

72-7
314125

WHEN RECORDED MAIL TO:

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

Project: Mass Grading Plan for
Parcel Map 28496

RECEIVED FOR RECORD
AT 2:00 O'CLOCK

AUG 28 1997 *WV*

Recorded in Official Records
of Riverside County, California

Recorder

Fees \$ 24

For Recorder's Office Use Only



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

THIS COVENANT AND AGREEMENT is made and entered into this *9TH* day of *JULY*, 1997, by **MISSION VILLAGE**, a California corporation ("Declarant") with reference to the following facts:

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

Parcels 1 through 3 of Parcel Map 28496 as shown by map on file in Book *190* of Parcel Maps, at pages *13* through *14* thereof, records of Riverside County, California.

B. By Parcel Map 28496, Declarant proposes to divide the approximately 25 vacant acres situated at the southeast corner of Mission Grove Parkway South and Alessandro Boulevard into three parcels for commercial purposes. The Property is in the Restricted Commercial and Specific Plan Overlay ("C-2-SP") Zones.

C. Declarant has submitted to the City of Riverside ("City") a mass grading plan for the Property, which plan shows that the surface storm flow and nuisance drainage waters from Parcel 1 of Parcel Map 28496 will flow across Parcels 2 and 3 of Parcel Map 28496 before discharging into Mission Grove Parkway South, a public street, and that the surface storm flow and nuisance drainage waters from said Parcel 2 will flow across a portion of said Parcel 3.

D. Declarant desires to impose upon the Property a plan for its development in conformance with the mass grading plan submitted to the Public Works Department of City, to provide for the acceptance of surface water runoff and storm water upon

Parcels 2 and 3 of Parcel Map 28496 and to ensure the construction and maintenance of any private 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 division 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.

E. As a condition to the approval of the mass grading plan for Parcel Map 28496, the Public Works Department of City is requiring that a means be provided for disposing of surface runoff water and storm water onto and from the Property and each parcel thereof and that a document to so provide be executed and recorded.

NOW, THEREFORE, for the purposes of complying with a condition imposed by the Public Works Department of 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 division, 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 Public Works Department of City of the mass grading plan for Parcel Map 28496. 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 parcel 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 parcel 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. "Grading Plan" shall mean the mass grading plan for Parcel Map 28496 and Zoning Case CU-033-967 prepared by Canty Engineering Group, Inc., Civil Engineers, a copy of which is on

file in the Public Works Department of City.

b. "City" shall mean the City of Riverside, California, or its Public Works Department.

c. "Declaration" shall mean this Covenant and Agreement for Acceptance of Drainage Waters and Maintenance of Drainage Facilities.

d. "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.

e. "Established Drainage Facility" or "Established Drainage Facilities" shall mean any improvement constructed or installed by Declarant for drainage of drainage waters in accordance with the Grading Plan.

f. "Owner" shall mean any person, whether an individual, corporation, association or otherwise, in which title to a Parcel 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 Parcels 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 Parcel. If more than one person is Owner of a Parcel, then all such persons shall be jointly and severally liable for all obligations herein of the Owner of a Parcel.

g. "Parcel" or "Parcels" shall mean the Parcel or Parcels of the Property as herein above described.

2. Construction of Established Drainage Facilities. Declarant shall construct or cause to be constructed the Established Drainage Facilities consisting of, but not necessarily limited to, an asphalt drainage swale and a dirt drainage swale, all in accordance with the Grading Plan on file with City. The Established Drainage Facilities shall be constructed prior to the sale or development of any Parcel of the Property.

3. Acceptance of Drainage Waters. Declarant for itself and its successors and assigns, hereby agrees to accept and does accept the drainage flow of surface water runoff and storm water onto Parcel 2 from Parcel 1 and onto Parcel 3 from Parcels 1 and 2.

4. Establishment of Private Cross-Lot Drainage Easements. Declarant hereby establishes, grants and reserves nonexclusive easements at the locations and for the purposes set forth as follows:

(a) A nonexclusive easement for the flow of drainage waters in the Established Drainage Facilities over, along and across that portion of Parcel 2 of Parcel Map 28496 as shown on the Grading Plan for the use and benefit of and as an easement appurtenant to Parcel 1 of Parcel Map 28496.

(b) A nonexclusive easement for the flow of drainage waters in the Established Drainage Facility over, along and across that portion of Parcel 3 of Parcel Map 28496 as shown on the Grading Plan for the use and benefit of and as an easement appurtenant to Parcels 1 and 2 of Parcel Map 28496.

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 Parcel 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 any Parcel of the Property which would block the natural drainage flow of surface water runoff and storm water as accepted in Paragraph 3 above except as otherwise shown on the Grading Plan.

6. Maintenance of Established Drainage Facilities. Each Owner of a Parcel upon which an Established Drainage Facility is located shall maintain, repair and replace, when necessary, such Established Drainage Facility located on said Parcel and keep such Established Drainage Facility in a good order and repair at all times.

7. 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 8 below, City. 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 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.

8. Notice from City. Any remedy granted to City pursuant to Paragraph 7 hereof shall be exercisable by the City only if the Owner (including the Declarant) shall fail to cure a violation of breach hereof after five days' written notice from 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 Parcel hereby release City and 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 Parcel whether due to natural surface water and storm water runoff or to the construction or maintenance of an Established Drainage Facility and the diversion of water into such facility. 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 City from any such unknown claims which are in any way related to water flooding, flowing over, or remaining on any Parcel 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.

10. 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.

11. 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 Parcel as the servient tenement in favor of every other Parcel as the dominant tenement and create reciprocal rights and obligations among the respective Owners of all of the Parcels, and privity of

contract and estate among all grantees of the Parcels, 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 Parcel, 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 Parcel or portion thereof, their successors and assigns in interest.

12. 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 Parcels 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.

MISSION VILLAGE,
a California corporation

By _____

Title Sec. _____

By _____

Title VICE PRESIDENT _____

APPROVED AS TO CONTENT:

Public Works Department

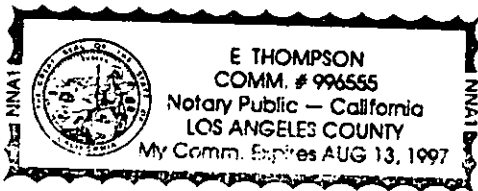
APPROVED AS TO FORM:

Assistant City Attorney

State of California)
County of Los Angeles)^{SS}

On July 9, 1997, before me, the undersigned, a Notary Public in and for said State, personally appeared Jack A. Sweeney & Alexander S. Lowy

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.

E Thompson
Signature

CAPACITY CLAIMED BY SIGNER

- Attorney-in-fact
- Corporate Officer(s)
Title _____
- Guardian /Conservator
- Individual(s)
- Partner(s)
 General Limited
- Trustee(s)
- Other _____

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