



WHEN RECORDED MAIL TO:

City Clerk
City of Riverside
City Hall, 9900 Main Street
Riverside, California 92522

Project: Tract 28907
Bradley & Harbart
Riverside, California

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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 31st day of December, 2004, by and between Empire Homes Riverside 72 LP, Property Owner of Lot 14 and Lot 3 ("Property Owner/Declarant"), with reference to the following facts:

A. Property Owner 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 "Lot 14":

Property Description: Lot 14 of Tract 28907, recorded in Book 351 Pages 70 to 75 of Book of Maps, Riverside County, California.

B. Property Owner is the fee owner of the following described property situated in the City of Riverside, County of Riverside, State of California, hereinafter referred to as "Lot 3":

Property Description: Lot 3 of Tract 28907, recorded in Book 351 Pages 70 to 75 of Book of Maps, Riverside County, California.

C. Lots 14 and 3 are adjoining lots with Lot 14 lying Southerly of Lot 3. Both lots are part of a residential development for Tract 28907.

D. Property Owner of Lot 14 desires to improve and develop Lot 14 by constructing a house. In connection with such development, Property Owner of Lot 14 has submitted to the City of Riverside ("City") certain grading plans for Tract 28907, which propose that the storm flow, irrigation and nuisance drainage water ("drainage waters") from Lot 14 will flow onto Lot 3 and that both Lots will be graded so as to establish concrete drainage facilities/swales to channel the flow of the drainage waters.

E. As a condition for the acceptance of property owner of lot 14's grading plans for Tract 28907 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 from Lot 14 onto Lot 3 and to provide for the maintenance of the concrete drainage facilities/swales on both lots.

F. Declarant desires to provide for the acceptance of drainage waters from Lot 14 onto Lot 3 and is willing to record this Covenant and Agreement for Acceptance of Drainage Waters ("Covenant") to put future owners and successor-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 Tract 28907 for the issuance of building and grading permits, Declarant hereby covenants and agrees with the City that the following restrictions shall apply to Lots 14 and 3.

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

2. Construction of Drainage Swales/Facilities. Property Owner shall construct or cause to be constructed the concrete drainage facilities/swales on Lot 14 and Lot 3 in accordance with the grading plans for Tract 28907 filed with and accepted by the Public Works Department of City.

3. Acceptance of Drainage Waters. Property Owner of Lot 3, for itself and its successors and assigns, hereby agrees to accept and does accept onto Lot 3 the drainage waters flowing from the adjacent Lot 14. Property Owner of Lot 3 also acknowledges that the drainage waters will contain drainage water from Lot 15 of Tract 28907, and hereby accepts said drainage waters from Lot 15.

4. Noninterference with Cross-Lot Drainage Facilities/Swales. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken on Lot 14 or Lot 3 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 for Tract 28907 filed with and accepted by the Public Works Department of the City.

5. Maintenance of Drainage Facilities/Swales. 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 as to each lot for the cross-lot drainage facilities/swales located on the respective lots.

6. Release. Declarant for itself and its respective successors and assigns, hereby releases 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 lots, 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. Declarant for itself and its respective successors and assigns, waives any and all rights and benefits which it now has, or in the future may have, conferred upon if 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 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

flowing over, or remaining on the lots 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.

7. 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.

8. This Covenant shall run with the land and each and all of its terms shall be binding upon Declarants, their 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.

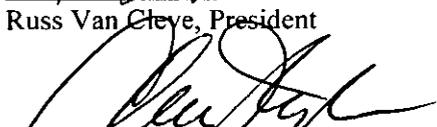
FURTHER, Declarants and each of them hereby represent and warrant that they have the legal power, right and actual authority to subject their respective lots to the restrictions, terms and conditions stated herein.

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

Owner of Lot 14 & 3
Empire Homes Riverside 72 LP
Empire Homes, Inc., General Partner



Russ Van Cleve, President



Chris Taylor, Vice President/ Assistant Secretary

APPROVED AS TO FORM:



Deputy City Attorney

APPROVED AS TO CONTENT:

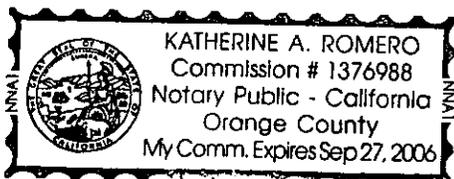


Public Works Department

STATE OF CALIFORNIA)
)
COUNTY OF RIVERSIDE)

On December 31, 2003, before me, Katherine A. Romero, the undersigned, a notary public in and for said State, personally appeared Russ Van Cleave personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person who name is subscribed to the within instrument and acknowledge 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.

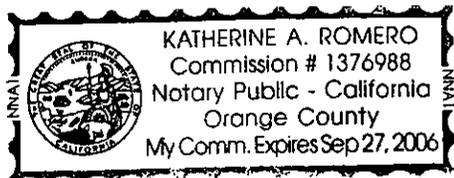


Katherine A. Romero
Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF RIVERSIDE)

On December 31, 2, 2003, before me, Katherine A. Romero, the undersigned, a notary public in and for said State, personally appeared Chris Taylor personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person who name is subscribed to the within instrument and acknowledge 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.



Katherine A. Romero
Notary Public