

134775

WHEN RECORDED MAIL TO:

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AT 8:00 O'CLOCK

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

APR 15 1996

RECORDED IN UNIFORM RECORDS  
OF RIVERSIDE COUNTY, CALIFORNIA

Recorder

Fees \$ 36

Project: Variance Case VR-093-945

COVENANT AND AGREEMENT  
ESTABLISHING EASEMENTS FOR COMMON ACCESS  
AND TRASH ENCLOSURE

ME  
36  
10

THIS COVENANT AND AGREEMENT is made and entered into this 2nd day of February, 1996, by ROSEMARY CLAYTON, SHELLEY L. HAMNER KAIN and KINGSLEY J. BIRD, as Successor Trustees under Declaration of Trust dated September 20, 1969 and ROSEMARY CLAYTON, SHELLEY L. HAMNER KAIN and KINGSLEY J. BIRD, as Successor Trustees under Declaration of Trust dated October 31, 1969 (collectively, "Declarants") with reference to the following facts:

A. Declarants are the fee owners of the real property (the "Property") consisting of two parcels located in the City of Riverside, County of Riverside, State of California, described as follows:

Parcel 1:

Parcel 1 of Parcel Map on file in Book 2, Page 40 of Parcel Maps, records of Riverside County, California;

EXCEPTING THEREFROM that portion as conveyed to the City of Riverside by Grant Deeds recorded June 9, 1970 as Instrument Nos. 53997 and 53998, both of Official Records of Riverside County, California;

ALSO EXCEPTING THEREFROM those portions as conveyed to the City of Riverside by Deed recorded December 17, 1992 as Instrument No. 481316 of Official Records of Riverside County, California.

Parcel 2:

Parcel 2 of Parcel Map on file in Book 2, Page 40 of Parcel Maps, records of Riverside County, California;

80-1  
C/A - 500

EXCEPTING THEREFROM that portion as conveyed to the City of Riverside by Grant Deeds recorded June 9, 1970 as Instrument Nos. 53997 and 53998, both of Official Records of Riverside County, California;

ALSO EXCEPTING THEREFROM those portions as conveyed to the City of Riverside by Deed recorded December 17, 1992 as Instrument No. 481316 of Official Records of Riverside County, California.

The two parcels of the Property are hereinafter referred to as "Parcel 1" and "Parcel 2", respectively.

B. Declarants propose to demolish an existing service station and construct an approximately 7,200 square foot commercial building and related parking on Parcel 1. Application has been made to the City of Riverside ("City") for a minor variance in Variance Case VR-093-945 to allow the required on-site parking to encroach up to 2 feet into the required 15 foot landscape setback on both Magnolia Avenue and Tyler Street.

C. As a condition to the granting of the variance in Variance Case VR-093-945, City is requiring that there be an agreement between Parcel 1 and Parcel 2 that the trash enclosure located on Parcel 2 shall also serve the uses on Parcel 1.

D. In addition, Declarants desire to provide for common access between both Parcel 1 and Parcel 2, and, further, to provide for the construction and use of aprons of driveways for Parcel 1 extending onto Parcel 2.

E. Declarants intend by this document to comply with the condition imposed by City for the granting of the variance in Variance Case VR-093-945 and to impose upon the Property mutually beneficial restrictions, conditions, covenants and agreements for the benefit of the Property and the improvements constructed or to be constructed thereon, and the future owners of both parcels of the Property, and for the same purpose to reserve and grant easements over portions of the Property.

NOW, THEREFORE, incorporating the above recitals and for the purpose of complying with a condition imposed by City for the granting of a variance in Variance Case VR-093-945 and in consideration of such approval, Declarants hereby covenant and agree with City as follows:

DESCRIPTION APPROVAL 4/19/96  
 K. S. Shedd  
 SURVEYOR, CITY OF RIVERSIDE  
 for

1. Grant of Easements.

(a) There is hereby granted, reserved and established over, under, along and across those portions of Parcels 1 and 2 now or hereafter designated for driveway purposes, nonexclusive easements for vehicular and pedestrian ingress and egress for the use and benefit of and as an easement appurtenant to the other parcel for the purpose of providing common access to and from the parcels of the Property and the adjoining public streets. In addition, there is hereby established easements for the use and benefit of and as easements appurtenant to Parcel 1 over those portions of Parcel 2 necessary for the construction, use, repair and maintenance of a portion of an apron for the driveway extending from Tyler Street along the southerly property line of Parcel 1 and of a portion of an apron for the driveway extending from Magnolia Avenue along the westerly property line of said Parcel 1.

The nonexclusive easements hereinabove granted shall be and are for ingress and egress of pedestrians and motor vehicles only, and shall not include the right of parking of said motor vehicles.

(b) There is hereby granted, reserved and established a nonexclusive easement for the use and benefit to Parcel 1 and as an easement appurtenant thereto for ingress to and egress from and the right of use of the trash enclosure located on Parcel 2. By the easement herein granted the owner, tenants and occupants of Parcel 1 may place the trash generated on said parcel into the trash enclosure located at the northwest corner of the building on Parcel 2 located southerly of Parcel 1.

2. Barriers. No fences, walls, barricades or barriers of any kind shall be placed on the common property line of Parcels 1 and 2 located within the easement areas which will prohibit or interfere with or restrict the exercise of the easements granted herein.

3. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the easements above granted to the general public or for the general public or for any public purposes whatsoever, it being the intention of Declarants that this document shall be strictly limited to and for the purposes herein expressed.

4. Non-Merger. This Covenant and Agreement shall not be subject to the doctrine of merger, even though the underlying fee ownership of the two parcels of the Property described herein, or any parts thereof, is vested in the same ownership.

5. Effect of Covenant and Agreement. In the event Declarants shall sell, convey, lease or otherwise change the ownership of either parcel of the Property, as such parcel is conveyed, Declarants shall grant that portion of the easements above described located on the parcel retained in ownership and shall reserve that portion of the easements above described located on the parcel to be conveyed. Any person who now or hereafter owns or acquires any right, title or interest to either parcel of the Property shall be deemed (a) to have consented and agreed to every covenant, condition, restriction and easement contained herein, and (b) to have been granted and be subject to the easements described in Paragraph 1 above whether any reference to this Covenant and Agreement is contained in the instrument by which such person acquired an interest in such parcel.

6. Enforcement. The provisions of this Covenant and Agreement shall be enforceable by City, its successors or assignees, and by any owner, lessee, or tenant of either parcel of the Property. In the event of any legal or equitable proceeding for the enforcement of, or to restrain any violation of, this Covenant and Agreement, the prevailing party shall be entitled to court costs, including reasonable attorneys' fees. The failure of City to enforce any provision of this Covenant and Agreement shall in no event be deemed to be a waiver of the right to do so thereafter.

7. Mutuality, Reciprocity, Run with Land. All of the provisions, contained herein are made for the direct, mutual and reciprocal benefit of both parcels of the Property and create mutual, equitable servitudes upon each parcel as the servient tenement in favor of the other parcel as the dominant tenement and create reciprocal rights and obligations among the respective owners of both parcels of the Property, and privity of contract and estate among all grantees of the parcels of the Property, their heirs, 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 parcel thereof and shall inure to the benefit of all owners thereof, their heirs, successors and assigns in interest, and shall apply to and bind each successive owner of each parcel, their heirs, successors and assigns in interest.

8. Termination and Modification. This Covenant and Agreement is made and entered into for the purpose of complying with a condition imposed by City for the granting of a variance in Variance Case VR-093-945, and it shall not be extinguished, terminated, modified, amended, or altered in any way except with

the prior written and recorded consent of the Planning Director of City.

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

Rosemary Clayton  
Rosemary Clayton as Successor Trustee under Declaration of Trust dated September 20, 1969

Shelley L. Hamner Kain  
Shelley L. Hamner Kain as Successor Trustee under Declaration of Trust dated September 20, 1969

Kingsley J. Bird  
Kingsley J. Bird as Successor Trustee under Declaration of Trust dated September 20, 1969

Rosemary Clayton  
Rosemary Clayton as Successor Trustee under Declaration of Trust dated October 31, 1969

Shelley L. Hamner Kain  
Shelley L. Hamner Kain as Successor Trustee under Declaration of Trust dated October 31, 1969

Kingsley J. Bird  
Kingsley J. Bird as Successor Trustee under Declaration of Trust dated October 31, 1969

Approved as to Content:

David Rivera  
Planning Department

Approved as to Form:

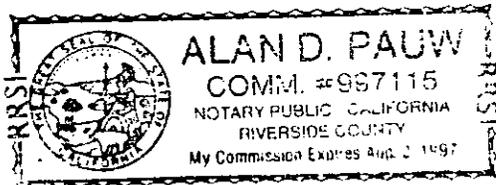
[Signature]  
Assistant City Attorney

State of California )  
County of Riverside ) ss

On January 31, 1996, 1996, before me, a notary public in and for said State, personally appeared

Rosemary Clayton

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.

Alan D. Pauw  
Signature

CAPACITY CLAIMED BY SIGNER

- Attorney-in-fact
- Corporate Officer(s)  
Title \_\_\_\_\_ Title \_\_\_\_\_
- Guardian /Conservator
- Individual(s)
- Partner(s)  
( ) General ( ) Limited
- Trustee(s)
- Other \_\_\_\_\_

The party(ies) executing this document is/are representing:

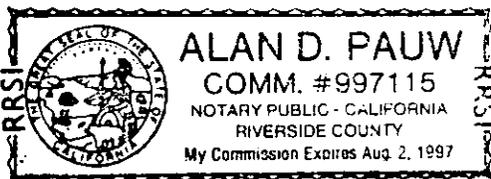
Trust under Declaration of Trust dated  
September 20, 1969

State of California )  
County of Riverside ) ss

On January 31, 1996, 1996, before me, a notary public in and for said State, personally appeared

Kingaly J. Bird

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.

Alan D. Pauw  
Signature

CAPACITY CLAIMED BY SIGNER

- ( ) Attorney-in-fact
- ( ) Corporate Officer(s)  
Title \_\_\_\_\_ Title \_\_\_\_\_
- ( ) Guardian /Conservator
- ( ) Individual(s)
- ( ) Partner(s)  
( ) General ( ) Limited
- (X) Trustee(s)
- ( ) Other \_\_\_\_\_

The party(ies) executing this document is/are representing:

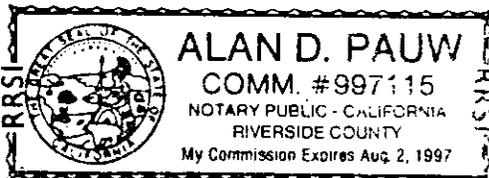
Trust under Declaration of Trust dated  
September 20, 1969

State of California )  
 ) ss  
County of Riverside )

On January 31, 1969, 1969, before me, a notary public in and for said State, personally appeared

Shelley L. Hammer Kain

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.

Alan D. Pauw  
Signature

CAPACITY CLAIMED BY SIGNER

- ( ) Attorney-in-fact
- ( ) Corporate Officer(s)  
Title \_\_\_\_\_ Title \_\_\_\_\_
- ( ) Guardian /Conservator
- ( ) Individual(s)
- ( ) Partner(s)  
( ) General ( ) Limited
- (X) Trustee(s)
- ( ) Other \_\_\_\_\_

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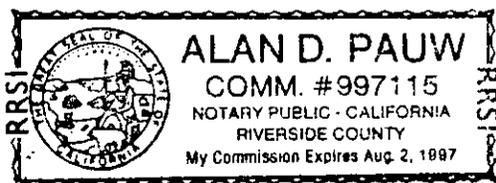
Trust under declaration of Trust dated  
September 20, 1969

State of California )  
County of Riverside ) ss

On January 31, 1996, 1996, before me, a notary public in and for said State, personally appeared

Rosemary Clayton

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.

Alan D. Pauw  
Signature

CAPACITY CLAIMED BY SIGNER

- ( ) Attorney-in-fact
- ( ) Corporate Officer(s)  
Title \_\_\_\_\_ Title \_\_\_\_\_
- ( ) Guardian /Conservator
- ( ) Individual(s)
- ( ) Partner(s)  
( ) General ( ) Limited
- (X) Trustee(s)
- ( ) Other \_\_\_\_\_

The party(ies) executing this document is/are representing:

Trust under Declaration of Trust dated  
October 31, 1964

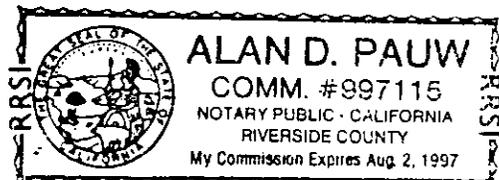
State of California )  
County of Riverside ) ss

On January 31, 1996, 1996, before me, a notary public in and for said State, personally appeared

Kingaleg, J. Bird

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.



Alan D. Pauw  
Signature

CAPACITY CLAIMED BY SIGNER

- ( ) Attorney-in-fact
- ( ) Corporate Officer(s)  
Title \_\_\_\_\_ Title \_\_\_\_\_
- ( ) Guardian /Conservator
- ( ) Individual(s)
- ( ) Partner(s)  
( ) General ( ) Limited
- (X) Trustee(s)
- ( ) Other \_\_\_\_\_

The party(ies) executing this document is/are representing:

Trust under Declaration of Trust dated  
October 31, 1969

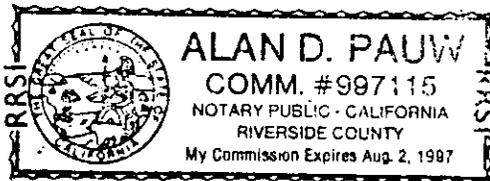
State of California )  
County of Riverside ) ss

On January 31, 1996, before me, a notary public in and for said State, personally appeared

Shelley L. Hansen Kain

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.



Alan D. Pauw  
Signature

CAPACITY CLAIMED BY SIGNER

- ( ) Attorney-in-fact
- ( ) Corporate Officer(s)  
Title \_\_\_\_\_ Title \_\_\_\_\_
- ( ) Guardian /Conservator
- ( ) Individual(s)
- ( ) Partner(s)  
( ) General ( ) Limited
- (X) Trustee(s)
- ( ) Other \_\_\_\_\_

The party(ies) executing this document is/are representing:

Trust under Declaration of Trust dated  
October 31, 1967