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RECORDING REQUESTED BY:

MAY 30 1997

WHEN RECORDED MAIL TO:

City Clerk  
City of Riverside  
City Hall  
3900 Main Street  
Riverside, CA 92522

Recorded in Official Records  
of Riverside County, California  
Recorder  
Fees \$

PM-28327

HD

408084-16

FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS  
AND  
AGREEMENT ESTABLISHING EASEMENTS  
(INGRESS, EGRESS, PARKING AND UTILITIES)

This DECLARATION OF COVENANTS AND AGREEMENT ESTABLISHING EASEMENTS ("Agreement") is made as of March 15, 1997 by 3600 Tyler-Riverside, Inc., a California corporation ("Tyler-Riverside") to be effective upon the date of its recordation with reference to the following facts:

WHEREAS, Tyler-Riverside is the owner of those certain parcels of real property ("Property") in the City of Riverside, County of Riverside, State of California, more particularly described as:

WHEREAS, Tyler-Riverside is the owner of those certain parcels of real property ("Property") in the City of Riverside, County of Riverside, State of California, more particularly described as:

Parcel 1 of Parcel Map 28327 ("Parcel Map") as shown by map on file in Book 189, at pages 1 through 2 thereof, records of Riverside County, California ("Parcel 1"); and

Parcel 2 of 28327 as shown by map on file in Book 189, at pages 1 through 2 thereof, records of Riverside County, California ("Parcel 2").

WHEREAS, when Parcel 1 and Parcel 2 were developed and the improvements now existing upon each were constructed in accord with conditions of PM 28327, CU-004-945, DR 006-945 and DR 028-945 (collectively "Conditions"), Parcel 1 and Parcel 2 were collectively a part of a single parcel;

WHEREAS, Parcel 1 is subject to a certain lease wherein Tyler-Riverside is the landlord and The Good Guys-California, Inc., a corporation ("Good Guys"), is the tenant;

WHEREAS, Parcel 2 is subject to a certain lease wherein Tyler-Riverside is the landlord and Hemet Federal Savings and Loan Association ("Hemet Federal"), is the tenant;

WHEREAS, a portion of the property utilized by Good Guys overlaps onto Parcel 2 and a portion of the property utilized by Hemet Federal overlaps onto Parcel 1;

WHEREAS, the orderly safe and economical separation of such single parcel into Parcel 1 and Parcel 2 requires the granting of certain easements and the making of certain covenants;

WHEREAS, the parties have previously executed and acknowledged a "Declaration of Covenants And Agreement Establishing Easements" (Ingress, Egress, Parking And Utilities) (hereinafter referred to as the "Declaration") which was recorded on December 19, 1996, as instrument no. 478130 in the official records of Riverside County, California;

WHEREAS, by this agreement the parties hereto wish to amend and restate the Declaration:

NOW, THEREFORE, Tyler-Riverside hereby declares that the Property will be held, conveyed, 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 an overall site 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 improvements of the Property, and to comply with conditions imposed by the City of Riverside with respect to the Parcel Map dividing the Property. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land and shall be binding upon Tyler-Riverside and its heirs, successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Property. Any conveyance, transfer, sale, assignment, lease or sublease made by Tyler-Riverside or its successors of a parcel of the Property shall be and hereby is deemed to incorporate by reference all of the provisions of this Covenant and agreement, including but not limited to, all the covenants, conditions, restrictions, limitations, equitable servitudes and easements contained herein:

1. Easements upon and across Parcel 1 appurtenant to Parcel 2.

There is hereby established over, under, along and across Parcel 1, for the benefit of and appurtenant to Parcel 2:

a. an easement for vehicular and pedestrian ingress and egress upon and across that portion of Hemet Street, more particularly described on Exhibit A attached hereto and incorporated herein by this reference and as depicted upon the Parcel Map, lying upon Parcel 1;

b. an easement for the flow of irrigation and storm water drainage originating upon or crossing Parcel 2 upon and across that portion of Hemet Street lying upon Parcel 1 and otherwise as such drainage is established on the date of recordation hereof (said easement is blanket in nature);

c. an easement for vehicular parking upon that portion of Parcel 1 which is a part of the established parking areas of Parcel 2 on the date of recordation hereof and for the overhang of vehicles so parked upon and over Parcel 1 (as used herein, the term "overhang of vehicles" shall mean those parts of any vehicle which parts are forward of the front wheels and rearward of the rear wheels which, when parked in an established parking space upon Parcel 2, projects over the property line onto Parcel 1); the owner of Parcel 2 shall repair and maintain, at its sole cost and expense, such portion of such established parking areas serving Parcel 2 as are located upon Parcel 1;

d. an easement for and access to the shared electrical vault now in place partially upon Parcel 1 and partially upon Parcel 2;

e. an underground easement for any digital and analog data and communications lines including, without limitation, telephone and cable television which may exist on the date of recordation hereof; and

f. an easement to enter upon such portions of Parcel 1 as are reasonably necessary to be entered in connection with the repair and maintenance of improvements upon and consistent with the terms of the easements created herein. Except in the case of emergency, if such entry will interfere with the normal business operations upon Parcel 1, such entry shall be only during the non business hours of the occupant or tenant upon Parcel 1. Any such entry shall be as minimally intrusive and damaging to Parcel 1 as reasonably possible. The then owner of Parcel 2 shall promptly, diligently and continuously repair any such damage at such person or entity's sole cost and expense without regard to overtime costs.

2. Easements upon and across Parcel 2 appurtenant to Parcel 1.

There is hereby established over, under, along and across Parcel 2, for the benefit of and appurtenant to Parcel 1:

a. an easement for vehicular and pedestrian ingress and egress upon and across that portion of Hemet Street, more particularly described on Exhibit B attached hereto and incorporated herein by this reference, lying upon Parcel 2;

b. an easement for irrigation and storm water drainage originating upon or crossing Parcel 1 upon and across that portion of Hemet Street lying upon Parcel 2 and otherwise as such drainage is established on the date of recordation hereof (said easement is blanket in nature);

c. an easement for pedestrian, wheelchair and handicapped access upon and across that portion of Parcel 2 over which now crosses an existing handicap ramp near the northwest corner of Parcel 2. Use of the handicap ramp shall not permit any other use of Parcel 1 except as expressly provided elsewhere herein;

d. an easement upon and across that portion of Parcel 2 now used for parking and vehicular access to an "Electric Room and Storage Area" exiting from a doorway located in the improvements upon Parcel 1 on the date of recordation hereof exiting into the parking area of Parcel 2 near the southeast corner thereof (the use of such easement shall be minimally intrusive to the use of the parking areas of Parcel 2 and no vehicle shall be left parked or unattended thereon for more than two hours);

e. an underground easement for existing water lines, control vales and reasonably appurtenant structures and equipment underlying the established parking areas of Parcel 2 on the date of recordation hereof, the transmission of water therein, and for an existing fire service hydrant now located upon Parcel 2 which easement is more particularly described on Exhibit C attached hereto and incorporated herein by this reference;

f. an underground easement for existing domestic water service lines underlying the parking areas of Parcel 2 as such lines are placed on the date of recordation hereof (said easement is blanket in nature);

g. an easement for and access to the shared electrical vault now in place partially upon Parcel 1 and partially upon Parcel 2 and for underground electrical lines underlying the parking areas of Parcel 2 as such lines are placed on the date of recordation hereof;

h. an underground easement for existing natural gas service as such natural gas service lines underlying the parking areas of Parcel 2 are placed on the date of recordation hereof (said easement is blanket in nature);

i. an underground easement for existing telephone and cable service as such service lines underlying the parking areas of Parcel 2 are placed on the date of recordation hereof (such use shall include the digital and analog transmission of any communications data) (said easement is blanket in nature);

j. an underground easement for existing municipal sewer service as such sewer service lines underlying the parking areas of Parcel 2 are placed on the date of recordation hereof; said easement is blanket in nature;

k. an easement to enter upon such portions of Parcel 2 as are reasonably necessary to be entered in connection with the repair and maintenance of improvements upon and consistent with the terms of the easements created herein. Except in the case of emergency, if such entry will interfere with the normal business operations upon Parcel 2, such entry shall be only during the non business hours of the occupant or tenant upon Parcel 2. Any such entry shall be as minimally intrusive and damaging to Parcel 2 as reasonably possible. The then owner of Parcel 1 shall promptly, diligently and continuously repair any such damage at such person or entity's sole cost and expense without regard to overtime costs.

3. Maintenance of Hemet Street.

The owners of Parcel 1 and Parcel 2 shall reasonably cooperate in the care, repair and maintenance of Hemet Street and the enforcement, as necessary, of any rights against others with respect to such care, repair and maintenance.

4. Lighting.

There is hereby established upon and across Parcel 1, for the benefit of and appurtenant to Parcel 2, an easement for the access to and maintenance of security lights now installed upon the building located upon Parcel 1 and illuminating the parking areas of Parcel 2. The owner of Parcel 1 shall pay all electrical costs in connection therewith without reimbursement. Except for the payment of electrical costs, the owner of Parcel 1 shall have no duty whatsoever in connection with the maintenance or care of such security lights.

5. Ownership and Maintenance of Fire Protection Hydrant.

The owners of Parcel 1 and Parcel 2 shall jointly own and be entitled to the use of the fire protection hydrant located upon Parcel 2, the maintenance of which shall be paid one-half by the owner of Parcel 1 and one-half by the owner of Parcel 2.

6. Maintenance and Care of Landscaping.

The owners of Parcel 1 and Parcel 2 shall jointly own and be entitled to the use of the fire protection hydrant located upon Parcel 1 and those which are located upon Parcel 1 and those which are located upon Parcel 2 generally to the north and east of the curb marking the eastern boundary of the existing parking areas upon Parcel 2 on the date of recordation hereof to standards in accord with City of Riverside conditions. All landscaping upon those portions of Parcel 1 and Parcel 2 underlying the parking overhang area shall be maintained, kept and trimmed in a fashion so that it remains below and does not interfere with any ordinary automobile or other vehicle overhanging such area.

7. No Merger.

Even though the underlying fee title to Parcel 1 and to Parcel 2 may be or may become vested in one and the same entity, the easements established herein shall not be subject to the doctrine of merger. If any reasonable question concerning the possible merger of such easements into the underlying fee shall arise, the then owner of the underlying fee title shall grant such easements to create the same effect as if such merger had not occurred and the easement so granted shall relate back and be of the same priority as this Agreement.

8. Agreement to Run with the Land.

This Agreement shall run with the land and shall be binding upon Tyler-Riverside and Tyler-Riverside's successors and assigns. Any person who now or hereafter owns or acquires any right, title or interest in or to Parcel 1 or Parcel 2 shall be deemed to have considered and agreed to every covenant, condition, restriction and easement contained herein and to have been granted and be subject to the easements established herein whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in such parcel.

9. Modification or Termination.

This Agreement and the rights created herein shall not be modified or terminated without the written consent of all of the owners of both Parcel 1 and of Parcel 2, and with respect to matters required by the Conditions, the action of the City Council of the City of Riverside. This Agreement may not be changed orally.

10. Enforcement.

The provisions of this Agreement shall be enforceable at law or in equity by Tyler-Riverside, each successive owner, or occupant of Parcel 1 and Parcel 2 and by the City of Riverside. The failure of Tyler-Riverside, any owner, or occupant of Parcel 1 or of Parcel 2, or the City to enforce any provision of this Agreement shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other provision hereof. "Condition 5" of the Approved Conditions for PM-28327 is hereby incorporated herein by reference.

11. No Alteration of Rights of Tenants.

Nothing herein is intended or shall be construed to modify or amend any now existing lease affecting the Property, any subsequent renewal thereof, any new lease entered pursuant to the terms of such now existing lease or any of the rights of any tenant, assignee or subtenant thereunder. The owner of each parcel may delegate such owner's duties hereunder to the tenant or other possessor of or upon such parcel by a separate writing.

12. Attorneys' Fees.

In the event any legal or equitable proceeding for the enforcement of, or to restrain any violation of, this Agreement, the prevailing party shall be entitled to costs and reasonable attorneys' fees.

13. Captions.

The captions herein are for the convenience of the parties and shall have no effect upon the interpretation of this Agreement.

14. Disputes.

This Agreement shall be governed by the laws of the State of California and any question arising hereunder shall be construed and determined according to such laws. Any actions or proceedings arising under, growing out of, or in any way related to this Agreement shall be instituted and prosecuted only in courts located in the County of Riverside, State of California, and each Owner hereto expressly consents to the jurisdiction of such courts and waives its rights to cause any such actions or proceedings to be instituted or prosecuted elsewhere.

15. Recitals and Exhibits.

The recitals and Exhibits to this Agreement set forth above are incorporated herein by this reference.

16. Nature of Easements.

The easements created herein or to be created pursuant to this Agreement are and shall be non-exclusive and, except as have been or may be otherwise expressly granted, are for the use and benefit only of the dominant tenement to which such easements are appurtenant. Most of the easements created herein are not precisely located. The easements herein created under, upon and across each parcel as a servient tenement shall be limited to the uses herein specified and in existence or reasonably anticipated upon the date of recordation hereof and reasonably necessary to serve the other parcel as a dominant tenement. The owners of Parcel 1 and Parcel 2 shall, when reasonably necessary, cooperate in locating such easements. In the event any service, pipelines, gas lines, water lines, telephone lines or other equipment or facility must be replaced or repaired, the owner of Parcel 1 and the owner of Parcel 2 shall use their best efforts to service, maintain, replace and repair such in their existing locations minimizing any interference to owners or occupants of the Property. If, despite such best efforts, such existing location cannot reasonably be maintained, the placement thereof shall be in the reasonably equivalent location but need not be placed precisely as it was placed prior to any such repair or replacement



~~Approved as to Content:~~

~~\_\_\_\_\_  
Public Works Department~~

~~Approved as to Content:~~

~~\_\_\_\_\_  
Planning Department~~

~~Approved as to Form:~~

~~\_\_\_\_\_  
Assistant City Attorney~~

CONSENT OF TENANT

The Good Guys-California, Inc., a corporation, the current tenant in possession of Parcel 1 hereinabove described, in consideration of the provisions set forth in section 11 hereinabove, hereby acknowledges and consents to each and every one of the provisions herein set forth.

By: Gregg Steele  
Gregg Steele, Vice President  
Real Estate and Development

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF San Mateo )

On 4-8, 1997, before me, Kerry Flynn, a Notary Public in and for said County and State, personally appeared Gregg Steele, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his 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.



Kerry Flynn  
Notary Public

Hemet Federal Savings & Loan Association, the current tenant in possession of Parcel 2 hereinabove described, in consideration of the provisions set forth in section 11 hereinabove, hereby acknowledges and consents to each and every one of the provisions herein set forth.

By: Jack M. Sanders  
Its: SR. VICE PRES.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF CALIFORNIA )  
 )SS.  
COUNTY OF RIVERSIDE )

On MAY 12, 1997, before me, MARY ROACH,  
Notary Public, personally appeared JACK A. SANDEN, personally known to  
me (or proved to me on the basis of satisfactory evidence) to be the person whose name is  
subscribed to the within instrument and acknowledged to me that she/he executed the same in  
her/his authorized capacity, and that by her/his 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.

Signature: Mary Roach



(This area for official seal)

~~STATE OF CALIFORNIA )  
 )SS.  
COUNTY OF RIVERSIDE )~~

~~On \_\_\_\_\_, 1997, before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_, personally known to  
me (or proved to me on the basis of satisfactory evidence) to be the person whose name is  
subscribed to the within instrument and acknowledged to me that she/he executed the same in  
her/his authorized capacity, and that by her/his 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.~~

~~Signature: \_\_\_\_\_~~

~~(This area for official seal)~~

## EXHIBIT A

EXHIBIT 'A'  
HEMET STREET EASEMENT

Being a portion of Parcel 1 of Parcel Map recorded in Book 19, page 97 of Parcel Maps, Riverside County Records, California, being more particularly described as follows:

BEGINNING at the Westerly most corner of said Parcel 1;  
THENCE North 55° 59' 00" East along the Northwesterly line of said Parcel 1, a distance of 299.45 feet to the beginning of a tangent curve, concave Southeasterly, having a radius of 277.00 feet;  
THENCE Northeasterly along the arc of said tangent curve, through a central angle of 05° 02' 11" a distance of 24.35 feet;  
THENCE South 34° 01' 00" East a distance of 46.93 feet;  
THENCE South 55° 59' 00" West a distance of 323.77 feet;  
THENCE North 34° 01' 00" West a distance of 48.00 feet to the POINT OF BEGINNING.

## EXHIBIT B

"Exhibit 'B'"

## HEMET STREET EASEMENT

Being a portion of Parcel 1 of Parcel Map recorded in Book 19, page 97 of Parcel Maps, Riverside County Records, California, being more particularly described as follows:

BEGINNING at the Westerly most corner of said Parcel 1;

THENCE North 55° 59' 00" East along the Northwesterly line of said Parcel 1, a distance of 299.45 feet to the beginning of a tangent curve, concave Southeasterly, having a radius of 277.00 feet;

THENCE Northeasterly along the arc of said tangent curve, through a central angle of 05° 02' 11" a distance of 24.35 feet to the TRUE POINT OF BEGINNING;

THENCE continuing Northeasterly along the arc of said tangent curve, through a central angle of 05° 51' 04" a distance of 28.29 feet to the beginning of a reverse curve, concave Northwesterly, having a radius of 223.00 feet, a radial from said beginning of reverse curve bears North 23° 07' 45" West;

THENCE Northeasterly along the arc of said reverse curve, through a central angle of 10° 53' 15" a distance of 42.38 feet to the beginning of a continuous curve, concave Northwesterly, having a radius of 40.00 feet, a radial from said beginning of continuous curve bears North 34° 01' 00" West;

THENCE Northeasterly along the arc of said continuous curve, through a central angle of 39° 01' 49" a distance of 27.25 feet;

THENCE South 34° 01' 00" East a distance of 57.96 feet to the beginning of a non-tangent curve, concave Southerly, having a radius of 27.00 feet, a radial from said beginning of non-tangent curve bears South 17° 02' 27" West;

THENCE Southwesterly along the arc of said non-tangent curve, through a central angle of 51° 03' 27" a distance of 24.06 feet;

THENCE South 55° 59' 00" West a distance of 74.31 feet;

THENCE North 34° 01' 00" West a distance of 46.93 feet to the TRUE POINT OF BEGINNING.

## EXHIBIT C

## EXHIBIT 'C'

## FIRE SERVICE EASEMENT

A 10 foot strip of land in and across a portion of Parcel 1 of Parcel Map recorded in Book 19, page 97 of Parcel Maps, Riverside County Records, California, the centerline of said 10-foot strip being more particularly described as follows:

BEGINNING at the Southerly most corner of said Parcel 1;  
THENCE North 55° 56' 39" East a distance of 419.08 feet;  
THENCE North 34° 01' 00" West a distance of 53.20 feet to the TRUE POINT OF BEGINNING.  
THENCE South 55° 59' 00" West a distance of 64.00 feet;  
THENCE North 79° 02' 10" West a distance of 12.72 feet;  
THENCE North 34° 01' 00" West a distance of 104.56 feet;  
THENCE South 55° 59' 00" West a distance of 10.00 feet to a point hereinafter referred to as Point "A";  
THENCE continueing South 55° 59' 00" West a distance of 15.00 feet;  
TOGETHER WITH the following described centerline;  
BEGINNING at Point "A";  
THENCE South 34° 01' 00" East a distance of 104.50 feet;  
THENCE South 55° 59' 00" West a distance of 10.31 feet.