

DOC # 2004-0573080

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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: 1373 Ocotillo Drive  
Riverside, California

PW 04-0180

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COVENANT AND AGREEMENT  
FOR ACCEPTANCE OF DRAINAGE WATERS



THIS COVENANT AND AGREEMENT AND DECLARATION OF RESTRICTIONS is made and entered into this 3<sup>RD</sup> day of JUNE, 2004, by **DiManno Construction, Inc., a California corporation** ("Declarant"), with reference to the following facts:

A. Declarant is the fee owner of the following described real property situated in the City of Riverside, County of Riverside, State of California, ("Parcel 1") currently identified by Assessor's Parcel Number 241-240-026, and more particularly described in Exhibit "A", which is attached hereto and incorporated within by reference.

B. Declarant desires to construct a catch basin to drain into a private storm drain ("Project") on Parcel 1. In connection with such development, Declarant has submitted to the City of Riverside ("City") certain grading plans for Project, which propose that the storm flow, irrigation and nuisance drainage water ("drainage waters") from Ocotillo Drive, a public street, will flow into the catch basin.

E. As a condition for the acceptance of Declarant's grading plans for Project and the issuance of building and grading permits, City is requiring that an agreement be executed and recorded for the acceptance of drainage waters from Ocotillo Drive onto Parcel 1 and to provide for the maintenance of the drainage swales on Parcel 1.

F. Declarant desires to provide for the acceptance of drainage waters from Ocotillo Drive onto Parcel 1 and is willing to record this Covenant and Agreement for Acceptance of Drainage Waters ("Covenant") to put future owners and successors-in-interest on notice of such conditions and restrictions.

NOW, THEREFORE, for the purposes of complying with the conditions imposed by the City of Riverside in Public Works Case No. PW 04-0180, and for the issuance of building and grading

permits, Declarant hereby covenants and agrees with the City that the following restrictions shall apply to the Property:

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated into this Covenant by reference.

2. Construction of Drainage Swales/Facilities. Declarant shall construct or cause to be constructed the drainage facilities/swales and catch basin on Parcel 1 in accordance with the grading plans for Project filed with and accepted by the Public Works Department of City.

3. Noninterference with Drainage Facilities/Swales or Catch Basin. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken on Parcel 1 which may damage, interfere with, obstruct, or retard the flow of drainage waters through the drainage facilities/swales and catch basin constructed in accordance with the grading plans for Project filed with and accepted by the Public Works Department of City.

4. Maintenance of Drainage Facilities/Swales and Catch Basin. Declarant shall continuously maintain, and repair if necessary, any and all of the cross-lot drainage facilities/swales described above; and this obligation for maintenance and repair shall be borne by the successors and assigns of Declarant.

5. Release. Declarant and it's respective successors and assigns, hereby release City, its officers and employees from any and all claims, demands, suits or other actions that they 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 parcels, whether due to natural surface water and storm water runoff or to the construction or maintenance of the drainage facilities/swales described above and the diversion of water into such facilities/swales. Declarants and it's respective successors and assigns, 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, Declarant agrees, represents and warrants that they are familiar with, have read, and understand 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. Declarant further agrees, represents and warrants that this release has been negotiated and agreed upon in light of such 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 parcels whether due to natural surface water or storm water runoff or the construction or maintenance of the drainage facilities/swales described above and the diversion of drainage waters into such facilities/swales.



6. Enforcement. The provisions of this Covenant shall be enforceable at law or in equity by the City, its successors or assigns. Should the City bring an action to enforce the terms of the Covenant, the prevailing party shall be entitled to reasonable attorneys' fees, expert witness fees, and reasonable costs of suit. The failure of City to enforce any provision of this Covenant 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. This Covenant shall run with the land and each and all of its terms shall be binding upon Declarant, it's heirs, successors and assigns, and shall continue in effect until such time as released by the Public Works Director of the City of Riverside, California, by a writing duly recorded.

FURTHER, Declarant hereby represents and warrants that it has the legal power, right and actual authority to subject its property to the restrictions, terms and conditions stated herein.

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

**DiManno Construction,  
a California corporation**

By: Donald J. DiManno  
Printed Name DONALD J. DIMANNO  
Title PRESIDENT

By: \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title \_\_\_\_\_

APPROVED AS TO FORM:

[Signature]  
Deputy City Attorney

APPROVED AS TO CONTENT:

[Signature]  
Public Works Department

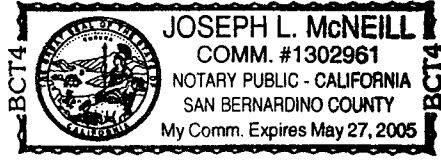
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04-1022  
5/27/04/clg



STATE OF CALIFORNIA )  
 )  
COUNTY OF RIVERSIDE )

On June 3, 2004 before me, Joseph L. McNeill, the undersigned, a notary public in and for said State, personally appeared Donald J. Dimanno personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same in ~~his~~/her/their authorized capacity, and that by ~~his~~/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Joseph L. McNeill  
Notary Public



**EXHIBIT "A"**

All of that certain parcel of land described in Certificate of Compliance document recorded April 29, 1992, as Instrument No. 153654 of Official Records of Riverside County, California.

Together with that portion of Lot A and Lot 9-A of Osborne Heights, in the City of RIVERSIDE, County of RIVERSIDE, State of California, as per map recorded in Book 12, page(s) 39 through 41, of Maps, in the office of the County Recorder of said County, more particularly described as follows:

That portion of Lot 9A and Lot "A" of Osborne Heights, as shown by map on file in Book 12 of Maps at Pages 39 through 41 thereof, records of Riverside County, California, more particularly described as all of Parcel 2 of Record of Survey, on file in Book 46 of Record of Surveys, at Page 94 thereof, records of Riverside County, California;

Together with that certain parcel of land conveyed to Gloria A. Frost, by Quitclaim Deed recorded November 27, 1985, as Instrument No. 268955 of Official Records of Riverside County, California. Together with that portion of said Lot "A" described as follows:

Commencing at the most Southerly corner of Lot 14 of Tract No. 9006-1, as shown by map on file in Book 140, Pages 43 through 45 of Maps, records of said Riverside County;

Thence South 35° 41' 38" West, along the Southwesterly prolongation of the Southeasterly line of said Lot 14, a distance of 28.22 feet;

Thence South 72° 02' 53" West, a distance of 28.27 feet to a point in a line parallel with and distant 55.00 feet Northeasterly, as measured at right angles, from the centerline of Overlook Parkway as shown by said Tract 9006-1;

Thence North 62° 24' 36" West, along said parallel line, a distance of 21.67 feet to the beginning of a tangent curve concaving Southwesterly and having a radius of 1355.00 feet;

Thence Northwesterly to the left along said curve through a central angle of 3° 59' 06", an arc length of 94.24 feet to an intersection with the Southerly prolongation of the Westerly line of said Lot 14 and the Point of Beginning of the parcel of land being described;

Thence North 0° 33' 12" West, along said Southerly prolongation of the Westerly line of Lot 14, a distance of 13.39 feet to a point in the centerline of Lot A;

Thence North 62° 25' 59" West, along said centerline, a distance of 12.58 feet to the beginning of a tangent curve concaving Northwesterly and having a radius of 300.00 feet;



EXHIBIT "A" Continued

Thence Northwesterly along said last mentioned curve through a central angle of 7° 24' 45" an arc length of 38.81 feet to most Easterly corner of that certain parcel of land described in deed to Frank M. Schlavons Construction, Inc., by document recorded November 27, 1985, as Instrument No. 268954 of Official Records of said Riverside County;

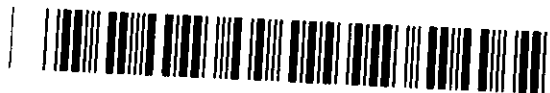
Thence South 34° 58' 46" West, along the Southeasterly line of said parcel, a distance of 20.00 feet to a point in said line parallel with and distant 55.00 feet Northeasterly, as measured at right angles, from the centerline of Overlook Parkway; said point being in a non-tangent curve concaving Southwesterly and having a radius of 1355.00 feet, and from which the radius bears South 21° 02' 58" West;

Thence Southeasterly along said last mentioned curve through a central angle of 2° 33' 20" an arc length of 60.44 feet to the Point of Beginning;

Excepting therefrom that certain parcel of land conveyed to Christopher L. Carpenter, by Deed recorded April 3, 1990, as Instrument No. 120537 of Official Records of Riverside County, California.

Pursuant to Lot Line Adjustment C0-008-967 recorded April 18, 1997 as Instrument No. 132788 of Official Records.

DESCRIPTION APPROVED  
*[Signature]*  
CITY OF RIVERSIDE



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