

5-79

ARCHIVES COPY
Do Not Remove From Files

AGREEMENT BETWEEN
MISSION VIEJO COMPANY
AND
THE CITY OF AURORA

THIS AGREEMENT is made and executed this 26th
day of November, 1973, by and between MISSION VIEJO
COMPANY, a California corporation ("Mission Viejo") and the
CITY OF AURORA, a municipal corporation of the State of
Colorado ("City"), collectively called the Parties.

WITNESSETH:

WHEREAS, Mission Viejo owns certain lands in the
City that it is developing as a planned community development
(the "Development"); and,

WHEREAS, the City wishes to build a library building
in the Development to provide public library services to the
City's inhabitants in the Development and nearby areas; and,

WHEREAS, Mission Viejo also wishes library services
to be readily available to the inhabitants of the Development;
and,

WHEREAS, Mission Viejo owns a site of approximately
2.2 acres in the Development that is suitable for a library
building and Mission Viejo has agreed by the Annexation Agreement
of May 24, 1971, to convey such a site to the City without cost
to the City, for so long as used for a library, subject to
certain covenants, conditions and restrictions; and,

WHEREAS, the City has agreed to build a library building
on the site to be conveyed to it as a determinable fee by Mission
Viejo, such construction to begin on a schedule as set forth herein;
and,

WHEREAS, the Parties intend that this Agreement shall
evidence their mutual understanding and their entire agreement
with respect to the proposed library site;



NOW, THEREFORE, in consideration of the foregoing recitals and of their mutual covenants and agreements contained in this Agreement, the Parties mutually covenant and agree as follows:

1. Mission Viejo shall convey to the City all of Tract F, Mission Viejo Filing No. 1, Arapahoe County, Colorado, (the "Property") so long as the Property shall be used as a library, subject to the City's agreement to and acceptance of the covenants, conditions and restrictions set forth in Exhibit A attached hereto and incorporated herein by this reference.

2. The conveyance of the Property to the City shall be by warranty deed in the form attached hereto as Exhibit B and incorporated herein by this reference, and Exhibit A to this Agreement is attached as Exhibit A to the deed exhibit. Such conveyance shall be deemed partial compliance by Mission Viejo of its obligations under an annexation agreement between Mission Viejo and the City, dated May 24, 1971, and the acreage conveyed to the City by this Agreement shall be subtracted from the total acreage which Mission Viejo is obligated to give to the City for civic purposes under the terms of the aforementioned annexation agreement.

3. Mission Viejo will make available all offsite utilities to the property line of the Property prior to the City's commencement of construction.

4. It is acknowledged and understood that the City intends to call an election for authorization to sell its general obligation bonds, from the proceeds of which the City will pay the costs of construction of the library building. The election will be held on the 6th day of November, 1973. In the event the bonds are not sold because of the failure of such election, the Parties shall have sixty (60) days from the date of the election in which to renegotiate the terms of this Agreement, failing which, this contract shall be null and void and of no further force and effect.

5. The City will commence construction of the library building within one (1) year from the date that an election is

held and approval received from the electorate to issue bonds for construction of the library. The library will be built in accordance with and subject to the restrictions, covenants and conditions contained in attached Exhibit A, and such construction shall be complete within six (6) months thereafter.

6. The City, for itself, its successors and assigns, hereby accepts and agrees to be bound by each and every covenant, condition and restriction contained in the attached Exhibit A, and the determinable fee in the form and manner of the Deed set forth on attached Exhibit B.

7. The City, for itself, its successors and assigns, hereby agrees to furnish library services to the citizens of Aurora for so long as the Property is used as a library, the minimum of which such use will be for fifty (50) years.

8. The City agrees to pay all utility connection and assessment fees and service lateral costs applicable to the Property.

9. The Parties mutually understand and agree that the conveyance of the Property to the City shall be at no cost to the City, and the construction by the City of the library building thereon shall be at no cost to Mission Viejo.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals this 26th day of November, 1973.

MISSION VIEJO COMPANY

By: 
via pro.

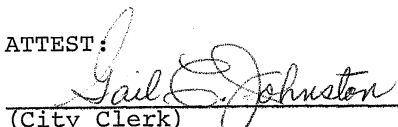
ATTEST:


(Secretary)

CITY OF AURORA

By: 

ATTEST:


(City Clerk)

RESTRICTIONS

1. Permitted Uses. The property subject to these restrictions shall be used exclusively for the operation of a library, together with any further uses normally and customarily incidental thereto.
2. Approval of Plans. Prior to the commencement of construction of any building, structure or improvement (including landscaping) upon the real property conveyed hereby, the following plans and specifications shall be submitted to GRANTOR for approval thereof. No improvement shall be erected, placed, altered, maintained or permitted to remain on the land subject to the Declaration unless and until said plans and specifications have been approved by GRANTOR in writing.
 - a) A site Development Plan, including thereon all improvements such as, but not limited to, the location of buildings, structures, fences, walls, parking areas, streetways, signs, exterior lighting, landscaped areas, and the proposed location for all service areas and trash collection areas indicating the proposed method of screening such areas from any portion of the subject property which is open to the public.
 - b) A Landscape Plan indicating the location, type, size, and quantity of all trees, shrubs, plants and ground cover, as well as the layout of the proposed sprinkler system.
 - c) Architectural Plans showing plot layout and exterior renderings or elevations, as well as designs, construction materials and colors.

GRANTOR shall approve or disapprove such plans and specifications within thirty (30) days of receipt thereof, and GRANTOR agrees that it shall not unreasonably withhold approval of said plans and specifications. If GRANTOR fails to either approve or disapprove such plans and specifications within thirty (30) days after the same have been submitted to GRANTOR, it shall be conclusively presumed that GRANTOR has approved said plans and specifications.
3. Basis for Approval. The improvements shall depict a building style of Spanish design, including, but not limited to, a fire-flashed, variegated, Mission-style barrel tile roof (similar to San Valle, Teja Grande) and Spanish stucco or Mission Viejo slump block exterior. The roof design may include a mansard or parapet style. Variations of the above stipulated construction materials may be used when approved by Mission Viejo Company's Director of Operations - Colorado.
4. Landscaping. Landscaping shall be installed by GRANTEE in accordance with the approved Landscape Plan within sixty (60) days of completion of construction.
5. Liabilities. GRANTOR shall not be liable for any damage, loss or prejudice incurred or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work whether or not pursuant to approved plans, drawings and specifications; or (c) the development of said property; provided, however, that GRANTOR has acted in good faith on the basis of actual knowledge possessed by it. By approving plans, drawings and specifications, GRANTOR assumes no liability or responsibility therefor, or for any defect in any structure constructed from such plans, drawings and

- specifications; and the GRANTEES and their successors-in-interest shall indemnify and hold GRANTOR free and harmless from any damage, loss or prejudice claimed, and from all costs, expenses and other charges arising therefrom and in connection therewith.
6. Utilities. All utilities shall be constructed and maintained underground.
 7. Antennas. There shall be no television or radio aerials visible from the outside of any premises, except as approved by GRANTOR in writing, other than those which are essential for the operation of a fire station. Any antennas erected shall be as inconspicuous as possible.
 8. Maintenance. The entire subject property shall at all times be maintained in a sightly and well-kept condition. Any weeds thereon shall be promptly removed and all landscaped areas shall be well-groomed and maintained at all times. No building or structure upon the subject property shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event of damage or destruction to any such building or structure, such building or structure may be repaired or reconstructed in accordance with previously approved plans and specifications therefor without resubmission of such plans and specifications to GRANTOR for its approval.
 9. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to the subject property, and no unreasonable odors shall be permitted to arise therefrom so as to render any portion of the property unsanitary, unsightly, offensive or detrimental to any of the property in the vicinity thereof or to the occupants thereof. No nuisance shall be permitted to exist or operate upon any portion of the property so as to be offensive or detrimental to any property in the vicinity thereof or to its occupants.
 10. Sign Control: Signs and identifying markings on buildings or building site shall only be of such size, design, material, color and location as specifically approved by GRANTOR in writing.

II

ENFORCEMENT

Abatement and Suit. Violation or breach of any covenants, conditions, or restrictions herein contained shall give to GRANTOR the right to enter upon the property upon or as to which said violation or breach exists, and to summarily abate and remove, at the expense of the owner thereof, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof, or to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of these covenants, conditions and restrictions to enjoin or prevent them from so doing, to cause said violation to be remedied or to recover damages for said violation.

The result of every action or omission whereby any covenant, condition or restriction herein is violated in whole or in part is hereby declared to be and to constitute a nuisance; and every remedy allowed by law or equity against an owner, either public or private, shall be applicable against every such result.

In any legal or equitable proceeding for the enforcement of or to restrain the violation of these covenants, conditions, and restrictions or any provisions hereof, the losing party or parties shall pay a reasonable attorney's fee and costs or expenses to the prevailing party in such amount as may be fixed by the court in such proceedings. All remedies provided herein at law or in equity shall be cumulative and not exclusive.

2. Inspection. GRANTOR may, from time to time, at any reasonable hour or hours, enter and inspect any property subject to these covenants, conditions and restrictions to ascertain compliance therewith.
3. Failure to Enforce Not a Waiver of Rights. The failure of GRANTOR to enforce any covenant, condition or restriction herein contained shall in no event be deemed to be a waiver of the right so to do thereafter nor of the right to enforce any other covenants, conditions or restrictions.

III

CONSTRUCTIVE NOTICE AND ACCEPTANCE

Every person who now or hereafter owns or acquires any right, title, estate or interest in or to the property conveyed hereby is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in said property.

IV

MODIFICATION

GRANTOR, at its sole discretion, may vary, adjust, amend, change, modify or terminate these covenants, conditions and restrictions, or any portions thereof, so long as GRANTOR does not impose any greater burden upon the GRANTEE or the real property to be affected. Such variances, adjustments, amendments, changes, modifications, or terminations, however, shall not be effective unless they are in written form and duly executed by GRANTOR.

V

TERMINATION OF COVENANTS, CONDITIONS & RESTRICTIONS

The covenants, conditions and restrictions contained herein shall be effective for a period of thirty-five (35) years after the date of recordation hereof.

VI

SEVERABILITY

Invalidation of any provision contained herein by judgment of court or otherwise shall in no way affect any of the other provisions, which shall remain in full force and effect.

EXHIBIT B

ARCHIVES COPY

Not Remove From Files

WARRANTY DEED

THIS DEED, made this _____ day of _____, 1973, between MISSION VIEJO COMPANY, a corporation duly organized and existing under and by virtue of the laws of the State of California, "Grantor", and the CITY OF AURORA, a municipal corporation of the Counties of Adams and Arapahoe, State of Colorado, "Grantee":

WITNESSETH:

Grantor, for valuable consideration, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by this deed does GRANT, BARGAIN, SELL, CONVEY and CONFIRM unto the Grantee, its successors and assigns the real property described as follows:

All of Tract F,
Mission Viejo Filing No. 1
Arapahoe County, Colorado

so long as the property is used as a library that will serve, inter alia, the citizens of the City of Aurora;

Provided, however, that this possibility of reverter reserved to the Grantor shall exist only for a period of twenty-one (21) years from the date of this deed; and from and after the said twenty-one (21) years, the lands herein conveyed shall be subject only to those covenants referred to in Exhibit A attached hereto.

Provided, further, that the property is conveyed subject to all the covenants, conditions and restrictions set forth in Exhibit A attached hereto and incorporated herein by this reference; and, those covenants, conditions and restrictions set forth in Exhibit A shall run with the property and be binding upon the Grantee, its successors and assigns for the term specified in Exhibit A; and,

EXCEPTING AND RESERVING from this conveyance and hereby retained by the Grantor all minerals, oil, gas, petroleum, and other hydrocarbon substances in or under or which may be produced from said land which underlies a plane parallel to and 550 feet below the present surface of said land for the purpose of prospecting, for the exploration, development, production, extraction, and taking of said minerals, oil, gas, petroleum, and other hydrocarbon substances from said land by means of mines, wells, derricks, and/or other equipment from surface locations on adjoining or neighboring land or lying outside of the above-described land, it being understood that the owner of such minerals, oil, gas, petroleum, and other hydrocarbon substances set forth above shall have no right to enter upon the surface of the above-described land nor to use any of said land or any portion thereof above said plane parallel to and 550 feet below the present surface of the said land for any purpose whatsoever.

TO HAVE AND TO HOLD unto the Grantee, its successors and assigns the property, with all and singular appurtenances and privileges in any way belonging or appertaining to the property, and all the estate, right, title, interest and claim of the Grantor, either in law or in equity, in and to the property with its hereditaments and appurtenances; subject, nevertheless, to the possibility of reverter, covenants, conditions and restrictions contained in the granting clause of this deed.

And the Grantor, for itself and its successors, covenants, grants, bargains and agrees to and with the Grantee, its successors and assigns, that at the time of the ensembling and delivery of this deed, the Grantor is well seized of the property in fee simple and has good right, full power and

lawful authority to grant, bargain, sell and convey the property in the manner and form of this deed, that the property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and encumbrances of every kind and nature, except current taxes and the possibility of reverter, covenants, conditions and restrictions contained in this deed; and, the property in the quiet and peaceable possession of the Grantee, its successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part of the property (excepting only therefrom the reversioners in the event of reverter), the Grantor shall WARRANT AND FOREVER DEFEND.

IN WITNESS WHEREOF, the Grantor has caused its corporate name to be hereunto subscribed by its _____ President, and its corporate seal to be hereunto affixed, attested by its Secretary, the day and year first above written.

ATTEST:

MISSION VIEJO COMPANY

Secretary

By _____
President

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, A.D., 1973, by _____ as _____ President, and _____ as Secretary of MISSION VIEJO COMPANY, a California corporation.

Witness my hand and official seal.

Notary Public

My Commission Expires: _____