

RECORDING REQUESTED BY:
City of Riverside

DOC # 2000-296629

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Page 1 of 7

Recorded in Official Records

County of Riverside

Gary L. Orso

Assessor, County Clerk & Recorder

WHEN RECORDED MAIL TO:

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



Project: Grading Plan for
7120 Indiana Avenue
Riverside, California

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(26)

COVENANT AND AGREEMENT
AND DECLARATION OF RESTRICTIONS
(Private Cross-Lot Drainage)

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THIS COVENANT AND AGREEMENT AND DECLARATION OF RESTRICTIONS is made and entered into this 6 day of July, 2000 by Indiana #176 LLC, a California Limited Liability Company, (hereinafter collectively referred to as "Declarants") with reference to the following facts:

A. Declarants are the fee owners of the following described real property located in the City of Riverside, County of Riverside, State of California, and hereinafter referred to as "Parcel 1" and "Parcel 2" respectively:

Parcel 1

See Attached Exhibit "A"

Parcel 2

See Attached Exhibit "B"

Parcels 1 and 2 are adjoining lots. Parcel 1 bears the street address of 7120 Indiana Avenue (APN 230-320-060), Riverside, California, and Parcel 2 bears the street address of Washington Street (APN 230-320-061), Riverside, California. Parcel 2 lies southeasterly of Parcel 1.

B. Declarants desire to improve and develop Parcels 1 and 2 by constructing a commercial building and parking lot. The grading plans for Assessor's Parcel Number 230-320-060 and Assessor's Parcel Number 230-320-061 propose that the storm flow and nuisance drainage water (hereinafter referred to as "drainage waters") from Parcel 2 will flow onto Parcel 1 and that parcels 1 and 2 will be graded so as to establish drainage swales to channel the flow of the drainage waters on both parcels to Indiana Avenue, a public street.

C. The City of Riverside (hereinafter referred to as "City"), as a condition to the issuance of building permits for Parcels 1 and 2, is requiring the Declarants to execute a covenant and agreement for cross-lot drainage to provide for the acceptance of the drainage waters from Parcel 2 onto Parcel 1 and to provide for the maintenance of the drainage swales on both parcels.

NOW, THEREFORE, incorporating the above recitals, and for the purpose of complying with a condition imposed by the City for the issuance of building permits for Parcels 1 and 2, Declarants hereby covenant and agree with the City and declare that Parcels 1 and 2 are, and shall hereafter be, held, transferred, sold, occupied subject to the following covenants, conditions, restrictions and easements:

1. Establishment of Drainage Swales.

Declarants shall construct or cause to be constructed the drainage swales on Parcels 1 and 2 as shown on the grading plans for Assessor's Parcel Number 230-320-060 and Assessor's Parcel Number 230-320-061 filed with the Public Works Department of City. The drainage swales shall be established on Parcel 1 prior to the commencement of construction of any building on that parcel; and the drainage swales shall be established on Parcel 2 prior to the commencement of construction of any parking lot on that parcel.

2. Acceptance of Drainage Waters.

Declarants agree to accept and do hereby accept upon Parcel 1 the drainage waters flowing from Parcel 2.

3. Noninterference with Cross-Lot Drainage Swales.

No structure, planting or other material shall be placed or permitted to remain or other activities undertaken on Parcels 1 or 2 which may damage, interfere with, or obstruct or retard the flow of water through the drainage swales installed pursuant to the grading plans for Assessor's Parcel Number 230-320-060 and Assessor's Parcel Number 230-320-061 on file with the Public Work's Department of City. No wall, fence or other structure shall be placed on or near the property lines of Parcel 1 or Parcel 2 which would block the natural drainage flow of surface water runoff and drainage waters as accepted in paragraph 2 above as otherwise shown on the City approved grading plans.

4. Maintenance of Drainage Swales.

Declarants shall continuously maintain, and repair if necessary, any and all of the cross-lot drainage swales above described; and this obligation for maintenance and repair shall be borne by the successors and assigns of Declarants as to each parcel for the cross-lot drainage swales located on that parcel.



5. Release.

Declarants, and each successive owner of Parcel 1, hereby release City and its officers and employees from any and all claims, demands, suits or actions that Declarants and their successors or assigns may now or in the future have arising out of or incurred as a result of water flooding, flowing over or remaining on Parcel 1 whether due to the natural surface water and storm water runoff from Parcel 2 or the construction and maintenance of the drainage swales above mentioned and the diversion of water into said drainage swales. Declarants, for themselves and their successors and assigns as to Parcel 1, 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 understood 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 the Declarants further agree, represent and warrant that this release has been negotiated and agreed upon in light of that realization and that the Declarants nevertheless intend to release, discharge and acquit the City from any such unknown claims, which are in any way related to the discharge of drainage waters from Parcel 2 onto Parcel 1.

6. Indemnification.

Declarants and their successors and assigns as to Parcel 2 hereby agree to defend, indemnify and hold harmless the City, its officers and employees from any and all liabilities, expenses, claims or causes of action arising out of or alleged to be caused by or resulting from water flooding, flowing over or remaining on Parcel 1 whether due to natural surface water or storm water runoff or the construction and maintenance of the cross-lot drainage swales on Parcel 2 and the diversion of water onto such swales.

7. Enforcement.

The provisions of this Covenant and Agreement and Declaration of Restrictions shall be enforceable at law or in equity by Declarant, and each successive owner or occupant of equity by Declarant, and each successive owner or occupant of Parcels 1 and 2, and the City. In the event of any legal or equitable proceeding for the enforcement of or to restrain the violation of this Covenant and Agreement and Declaration of Restrictions 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 Declarants, any owner or occupant, or the City to enforce any provision of this Covenant and Agreement and Declaration of Restrictions shall in no event



be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other provision herein.

8. Effect.

Any person who now or hereafter owns or acquires any right, title or interest in or to either Parcel 1 or Parcel 2 shall be deemed to have consented and agreed to every covenant, condition, restriction and easement contained herein, and to have granted or be subject to the easement for the flow of drainage waters onto Parcel 1 whether or not any reference to this Covenant and Agreement and Declaration of Restrictions is contained in the instrument by which such person acquired an interest in either parcel.

9. Termination and Modification.

Subject to the prior written approval of the City, this Covenant and Agreement and Declaration of Restrictions and any provisions contained herein, may be terminated, modified or amended upon the written agreement of the owners of both parcels. 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 City.

10. Run With land.

This Covenant and Agreement and Declaration of Restrictions shall run with the land and shall be binding upon the Declarants, their heirs, successors and assigns, and shall continue in effect until released by the City of Riverside Public Works Director.

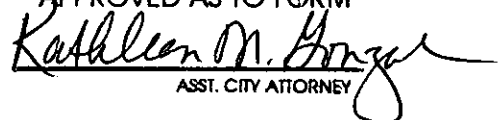
IN WITNESS WHEREOF the Declarants have caused this Covenant and Agreement and Declaration of Restrictions to be executed the day and year first above written.

Indiana #176, LLC (Owner of Parcel 1)

By 
Alan J. Gindi, President of B.A.G. Investments, Inc., Manager

Indiana # 176, LLC (Owner of Parcel 2)

By 
Alan J. Gindi, President of B.A.G. Investments, Inc., Manager

APPROVED AS TO FORM

ASST. CITY ATTORNEY



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of CALIFORNIA

County of LOS ANGELES

On JULY 7TH, 2000 before me, G. O. WEINER, NOTARY PUBLIC

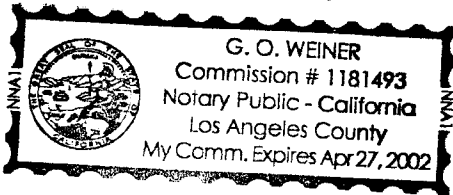
DATE

NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared ALAN S GINDI

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.

G O Weiner
SIGNATURE OF NOTARY



CHA 684-5

EXHIBIT "A"

PARCEL 1:

THAT PORTION OF PARCEL 4 OF RECORDS OF SURVEY, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 23 PAGE 21 OF RECORDS OF SURVEY, RECORDS OF SAID COUNTY, TOGETHER WITH THAT PORTION OF LOT 8, IN BLOCK 66 OF THE LANDS OF W.T. SAYWARD AND S.C. EVANS, AS SHOWN BY MAP ON FILE IN BOOK 3 PAGE(S) 2, OF MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF PARCEL 2 AS SHOWN ON SAID RECORD OF SURVEY; THENCE SOUTH 33°59' 22" EAST, PARALLEL WITH THE CENTERLINE OF WASHINGTON STREET, AND ALONG THE SOUTHWESTERLY LINE OF PARCEL 2, A DISTANCE OF 4.00 FEET TO A POINT THAT IS 44.00 FEET, MEASURED AT RIGHT ANGLES, SOUTHEASTERLY OF THE CENTERLINE OF INDIANA AVENUE, SAID POINT BEING THE SOUTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED TO THE CITY OF RIVERSIDE BY DEED RECORDED JULY 6, 1989 AS INSTRUMENT NO. 225767, RECORDS OF SAID COUNTY; THENCE NORTH 56°00'00" EAST, PARALLEL WITH THE CENTERLINE OF INDIANA AVENUE, AND ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL OF LAND CONVEYED TO THE CITY OF RIVERSIDE, 184.57 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 33°59'22" EAST, PARALLEL WITH THE CENTERLINE OF WASHINGTON STREET, 209.39 FEET TO A POINT, SAID POINT BEING DISTANT NORTH 33°59'22" WEST 110.00 FEET FROM THE NORTHWESTERLY RIGHT OF WAY LINE OF A.T. & S.F. R.R., AS SHOWN ON SAID RECORD OF SURVEY; THENCE NORTH 56°00'38" EAST 28.39 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT 106.00 FEET, MEASURED AT RIGHT ANGLES, NORTHWESTERLY FROM SAID NORTHWESTERLY RIGHT OF WAY LINE OF A.T. & S.F. R.R.; THENCE NORTH 49°23'58" EAST, ALONG SAID PARALLEL LINE, 188.32 FEET TO THE SOUTHWESTERLY RIGHT OF WAY LINE OF WASHINGTON STREET (80 FEET IN WIDTH); THENCE NORTH 33°59'22" WEST, ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE, 164.75 FEET TO THE MOST EASTERLY CORNER OF SAID PARCEL OF LAND CONVEYED TO THE CITY OF RIVERSIDE; THENCE NORTH 67°06'14" WEST, ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL OF LAND CONVEYED TO THE CITY OF RIVERSIDE, 27.46 FEET TO A POINT THAT IS 44.00 FEET, MEASURED AT RIGHT ANGLES, SOUTHEASTERLY OF THE CENTERLINE OF SAID INDIANA AVENUE; THENCE SOUTH 56°00'00" WEST, PARALLEL WITH THE CENTERLINE OF SAID INDIANA AVENUE AND ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL OF LAND CONVEYED TO THE CITY OF RIVERSIDE, 200.46 FEET TO THE POINT OF BEGINNING.

CREATED APPROVAL

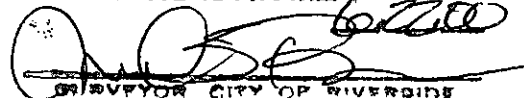

SURVEYOR CITY OF RIVERSIDE



EXHIBIT "B"

PARCEL 2:

THAT PORTION OF PARCEL 4 OF RECORDS OF SURVEY, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 23 PAGE 21 OF RECORDS OF SURVEY, RECORDS OF SAID COUNTY, TOGETHER WITH THAT PORTION OF LOT 8, IN BLOCK 66 OF THE LANDS OF W.T. SAYWARD AND S.C. EVANS, AS SHOWN BY MAP ON FILE IN BOOK 3 PAGE(S) 2, OF MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF PARCEL 2 AS SHOWN ON SAID RECORD OF SURVEY; THENCE SOUTH 33°59' 22" EAST, PARALLEL WITH THE CENTERLINE OF WASHINGTON STREET, AND ALONG THE SOUTHWESTERLY LINE OF PARCEL 2, A DISTANCE OF 4.00 FEET TO A POINT THAT IS 44.00 FEET, MEASURED AT RIGHT ANGLES, SOUTHEASTERLY OF THE CENTERLINE OF INDIANA AVENUE, SAID POINT BEING THE SOUTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED TO THE CITY OF RIVERSIDE BY DEED RECORDED JULY 6, 1989 AS INSTRUMENT NO. 225767, RECORDS OF SAID COUNTY; THENCE NORTH 56°00'00" EAST, PARALLEL WITH THE CENTERLINE OF INDIANA AVENUE, AND ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL OF LAND CONVEYED TO THE CITY OF RIVERSIDE, 184.57 FEET; THENCE SOUTH 33°59'22" EAST, PARALLEL WITH THE CENTERLINE OF WASHINGTON STREET, 209.39 FEET TO THE POINT OF BEGINNING, SAID POINT BEING DISTANT NORTH 33°59'22" WEST 110.00 FEET FROM THE NORTHWESTERLY RIGHT OF WAY LINE OF A.T. & S.F. R.R., AS SHOWN ON SAID RECORD OF SURVEY; THENCE CONTINUING SOUTH 33°59'22" EAST, PARALLEL WITH THE CENTERLINE OF WASHINGTON STREET, 110.00 FEET TO SAID NORTHWESTERLY RIGHT OF WAY LINE; THENCE NORTH 49°23'58" EAST, ALONG SAID NORTHWESTERLY RIGHT OF WAY LINE, 216.90 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF WASHINGTON STREET (80 FEET IN WIDTH); THENCE NORTH 33°59'22" WEST, ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE, 106.71 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT 106.00 FEET, MEASURED AT RIGHT ANGLES, NORTHWESTERLY FROM SAID NORTHWESTERLY RIGHT OF WAY LINE OF A.T. & S.F. R.R.; THENCE SOUTH 49°23'58" WEST, ALONG SAID PARALLEL LINE, 188.32 FEET; THENCE SOUTH 56°00'38" WEST 28.39 FEET TO THE POINT OF BEGINNING.



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DESCRIPTION APPROVAL

SURVEYOR, CITY OF RIVERSIDE

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