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RECORDING REQUESTED BY:
Continental Lawyers Title Company
Mission Village Homes, a limited partnership
1801 Century Park East, Ste. 820
Century City, California 90067

RECEIVED FOR RECORD
AT 12:00 O'CLOCK P.M.

OCT 26 1993

Recorded in Official Records
of Riverside County, California

Recorder
Fees \$ 20 -

WHEN RECORDED MAIL TO:

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

Project: Tract 27653-1

27/6

**COVENANT AND AGREEMENT AND
DECLARATION OF RESTRICTIONS**

Offsite Drainage Acceptance

This Covenant and Agreement is made and entered into this 1st day of October, 1993, by Mission Village Homes, a limited partnership (the "Declarant") with reference to the following facts:

- A. Declarant is the owner of the real property ("the Property"), consisting of 32 residential lots, a neighborhood park, private streets and openspace lots, located in the City of Riverside, County of Riverside, State of California, described as follows:

Lots 1 - 36, and lettered Lots A - E, inclusive, of Tract 27653-1, as shown by map on file in Book 246 of Tract Maps, at Pages 35 through 37 thereof, records of Riverside County, California.

- B. Declarant desires to improve and develop the Property as a part of a residential subdivision including the provision for the acceptance of offsite drainage and the construction of private streets and drainage facilities in accordance with plans on file with the Public Works Department of the City of Riverside, California, in order to accept and dispose of surface water runoff and storm water and to carry such waters to a discharge point within public street right-of-way. Declarant desires to impose upon the Property a plan for the development and maintenance of such drainage facilities and to adopt and establish covenants, conditions, restrictions and easements upon and with respect to the Property for such purpose, all of which are in the furtherance of a general plan for the subdivision and improvement of the

DESCRIPTION APPROVAL 10/24/93
Walter R. Joyce by ---
SURVEYOR, CITY OF RIVERSIDE

Property, and for the purpose of enhancing, maintaining and protecting the value, desirability and attractiveness of the Property, and upon and subject to which all of the Property shall be held, improved and conveyed.

- C. The City of Riverside (the "City") as a condition to the approval of Tract Map 27653-1 requires that a means be provided for disposing of surface runoff water and storm water onto and from the Property.

NOW, THEREFORE, Declarant declares that the Property is, and shall hereafter be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following covenants, conditions, restrictions and easements, all of which are declared and agreed to be in furtherance of a general plan for the subdivision, development, improvement, protection, maintenance, and sale of the Property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining, and protecting the value, desirability and attractiveness of the Property, and all of which are in consideration for the approval by the City of a final map for Tract 27653-1. All of the covenants, conditions, 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 lot or portion thereof, and shall be binding on 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 lot of the Property shall be and hereby is deemed to incorporate by reference all the provisions of this Covenant and Agreement and Declaration of Restrictions, including, but not limited to all the covenants, conditions, restrictions, limitations, grants of easements, rights, rights-of-way and equitable servitudes contained herein.

1. Definitions. In addition to the definitions herein-before set forth, the following words or phrases where used in this Covenant and Agreement and Declaration of Restrictions (except when the context otherwise requires) shall have the following definitions:

- a. "Declaration" shall mean this Covenant and Agreement and Declaration of Restrictions.
- b. "Established Drainage Facilities" shall mean all improvements constructed or installed by Declarant for drainage of surface or storm waters in accordance with the Grading Plan, Street Plan and Storm Drain Plans for Tract 27653-1 on file with the Public Works Department of the City of Riverside.
- c. "Owner" shall mean any person, whether an individual, corporation, association or otherwise, in which title to a Lot 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 all unsold or retained Lots until Declarant, its heirs, 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 the respective Lot. If more than one person is owner of a Lot, than all

such persons shall be jointly and severally liable for all obligations herein of the owner of a Lot.

d. "Lot" or "Lots" shall mean the lot or lots of the Property described hereinabove.

2. Construction of Established Drainage Facilities. The Declarant shall construct or cause to be constructed, Established Drainage Facilities consisting of paved streets with concrete curbs, cross-gutters, and underground storm drain piping on Lots D, C, E, and 34, all in accordance with the grading plan, street plans and storm drains for Tract Map 27653-1 on file with the Public Works Department of the City of Riverside, California. The established drainage facilities shall be constructed prior to the sale or development of any Lot of the Property.

3. Acceptance of Surface Water Runoff. As the drainage flow of surface water runoff and storm water in Port Royal Way, a public street adjacent to the Property, is through the private street and storm drain system described in Paragraph 2 above which discharges into Alessandro Boulevard, a public street, Declarant, for itself and its successors and assigns, hereby agrees to accept and does accept onto Lots D, C, E and 34 the surface water runoff and storm water runoff from said Port Royal Way; onto Lot 34 the surface water runoff and storm water runoff from said Lots D, C and E; onto Lot E the surface water runoff and storm water runoff from said Lots D and C, and onto Lot C the surface water runoff and storm water runoff from Lot D.

4. 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 Lot 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 the Lots which would block the natural drainage flow of surface water runoff and storm water as accepted in Paragraph 3 above.

5. Maintenance of Established Drainage Facilities. The Declarant or, upon the establishment of a Homeowners' Association for the Property, the Homeowners' Association shall maintain, repair, and replace, when necessary, any and all Established Drainage Facilities and keep such Established Drainage Facilities in a good order and repair at all times.

6. Enforcement. The provisions of this Declaration shall be enforceable at law and in equity by Declarant, each successive Owner and, subject to the provisions of Paragraph 7 below, the City. In the event of any legal or equitable proceeding for the enforcement of or to restrain the 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 therein. The failure of Declarant, any Owner or the 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 of the right to enforce any other provision hereof.

7. Notice from the City. Any remedy granted to the City pursuant to Paragraph 6 hereof shall be exercisable by the City only if the Owner shall fail to cure a violation of 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 delivered to the Owner in person, or 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.

8. Release. Declarant and each successive Owner of a Lot hereby release the City of Riverside, its officers, employees and agents from any and all claims, demands, suits or actions that the 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 water flooding, flowing over, or remaining on any Lot whether due to natural surface water and storm water runoff or to the construction and maintenance of the private cross-lot drainage facilities and the diversion of water into such facilities. 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 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, 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 the water flooding, flowing over, or remaining on any Lot whether due to natural surface water and storm water runoff or to the construction and maintenance of the private cross-lot drainage facilities and the diversion of water into such facilities.

9. Mutuality, Reciprocity, Run with Land. All of the provisions contained herein are made for the direct, mutual and reciprocal benefit of each and every portion of the Property and create mutual, equitable servitudes upon each Lot as the servient tenement in favor of every other Lot as the dominant tenement and create reciprocal rights and obligations among the respective Owners of all of the Lots, and privity of contract and estate among all grantees of the lots, 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 Lot, and shall inure to the benefit of all Owners thereof, their successors and assigns in interest, and shall apply to and

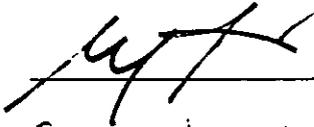
bind each successive Owner of each Lot or portion thereof, their successors and assigns in interest.

10. Termination and Modification. Subject to the prior written approval of the Public Works Director of the City of Riverside, this Declaration, and any provision contained herein, may be terminated, modified or amended as to all of the Property or any portion only upon the written agreement of the Owners of all of the Lots of the Property. 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 the City acting through its Public Works Director.

IN WITNESS WHEREOF, the Declarant has executed this Declaration on the day and year first above written.

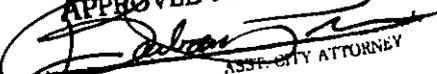
Mission Village Homes, a limited partnership

By: Jamco Development Corp.
General Partner
a California Corporation

By: 

Title: Secretary

jds:regional:AB0

APPROVED AS TO FORM

ASSISTANT CITY ATTORNEY