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Project: Parcel Map 24092

323603

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AT 8:30 O'CLOCK A.M.  
At Request of  
CONTINENTAL LAND TITLE CO.

AUG 30 1990

Recorded in Official Records  
of Riverside County, California

Recorder  
Fees \$ 33

33/14

AMENDMENT TO COVENANT AND AGREEMENT  
ESTABLISHING EASEMENTS FOR INGRESS AND EGRESS,  
UTILITIES, SEWERS AND DRAINAGE.

This Amendment to the existing Covenant and Agreement is made and entered into this *31st* day of *August*, 1990, by GARNER PARTNERS, a California general partnership, hereinafter referred to as "Declarant", with reference to the following facts:

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

- (1) Parcels 1 through 10 of Parcel Map 24092 shown by map on file in Book 158 of Parcel Maps, at pages 48 through 49 thereof, records of Riverside County, California.
- (2) That certain Covenant and Agreement Establishing Easements for Ingress and Egress, Utilities, Sewers and Drainage filed with the Riverside County Recorder on August 11, 1989, records of Riverside County, Recordation No. 272035.

B. As a condition of approval of the application for lot line adjustment for Parcel Map 24092 imposed by the City of Riverside (the "City"), Declarant must establish fire service easements to Lots 1, 2, 9 and 10; sanitary sewer easements to Lots 1, 2, 9 and 10; domestic water service easements to Lots 1, 2, 9 and 10 and ingress and egress to Lots 1, 2, 9 and 10.

C. The Declarant has previously complied with City's conditions for approval of Parcel Map 24092 by recordation of the Covenant and Agreement described above. The herein amendment is necessary to accommodate Declarant's proposed lot line adjustments and to provide necessary easements to Lots 1, 2, 9 and 10.

D. All terms and conditions of the existing Covenant and Agreement not modified by this amendment shall remain in force and effect and are hereby incorporated by reference as if stated at length herein.

NOW, THEREFORE, Declarant hereby declares that the property hereinafter 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 equitable servitudes pursuant to a general plan for the development, and those applications for lot line adjustments of the property, and each parcel thereof, in accordance with the plan of improvement, and lot line adjustments, and to comply with the conditions for approval of Parcel Map 24092 and for the issuance of building permits for the development of the property.

1. Definitions shall be as stated in the original Covenant and Agreement and as used in this amendment the following words shall have the following definitions:

(a) "Common driveway easement" shall now include that grant of easement on Parcels 1, 2, 9 and 10 of the property described in paragraphs 2 and 3 below.

2. Common Area Use:

(a) Declarant hereby establishes and grants nonexclusive easements for ingress, egress, drainage, sanitary sewers and private utilities on, over and across the Common Areas of Parcels 1, 2, 9 and 10 of the Property, and as each such Parcel may hereinafter be configured, for the use and benefit of and as easements appurtenant to the remaining Parcels. The driveways, walkways and parking areas shall be installed on each Parcel in accordance with plans approved by the City in connection with the issuance of any building permit for such Parcel.

(b) Declarant hereby establishes and grants a nonexclusive easement for utilities, sanitary sewers, fire protection, drainage, ingress and egress, on, over, along and across the portions of Parcels 1, 2, 9 and 10 of the Property as described in Exhibits A, attached hereto and made a part hereof by reference.

(c) The easements hereinabove granted or established shall include all rights necessary and proper for the installation, construction, maintenance, repair, replacement and use of sewer, electricity, water, gas, telephone, cable television, storm drains and other utilities required of an industrial complex. The cost of repair of the driveways, parking areas and landscaped areas due to the installation, construction, repair or maintenance of the private utility to serve any Parcel of the Property shall be borne exclusively by the Owner of such Parcel as set forth in Paragraph 3 below.

(d) Those areas of the Property designated as parking areas shall be in conformance with plans for the development of the Property 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 the Property.

3. Common Driveway Easement Area Maintenance.

(a) Maintenance of Sewers and Utilities. The obligation to maintain and/or repair any sewer, water, gas, electrical or other utility connections located within any portion of the Common Driveway Easement Area shall be the sole responsibility of the respective utility companies and/or the Owner of the Parcel served by such utility connections. In the event it shall become necessary or desirable for any utility company or any Owner to disturb the surface of the Common Driveway Easement Area in order to maintain or repair the utility connections servicing such Owner's Parcel or for any other reason whatsoever, such Owner shall, at such Owner's own cost and expense, recompact the soil, repave any paved areas, replant any landscaping removed during the course of the work, and otherwise repair the surface of the Common Driveway Easement Area to substantially the same condition existing immediately prior to the commencement of the work.

(b) Joint Maintenance of the Common Driveway Easement Area. The Owners of Parcels 1 through 10 shall jointly maintain the Common Driveway Easement Area in a neat, clean, safe and attractive condition at all times so as to assure ingress, egress and access over and across the Common Driveway Easement Area, and shall share proportionately in the costs thereof as indicated in item (4) of this subparagraph. All such joint maintenance shall be performed in accordance with the following:

(1) Commencing with the first anniversary of recordation of this Covenant and Agreement, or sooner if necessary, and continuing each anniversary thereafter, the Owners shall, upon written notice ("Notice") from any Owner, inspect the Common Driveway Easement Area and, if repairs or maintenance is determined to be necessary by a vote of a majority of Owners, with each Parcel having one (1) vote, shall obtain at least three (3) bids from reputable contractors for the purpose of performing any and all necessary maintenance and repair work on any or all of the Common Driveway Easement Area

(including but not limited to, patching and sweeping, resurfacing, re-striping, curb repairs, light fixture repairs, reconstruction and/or restoration) so as to keep the same in a neat, clean, safe and attractive condition at all times. In the event a majority vote cannot be obtained, the vote of the Owner of Parcel 4 shall be determinative. The Notice shall set forth the date, place and time for the inspection and vote which, in no event, shall be sooner than fifteen (15) days nor later than thirty (30) days from the delivery of the Notice. No vote of the Owners shall be effective unless attended by a minimum of two (2) Owners or their respective representatives.

(2) Within sixty (60) days after receipt of the bids, the Owners shall cause all necessary work to be performed by the lowest responsible bidder. Within ten (10) days after completion of said work to the Owners' satisfaction, the Owners shall pay to the contractor who performed such work their respective shares of the cost of the work as set forth in item (4) of this subparagraph.

(3) In the event any of the aforesaid Owners shall fail or refuse to pay all or any portion of said owner's respective share of the cost of such work within thirty (30) days after said payment was due, the other Owners shall pay the unpaid amount and shall be entitled to bring legal action against the non-paying Owner to recover the full amount paid on said Owner's behalf, together with interest thereon from the date of such payment at the maximum legal rate until paid, and all court costs and reasonable attorneys' fees. Any such payment made on behalf of such non-paying Owner shall not be deemed a gift, but shall be deemed a payment made pursuant to an agreement hereunder for reimbursement in return for benefit received.

(4) The cost of all maintenance, repair, reconstruction, restoration and any and all other work performed for the Common Driveway Easement Area shall be shared in perpetuity as follows:

Owner of Parcel 1:	30.90%
Owner of Parcel 2:	22.96%
Owner of Parcels 9 & 10:	46.14%

(c) Performance of the Work. Any Owner performing any work on any of the Common Driveway Easement Area shall use reasonable safety precautions to prevent unnecessary risk of injury to persons or property during the performance of such work. Except in the event of an emergency, all work on the Common Driveway Easement Area shall be performed during normal business hours. Under all circumstances, the Owner performing such work shall use best efforts to minimize the duration of the work and the inconvenience to the other Owners and the owners of any adjacent property.

4. Master Water Meter Agreement. Parcels 1, 2, 9 and 10 of the Property (hereinafter collectively referred to as "Parcel C") will be served water for fire protection service by the City through a Master Water Meter. The billing from the City for the fire protection water service for Parcel C shall be the responsibility of and shall be promptly paid by Declarant or the Owner of Parcel 1 if other than the Declarant; provided, however, the Declarant or Owner of Parcel 1 may bill the other Owners of Parcel C at a like rate for the cost of such water service in a total amount not to exceed the amount billed by the City to the Master Water Meter for Parcel C for fire protection services.

Declarant and Owners acknowledge and agree that the water provided through the Master Water Meters may only be used on Parcel C, and may not be otherwise resold except as provided herein. Declarant or the Owners of Parcel 1, if other than the Declarant, shall be responsible for the maintenance and timely repair of the fire protection water lines on Parcel C. Declarant and Owners acknowledge that the provision of water to Parcel C is and shall be governed by the rules and regulations promulgated from time to time by the Public Utilities Board of the City as approved by the City Council of said City and the Declarant and Owners agree to be bound by and comply with such rules and regulations as they may be promulgated and amended from time to time.

5. Enforcement of Master Water Agreement. Inasmuch as the Owner of Parcel 1 may, pursuant to Paragraph 4 above, be required to pay for the cost of fire protection water service utilized, in whole or in part, by Parcels 2, 9 and 10 (with respect to payments made by the Owner of Parcel 1), the Owner of Parcel 1 is hereby granted a right of reimbursement from the Owners of Lots 2 and 9 and 10 with respect to any payments made by them on account of fire protection water services provided to such other Parcels. The Owners of such other Parcels which have utilized and benefited from such fire protection water service will reimburse the cost thereof to the Owner of Parcel 2, 9 or 10, as the case may be, within fifteen (15) days following

receipt of a statement evidencing payment of such fees by such Owner. In the event fire protection water services are utilized by more than one Owner, the Owner of Parcel 1 will make an equitable proration between the Owners of the affected parcels, in its reasonable judgment. Any such reimbursement amount which is not repaid to the Owner of Parcel 2, Parcels 9 and 10 within such fifteen (15) day period will thereafter bear interest at the highest rate allowed under California law, and if not satisfied within thirty (30) days following such written request, the Owner of Parcel 1, may (a) initiate appropriate legal action in any court having jurisdiction for collection of such delinquent amount; and (b) prepare and cause to be recorded a Notice of Lien in the same manner as provided by California Civil Code Section 1367 with respect to liens for delinquent assessments by property owners' associations. Such lien may be enforced as provided therein by a trustee's sale in accordance with Civil Code Sections 2924, 2924(b) and 2924(c).

6. Barriers. No walls, fences, or barriers of any kind shall be constructed or maintained on the Common Area or Common Driveway Easement Area, or any portion thereof, by any 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 limitation, of pedestrians and vehicular traffic between the Parcels; provided, however, reasonable traffic controls as may be necessary to guide and control the orderly flow of 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 or Common Driveway Easement Area which may occur as a result of the use of ladders, scaffoldings, 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.

7. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Common Area or the Common Driveway Easement 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 purposes herein expressed. The right of the public or any person to make use whatsoever of the Common Area or the Common Driveway Easement 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, the Owner(s) may periodically restrict ingress and egress from the Common Area or Common Driveway Easement 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 a minimum effect on the parties hereto.

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

9. 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.

10. Mutuality, Reciprocity, Run with Land. All of the provisions contained herein are made for the direct, mutual and reciprocal benefit of each and every Parcel of the Property and create mutual, equitable servitudes upon each Parcel as the servient tenement in favor of the other Parcels as the dominant tenement and create reciprocal rights and obligations among the respective Owners of all the Parcels, and privity 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.

11. Termination and Modification. Subject to the prior written approval of the City Council of the City of Riverside, this Covenant and Declaration, and 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 the Owners of 75% of the total number of square feet of land area contained in the Property; provided, however, that as long as Declarant owns at least 25% of the total square feet contained in the Property, no such termination, modification or amendment shall be effective without the prior written approval of Declarant. 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.

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

GARNER PARTNERS, a California general partnership

By: THE STENTON FAMILY TRUST, a Trust, as a general partner

By Richard R. Stenton  
Richard R. Stenton, Trustee

By: AXIOM PROPERTIES, INC., a California corporation, as a general partner

By L. Taylor Gerry  
President

By Christina Pisarik  
Secretary

By: L. Taylor Gerry  
L. TAYLOR GERRY, as a general partner

By: Christina Pisarik  
CHRISTINA PISARIK, as a general partner

DESCRIPTION APPROVAL: 8, 24, 90  
George P. Hutchinson  
SURVEYOR, CITY OF RIVERSIDE

NH/2639A/1m  
8/3/90

LEGAL DESCRIPTION

## Fire Service Building 7

In the City of Riverside, County of Riverside, State of California, an easement for fire service over across Parcels 1 and 2 of Parcel Map 24092 per Map recorded in Book 158 of Parcel Maps, pages 48 and 49, Records of said County described as follows:

Beginning at the most Northerly corner of Parcel 3 of said Parcel Map No. 24092 said point being in the Southwesterly line of Garner Road, a 60 foot right of way;  
Thence long said Southwesterly line, North 71°59'35" West 109.00 feet to the True Point of Beginning.

NOTE: The following course and distance describe the centerline of an easement for fire service being 10.00 feet in width, lying 5.00 feet on either side of the following described centerline, the side lines of which shall be prolonged or foreshortened to meet the terminating line:  
Thence South 18°00'25" West 48.00 feet;  
Thence North 71°59'35" West 57.00 feet to the end of said centerline.

**EXHIBIT A**

LEGAL DESCRIPTION

## Fire Service, Building 9

In the City of Riverside, County of Riverside, State of California, an easement for Fire Service over and across Parcels 2 and 9 of Parcel Map No. 24092 per Map recorded in Book 158 of Parcel Maps, pages 48 and 49, Records of said County described as follows:

Beginning at the most Northerly corner of Parcel 3 of said Parcel Map No. 24092 said point being in the Southwesterly line of Garner Road, a 60 foot right of way;  
Thence along said Southwesterly line, North  $71^{\circ}59'35''$  West 109.00 feet to the True Point of Beginning.

NOTE: The following course and distance describe the centerline of an easement for fire service being 10.00 feet in width, lying 5.00 feet on either side of the following described centerline, the side lines of which shall be prolonged or foreshortened to meet the terminating line:  
Thence South  $18^{\circ}00'25''$  West 168.24 feet to the end of said centerline.

**EXHIBIT A**



LEGAL DESCRIPTION

Building 9, Sanitary Sewer

In the City of Riverside, County of Riverside, State of California, an easement for sanitary sewer over and across Parcels 1 and 10 of Parcel Map No. 24092 per Map recorded in Book 158 of Parcel Maps, pages 48 and 49, Records of said County described as follows:

Beginning at the most Northerly corner of Parcel 3 of said Parcel Map No. 24092 said point being in the Southwesterly line of Garner Road, a 60 foot right of way;  
Thence along said Southwesterly line, North  $71^{\circ}59'35''$  West 119.45 feet to the beginning of a tangent curve concave Northeasterly having a radius of 230.00 feet;  
Thence Northwesterly along the arc of said curve through a central angle of  $14^{\circ}01'41''$  56.31 feet to a point through which a radial line bears North  $32^{\circ}02'06''$  East, said point being the True Point of Beginning.

NOTE: The following course and distance describe the centerline of an easement for sanitary sewer being 10.00 feet in width, lying 5.00 feet on either side of the following described centerline, the side lines of which shall be prolonged or foreshortened to meet the terminating line:  
Thence South  $18^{\circ}00'25''$  West 175.10 feet to the end of said centerline.

EXHIBIT A

323603

LEGAL DESCRIPTION

## Domestic Water Service, Building 9

In the City of Riverside, County of Riverside, State of California, an easement for domestic water service over and across Parcels 1 and 10 of Parcel Map No. 24092 per Map recorded in Book 158 of Parcel Maps, pages 48 and 49, Records of said County described as follows:

Beginning at the most Northerly corner of Parcel 3 of said Parcel Map No. 24092 said point being in the Southwesterly line of Garner Road, a 60 foot right of way;  
Thence along said Southwesterly line, North  $71^{\circ}59'35''$  West 119.45 feet to the beginning of a tangent curve concave Northeasterly having a radius of 230.00 feet;  
Thence Northwesterly along said curve through a central angle of  $23^{\circ}57'54''$  96.20 feet to a point through which a radial line bears North  $41^{\circ}58'19''$  East, said point being the True Point of Beginning;

NOTE: The following course and distance describe the centerline of an easement for domestic water service being 10.00 feet in width, lying 5.00 feet on either side of the following described centerline, the side lines of which shall be prolonged or foreshortened to meet the terminating line:

Thence South  $15^{\circ}46'31''$  West 188.21 feet to the end of said centerline.

**EXHIBIT A**

LEGAL DESCRIPTION

Ingress and Egress

In the City of Riverside, County of Riverside, State of California, an easement for ingress and egress over and across Parcels 1, 2, 9 and 10 of Parcel Map No. 24092 per Map recorded in Book 158 of Parcel Maps, pages 48 and 49, Records of said County described as follows:

Beginning at the most Northerly corner of Parcel 3 of said Parcel Map No. 24092, said point being in the Southwesterly line of Garner Road, a 60 foot right of way;  
 Thence along said Southwesterly line, North 71°59'35" West 119.45 feet to the beginning of a tangent curve concave Northerly having a radius of 230.00 feet;  
 Thence Northwesterly along the arc of said curve through a central angle of 0°23'07" 1.55 feet to a point through which a radial line bears North 18°23'32" East, said point being the True Point of Beginning;

Thence South 18°00'25" West 156.25 feet;  
 Thence South 71°59'35" East 100.00 feet;  
 Thence South 18°00'25" West 24.00 feet;  
 Thence North 71°59'35" West 290.00 feet;  
 Thence North 18°00'25" East 24.00 feet;  
 Thence South 71°59'35" East 100.00 feet;  
 Thence North 18°00'25" East 143.23 feet;  
 Thence North 33°20'47" East 29.83 feet to a point in a curve concave Northeasterly having a radius of 230.00 feet through which a radial line bears North 39°20'09" East;  
 Thence Southeasterly along the arc of said curve through a central angle of 5°59'22" 24.04 feet to a point through which a radial line bears North 33°20'47" East  
 Thence South 33°20'47" West 25.34 feet;  
 Thence South 18°00'25" West 140.00 feet;  
 Thence South 71°59'35" East 42.00 feet;  
 Thence North 18°00'25" East 157.66 feet to a point in a curve concave Northerly having a radius of 230.00 feet through which a radial line bears North 24°23'02" East;  
 Thence Southeasterly along the arc of said curve through a central angle of 5°59'30" 24.05 feet to a point through which a radial line bears North 18°23'32" East said point being the True Point of Beginning.

**EXHIBIT A**