

RECORDING REQUESTED BY
Cesar Andaya and Esmireyda Andaya

DOC # 2005-0715604

08/31/2005 08:00A Fee:NC

Page 1 of 6

Recorded in Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder

WHEN RECORDED MAIL TO:

City Clerk
City of Riverside
City Hall, 3900 Main Street
Riverside, California 92522



Project: PW05-0281

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**COVENANT AND A AGREEMENT AND
DECLARATION OF RESTRICTIONS FOR
ACCEPTANCE OF DRAINAGE WATERS AND EASEMENT**



THIS COVENANT AND AGREEMENT AND DECLARATION OF RESTRICTIONS is made and entered into this 16th day of August, 2005, Cesar Andaya and Esmireyda Andaya ("Declarants"), 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, hereinafter referred to as Lots 5 and 6, Block 27 as shown on map of Riverview Addition Tract No. 1 on file Book 6, Page 38 of Maps, records of said county.
- B. Lots 5 and 6 consists of approximately 0.32 acres in which will be constructed a one story house with an attached 2-car garage per lot.
- C. Declarant desires to improve and develop the lot. In connection with that development, Declarant has submitted to the City of Riverside ("City") certain grading plans for the two lots, which propose that the storm flow and nuisance water (collectively "Drainage Water") shall flow across the Lot 6 contained therein for the benefit of Lot 5 and Lot 6 where necessary, will be graded so as to establish dirt flowline or concrete v-gutters to channel the flow of the Drainage Waters on and across Lot 6 onto Essex Street, as depicted on grading permit PW05-0281, on file with City's Public Works Department.
- D. Declarant desires to create an easement across Lot 6 for the acceptance of Drainage Water. Said easement area being described in exhibit A attached hereon.
- E. As a condition for the acceptance of Declarants grading plan for lot and the issuance of building and grading permits, City is requiring that an agreement be executed and recorded for cross-lot drainage to provide for the acceptance of Drainage Waters across Lot 6 and to provide for the maintenance of the drainage swales by the recording of a covenant.

DESCRIPTION APPROVAL:

 MARK S. BROWN
 CITY SURVEYOR
 DATE 8/18/05

- F. Declarant desires to provide for the acceptance of Drainage Waters across Lot 6 and is willing to record this Covenant and Agreement for Acceptance of Drainage Waters ("Covenant") to put future owner and successors-in-interest on notice of such conditions and restrictions.

NOW, THEREFORE, for the purpose of complying with the conditions imposed by the City and for the issuance of building and grading permits, Declarant hereby covenant and agrees with the City that the following restrictions shall apply:

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 swales in accordance with the grading plans for Lot 6 filed with and accepted by the Public Works Department of City under grading PW05-0281.
3. Easement and Acceptance of Drainage Waters: Declarant, as owner and developer of the Lots 5 and 6, for itself and its successors and assigns, hereby grants, conveys and accepts an easement for Drainage Waters as described in exhibit A attached hereto over, along and across Lot 6.
4. 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 within Lot 6 which may damage, interfere with, obstruct, or retard the flow of Drainage Waters through the drainage facilities/swales constructed in accordance with the grading plans filed with and accepted by the Public Works Department of City.
5. 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. Insofar as those facilities lie within the ownership of each lot.
6. 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 s result of the drainage waters flooding, flowing over, or remaining on the parcels, whether due to natural surface water and storm runoff or to the construction of maintenance of the drainage facilities/swales described above and the diversion of water into such facilities/swales. Declarant and it's respective successors and assigns, 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 SUPECT TO EXIST IN HIS FAVOR AT

THE TIME OF EXECUTING THE RELEASE, WHICH KNOWN BY HIM MUST
HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

In this connection, Declarant 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. 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 of the construction or maintenance of the drainage facilities/swales described above and the diversion on drainage waters into such facilities/swales.

7. Enforcement. The provisions of this Covenant shall be enforceable at law or in equity by the City, its successors 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.
8. Run with the Land. This Covenant shall run with the land and each and all of its terms shall be binding upon Declarant, its 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.
9. Non merger: This Covenant shall not be subject to the doctrine of merger, even though the underlying fee ownership of the Lot 6 described herein, are vested in one party or entity.

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.

[remainder of page intentionally left blank]

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

By: Cesar Andaya
Cesar Andaya, Owner

By: Esmireyda Andaya
Esmireyda Andaya, Owner

APPROVED AS TO FORM:

[Signature]
Deputy City Attorney

APPROVED AS TO CONTENT:

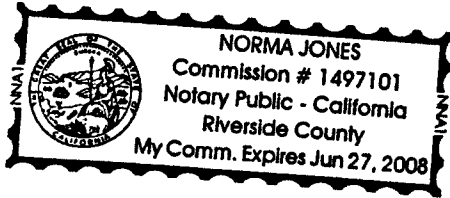
[Signature]
Public Works Department

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

On August 16, 2005, before me, Norma Jones, notary, the undersigned, a notary public in and for said State, , personally appeared Cesar Andaya and Esmireyda Andaya personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his 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.

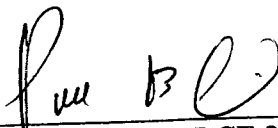
Norma Jones
Notary Public



LEGAL DESCRIPTION
EXHIBIT "A"

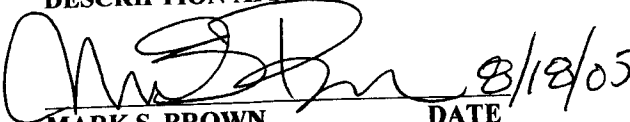
The northerly 10 foot strip of land of lot 6, Block 27 of Tract No. 1 of the Riverview addition, in the City of Riverside, State of California, as per map recorded in book 6, page 38 of maps, in the office of the county recorder of said county.

This description was prepared by me or under direction in conformance with the requirements of the Land Surveyors Act.


Pablo B. Sanchez, RCE 29664, Exp. 3-31-07 Date 7-8-05



DESCRIPTION APPROVAL:


MARK S. BROWN CITY SURVEYOR DATE 8/18/05

Villarruel and Associates Civil Engineering, Inc.

9519 Telegraph Road, Suite E • Pico Rivera, CA. 90660 • Ph. (562) 949-5100 • Fax (562) 949-5400 • eveng@verizon.net

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