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Gary L Orso

County of Riverside  
Assessor, County Clerk & Recorder

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Riverside, California 92522

Project: Tract 29362-1

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COVENANT AND AGREEMENT  
FOR ACCEPTANCE OF DRAINAGE WATERS

THIS COVENANT AND AGREEMENT is made and entered into this 16<sup>TH</sup> day of MARCH, 2000 by RIVERSIDE 143/AF XX, LTD., a California limited partnership, Van Daele Development Corporation, a California corporation, its general partner ("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:

Lots 1-134 of Tract No. 29362-1 as shown by map on file in Book 294 of Maps, at pages 53 through 62 thereof, records of Riverside County, California.

B. The Property is part of a phased residential subdivision consisting of approximately 134 lots for single family residential purposes known as Tract 29362-1 located on the north side of Van Buren Blvd. and the east side of Barton Street. Declarant has submitted to the City of Riverside ("City") certain grading and storm drain plans for Tract 29362-1, which plans show that surface storm flow and irrigation water from a manufactured slope north of and adjacent to said Lot 120 of the above described Property.

C. Declarant desires to provide for the acceptance on said Lot 120 of the Property of the surface water runoff and storm water from that area north of and adjacent to Lot 120 of the Property.

D. As a condition for the acceptance of Declarant's Grading Plan and Storm Drain Plan for Tract No. 29362-1, City is requiring that a document be executed and recorded accepting the surface runoff water and storm water onto the Property from the adjacent north property at said Lot 120 of Tract 29362-1 and its conveyance by way of a drainage facility.

DESCRIPTION APPROVAL 6/8/00  
Walter R. Spivey by  
SURVEYOR, CITY OF RIVERSIDE

NOW, THEREFORE, for the purposes of complying with a condition imposed by City for the acceptance of the Grading Plan and Storm Drain Plan for Tract No. 29362-1 and in consideration of such approval, Declarant hereby covenants and agrees with City as follows:

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 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.

c. "Established Drainage Facility" shall mean the drainage swale constructed or installed on the Property by Declarant for drainage of drainage waters in accordance with the Grading and Storm Drain Plans for Tract No. 29362-1 on file with the Public Works Department of the City of Riverside.

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

2. Construction of Established Drainage Facility. Declarant shall construct or cause to be constructed the Established Drainage Facility in accordance with the Grading Plan and Storm Drain Plan for Tract No. 29362-1 on file with the Public Works Department of the City of Riverside, California.

3. Acceptance of Drainage Waters. Declarant for itself and its successors and assigns, hereby agrees to accept and does accept onto said Lot 120 of the Property, the drainage waters flowing from the adjacent northerly property.

4. Interference with Established Drainage Facility and Natural Water Drainage. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken on the Property which may damage or interfere with, or obstruct or retard, the flow of water through the Established Drainage Facility and which may interfere with the natural flow of drainage water on and from the northerly adjacent property of Lot 120 of said Tract 29362-1.

5. Release. Declarant and each successive Owner of the Property hereby release City, 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 the Property whether due to natural surface water and storm water runoff or to the construction or maintenance of the 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 Declarant is familiar with, has read, and understands Civil Code Section 1542, and Declarant realizes and acknowledges that factual matters now unknown to Declarant 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 the Property whether due to natural surface water and storm water runoff or the construction and maintenance of the Established Drainage Facility and the diversion of drainage waters into such facility.

6. Enforcement. The provisions of this Declaration shall be enforceable at law or in equity by 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' fees in addition to any other costs to which such party is entitled. The failure of 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. Covenant Running with Land. This Declaration shall run with the land and each and all of its terms shall be binding upon Declarant and Declarant's successors and assigns in interest, and shall continue in effect until such time as released by the Public Works Director of City by a writing duly recorded.

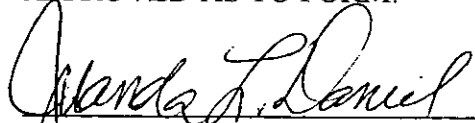
RIVERSIDE 143/AF XX, LTD., a  
California limited partnership by VAN  
DAELE DEVELOPMENT  
CORPORATION, its general partner

By   
Michael B. Van Daele, CEO

APPROVED AS TO CONTENT:

  
Public Works Department

APPROVED AS TO FORM:

  
Assistant City Attorney