising out of or incurred as a result of the installation and/or maintenance of the street tree lighting in the parkways in Fourth, Fifth and Orange Streets adjacent to the Property or the trimming, removal or replacement of said street trees by City following the installation of such lighting. Declarant and each successive owner of the Property further release the City of Riverside and its officers and employees from all liability for any loss or damage to the lighting system caused by the acts or omissions of the City of Riverside, and its officers, employees, or contractors or weather conditions, including, but not limited to fog, wind, rain, flood, ice, snow earthquake or earth movement. Declarant, for himself and his successors and assigns as to the Property, waive any and all rights and benefits which he now has, or in the future may have, conferred upon him 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 he is familiar with, has read, and understands Civil Code Section 1542, and he realizes and acknowledges that factual matters now unknown to him 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 the Declarant nevertheless intends to release, discharge and acquit the City of Riverside from any such unknown claims, which are in any way related to the installation and/or maintenance of the street tree lighting by Declarant including loss

of or damage to said lighting systems caused by or alleged to be caused by action of the elements or the trimming, removal or replacement of the street trees by City after the installation of such lighting.

6. Declarant, and his successors and assigns as to the Property, hereby agrees to defend, indemnify and hold harmless the City of Riverside, its officers and employees from any and all liabilities, expenses, claims or causes of action arising out of the installation and/or maintenance of the street tree lighting in the parkways of Fourth, Fifth and Orange Streets adjacent to the Property.

7. The terms of this Covenant and Agreement may be enforced by the City of Riverside, its successors and assigns. Should the City of Riverside bring an action to enforce any of the terms hereof, the prevailing party shall be entitled to costs of suit, including reasonable attorneys' fees.

8. This Covenant and Agreement shall run with the land and each and all of the terms shall be binding upon Declarant, his heirs, successors and assigns, and shall not be modified, amended or terminated without the prior written consent of the City of Riverside duly recorded.

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



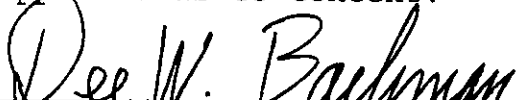
 Robert J. Norton

I, Rita E. Norton, the wife of Robert J. Norton, hereby consent to and join in the execution of the above Covenant and Agreement.



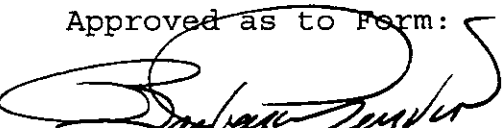
 Rita E. Norton

Approved as to Content:



 Park and Recreation Director

Approved as to Form:



 Assistant City Attorney