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City of Riverside  
City Hall, 3900 Main Street  
Riverside, California 92522  
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OCT 13 1995

Recorded in Official Records  
of Riverside County, California

Recorder

Fees \$ 0

Project: VC-003-934  
3559 Harrison Drive  
Riverside, California 92503

COVENANT AND AGREEMENT  
FOR ACCEPTANCE OF DRAINAGE WATERS  
AND MAINTENANCE OF DRAINAGE FACILITIES

THIS COVENANT AND AGREEMENT AND DECLARATION OF RESTRICTIONS is made and entered into this 21<sup>st</sup> day of July, 1995, by ARTHUR F. BARNABY, JR. and AVIS M. BARNABY, husband and wife as joint tenants, hereinafter referred to as "Declarants" with reference to the following facts:

A. The Declarants are the fee owners of the real property situated in the City of Riverside, State of California, described as follows and hereinafter referred to as "Lot 13":

[See Exhibit A attached hereto and incorporated herein by this reference]

B. Lot 13 is adjacent to an alley that has been ordered vacated between Harrison Street and the westerly terminus of Belmont Drive subject to the reservation of certain utility easements as set forth in Resolution No. 18427 and subject to the completion of certain conditions, including the acceptance of drainage waters and the maintenance of existing facilities which convey drainage in the alley to Harrison Street.

C. Drainage from properties upstream of Lot 13 flows onto and across the rear portion of that parcel before draining onto Harrison Street.

D. As a condition of the completion of vacation case VC-003-934, the City of Riverside is requiring Declarants to execute and record a Covenant and Agreement accepting onto Lot 13 the drainage waters from the upstream properties and releasing the City of Riverside and its officers and employees from liability related thereto.

NOW, THEREFORE, for the purposes of complying with a condition imposed by the City of Riverside for the completion of the vacation

of the alley between Harrison Street and the westerly terminus of Belmont Drive and in consideration of such approval, Declarants hereby covenant and agree with the City of Riverside as follows:

1. Declarants hereby agree to accept and do hereby accept upon Lot 13, the drainage waters which flow onto the rear portion of Lot 13 from Lot 12 and from other properties upstream.

2. Declarants agree not to impede or otherwise obstruct the flow of drainage waters flowing from properties upstream onto Lot 13.

3. Declarants agree to maintain the property which previously was the alley in good repair to allow the water drainage to proceed in an unimpeded manner along the southerly 20.4 foot portion of the rear property line of Lot 13.

4. Declarants hereby agree to release the City of Riverside, its officers and employees from any and all claims, demands, suits or other actions that Declarants may now or in the future have arising out of or incurred as a result of the drainage waters flowing or flooding from the properties upstream including but not limited to the drainage waters which drain through the existing storm drain structure outlet located at the rear portion of Lot 9. Declarants for themselves and their heirs, successors and assigns waive 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, Declarants agree, represent and warrant that they are familiar with, have read, and understand Civil Code Section 1542, and they realize and acknowledge that factual matters now unknown to them may have given, or may hereafter give rise to claims, which are presently unknown, unanticipated and unsuspected, and Declarants further agree, represent and warrant that this release has been negotiated and agreed upon in light of that realization and that Declarants nevertheless intend to release, discharge and acquit the City of Riverside from any such unknown claims, which are in any way related to the discharge of drainage waters from the properties upstream of Lot 13 or otherwise alleged to arise from the approval of the vacation of the alley between Harrison Street and the westerly terminus of Belmont Drive, Case VC-003-934, located in the City of Riverside.

5. Declarants, as the owners of Lot 13, hereby release the City of Riverside, its officers and employees from any and all

claims, demands, suits or causes of action that the undersigned and the heirs, successors or assigns of the undersigned may have, now or in the future, arising out of or incurred as a result of the City of Riverside approving the vacation of the alley in the above-referenced case or arising from or as a consequence of any loss of access due to the vacation of said alley.

6. The provisions of this Covenant and Agreement shall be enforceable at law or in equity by the City of Riverside. In the event of any legal or equitable proceeding for the enforcement of or to restrain a violation of this Covenant and Agreement, or any provision hereof, the prevailing party therein shall be entitled to reasonable attorney's fees in addition to any other costs to which such party is entitled.

7. This Covenant and Agreement shall run with the land and each and all of its terms shall be binding upon Declarants, their heirs, successors and assigns, and shall continue in effect until such time as released by the Public Works Director of the City of Riverside, California.

IN WITNESS WHEREOF the Declarants have caused this Agreement to be executed the day and year first above written.

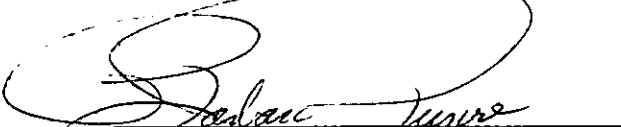
  
ARTHUR F. BARNABY, JR.

  
AVIS M. BARNABY

APPROVED AS TO CONTENT:

  
Public Works Department

APPROVED AS TO FORM:

  
Assistant City Attorney

KMG/sb/jm  
7/12/95

GENERAL ACKNOWLEDGEMENT

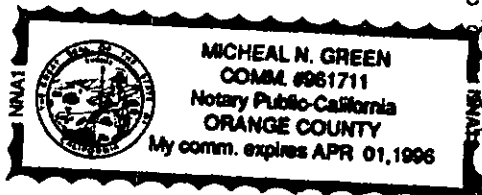
State of California }  
County of Riverside } ss

On July 21, 1995, before me Michael N. Green  
(date) (name)

a Notary Public in and for said State, personally appeared

ARTHUR F. BARNABY, Jr. & AVIS M. BARNABY  
Name(s) of Signer(s)

personally known to me - OR -  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.



WITNESS my hand and official seal.

Michael N. Green  
Signature

OPTIONAL SECTION

CAPACITY CLAIMED BY SIGNER

- ( ) Attorney-in-fact
- ( ) Corporate Officer(s)

Title \_\_\_\_\_

Title \_\_\_\_\_

- ( ) Guardian/Conservator
- (X) Individual(s)
- ( ) Trustee(s)
- ( ) Other

- ( ) Partner(s)
- ( ) General
- ( ) Limited

The party(ies) executing this document is/are representing:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## EXHIBIT "A"

Lot 13 and that portion of Lot 16 and that portion of that certain Alley 15.4 feet in width and that portion of the southwesterly one-half of that certain Alley 11.00 feet in width all of the Primrose Subdivision, as shown by map on file in Book 6, Page 29 of Maps, records of Riverside County, California, described as follows:

BEGINNING at the most westerly corner of said Lot 13;

THENCE northeasterly along the northwesterly line of said Lot 13, a distance of 200 feet to the most northerly corner of said Lot 13;

THENCE northeasterly at a right angle to the northeasterly line of said Lot 13, a distance of 5.5 feet to the northeasterly line of said southwesterly one-half of said Alley 11.00 feet in width;

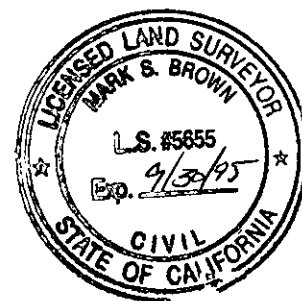
THENCE southeasterly along said last mentioned northeasterly line, a distance of 100 feet to an intersection with the northeasterly prolongation of the southeasterly line of said Lot 13;

THENCE southeasterly at a right angle to said southeasterly line of Lot 13, a distance of 20.4 feet to the southeasterly line of Lot 16;

THENCE southwesterly along said last mentioned southeasterly line, a distance of 205.5 feet to the most southerly corner of said Lot 16;

THENCE northwesterly along the southwesterly line of said Lot 16, the northwesterly prolongation of said southwesterly line and along the southwesterly line of said Lot 13, a distance of 120.4 feet to the POINT OF BEGINNING.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyors Act.



Mark S. Brown      11/21/94      Prep. [Signature]  
 Mark S. Brown, L.S. 5655      Date  
 License Expires 9/30/95

C/A-480

