

RECORDING REQUESTED BY:

DOC # 2002-261304  
05/17/2002 08:00A Fee:22.00  
Page 1 of 6  
Recorded in Official Records  
County of Riverside  
Gary L. Orso  
Assessor, County Clerk & Recorder

WHEN RECORDED, MAIL TO:

CITY CLERK  
City of Riverside  
City Hall, 3900 Main Street  
Riverside, California 92522

Project: Parcel Map 30369

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COVENANT AND AGREEMENT ESTABLISHING EASEMENTS  
FOR INGRESS, EGRESS, PARKING AND UTILITIES

This Covenant and Agreement is made and entered into this 18<sup>th</sup> day of April, 2002, by ORANGECREST HILLS, L.P., a Washington limited partnership, hereinafter referred to as "**Declarant**," with reference to the following facts:

1. Declarant is the fee owner of the real property hereinafter referred to as Parcels 1 through 9 of Parcel Map 30369 located in the City of Riverside, County of Riverside, State of California, described as follows:

Parcels 1 through 9 of Parcel Map 30369 as shown by map on file in Book 201 of Parcel Maps at Pages 77 through 79 thereof, Records of Riverside County, California.

Parcels 1 through 9 are hereinafter collectively referred to as the "**Property**."

2. The Property consists of 25.09 acres located in the Orangecrest area, south and east of Bountiful Street, north of Van Buren Boulevard and west of Trautwein Road. An application has been filed with the City of Riverside ("**City**") as Case No. PM 30369 to subdivide one (1) parcel consisting of approximately 25.09 acres into nine (9) parcels, ranging in size from 0.984 acres to 7.721 acres for commercial purposes.

3. As a condition to the approval by the City of Case No. PM 30369, Declarant is required to submit documentation prior to recordation of the final map for approval by the Planning and Legal Departments of the City to assure mutual access for ingress, egress, parking and/or utilities across all parcels.

5-201085-07

DESCRIPTION APPROVAL 5/1/02  
by  
L. R. Orso  
SURVEYOR, CITY OF RIVERSIDE

4. Declarant intends by this document to comply with the conditions imposed by the City and to impose upon the Property mutually beneficial restrictions, conditions, covenants and agreements for the benefit of the Property and the improvements to be constructed thereon, and the future owners of all parcels of the Property, and for the same purpose to reserve and grant easements over portions of the Property.

**NOW, THEREFORE,** Declarant hereby declares that the Property is and hereafter shall be held, conveyed, transferred, mortgaged, encumbered, leased, rented, used, occupied, sold and improved subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are imposed as equitable servitudes pursuant to a general plan for the development of the Property for the purpose of enhancing and protecting the value and attractiveness of the Property, and each parcel thereof, in accordance with the plan for the improvement of the Property, and to comply with certain conditions imposed by the City for the approval of Parcel Map 30369 or portion thereof, and shall be binding 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 parcel of the Property shall be and hereby is deemed to incorporate by reference all the provisions of this Covenant and Agreement including, but not limited to, all the covenants, conditions, restrictions, limitations, grants of easement, rights, rights-of-way equitable servitudes contained herein.

1. **Definitions.** In addition to the definitions hereinbefore set forth, the following words or phrases when used in the Covenant and Agreement (except when the context otherwise requires) shall have the following definitions:

(1) ***“Building Areas”*** shall mean those areas on each parcel of the Property upon which buildings are to be constructed or other structures placed pursuant to plans approved by the City and building permits issued therefor and shall include any landscaped areas.

(2) ***“Common Area”*** shall mean all the area of Parcels 1 through 9 of the Property other than building areas.

(3) ***“Owner”*** shall mean any person, whether an individual, corporation, association or otherwise, in which title to a parcel is vested, as shown by the official Records of Riverside County, California. Declarant, its successors or assigns shall have executed or caused to record in the Office of the County Recorder of Riverside County, California, an instrument of conveyance conveying the respective parcel. If more than one person is owner of a parcel, then all such persons shall be jointly and severally liable for all obligations herein of the Owner of a parcel.

(4) ***“Parcel”*** or ***“Parcels”*** shall mean the parcel or parcels of the Property hereinabove described.

2. **Establishment of Access, Parking and Utility Easements.**

(1) Declarant hereby establishes, grants and reserves nonexclusive easements for parking, vehicular and pedestrian ingress and egress and

PR-2021-000897 (MISC/CUP/PM/DR) Exhibit 12 - Response to Comments



underground utilities over, along, under and across the Common Areas of each Parcel of the Property (as said Parcel now exists or may hereinafter be reconfigured), designated as driveway and parking areas on the plans for the development of each Parcel of the Property as may be approved by the City, for the use and benefit of and as an easement appurtenant to the remaining Parcels (as said Parcels now exist or as hereinafter reconfigured).

(2) The nonexclusive easements herein established shall be and are for ingress, egress, and parking of motor vehicles and the installation, construction, maintenance, removal, replacement and use of driveways, parking lots and utilities, including, but not limited to, water drainage systems or structures, water lines, sewer lines, fire protection lines, telephone lines, electrical conduits or systems, gas lines and any other such utilities required for commercial uses, and all rights deemed reasonable and necessary therefore. All such systems, structures, lines, conduits and other utility instrumentalities shall be installed and maintained below the ground level or surface of the Property, except where the instrumentality of the particular utility involved is not amendable to be place underground (such as, but not limited to, transformers and risers).

(3) The easements hereinabove granted or established shall include all rights necessary and proper for the installation, construction, maintenance, repair, replacement and use of driveways, walkways and parking areas. The cost of repair and maintenance of the driveways, walkways and parking areas on Parcels 1 through 6 shall be borne by the Owners of Parcels 1 through 6. The cost of repair and maintenance of the driveways, walkways and parking areas on Parcels 8 and 9 shall be borne by the Owners of Parcels 8 and 9. The cost of repair and maintenance of the driveways, walkways and parking areas, if any, on Parcel 7 shall be borne by the Owners of Parcels 1 through 6 and 8 and 9.

(4) Parcels 1 through 7 shall continually operate as a single unified development. Parcels 8 and 9 shall continually operate as a single unified development.

(5) Those areas on each parcel of the Property designated as parking areas shall be in conformance with plans for the development of such parcel which have been or may be approved by the City and shall include the number of parking spaces required by the Riverside Municipal Code for all of the uses on such parcel.

(6) In the event Declarant shall sell, convey, lease or otherwise change the ownership of any of the Parcels of the Property, as such Parcel is conveyed, Declarant shall grant and reserve, as is appropriate, the easements established in this Paragraph 2.

3. **Barriers.** No walls, fences or barriers of any kind shall be constructed, installed, erected or maintained on the Common Area, or any portion thereof, by Owner, tenant or person which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement, including without limitations, of pedestrians and vehicular traffic between the parcels, provided, however, reasonable traffic controls as may be necessary to guide and control the traffic may be installed so long as access driveways to the parking areas on the Property are not closed or blocked. The only exceptions to this provision



shall be for incidental encroachments upon the Common Area which may occur as a result of the use of ladders, scaffolding, barricades and similar facilities resulting in temporary obstruction of the Common Area, all of which are permitted hereunder so long as their use is kept within reasonable requirements of construction or maintenance work being expeditiously pursued.

4. **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Common Area to the general public or for the general public or for any public purposes whatsoever, it being the intention of Declarant that this document shall be strictly limited to and for the purpose herein expressed. The right of the public or any person to make use whatsoever of the Common Area of the Property, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is solely by permission, and subject to the control of the Owner(s). Notwithstanding any other provision herein to the contrary, Declarant may periodically restrict ingress and egress from the Common Area in order to prevent a prescriptive easement from arising by reason of continued public use. Any restriction on ingress or egress shall be limited to the minimum period necessary to prevent the creation of a prescriptive easement and shall occur at such time as to have minimum effect on the Owners, occupants and invitees of the Parcels of the Property.

5. **Non-Merger.** This Covenant and Agreement shall not be subject to the doctrine of merger, even though the underlying fee ownership of the parcel described herein, or any parts thereof, is vested in one party or entity.

6. **Effect of Covenant and Agreement.** Any person who now or hereafter owns or acquires any right, title or interest in or to any 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 each of the applicable easements described in Paragraph 2 hereof, whether or not any reference to this Covenant and Agreement is contained in the instrument by which such person acquired an interest in the Property.

7. **Mutuality, Reciprocity, Run with Land.** All of the provisions contained herein are made for the direct, mutual and reciprocal benefit of all Parcels of the Property and create mutual, equitable servitude upon each Parcel as the servient tenement in favor of each other Parcel as the dominant tenement and create reciprocal rights obligations among the respective Owners of all Parcels, and privities of contract and estate among all grantees of the Parcels, 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 Parcel thereof 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 Parcel, their successors and assigns in interest.

8. **Enforcement.** The terms of this Covenant and Agreement may be enforced by the City, its successors or assigns, and by any Owner, lessee or tenant of the Parcels of the Property. Should the City or any Owner, lessee or tenant bring an action to enforce any of



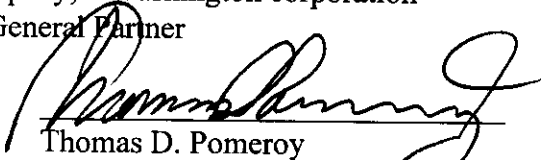
the terms of this Covenant and Agreement, the prevailing party shall be entitled to costs of suit including reasonable attorneys' fees.

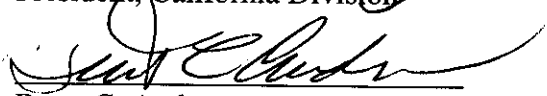
9. **Termination and Modification.** Subject to the prior written approval of the City and Declarant, any provision contained herein, may be terminated, modified or amended as to all of the Property or any portion thereof, upon the written consent of all the Owners of the Property. No such termination, 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, which City consent may be executed by the City Planning Director of the City of Riverside, California.

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

ORANGECREST HILLS, L.P., a Washington  
limited partnership

By: CSW Development & Construction  
Company, a Washington corporation  
Its General Partner

By:   
Thomas D. Pomeroy  
President, California Division


By:   
Brent C. Anderson  
Senior Vice President Finance,  
California Division

"Declarant"

APPROVED AS TO CONTENT:

  
Diane Jenkins  
Planning Department

APPROVED AS TO FORM:

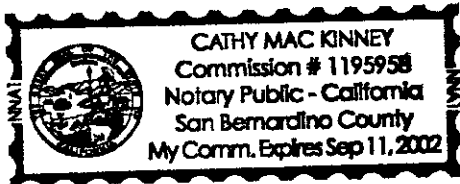
  
Kristi Smith  
Deputy City Attorney



STATE OF CALIFORNIA       )  
                                      )  
COUNTY OF ORANGE       ) ss

On April 22, 2002, before me, Cathy MacKinney, a Notary Public in and for the State, personally appeared Thomas D. Pomeroy and Brent C. Anderson, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signatures on the instrument the persons, or the entities upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.



(SEAL)

*Cathy MacKinney*  
Notary Public in and for the said State

