

Recording Requested By
First American Title Company

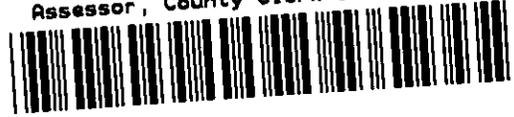
DOC 2003-198048

03/20/2003 08:00A Fee:NC

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Recorded in Official Records
County of Riverside

Gary L. Orso
Assessor, County Clerk & Recorder



RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF RIVERSIDE
CITY HALL, 3900 MAIN STREET
RIVERSIDE, CALIFORNIA 92522

PROJECT: TRACT MAP NO. 28728-2

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**COVENANT AND AGREEMENT
FOR STORM WATER PURPOSES**

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This **COVENANT AND AGREEMENT FOR STORM WATER PURPOSES** ("Easement"), dated this 27th day of February, 2003 (for reference purposes only), is made by **SANDA GROUP**, a California limited partnership, its heirs, successors and assigns ("Declarant"), with reference to the following facts:

RECITALS

A. Declarant is the fee owner of the following described real property located in the City of Riverside, County of Riverside, State of California ("Property"):

Residential Lots **1** through **14**, inclusive, and Common Area Lots **15**, **16**, and **B** of Tract No. **28728-2**, as shown by Map on file in Book 331, Pages 86 through 90, inclusive, of Maps, records of **Riverside** County, California.

and the following described additional real property located in the City of Riverside, County of Riverside, State of California ("Additional Property"):

The North Four Acres of the Southeast Quarter of the Northwest Quarter of the Southwest Quarter of Section 1, Township 3 South, Range 5 West, San Bernardino Base and Meridian, Said Property Is Also Shown as a Portion of Elysian Heights Tract No. 2 by Map on File in Book 5, Page 149 of Maps, Records of Riverside County, California.

B. Declarant has filed with the City of Riverside ("City") an application to develop the Property as a part of a residential planned development subdivision, as defined in Civil Code Section 1351(k), consisting of 14 Residential Lots, 2 open space Common Area Lots, and 1 Common Area Lot for private street purposes. This development shall be maintained and operated by an association of homeowners ("Association") governed by the Declaration of Covenants, Conditions, Restrictions and Easements recorded July 20, 1998 as Instrument No. 298202 ("Declaration") and the First Amendment to the Declaration recorded October 19, 2001 as Instrument No. 2001-509668, both in the Official Records of the Riverside County Recorder.

- C. As a condition to the approval of Tract Map No. 28728-2 by City, City is requiring Declarant to accept surface runoff water and storm water from a certain public street onto particular portions of the Property, and the Additional Property, as shown and delineated on the street improvement plans for the residential planned development which Tract Map No. 28728-2 is a part of, as submitted to the City.
- D. Declarant, by this document, intends to comply with such requirement and to give notice thereof to all future owners of the Property and the Additional Property and to all members of the Association established to manage and operate the residential planned development.

NOW, THEREFORE, in consideration of the foregoing recitals, Declarant hereby covenants and agrees with City as follows:

1. Surface runoff water and storm water shall be allowed to flow from the public street commonly known as **Cresthaven Drive** and shall be accepted onto Lot **B** and portions of Lot **15** of the Property, Lot **B** being a private street known as **Garden Way** and Lot **15** being an open space Common Lot, and onto the Additional Property. Such runoff and storm water shall be no greater than historic flow amounts. Said drainage flows are shown and depicted on the street improvement plans for the residential planned development and for Tract Map No. 28728-2, as approved by the City.

2. Declarant and/or the Association established to maintain and operate the residential planned development shall maintain the drainage facilities within Lot **B**, and on a portion of Lot **15**, and on the Additional Property, in a good, usable and safe condition at all times, shall keep such drainage facilities free from obstruction and shall make any repairs as may be necessary to ensure proper drainage, or as may be required by the City of Riverside.

3. Declarant hereby releases the City of Riverside, its officers and employees from any and all claims, demands, suits or actions that the Declarant may now or in the future have arising out of or incurred as a result of water flooding, flowing over, or remaining on any part of the Property and the Additional Property due to the acceptance of the storm waters from **Cresthaven Drive** or the drainage facilities in Lots **B** or **15**, or the Additional Property, or the maintenance of 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 of the Property or the Additional Property, 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 of Riverside from any such unknown claims which are in any way related to water flooding, flowing over, or remaining on any part of the Property or Additional Property due to the acceptance of the storm waters from **Cresthaven Drive** or the drainage facilities in Lots **B** or **15**, or the Additional Property, or the maintenance of such facilities.



4. Declarant shall defend, indemnify and hold harmless 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 any Property or Additional Property due to the acceptance of the storm waters from **Cresthaven Drive** or the drainage facilities in Lots **B** or **15**, or the Additional Property, or the maintenance of such facilities.

5. The terms of this Easement may be enforced by City, its successors or assigns, or by any Owner or Tenant of any Lot of the Property or the Additional Property. Should the City or any Owner or Tenant bring an action to enforce any of the terms of this Easement, the prevailing party shall be entitled to reasonable attorneys' fees, expert witnesses' fees and reasonable costs of suit.

6. The rights granted herein are not exclusive, and do not, therefore, restrict Declarant's use of Lots **B** and **15**, and the Additional Property, so long as the Declarant's use does not interfere with the purpose of the rights granted.

7. This Easement shall run with the land and shall be binding upon Declarant, its heirs, successors and assigns and shall continue in full force and effect in perpetuity. This covenant may not be modified, amended and/or terminated except by a writing executed by all the Owners of the Property, approved by the Planning Director of the City of Riverside, and recorded in the Official Records of Riverside County, California.

8. Declarant, by recordation of this Easement, prior to or concurrently with the recordation of the Map for Tract No. 28728-2, hereby gives notice to all prospective buyers of any Lot of the Property or the Additional Property, that the Property and the Additional Property shall be subject to the foregoing terms and conditions.



IN WITNESS WHEREOF, Declarant has caused this Easement to be executed the day and year written below.

"Declarant"

SANDA GROUP, a California limited partnership

By: HANDA DEVELOPMENT CORPORATION
a California corporation, its general partner

X Yang Chang Hong
By: YANG-CHANG HONG
its: President

Dated: Feb. 27, 2003

STATE OF CALIFORNIA }
COUNTY OF Riverside } ss.

On Feb 27, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared:

Yang Chang Hong
[] Personally known to me, - OR - [X] 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.

(SEAL)



Linda A. Thress
Notary Public



APPROVED AS TO FORM:


Deputy City Attorney

APPROVED AS TO CONTENT:


Planning Department



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