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FRANK K. JOHNSON
County Recorder
RIVERSIDE COUNTY CALIFORNIA

WHEN RECORDED MAIL TO:

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

Project: Tract 27618

COVENANT AND AGREEMENT
FOR ESTABLISHMENT OF DRAINAGE EASEMENTS
AND ACCEPTANCE OF DRAINAGE WATERS

24-

THIS COVENANT AND AGREEMENT is made and entered into this 14th day of June, 1995, by KIMMEL-PATTERSON DEVELOPMENT CO., INC., a California corporation ("Declarant") with reference to the following facts:

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

Lots 12 through 22, inclusive, of Tract 27618 as shown by map on file in Book 256 of Maps, at Pages 15 through 17 thereof, records of Riverside County, California.

B. The Property is part of a single-family residential subdivision consisting of 22 lots located in the Casa Blanca community of the City of Riverside at the easterly terminus of Evans Street. Declarant has submitted to the City of Riverside ("City") a certain grading plan for the Property, which plan shows the acceptance of offsite drainage onto certain of the lots of the Property from properties located easterly thereof known as 3144, 3162, 3198 and 3276 Washington Avenue and 7115 and 7125 Marguerita Avenue and other lots of the Property into private drainage facilities and into the adjacent public streets known as Mendoza Way and Evans Street.

C. Declarant desires to impose upon the Property a plan for its development in conformance with the grading plans submitted to the Public Works Department of the City of Riverside, to provide for the acceptance of surface water runoff and storm water upon the various Lots of the Property and to ensure the construction and maintenance of the private

DESCRIPTION APPROVAL 6/14/95
SURVEYOR, CITY OF RIVERSIDE by WJF

drainage facilities to protect the improvements to be constructed therein, 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.

D. As a condition to the approval of the final map for Tract 27618, City is requiring that a means be provided for disposing of surface runoff water and storm water onto and from the Property and that a document to so provide be executed and recorded.

NOW, THEREFORE, for the purposes of complying with a condition imposed by City, 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 Riverside of a final map for Tract 27618. 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 document, including, but not limited to, all the covenants, conditions, restrictions, limitations, grants of easements, rights, right-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 document (except when the context otherwise requires) shall have the following meanings:

a. "Declaration" shall mean this Covenant and Agreement for Establishment of Drainage Easements and Acceptance of Drainage Waters.

b. "Drainage waters" shall mean storm water and/or surface water runoff and/or nuisance drainage waters whether

from public or private property or public or private storm drain facilities including public or private streets.

c. "Established Drainage Facilities" shall mean the improvement constructed or installed by Declarant for drainage of drainage waters in accordance with the grading plan for Tract 27618 on file with the Public Works Department of the City of Riverside.

d. "Lot" or "Lots" shall mean the Lot or Lots of the Property as herein above described.

e. "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 or 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 Established Drainage Facilities. Declarant shall construct or cause to be constructed Established Drainage Facilities consisting of a 26" wide by 6" deep concrete gutter extending along a portion of the northerly and along the westerly property lines of Lot 13 to the abutting street, and a 26" wide by 6" deep concrete gutting extending along the westerly property line of Lot 15 to the abutting public street; all in accordance with the grading plan for Tract 27618 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 Drainage Waters. As the drainage flow of surface water runoff and storm water is generally in a westerly direction from the properties located easterly of the Property and from certain of the easterly lots of the Property located on Washington Street, Declarant for itself and its successors and assigns, hereby agrees to accept and does accept the drainage waters onto the following lots: Onto Lot 19 from the properties known as 7115 Marguerita Avenue and 7125 Marguerita Avenue and 3144 Washington Street; onto Lot 18 from the properties known as 3144 Washington Street and 3162 Washington Street; onto Lot 17 from the property known as 3162 Washington Avenue; onto Lot 16 from the properties known as 3162 Washington Street and 3198 Washington Street; onto Lot 15 from the properties known as Lots 14 and 20 and 3198 Washington Street; onto Lot 13 from Lots 12, 21 and 22; and onto Lot 12 from Lot 22 and 3276 Washington Street.

4. Establishment of Private Cross-Lot Drainage Easements. Declarant hereby establishes, grants and reserves nonexclusive easements for the construction, installation, maintenance, repair, replacement and use of the Established Drainage Facilities and for ingress and egress in connection with said facilities over, along and across the following lots of the Property:

(a) The northerly most two-foot portion of Lot 13 of Tract No. 27618 as shown by map on file in Book of Maps, at pages and thereof, records of Riverside County, California extending from the most westerly point of said Lot 13 to its intersection with the common property line of Lots 21 and 22 of said Tract No. 27618 and the westerly two-foot portion of Lot 13 extending from its intersection with the southerly property line of Lot 22 to the adjacent public street for the use and benefit of and as an easement appurtenant to Lots 12 and 22 of Tract No. 27618 as shown by map on file in Book of Maps, at pages and thereof, records of Riverside County, California.

(b) The westerly most two-foot portion of Lot 15 of Tract No. 27618 as shown by map on file in Book of Maps, at pages and thereof, records of Riverside County, California extending from its intersection with the southerly and easterly property lines of Lot 20 to the adjacent public street for the use and benefit of and as an easement appurtenant to Lots 14 and 20 of Tract No. 27618 as shown by map on file in Book of Maps, at pages and thereof, records of Riverside County, California, and the property known as 3198 Washington Street, Riverside, California.

5. 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 of the Property which would block the natural drainage flow of surface water runoff and storm water as accepted in Paragraph 3 above.

6. Enforcement. The provisions of this Declaration shall be enforceable at law or in equity by Declarant, each successive Owner and, subject to the provisions of Paragraph 7 below, the City of Riverside. In the event of any legal or equitable proceeding for the enforcement of or to restrain a violation of this Declaration, or any provision hereof, the prevailing party therein shall be entitled to reasonable attorneys' fee in addition to any other costs to which such party is entitled. 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 the right to enforce any other provision hereof.

7. Notice from City. Any remedy granted to City pursuant to Paragraph 6 hereof shall be exercisable by the City only if the Owner (including the Declarant or the Homeowners' Association) 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.

8. Release. Declarant and each successive Owner of a Lot hereby release the City of Riverside, its officers and employees from any and all claims, demands, suits or other actions that 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 the drainage waters flooding, flowing over, or remaining on any Lot whether due to natural surface water and storm water runoff or to the construction or maintenance of the Establish 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 of Riverside from any such unknown claims which are in any way related to water flooding, flowing over, or remaining on any Lot whether due to natural surface water and storm water runoff or the construction and maintenance of the Established Drainage Facilities and the diversion of drainage waters into such facilities.

9. 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 granted and be subject to each applicable easement hereof, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Property.

10. 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 and reciprocal benefits for 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 insure 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.

11. Termination and Modification. Subject to the prior written approval of the Public Works Director of the City of Riverside, this Declaration, and any provisions contain herein, may be terminated, modified or amended as to all of the Property or any portion thereof only upon the written agreement of the Owners 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 Declarant has caused this Declaration to be executed the day and year first written above.

KIMMEL-PATTERSON DEVELOPMENT CO., INC.,
a California corporation

By 
President

By 
Secretary

APPROVED AS TO CONTENT:

Michael Katusian
Public Works Department

APPROVED AS TO FORM:

Barbara Parker
Assistant City Attorney

State of California)
County of Riverside) ss

On June 14, 1995, before me, the undersigned, a Notary Public in and for said State, personally appeared _____
DANNY D. PATTERSON and JAMES M. KIMMEL

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.

Karina Polcy
Signature

