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WHEN RECORDED MAIL TO:
City Clerk
City of Riverside
City Hall, 3900 Main Street
Riverside, California 92522

RECEIVED FOR RECORD
AT 8:00 O'CLOCK

APR 23 1998

Recorded in Official Records
of Riverside County, California

Recorder
Fees \$ 30-

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Project: Parcel Map No. 28543

For Recorder's Office Use Only

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COVENANT AND AGREEMENT
ESTABLISHING EASEMENTS FOR ACCESS, UTILITIES AND
CROSS-LOT DRAINAGE, AND
LIMITING THE NUMBER OF DRIVEWAYS ONTO VAN BUREN BOULEVARD

THIS COVENANT AND AGREEMENT is made and entered into this 15th day of DECEMBER, 1997, by **RICK FRITTS**, a married man, ("Declarant"), with reference to the following facts:

A. Declarant is the fee owner of the real property (the "Property") consisting of approximately 12.2 acres located in the City of Riverside, County of Riverside, State of California, and described as follows:

Parcels 1 through 8 of Parcel Map No. 28543 as shown by map on file in Book 191 of Parcels Maps, at pages 60 and 61 thereof, records of Riverside County, California.

B. The Property is located on the southerly side of Van Buren Boulevard, easterly of Dauchy Avenue in the Restricted Commercial ("C-2") Zone of the City of Riverside, California. Declarant has filed an application with the City of Riverside ("City") to divide the Property by Parcel Map No. 28543 into eight parcels, ranging in size from .6 acres to 4.8 acres, for commercial purposes. The Property has one freestanding commercial business and related parking in its northeast corner, with the remainder of the Property being vacant. Five of the parcels have street frontage along Van Buren Boulevard; two of the parcels have street frontage on Dauchy Avenue; and the remaining parcel is landlocked.

C. As a condition of approval of Parcel Map No. 28543 by the City, Declarant must:

- (1) Record a mutual access agreement between all parcels subject to approval of the Planning and Legal Departments of the City.

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(2) Limit access to Van Buren Boulevard to that shown on the parcel map.

D. Declarant further desires to establish easements for utilities for the use and benefit of certain of the Parcels of the Property and for cross-lot drainage across all Parcels of the Property for the use and benefit of the entire Property and each of the Parcels thereof with the understanding that as the Parcels are developed and such easements are not necessary, the easements may be eliminated.

E. Declarant intends by this document to comply with the conditions above noted and to establish easements for utilities and cross-lot drainage.

NOW, THEREFORE, Declarant hereby declares that the Property is and hereafter shall be held, conveyed, transferred, mortgaged, encumbered, leased, rented, used, occupied, sold and improved subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are imposed as equitable servitudes pursuant to a general plan for the development of the Property for the purpose of enhancing and protecting the value and attractiveness of the Property, and each Parcel thereof, and to comply with certain conditions imposed by the City for the approval of Parcel Map No. 28543. All of the covenants, conditions, limitations, 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 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 Covenant and Agreement, including, but not limited to, all the covenants, conditions, restrictions, limitations, grants of easement, rights, rights of way and equitable servitudes contained herein.

1. Definitions. In addition to the definitions hereinbefore set forth, the following words or phrases when used in this Covenant and Agreement (except when the context otherwise requires) shall have the following definitions:

(a) "Building Areas" shall mean those areas on each Parcel of the Property upon which buildings have been or are to be constructed pursuant to plans approved by the City and with building permits issued therefor.

(b) "Common Area" shall mean all the areas of the Property other than Building Areas.

(c) "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.

(d) "Established Drainage Facility" or "Established Drainage Facilities" shall mean any improvement constructed or installed by Declarant for drainage of drainage waters in accordance with any storm drain plan or grading plan as may be approved by the City from time to time for the development of any of the Parcels of the Property.

(e) "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 Riverside County, California. Declarant shall be deemed the Owner of any unsold or retained Parcels until Declarant shall have executed or 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.

(f) "Parcel" or "Parcels" shall mean the Parcel or Parcels of the Property hereinabove described.

2. Limitations on Access onto Van Buren Boulevard. A condition imposed by the City for the approval of Parcel Map No. 28543 provides that access onto Van Buren Boulevard shall be limited to that shown on the map for Parcel Map No. 28543. The map for Parcel Map No. 28543 shows that there shall only be three driveway openings onto Van Buren Boulevard as follows:

(a) A thirty-eight foot wide driveway located at the most westerly portion of Parcel 1 of Parcel Map No. 28543.

(b) A forty foot wide driveway located twenty feet on the most easterly portion of Parcel 2 of parcel Map No. 28543 and twenty feet on the most westerly portion of Parcel 3 of Parcel Map No. 28543.

(c) A forty foot wide driveway located at the most westerly portion of Parcel 5 of Parcel Map No. 28543.

Declarant hereby agrees with the City to limit the number of driveway openings onto Van Buren Boulevard to the three shown above.

3. Easements for Access. Declarant hereby establishes, grants and reserves nonexclusive easements for vehicular and pedestrian ingress and egress over, along, under and across the Common Areas of each Parcel of the Property (as said Parcel now exists or may hereinafter be reconfigured), designated as a driveway or walkaway on the plans for the development of a Parcel of the Property as may be approved from time to time by the City, for the use and benefit of and as an easement appurtenant to the remaining Parcels (as said Parcels now exist or as hereinafter reconfigured). The nonexclusive easements herein established shall be and are for vehicular and pedestrian ingress and egress only.

In the event such nonexclusive easements are not necessary for the

use of any Parcel at the time of the approval of the development plans by the City for such Parcel, such nonspecific easement established immediately above in this paragraph may be quitclaimed by the Owner of the Parcel for whose use and benefit the easement exists **subject** to the consent of the Planning Director of the City shown on such quitclaim deed.

In addition, the following specific easements are granted and reserved for vehicular and pedestrian ingress and egress:

(a) The most easterly twenty-feet of Parcel 2 of Parcel Map No. 28543 as shown by map on file in Book _____ of Parcel Maps, at pages _____ and _____ thereof, records of Riverside County, California, for the use and benefit of and as an easement appurtenant to Parcels 3 and 7 of Parcel Map No. 28543 as shown by map on file in Book _____ of Parcel Maps, at pages _____ and _____ thereof, records of Riverside County, California.

(b) The most westerly twenty-feet of Parcel 3 of Parcel Map No. 28543 as shown by map on file in Book _____ of Parcel Maps, at pages _____ and _____ thereof, records of Riverside County, California, for the use and benefit of and as an easement appurtenant to Parcels 2 and 7 of Parcel Map No. 28543 as shown by map on file in Book _____ of Parcel Maps, at pages _____ and _____ thereof, records of Riverside County, California.

(c) The most westerly forty-feet of Parcel 5 of Parcel Map No. 28543 as shown by map on file in Book _____ of Parcel Maps, at pages _____ and _____ thereof, records of Riverside County, California, for the use and benefit of and as an easement appurtenant to Parcels 4 and 6 of Parcel Map No. 28543 as shown by map on file in Book _____ of Parcel Maps, at pages _____ and _____ thereof, records of Riverside County, California.

4. Utility Easements. Declarant hereby establishes, grants and reserves nonexclusive easements for underground public and private utilities, including sewers and fire service facilities, as follows:

(a) The most easterly twenty-feet of Parcel 2 of Parcel Map No. 28543 as shown by map on file in Book _____ of Parcel Maps, at pages _____ and _____ thereof, records of Riverside County, California, for the use and benefit of and as an easement appurtenant to Parcel 7 of Parcel Map No. 28543 as shown by map on file in Book _____ of Parcel Maps, at pages _____ and _____ thereof, records of Riverside County, California.

(b) The most westerly twenty-feet of Parcel 3 of Parcel Map No. 28543 as shown by map on file in Book _____ of Parcel Maps, at pages _____ and _____ thereof, records of Riverside County, California, for the use and benefit of and as an easement appurtenant to Parcel 7 of Parcel Map No. 28543 as shown by map on file in Book _____ of Parcel Maps, at pages _____ and _____ thereof, records of Riverside County, California.

(c) The most westerly forty-feet of Parcel 5 of Parcel Map

No. 28543 as shown by map on file in Book of Parcel Maps, at pages and thereof, records of Riverside County, California, for the use and benefit of and as an easement appurtenant to Parcel 6 of Parcel Map No. 28543 as shown by map on file in Book of Parcel Maps, at pages and thereof, records of Riverside County, California.

The easements herein established shall be and are for the installation, construction, maintenance, repair, replacement, and use of underground public and private utilities, including, but not limited to, sewer, electricity, water, gas, telephone, cable television, storm drains and other utilities required for commercial uses, and all rights deemed reasonable and necessary therefor including reasonable ingress and egress.

The cost of any repair to the easement area necessitated by the installation of utilities therein shall be borne by the Owner of the Parcel benefited by the installation of such utility.

In the event an easement as above established is not necessary for the use of any Parcel at the time of the approval of the development plans by the City for such Parcel, the easement established by this paragraph may be quitclaimed by the Owner of the Parcel for whose use and benefit the easement exists subject to the consent of the Planning Director of the City shown on such quitclaim deed.

5. Barriers. Declarant shall not construct, erect, install, maintain or permit the construction, erection, installation or maintenance of any barrier, barricade, wall, or fence between the Parcels of the Property which would preclude or interfere with the use of the driveways by the Owners, occupants, employees and invitees of the other Parcels; provided, however, nothing herein shall prevent the installation, construction or maintenance of necessary traffic control devices.

6. Acceptance of Drainage Waters. Declarant for himself and his heirs, successors and assigns, hereby agree to accept and does accept the surface flow of drainage waters onto each Parcel of the Property from each remaining Parcels of the Property (as each of said Parcels now exists or may hereinafter be reconfigured).

In the event the easement for acceptance of drainage waters as above established is not necessary for any Parcel at the time of the approval of the development plans by the City for such Parcel, the easement established by this paragraph may be quitclaimed by the Owner of the Parcel for whose use and benefit the easement exists subject to the consent of the Public Works Director of the City shown on such quitclaim deed.

7. Construction of Established Drainage Facilities. Declarant shall construct or cause to be constructed the Established Drainage Facilities as may be required by the Public Works Department of the City at the time of submission of plans to the City for the development of a Parcel of the Property. The Established Drainage Facilities for such Parcel shall be constructed prior to the development of said

Parcel of the Property.

8. 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 6 above except as otherwise shown on any approved storm drain plan or grading plan.

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

10. Enforcement. The provisions of this Covenant and Agreement shall be enforceable at law or in equity by Declarant, each successive Owner and, subject to the provisions of Paragraph 11 below, the City. 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 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 Covenant and Agreement 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.

11. Notice from City. Any remedy granted to the City pursuant to Paragraph 10 hereof shall be exercisable by the City only if the Owner (including the Declarant) shall fail to cure a violation or 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 deemed served when delivered to the Owner in person, or on the third days after it is 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.

12. Release. Declarant and each successive Owner of a Parcel of the Property hereby release the 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 himself and each successive Owner, waives 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, Declarant agrees, represents and warrants that he is familiar with, has read, and understands Civil Code Section 1542, and Declarant 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 that Declarant nevertheless intends to release, discharge, and acquit the City from any such unknown claims which are in any way related to drainage waters 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.

13. No Gift or Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property, including the Common Area, to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Declarant that this document shall be strictly limited to and for the purposes herein expressed. The right of the public or any person to make use whatsoever of the Common Area of the Property, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is solely by permission, and subject to the control of the Owner(s). Notwithstanding any other provision herein to the contrary, Declarant may periodically restrict ingress and egress on a driveway or a walkway area of the Common Area in order to prevent a prescriptive easement from arising by reason of continued public use. Any restriction on ingress or egress shall be limited to the minimum period necessary to prevent the creation of a prescriptive easement and shall occur at such time as to have a minimum effect on the Owners, occupants and invitees of the Parcels of the Property.

14. Merger. This Covenant and Agreement shall not be subject to the doctrine of merger, even though the underlying fee ownership of the Parcels described herein is vested in one party or entity.

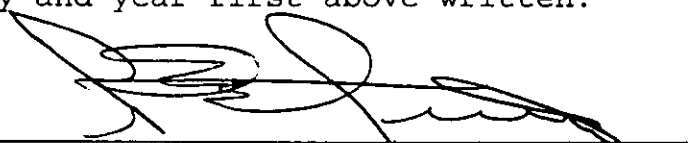
15. Effect of Covenant and Agreement; Grant or Reservation of Easements. Any person who now or hereafter owns or acquires any right, title or interest in or to any Parcel of the Property shall be deemed (a) to have consented and agreed to every covenant, condition, restriction and easement contained herein; and (b) to have been granted and be subject to each of the applicable easements described hereinabove, whether or not any reference to this Covenant and Agreement is contained in the instrument by which such person acquired

an interest in the Property. In the event Declarant shall sell, convey, lease or otherwise change the ownership of any Parcel of the Property, as such Parcel is conveyed, Declarant shall grant and reserve, as is appropriate, the easements established hereinabove.

16. Mutuality, Reciprocity, Run with Land. All of the provisions contained herein are made for the direct, mutual and reciprocal benefit of each and every Parcel of the Property and create mutual, equitable servitudes upon each Parcel as the servient tenement in favor of the other Parcels as the dominant tenement and create reciprocal rights and obligations among the respective Owners 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 thereof 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 Parcel, their successors and assigns in interest.

17. Amendment, Termination. This Covenant and Agreement, 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, and the consent of the City acting by and through its Planning Director or Public Works Director. 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 of the City.

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




 RICK FRITTS

Approved as to Content:



 Planning Department

Approved as to Form:



 Assistant City Attorney

Approved as to Content:



 Public Works Department

State of California)
County of Riverside)se

On December 15, 1997, before me, the undersigned, a Notary Public in and for said State, personally appeared

Richard E. Little

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.

Michelle C. Small
Signature

