

RECORDING REQUESTED BY:

[\_\_\_\_\_]

WHEN RECORDED, MAIL TO:

**GREENBERG GLUSKER LLP**  
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Los Angeles, California 90067  
Attn: Steven J. Lurie, Esq.

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**DECLARATION OF COVENANTS, CONDITIONS  
AND RECIPROCAL EASEMENTS FOR  
MAJESTIC CHINO FLIGHT**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND RECIPROCAL EASEMENTS FOR MAJESTIC CHINO FLIGHT (“Declaration”) is made and entered into, as of \_\_\_\_\_, 20\_\_, by and between SAN BERNARDINO COUNTY (“County”) and MAJESTIC CHINO FLIGHT LLC, a Delaware limited liability company (“Majestic”). The County and Majestic are sometimes individually referred to herein as a “Party” or collectively as the “Parties.”

**RECITALS**

A. County owns approximately 56.97 net acres of land located at the southeast corner of Remington Avenue and Flight Avenue, City of Chino, County of San Bernardino, State of California, as more particularly set forth on Exhibit “A” attached hereto (the “Total County Land”).

B. Pursuant to a participating ground lease between County, as ground lessor, and Majestic, as ground lessee (the “Ground Lease”), Majestic holds a leasehold interest in a portion of the Total County Land consisting of approximately 46.02 net acres and as more particularly depicted on Exhibit “B” attached hereto (“Parcel 1”). As of the date the County executes this Declaration, Majestic and County have not entered into this Ground Lease, which shall be executed and in effect prior to Majestic’s commencement of construction.

C. The remaining portion of the Total County Land that is not subject to the Ground Lease consists of approximately 10.95 net acres, as more particularly depicted on Exhibit “B” attached hereto (“Remaining County Land”), and will not be used for any purpose other than being designated as the Runway Protection Zone (“RPZ”) for the Chino Airport and other than being used for Common Facilities. The Remaining County Land is further subdivided into two separate parcels of land as more particularly depicted on Exhibit “B” and identified herein as “Parcel 2” and “Parcel 3,” respectively. A site plan of the Total County Land, Parcel 1 and the Remaining County Land is depicted on Exhibit “B” attached hereto.

D. A Vesting Tentative Parcel Map No. 20561 has been approved by the City of Chino to subdivide the Total County Land in order to create Parcels 1, 2 and 3 and is attached hereto as Exhibit “C”, as further defined in Section 1.23 below.

E. Majestic intends to develop Parcel 1 with a light industrial building and other related improvements (as further defined below, the “Project”) Accordingly, to effectuate the development, operation, use, occupancy and enjoyment of Parcel 1, along with portions of the Remaining County Land, by Majestic and the RPZ use of the Remaining County Land by County, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Total County Land and enhancing the quality of environment within the Total County Land, the Parties desire to declare the existence of conditions, covenants, restrictions and certain reciprocal easements in, to, over and across the Total County Land as set forth in this Declaration. This Declaration is intended to satisfy certain of the conditions imposed by the City of Chino (“City”) in approving the Project, and shall benefit the City, County, Majestic and any future “Owners,” with respect to the provisions hereof which implement such conditions.

F. The Parties intend to provide for the equitable allocation of the costs of operation, use and occupancy of Parcel 1 together with certain portions of the Remaining County Land by Majestic, and the RPZ use of the Remaining County Property by County. Each of Parcel 1, Parcel 2 and Parcel 3 are referred to herein as a “Parcel” and collectively as the “Parcels.” Among other matters, this Declaration establishes that certain of said responsibilities are to be performed and paid for solely by the individual Owners and that certain other responsibilities are to be performed by a “Manager” on behalf of all the Owners with the cost of such responsibilities to be shared among the Owners of Parcel 1 and the Remaining County Property as provided herein.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby covenant, agree and declare that the Total County Land and every part thereof shall be held, encumbered, leased, subleased and occupied subject to the conditions, covenants, restrictions, easements and reservations hereinafter set forth, which are hereby declared to be for the benefit of said property and any interests therein, which shall be enforceable equitable servitudes and which shall inure to the benefit of and bind each and every part of the Total County Land and each interest therein, including, without limitation, each Parcel, each Owner and each Sublessee (as defined in Section 1.30 below). Accordingly, and in accordance with California Civil Code Section 1468, this Declaration shall be binding upon all parties having or acquiring any right, title, or interest in said property or any part thereof, shall inure to the benefit of each Owner and Sublessee thereof, and are imposed upon said interests and every part thereof as a servitude in favor of each and every of said interests as the dominant tenement or tenements.

## **ARTICLE 1** **DEFINITIONS**

Section 1.1 RESERVED.

Section 1.2 City. “City” shall have the meaning ascribed to it in Recital E.

Section 1.3 Common Drainage Improvements. “Common Drainage Improvements” shall mean the following: (a) the detention basin designated “Detention Basin” on the Common Facilities Plan, and (b) the underground storm drain facilities designated “Underground Drainage” on the Common Facilities Plan.

Section 1.4 Common Facilities. “Common Facilities” shall mean and refer to: (a) those common facilities reflected on the Common Facilities Plan, and (b) any facilities located outside of the land area of the Total County Land which are required to be privately constructed or privately maintained pursuant to the Existing Approvals which may include, without limitation, certain street lights and certain frontage roadway landscaping not within the lot lines of the Total County Land.

Section 1.5 Common Facilities Expenses. “Common Facilities Expenses” shall have the meaning specified in Section 3.6 below.

Section 1.6 Common Facilities Plan. “Common Facilities Plan” shall mean the common facilities plan attached hereto as Exhibit “D” and incorporated herein by this reference.

Section 1.7 Common Driveways. “Common Driveways” are part of the Common Facilities, and shall mean the portions of the private driveways and related lighting, landscaping, sidewalks and signage on Parcel 3 each paved driveway portion thereof being designated as a “Private Driveway” on the Parcel Map and as a “Common Driveway” on the Common Facilities Plan, and pursuant to easements appurtenant to Parcel 1 provided for in Section 14.2 below.

Section 1.8 County. “County” shall mean San Bernardino County, as defined the Recitals.

Section 1.9 Parcel 1. “Parcel 1” shall mean the real property in San Bernardino County defined in the Recitals in which Majestic holds a leasehold interest under the Ground Lease.

Section 1.10 Majestic. “Majestic” shall mean:

(a) Majestic Chino Flight, LLC, a Delaware limited liability company, its successors and assigns, by merger, consolidation or by purchase of all or substantially all of its assets; and

(b) any Person or entity, his or its successors and assigns, to which Majestic has assigned all of its rights and obligations as Majestic by an express assignment: provided, however, that any successor or assignee of Majestic shall be an Owner of Parcel 1. Such assignment may be incorporated into a recorded instrument including but not limited to a lease, option agreement, or assignment as the case may be, transferring such interest if such assignee agrees in writing with Majestic.

Section 1.11 RESERVED.

Section 1.12 Existing Approvals. “Existing Approvals” shall mean the EIR Addendum, Site Plan Approval, Special Condition Use Permit, Vesting Tentative Parcel Map, EIR Facts, CEQA mitigation monitoring program for the Project, and all other governmental approvals related to the development of the Project. In addition, any applicable Street Lighting Maintenance and Assessment District, other improvement or assessment district, or other public agencies or entities with regulatory jurisdiction over the Project, and any special taxes, charges and assessments applicable thereby, shall also be considered “Existing Approvals” that must be complied with.

Section 1.13 Ground Lease. “Ground Lease” shall mean the ground lease between the County, as lessor, and the Majestic, as lessee, as defined in the Recitals.

Section 1.14 Hazardous Materials. “Hazardous Materials” shall mean any hazardous or toxic substance, material or waste which now is or hereafter becomes regulated by any local governmental authority, the State of California or the United States Government. The term “hazardous substances” includes, without limitation, any material or substance which is (i) defined as a “hazardous waste”, “extremely hazardous waste” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7 or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a “hazardous material”, “hazardous substance” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) asbestos; (vii) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (viii) designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317); (ix) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903); or (x) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and liability Act, 42 U.S.C. Section 9601 et seq.

Section 1.15 Improvement or Improvements. “Improvement” or “Improvements” shall mean any or all of the following relating to the Total County Land (including both the Common Facilities and the Owner Facilities):

(a) structures and appurtenances thereto of every type and kind, including but not limited to, buildings, out buildings, sidewalks, walkways, water systems, irrigation and exterior sprinkler systems and sewer and storm drain pipes or lines, roads, driveways, parking areas, curbs, gutters, sidewalks, loading areas, trash receptacle areas and other paved areas, fences, screens, screening walls, retaining walls, awnings and covers, stairs, landscaping, hedges, trees and shrubs, poles, signs and appurtenances thereto, solar or wind powered energy systems or equipment, and heater or air conditioning and heating fixtures and equipment, lighting, drainage, detention basins and other utility facilities (except for those installations maintained by utility companies);

(b) the demolition, destruction, construction, reconstruction, maintenance, or repair by voluntary action of any structure or appurtenance thereto of every type and kind;

(c) the grading, excavation, filling, or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level or change of drainage pattern;

(d) landscaping, planting, clearing, or removing of trees, shrubs, grass, or plants, including dense tree and shrub planting; and

(e) landscaping control systems, including, but not limited to, all landscaping house panels, meters, conduits, water lines, landscaping sprinkler systems and water lines and any appurtenances for irrigating the landscaping; and any change or alteration of any Improvement including, but not limited to, any change of material, exterior appearance, color or texture.

Section 1.16 Manager. “Manager” shall mean and refer to the Owner of Parcel 1, or its designee, which shall manage and maintain the Common Facilities as provided in this Declaration.

Section 1.17 Mortgagee. “Mortgagee” shall mean a mortgagee, or trustee and beneficiary under a Mortgage (hereinafter defined). The term “Mortgage” means any first mortgage, indenture of first mortgage, or first deed of trust encumbering the leasehold interest.

Section 1.18 Owner. “Owner” shall mean and refer to (a) County with respect to Parcel 2 and Parcel 3, and (b) one or more Persons who are, alone or collectively, from time to time the ground lessee (or any successor in interest) of Parcel 1 with County as ground lessor under the Ground Lease (or any subsequent ground lease for Parcel 1), including Majestic, but excluding those having an interest merely as security for the performance of an obligation so long as the Ground Lease has not expired or been terminated. “Owner” shall include any Person designated in writing by any Owner to act in the manner and at the time provided herein with complete authority and in the place of such Owner in the matter for which action is taken, powers exercised or performance required. Notwithstanding the use of the term “Owner” for Parcel 1, the interest of “Owner” for Parcel 1 is a leasehold interest.

Section 1.19 Owner Facilities. “Owner Facilities” shall mean those facilities and Improvements located on the Total County Land that are not included within the definition of Common Facilities, including, but not limited to, interior roadways, the buildings, parking spaces, truck parking and dock areas and lighting. As further provided in Section 3.11 below, the maintenance of the respective Owner Facilities is the responsibility of their respective Owners.

Section 1.20 Owners. “Owners” shall mean collectively each and every Owner.

Section 1.21 Parcel. “Parcel” shall mean each of (a) Parcel 1, (b) Parcel 2, and (c) Parcel 3, as the lot lines of said Parcels may be adjusted from time to time by any recorded lot line adjustment, parcel merger or consolidation, or a later Parcel Map or subdivision map showing the Parcel. For the sake of clarity as of the date of this Declaration, there are three (3) Parcels.

Section 1.22 Parcel Area. “Parcel Area” shall mean the total square footage of the land of each Parcel. The measurement of each total area shown on the Parcel Map shall be conclusively presumed to be accurate and the measurement of the Common Facilities area shown on the Exhibits to this Declaration shall be conclusively presumed to be accurate.

Section 1.23 Parcel Map. “Parcel Map” shall mean the final Parcel Map to be recorded pursuant to the Vesting Tentative Parcel Map for the Project (which is attached hereto as Exhibit “C” and incorporated by this reference) with such modifications deemed necessary since creation of the Vesting Tentative Parcel Map, or such later Parcel Map or subdivision map applicable to the Total County Property.

Section 1.24 Parcel 1. “Parcel 1” shall mean the Parcel designated as Parcel 1 on the Parcel Map consisting of approximately 46.02 acres.

Section 1.25 Parcel 2. “Parcel 2” shall mean that certain Parcel designated as Parcel 2 on the Parcel Map consisting of approximately 3.74 acres.

Section 1.26 Parcel 3. “Parcel 3” shall mean that certain Parcel designated as Parcel 3 on the Parcel Map consisting of approximately 7.21 acres.

Section 1.27 Person. “Person” shall mean any individual, partnership, firm, association, joint venture, corporation, trust, limited liability company, or any other form of business or governmental entity.

Section 1.28 Project. “Project” shall mean the light industrial building and other related Improvements constructed on Parcel 1 and certain portions the Remaining County Land pursuant to the Existing Approvals, and the use and occupancy of the Improvements located on Parcel 1 and certain portions of the Remaining County Land.

Section 1.29 Responsible Share. “Responsible Share” is defined in Section 3.6. The Common Facilities shall remain as set forth on the Common Facilities Plan as of the date hereof and shall not be materially changed or modified without the prior written consent of all Owners of the Total County Land, as defined as of the date hereof.

Section 1.30 Sublessee. “Sublessee” shall mean any Person which enters into a sublease or similar agreement for the subleasing or occupancy of Parcel 1 or any Improvement thereon (such as the subtenant in a building lease), as such agreement is further defined in Section 16.21 of this Declaration.

## **ARTICLE 2** **USE RESTRICTIONS**

The use of the Total County Land shall be subject to and in compliance with the then applicable laws and land use regulations, and shall be restricted in accordance with the following provisions and all other covenants, conditions and restrictions herein contained.

Section 2.1 No Increase in Insurance. No Owner or Sublessee of an Owner shall make any change to the use of its Parcel existing at the time of the occupancy of another Parcel which would (i) cause the cancellation of any insurance covering any portion of the Total County Land owned by any other Owner, or (ii) substantially increase the insurance rates applicable to any portion of the Total County Land owned by any other Owner, without the written approval of all of the other Owners, which approval may be granted in in the other Owners’ sole and absolute discretion.

Section 2.2 Drainage. All drainage of irrigation and rainwater landing on the Total County Land shall drain or flow pursuant to the civil engineering plans approved by the governmental authority having jurisdiction, including into storm water catch basins, conveyance elements (e.g., underground pipes) and adjacent streets, and shall be allowed to drain or flow upon, across or under any other portion of the Total County Land as provided in Article 14. Unless approved by all affected Owners, an Owner shall not alter the drainage of water which exists pursuant to the drainage plan originally created at the time of the initial development, improvement and construction of Parcel 1 by Majestic except in a manner which does not materially affect the concentration or flow direction of drainage water under said drainage plan. Any alteration of the drainage on any portion of the Total County Land shall be in compliance with all applicable governmental laws and regulations.

Section 2.3 Use of Hazardous Substances. At no time shall any Owner or Sublessee, in violation of any applicable law, cause, suffer or permit any Hazardous Substance to be brought onto, kept, maintained, stored or released on the Total County Land, and each Owner hereby agrees to indemnify and hold harmless each other Owner from any violation of this Section 2.3 caused by such Owner or by any Sublessee thereof. Upon demand by any Owner, such Owner will promptly cause any Hazardous Substance in violation of any applicable law to be removed at such Owner's sole cost and expense in strict compliance with all applicable laws, rules, regulations and governmental directives.

Section 2.4 Parking. The Owner of Parcel 1 shall provide on its Parcel all parking spaces required for the building and uses on Parcel 1, including, without limitation, any required truck parking and preferential parking spaces, including by way of example for carpools and vanpools.

Section 2.5 Existing Approvals Compliance. Each Owner shall cause its Parcel to comply with the Existing Approvals, as the same may be modified from time to time.

Section 2.6 Compliance with Municipal Code Section 20.21.200. Unless otherwise provided by law, no outdoor storage, manufacturing, or assembly of materials or equipment shall be permitted unless otherwise permitted in accordance with Chino Municipal Code Section 20.21.200.

Section 2.7 Parcel 2 and Parcel 3 Restrictions. Except as expressly permitted under this Declaration with respect to the rights of the Owner of Parcel 1 and any Sublessee, County shall not use, nor permit the use of, Parcel 2 and Parcel 3 for any purpose other than as an RPZ. Further, in no event shall County lease, license, mortgage, encumber or otherwise transfer any interest in Parcel 2 and Parcel 3 except as expressly permitted under this Declaration.

### **ARTICLE 3** **COMMON FACILITIES AND OWNER FACILITIES MAINTENANCE**

Section 3.1 Common Facilities Maintenance Generally. As provided in Section 3.3 below, the operation and maintenance of certain Common Facilities is delegated to the Manager, and the Owner of each Parcel shall be responsible to pay for its Responsible Share of the "Common Facilities Expenses," as defined below in Section 3.6, with respect thereto. The Common Facilities shall be maintained by Manager in a manner comparable to the standard of maintenance followed in other first class developments of comparable size and use to the Project with materials of equal or greater quality as that originally installed by Majestic and in compliance with all applicable governmental laws, rules, regulations, order and ordinances and the provisions of this Declaration. Except for Common Facilities damages by an Owner (for which the responsible Owner shall pay the cost of repair or replacement pursuant to Section 5.2 below), each Owner shall bear the costs of its Responsible Share.

Section 3.2 Maintenance of Utility Lines pursuant to an Easement. If Parcel 1 is the grantee of any easement for Utility Lines (as defined in Section 14.3 below) located on Parcel 2 or Parcel 3, then the Owner of Parcel 1 shall be responsible, at its sole cost and expense, for the installation, replacement, maintenance, and repair of all such Utility Lines, except to the extent the same are maintained by a utility company or governmental agency.

Section 3.3 Manager/Owner Responsibility. Subject to the provisions of this Section 3.3, the Manager shall manage and maintain the Common Facilities; provided, however, that each Owner

shall remain separately responsible for (and the duties of the Manager shall not include) (i) the restoration of any such Common Facilities and/or Improvements following a casualty event caused by such Owner, as further provided for in Section 5.2 below, and (ii) cost of its disproportionate impact, as further provided in Section 3.10 below. Notwithstanding anything in this Declaration to the contrary, in the event that there is a conflict between the terms of this Declaration and the terms of any property management agreement, this Declaration shall control.

Section 3.4 RESERVED.

Section 3.5 Certain Management Terms. The Manager shall have the right to select from time to time a Person or Persons to perform some or all of the Manager's duties including, without limitation, to maintain some or all of those Common Facilities which it is appointed to maintain provided that such selection will not diminish the Manager's obligations to maintain the applicable Common Facilities for so long as it is serving as Manager. The Manager shall undertake and perform its duties hereunder diligently and in as economical, efficient and effective a manner as possible (which does not always mandate lowest cost if that is not the best value). The aggregate fees and administrative charges of Manager and its designees shall not exceed those charges for a similar scope of work prevailing in similar projects maintained by unaffiliated third parties.

Section 3.6 Common Facilities Expenses. As used herein, each Owner's "Responsible Share" shall mean said Owner's proportionate share of the Common Facilities Expenses (as defined below) as reasonably and equitably determined by the Manager; provided, however, that in all events each Owner shall be solely responsible for any and all costs and expenses that said Owner is directly responsible for under this Declaration including, without limitation, under Sections 3.10 and 5.2 below. Notwithstanding anything herein to the contrary but subject to Sections 3.10 and 5.2 below, unless otherwise agreed to by the Owners in writing, the Parties hereby agree that (A) the Owner of Parcel 1 shall be solely responsible for the Common Facilities Expenses set forth Sections 3.6(a); 3.6(b); 3.6(c); 3.6(d); 3.6(f); 3.6(g); 3.6(h); 3.6(j); and 3.6(k) below and (B) each Owner shall be responsible for its Responsible Share of the Common Facilities Expenses set forth in Sections 3.6(e) and 3.6(i) below.

The Manager shall be entitled to collect from the Owner of each Parcel such Owner's Responsible Share of the following costs and expenses incurred in performing the obligations delegated to the Manager in accordance with the provisions of this Declaration (collectively, the "Common Facilities Expenses"):

- (a) All costs for the general operation, maintenance, management, replacement and repairs to the applicable Common Facilities;
- (b) All costs of operating, maintaining, repairing or replacing any Improvements that are part of all easement areas granted to third parties or received from third parties if required by the terms of the grant of easement granting same;
- (c) Periodic street sweeping of the Common Driveways, and removal of all debris and refuse from the Common Facilities;
- (d) Slurry coating, striping, repairing and repaving of the Common Driveways, as applicable;

(e) Any utility or governmental charges or surcharges, applicable Street Lighting Maintenance and Assessment District other improvement or assessment district charges, or other similar charges imposed by public agencies or entities with regulatory jurisdiction over the Total County Land, and any other costs, taxes, charges or assessments levied, assessed, or imposed pursuant to laws, statutes, regulations, codes and ordinances promulgated by a governmental or quasi-governmental authority in connection with the Total County Land, Existing Approvals and/or the operation and use of the applicable Improvements or Common Facilities;

(f) Compensation and reimbursements, such as management fees and costs to Manager, and any affiliates of Manager, management companies, managers, accountants, attorneys and employees, exclusively for the performance of its duties pursuant to this Declaration; provided, such compensation and reimbursements shall be commercially reasonable and consistent with compensation paid in connection with similar projects in the area;

(g) To the extent not metered or billed to an Owner or Owners, utilities, trash pickup and disposal, gardening and other services which generally benefit the Common Facilities;

(h) Premiums on all insurance and fidelity bonds maintained by the Manager to cover risks for which the Manager is not adequately covered as an additional insured (using commercially reasonable judgment and consistent with practices of other managers of similar projects in the area) pursuant to the Article entitled "Insurance" of this Declaration;

(i) Discharge of any lien or encumbrance levied against any of the Parcels based on or arising from any Owners' failure to maintain the Common Facilities, real estate taxes, or any other such lien or encumbrance, including without limitation as specified in Section 3.6(e) above, to the extent not timely paid or discharged or collectable from the defaulting Owner [from the Owner of the charged/assessed/levied Parcel];

(j) Costs associated with managing and enforcing this Declaration; and

(k) Other expenses or costs incurred by the Manager reasonably related to the maintenance and general repair of Common Facilities or in the discharge of any duties or powers delegated to Manager or of the Owners, as determined by the Manager in the exercise of its duties and responsibilities under this Declaration.

Section 3.7 Payment of Common Facilities Expenses. The Owners shall pay from time to time the costs to sufficiently perform their obligations under this Declaration, including the timely payment of each Owner's Responsible Share of the Common Facilities Expenses to the Manager as set forth herein. Each Owner is deemed to covenant and agree to pay its Responsible Share of all Common Facilities Expenses to Manager. All such Common Facilities Expenses shall be payable in the amount specified by the Manager and no offsets against such amount shall be permitted for any reason. All such Common Facilities Expenses shall be payable as incurred on a monthly basis based on actual costs incurred or the Manager's estimates of the same. The Manager will provide on an annual basis a written statement of the Common Facilities Expenses actually expended for the period covered by the statement (a "Common Facilities Expense Statement"). Any shortfall shall be payable within thirty (30) days of the issuance of such statement, and any overpayment shall be credited against the next period, except for reasonable reserves which Manager may retain for anticipated upcoming Common Facilities Expenses.

Section 3.8 Disputed Expenses. Any dispute as to the payment of a Common Facilities Expense, if not resolved within sixty (60) days of the date of delivery of the Common Facilities Expense Statement, shall be resolved through arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Upon the final resolution of any such dispute, the amount determined to be owing, together with interest thereon at the maximum rate permitted by law (the "Interest Rate") from the date of the Common Facilities Expense Statement to the date of payment shall be paid to the Manager. Post arbitration judicial remedies may be pursued to enforce the resolution, if necessary.

Section 3.9 Late Payments, Interest and Lien Imposition. Any Common Facilities Expense Statement which is not satisfied within ten (10) days of the date of receipt of the Common Facilities Expense Statement shall bear interest at the Interest Rate and shall become a lien against the non-compliant Owner's Parcel. The Owner shall also be responsible for all reasonable costs incurred by Manager in collecting such delinquent installment.

Section 3.10 Costs of Disproportionate Impacts. If the use by any Owner of any Common Facilities shall result in wear and tear to said Common Facilities which is disproportionate to such Owner's Responsible Share of such cost category, the Manager may bill the costs of repairing or otherwise addressing such disproportionate use and wear and tear to the Parcel causing the same, which shall be considered a Common Facilities Expense for such Parcel.

Section 3.11 Owner Facilities Maintenance. The Owners shall maintain the Owner Facilities, if any, located on each Owner's Parcel in a manner comparable to the standard of maintenance followed in other first-class developments of comparable size and use in the City of Chino area in compliance with all applicable governmental laws, rules, regulations, order and ordinances and the provisions of this Declaration. Such responsibilities shall include, without limitation, the painting of and removal of graffiti from its building walls and screen walls, the maintenance repair and replacement of catch basins, downspouts, subsidiary storm drainage lines and other drainage improvements not within the definition of Common Drainage Improvements, the maintenance of landscaped/unimproved areas which are not a part of the Common Facilities, provision of landscape irrigation water to the landscaped areas on its respective Parcel (if not separately metered as a Common Facilities Expense) and lighting of the Owner Facilities. The Owners shall undertake and perform their respective duties hereunder diligently and in as economical a manner as possible. If an Owner does not timely perform its Owner Facilities Maintenance, such work may be undertaken by the Manager and charged to such Owner. Disputes related to such Owner Facilities Maintenance shall be handled in accordance with Section 3.8 above, and Late Payments, Interest and Lien Imposition shall be governed by the procedure in Section 3.9 above.

## **ARTICLE 4** **INSURANCE**

Section 4.1 Insurance on Parcel and Common Facilities Improvements. Each Owner shall at all times, at its sole expense, maintain insurance on such Owner's Parcel and all Common Facilities Improvements located thereon, and all fixtures, furnishings, equipment, and contents, as the same may exist from time to time. Insurance shall be in the amount of the full replacement value thereof as ascertained by the insurance carrier and shall insure against all risks and perils normally covered under an "extended coverage all risk" policy as that term is ordinarily used in the insurance industry. For County, it may satisfy this requirement and any other insurance requirements in this Declaration in the form of self-insurance or private insurance.

Section 4.2 Liability Insurance. Each Owner shall at all times, at its sole expense, maintain a policy of public liability and property damage insurance with respect to such Owner's Parcel, the business operated by such Owner, and any permittees, concessionaires, or licensees of the Owner on its Parcel with limits of public liability coverage of not less than \$3,000,000 per occurrence and with limits of property damage coverage of not less than \$100,000 per accident or occurrence. Notwithstanding the foregoing, an Owner may comply with such coverage amounts through the usage of an umbrella policy.

Section 4.3 Requirements for Insurance Policies. Insurance required to be maintained by each Owner hereunder shall be in companies holding a "General Policyholders' Rating" of A- or better and a "Financial Rating" of VIII or better, as set forth in the most current issue of "Best's Insurance Guide." Each Owner shall promptly deliver to the other Owners, within ten (10) days of request, original certificates evidencing the existence and amounts of insurance. No policy shall be cancelable or subject to reduction of coverage except after thirty (30) days prior written notice to the other Owners. All public liability, property damage, and other liability policies shall be written as primary policies, not contributing with and not in excess of any other coverage which may be applicable. Notwithstanding the provisions in this Article 4, each Owner may satisfy the insurance obligations under this Article 4 by being a named additional insured under a policy of insurance that in all other respects satisfies the insurance policy requirements under this Article 4.

Section 4.4 Lenders. Any Mortgagee may, at its option, be afforded coverage under any policy required to be secured by each Owner hereunder, by use of a mortgagee's endorsement to the policy concerned.

Section 4.5 Owner's Failure to Maintain Insurance. In the event any Owner fails to maintain the insurance coverage required hereunder, the other Owners or Manager may, but shall have no obligation to, obtain coverage at the non-compliant Owner's expense. The premiums paid for such insurance, plus twenty percent (20%) for overhead, shall be reimbursed by the non-compliant Owner immediately upon presentation of a bill therefor, and, if not so reimbursed, shall become a lien against the non-compliant Owner's Parcel, which may be enforced as provided for herein.

Section 4.6 Release and Waiver of Subrogation. Each Owner hereby waives all rights of indemnity, recovery and causes of action against the other Owner(s) for all losses and damages in connection with any claims, losses and damages in connection with the Common Facilities and the obligations arising under this Declaration to the extent that such losses and damages are paid by any insurance policy providing coverage to an Owner for such claims, losses, and damages; provided, however, that the Owner responsible for any such losses or damages shall pay for any deductible or other unpaid losses under the policies. The policies of insurance required by this Article shall provide for waivers of any right of subrogation that the insurer of such Owner may acquire against each other Owner with respect to any such losses.

## **ARTICLE 5**

### **DAMAGE TO COMMON FACILITIES**

Section 5.1 Casualty to Common Facilities. Subject to Section 5.2 below, in the event of any damage or destruction to the Common Facilities on any Parcel, whether insured or uninsured, the Owner of Parcel 1 shall (subject to Section 3.3 above) restore, repair or rebuild such Common

Facilities with all due diligence as nearly as possible to at least as good a condition as it was in immediately prior to such damage or destruction.

Section 5.2 Responsibility for Damage Caused. Subject to Section 4.6 above (captioned “Release and Waiver of Subrogation”), each Owner shall be obligated to pay for the cost of repairing or replacing any damage sustained to any Common Facilities caused by such Owner, or such Owner’s Sublessees, invitees, permittees, agents, occupants, and contractors.

## **ARTICLE 6**

### **EMINENT DOMAIN**

Section 6.1 Eminent Domain. If the whole or any part of the real property interest comprising Parcel 1 or the Common Facilities shall be taken by right of eminent domain or any similar authority of law (a “Taking”), all sums awarded for the leasehold interest or fee, as applicable, the Common Facilities, and Improvements shall be delivered to the fee owner of the parcels within the Total County Land and Owner of Parcel 1 (or to such Owner’s Mortgagee(s) or Sublessee(s), as their interests may appear), respectively, as such award has been apportioned between such owners by such condemning authority, unless otherwise determined by a court, and the other Owner(s) shall not have a right to claim any portion of such award by virtue of any interest created by this Declaration; provided, however, that said other Owner(s) may separately seek an award from the Taking authority as compensation for the adverse impact of the Taking to the other Owner(s) Parcel(s) so long as the award to the Owner of the taken property is not reduced. The Owners of the Parcels which are not the subject of a Taking may, however, file a collateral claim with the condemning authority over and above the value of the ground lease being so taken to the extent of any damage suffered by such Owner resulting from the severance of the ground lease and Improvements so taken if such claim does not operate to reduce the award allocable to the Owner of the property taken.

Section 6.2 Restoration. The Owner of each Parcel subject to a Taking shall promptly repair and restore the remaining portion of the Parcel and Common Facilities located thereon as necessary without contribution from any other Owner.

## **ARTICLE 7**

### **RIGHTS OF MORTGAGEES**

Section 7.1 Priority of Mortgage Lien. No breach of the covenants, conditions, or restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat, or render invalid the lien or charge of any Mortgage made in good faith and for value encumbering a Parcel, but all of the covenants, conditions, and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee’s sale or otherwise with respect to a Parcel.

Section 7.2 Curing Defaults. A Mortgagee or the immediate transferee of such Mortgagee who acquires a leasehold interest by judicial foreclosure, lease in lieu of foreclosure, or trustee’s sale shall not be obligated to cure any breach of the provisions of this Declaration which occurred prior to the date such Mortgagee acquired the leasehold interest to a Parcel, and which is non-curable or of the type which is not feasible to cure.

Section 7.3 Re-Lease Loan. It is intended that any loan to facilitate the re-lease of any Parcel after judicial foreclosure, lease in lieu of foreclosure, or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

Section 7.4 Relationship of Liens.

(a) The lien for nonpayment of an Owner's share of Common Facilities Expenses, or other sums due hereunder from any Owner, shall be subordinate to the lien of any Mortgage which was recorded prior to the date any such Common Facilities Expenses become due, and the foreclosure of any lien created by this Declaration shall not affect or impair the lien of such Mortgage.

(b) The foreclosure of the lien of the Mortgage, acceptance of a lease in lieu of foreclosure of the Mortgage, or sale under a power of sale included in the Mortgage (such events being hereinafter referred to as "Events of Foreclosure") shall not operate, affect or impair the lien hereof, except that Persons who obtain an interest through an Event of Foreclosure, shall take title free of the lien hereof or any personal obligation as shall have accrued up to the time of any Event of Foreclosure, but subject to the lien hereof for all sums that shall accrue subsequent to the Event of Foreclosure.

Section 7.5 Other Rights of Mortgagees. Any Mortgagee or its mortgage servicing contractor shall, upon written request, be entitled to receive written notification of any default in the performance of the obligations imposed by this Declaration on the Owner whose Parcel is encumbered by such Mortgagee's Mortgage, which default has not been cured within thirty (30) days of notice.

**ARTICLE 8**  
**APPROVAL OF OWNER/DEEMED APPROVAL**

Except as otherwise specifically provided herein, if any Owner having a right of approval hereunder fails to give such approval or specify grounds for disapproval within ten (10) business days of receipt of the request therefor, said Owner shall be deemed to have given its approval. Except as otherwise specifically provided herein, no such approval shall be unreasonably withheld or delayed.

**ARTICLE 9**  
**NO PUBLIC DEDICATION**

Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Total County Land to the general public or for the general public or for any public purposes whatsoever, it being the intention of Parties that this Declaration shall be strictly limited to and for the purposes herein expressed. The right of the public or any Person to make any use whatsoever of the Total County Land or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed, ground lease, sublease, easement or dedication) is by permission and subject to control of the Owners. Notwithstanding any other provisions herein to the contrary, the Owners may periodically restrict ingress to and egress from its respective Parcel in order to prevent a prescriptive easement from arising by reason of continued public use.

**ARTICLE 10**  
**BREACH SHALL NOT PERMIT TERMINATION/WAIVER OF USE**

Section 10.1 No Termination. No breach of this Declaration shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which an Owner may have hereunder by reason of any breach.

Section 10.2 Waiver of Use. No Owner may exempt itself from personal liability for Assessments duly levied by the Owners or Manager, or release the Parcel owned by it from the liens, charges and other provisions of this Declaration by waiver of the use and enjoyment of the Common Facilities or the abandonment of a Parcel.

**ARTICLE 11**  
**INDEMNITY**

Subject to Section 15.14 below, each Owner (the “Indemnifying Owner”) shall protect, indemnify, defend, and hold Manager and the other Owners (the “Indemnified Owner”) harmless from and against all claims, expenses, liabilities, loss, damage, and costs, including any actions or proceedings in connection therewith and including reasonable attorneys’ fees, incurred in connection with, arising from, due to or as a result of claims of third parties for the death of or any accident, injury, loss, or damage, however caused, to any person or loss or damage to the Total County Land as shall occur on the Indemnifying Owner’s Parcel, except claims resulting from the gross negligence or willful act or omission of the Indemnified Owner, its Sublessee(s) or any other occupant or permittee of such Indemnified Owner’s Parcel, or the agent, servants, or employees of such Indemnified Owner, wherever the same may occur. Notwithstanding any of the provisions of this Article 11 to the contrary, each Owner for itself and its permittees waives any right of recovery against the other Owner and its permittees for any loss, damage, or injury to the extent the same (i) is actually covered by insurance, or (ii) would have been covered by such insurance as is required to be carried pursuant to Article 4.

**ARTICLE 12**  
**CONFORMITY TO LAWS**

Each Owner, and the Manager as applicable, shall maintain, or cause to be maintained, in a safe, clean, and tenantable condition and in good order and repair, its Parcel, and all buildings, Improvements and the Owner Facilities on said Owner’s Parcel, if any, and the Common Facilities as required herein so that the same conform to, and comply with, all applicable laws, ordinances, rules, and regulations of any governmental authority having jurisdiction with respect to construction and maintenance of the Total County Land and the health and safety of the Owners, Sublessees, permittees, occupants, business invitees, customers, and other Persons using the Total County Land, and in such a manner as to not constitute a nuisance or create unreasonable interference. In addition, notwithstanding any other provision contained herein to the contrary, California Vehicle Code Sections 21107.5, 21107.6 and 21107.7 shall be applicable to privately owned and maintained roads, and California Vehicle Code Section 21107.8 shall be applicable to privately owned and maintained off-street parking facilities, if the City determines in its discretion that any or all of such applications are desirable, and provides a written request to the Owners that it intends to enforce the same on the Total County Land at the City’s cost.

**ARTICLE 13**  
**CONSTRUCTION BY MAJESTIC**

Section 13.1 Majestic's Construction. Nothing in this Declaration shall limit the right of Majestic to alter or to construct Improvements as Majestic deems advisable. Such right shall include, but not be limited to, erecting, constructing, and maintaining the Project on Parcel 1, along with certain portions of the Remaining County Land pursuant to this Declaration, provided all necessary permits or approvals are obtained from the City, fee owner of the Total County Land as contractually required, and other governmental authority having jurisdiction, such structures and displays as may be reasonably necessary for the conduct of its business or completing the work and marketing of the same by lease. This Declaration shall not limit the right of Majestic, at any time prior to sublease of the Project, subject to the approval of the fee owner of the Total County Land, which shall not be unreasonably withheld, conditioned or delayed, to establish on the Total County Land additional licenses, reservations, and rights of way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development of the Project. The rights of Majestic hereunder may be assigned to any successor or successors to Majestic's interest in the Project by an express assignment.

Section 13.2 Changes to Parcels 2 and 3, and to Common Facilities; and Reciprocal Easement Areas. Notwithstanding anything in Section 13.1 to the contrary in no event shall the Owners of Parcel 2 and Parcel 3 have the right to construct new, or alter any existing, Improvements on the Remaining County Land and/or the Common Facilities without the consent of all of the Owners, which consent may be withheld at their sole and absolute discretion. Further, subject to the approval of the fee owner of the Total County Land, which shall not be unreasonably withheld, conditioned or delayed, the Owner of Parcel 1 shall be entitled to make any changes (each, a "Change") in the alignment, location, nature, size, extent or configuration of the areas of the Common Facilities and the reciprocal easements provided in Section 14 below existing from time to time as the Owner of Parcel 1, in its reasonable and good faith discretion, shall deem desirable (including, but not limited to, the addition, elimination, location or relocation of driveways, entrances, exits, landscaped or prohibited areas, and the determination of direction and flow of traffic), provided all of the following conditions are satisfied (or unless agreed to in writing by all Owners):

- (a) No such Change landlocks Parcel 2 or Parcel 3;
- (b) During any construction period in connection therewith, reasonably adequate access to each affected Parcel is provided for the duration of such interruption; and
- (c) Such Change is in compliance with all governmental laws, regulations and procedures.
- (d) No such Change materially impairs the use of Parcel 2 or Parcel 3 as permitted under this Declaration.

**ARTICLE 14**  
**EASEMENTS**

Section 14.1 Surface and Subsurface Drainage. The Parties declare the existence of and each Owner hereby grants and conveys to the other Owners, for their use and for the use of their

permittees, a non-exclusive, underground and above ground easement through and across each Parcel for reasonable drainage purposes. In addition, there is hereby reserved to the Parties, together with the right to grant and transfer same to Owners and to the Owners, as applicable, an easement over the Total County Land to the extent necessary for reasonable surface drainage to and upon any adjoining Parcel or Common Facilities area. These easements shall not be interpreted to prohibit the construction of any Improvements upon the Parcels. "Reasonable surface drainage" and "reasonable drainage purposes" as used herein shall mean that an Owner and the Owners, as applicable, have the right of surface and subsurface drainage over any adjoining Total County Land to the extent that such surface and subsurface drainage (i) is consistent with the approved civil engineering plans as described in Section 2.2 above, and/or (ii) does not unreasonably interfere with or hinder the intended use and enjoyment of such adjoining Total County Land. To the extent that an easement in this Article 14 cannot be granted, then for the period of time the County is the fee interest owner of the Total County Land, the rights and obligations in this Article 14, including all sections within this Article are contractual rights and obligations among the Owners.

Section 14.2 Vehicular and Pedestrian Access, Lighting, Landscaping and Sidewalk. The Parties hereby declare for the benefit of the Owner of Parcel 1, exclusive and irrevocable easements, appurtenant to Parcel 1, for vehicular and pedestrian ingress and egress over, across and upon the Common Driveways located on Parcel 3, including this for the installation, use and maintenance of adjacent lighting, landscaping and sidewalks.

Section 14.3 Utilities. The Owner of the Total County Land hereby declares for the benefit of the Owner of Parcel 1 a nonexclusive, irrevocable appurtenant easement in, to, over, under and across those portions of the Total County Land for the benefit of and appurtenant to Parcel 1 for the purposes of installation, repair, maintenance, removal, replacement, use and operation of sanitary sewers, storm drains, potable and recycled water pipes and systems, gas pipes and systems, electrical power conduits, telephone/data conduits, lines and wires, and other public utilities (individually and collectively "Utility Lines"), including, without limitation, the Utility Lines associated with the Common Drainage Improvements, at a location or locations reflected on the Common Facilities Plan, or in addition as reasonably required by Majestic.

Section 14.4 Restriction. No Owner shall grant any easement for the purposes set forth in this Article for the benefit of any property not within the Total County Land; provided, however, that the foregoing shall not prohibit the granting or dedicating of utility easements by the Owners to governmental or quasi-governmental authorities or to public utilities for the benefit of the Parcel 1 Owner's Improvements, so long as such grant or dedication does not interfere with Parcel 2 and Parcel 3 Owner's Improvements. The Owner of Parcel 2 and Parcel 3 shall not have access to the Detention Basin located on Parcel 1, it being understood that the Detention Basin is a Common Drainage Improvement which the Manager shall maintain and exclusively access.

## **ARTICLE 15**

### **REMEDIES, CURE, SELF HELP AND ENFORCEMENT LIEN**

Section 15.1 Legal Action Generally. If any of the Owners breaches any provision of this Agreement, as applicable, then any other Owner may institute legal action against the defaulting Owner for specific performance, injunction, declaratory relief, damages, or any other remedy provided by law. As used herein, any reference to rights or remedies "at law" or "under applicable law" shall also include any rights or remedies "in equity".

Section 15.2 Injunctive and Declaratory Relief. In the event of any violation or threatened violation by Manager or by any Owner, Sublessee, or occupant of the Total County Land (or any portion thereof) of any of the terms, covenants, conditions, and restrictions herein contained, in addition to any other remedies provided for in this Agreement, any Owner, as applicable, shall have the right to bring an action to enjoin such violation or threatened violation, and to bring an action for declaratory relief, in a court of competent jurisdiction.

Section 15.3 Notice to Defaulting Owner. The Manager or any Owner may, by notice (herein called the “Default Notice”) to any defaulting Owner, claim that (i) the Common Facilities, or any portion thereof, (ii) the Owner Facilities, and/or (iii) other Improvements, which are required to be maintained, repaired and/or replaced pursuant to the terms of this Declaration have not been maintained, repaired or replaced or do not conform with the requirements of this Declaration. The Owner receiving such notice shall be herein referred to as the Defaulting Owner (as defined in Section 15.7 below). The Default Notice shall specify the nature of the maintenance, repair or replacement required.

Section 15.4 Cure Period. The Defaulting Owner shall, on or before thirty (30) days after receipt of the Default Notice, begin such work as is required to conform to the requirements of this Declaration. Once commenced, the Defaulting Owner shall prosecute such work with diligence until it is completed. If an emergency occurs, the Defaulting Owner shall take immediate action to the extent practicable and necessary (within seventy-two (72) hours after receipt of the Default Notice) to minimize any potential damage.

Section 15.5 Self-Help. If the Defaulting Owner fails or refuses to comply with the Default Notice, the non-Defaulting Owner may commence and cure (or cause Manager to commence and cure) such default to conform to the terms of this Declaration and such cost shall be due and payable by the Owner otherwise responsible pursuant to the terms of this Declaration.

Section 15.6 Cost Reimbursement. Any sums paid by the Manager or Owner giving the Default Notice in performing on behalf of the Defaulting Owner shall be due and payable in accordance with the terms of this Declaration on or before thirty (30) days after notice. If such sums are not paid on or before such date, the Manager or Owner giving the Default Notice shall have the right to pursue any action at law or equity to recover such costs, fees and expenses.

Section 15.7 Right to Recover. If any sums are due from any Owner in respect of Common Facilities Expenses, failure of any Owner to maintain its Owner Facilities (including pursuant to Section 3.11) or otherwise, and such sums are not paid in accordance with the terms of this Declaration, the delinquent Owner shall be a “Defaulting Owner” hereunder and the Manager and each other Owner shall have the right to pursue any action at law or equity to recover such costs, fees and expenses from the Defaulting Owner for the benefit of itself and the other Owners or Manager, as applicable.

Section 15.8 Claim of Lien. Without limitation upon any other rights or remedies hereunder and to the extent authorized by law, any other Owner or the Manager (each a “Creditor Owner”) may file a lien pursuant to this Section for the collection of any sums due to another Owner or the Manager under this Agreement, including without limitation, any sums due from an Owner that is a Defaulting Owner in respect of delinquent Common Facilities Expenses or in respect of the costs of the cure of the non-performance by such Defaulting Owner of its obligations hereunder, including without limitation such Owner’s failure to maintain its Owner Facilities.

Section 15.9 Creation. A lien authorized by this Declaration shall be created by recording a written instrument (the "Claim of Lien") in the records of San Bernardino County, California which (i) references this Declaration by recording number, (ii) alleges a specific breach of this Declaration (iii) states the amount owed by the Defaulting Owner through the recording date of the Claim of Lien, (iv) contains a legal description of the Parcel of the Defaulting Owner, and (v) is executed and acknowledged by the Creditor Owner or Manager, as applicable.

Section 15.10 Amount. A lien created pursuant to this Section shall include (i) the amount stated in the Claim of Lien, (ii) all costs and expenses incurred in creating and foreclosing such lien (including attorneys' fees and costs), (iii) all amounts which become due from the Defaulting Owner (or its successors or assigns) to the Creditor Owner after the date the Claim of Lien is recorded, whether such amounts arise from a continuation of the default alleged in the Claim of Lien or from some other default under this Agreement, and (iv) interest on all of the foregoing at the Interest Rate.

Section 15.11 Priority. The priority of a lien created pursuant to this Section shall be established solely by reference to the date the Claim of Lien is recorded, and, accordingly, the same shall be junior to any deed of trust or similar security instrument recorded after the date of this Declaration and prior to the recordation of any such Claim of Lien.

Section 15.12 Extinguishment. If the Defaulting Owner cures its default, and pays all amounts secured by a lien created pursuant to this Section, the Creditor Owner shall record an instrument sufficient in form and content to clear title from such Creditor Owner's lien.

Section 15.13 Foreclosure. A lien created pursuant to this Section shall be foreclosed judicially, in the same manner as provided for judicial foreclosure of a mortgage or deed of trust of real property in the State of California.

Section 15.14 Personal Obligation. Each Owner, by acceptance of the ground lease of or other conveyance of all or a portion of a Parcel or interest therein, shall be deemed to covenant and agree to be personally bound by this Declaration. Any sum not paid, or other obligation not performed when due, together with interest payable hereunder, and all costs and attorneys' fees incurred in connection with collection, shall be the personal obligation of the Person or Persons who were the Owners or Sublessees of the Parcel at the time the payment or obligation became due. Notwithstanding anything herein to the contrary, upon the sale or transfer of the ground lease of Parcel 1 or the fee real property interest in Parcel 2 and/or Parcel 3 to a third party, the applicable Owner of said Parcel shall be released from any and all personal obligations under this Declaration; provided, however, that such obligations shall run with the land pursuant to Section 16.10 below, and shall be binding upon any successor Owner, subject to Section 7.4(b) above.

Section 15.15 Remedies Cumulative. The remedies provided in this Section 15 are in addition to any remedies available elsewhere in this Declaration or under applicable law. Exercise of one remedy shall not be deemed to preclude exercise of other remedies for the same default, and all remedies available to an Owner or Manager may be exercised cumulatively.

## **ARTICLE 16**

### **MISCELLANEOUS**

Section 16.1 Enforcement. Each Owner (by acceptance of a ground lease to a Parcel) shall be deemed to covenant and agree to comply strictly with all applicable terms and provisions of this

Declaration. The Owners shall have a right of action against any other Owner to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation. Notwithstanding the foregoing or any other provision of this Declaration, judicial proceedings must be instituted before any Improvements can be demolished or materially altered in connection with any summary abatement or similar means of enforcing restrictions against any Parcel or its use. Further notwithstanding anything herein to the contrary, City shall have the right, but not the obligation, to deliver a Default Notice to any Defaulting Owner (with a copy concurrently sent to Manager and the non-Defaulting Owner[s]) (a "City Default Notice"). If the non-Defaulting Owner(s) fail(s) to deliver a Default Notice to a Defaulting Owner within thirty (30) days after a City Default Notice, then the City shall have the right, but not the obligation, to enforce the terms and provisions of this Declaration against a Defaulting Owner in the same manner as a non-Defaulting Owner. The City Default Notice shall include specific and reasonable details regarding the default alleged by the City.

Section 16.2 Nondiscrimination. There shall be no discrimination against or segregation of any person or group of persons of a protected class (e.g., on account of race, color, creed, religion, sex, marital status, national origin or ancestry) in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Total County Land of any part thereof, nor shall any Owner or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of Sublessees of the Total County Land or any part thereof. The foregoing nondiscrimination covenant shall be included in all deeds, leases and contracts which any Owner or any person claiming under or through such Owner shall enter into concerning the Total County Land or any portion thereof.

Section 16.3 Notices. All notices hereunder shall be in writing and addressed to the recipient at such addresses as each shall supply to the others in the manner hereafter provided. All notices given pursuant to this Declaration shall be deemed received upon (a) personal delivery or, (b) if mailed, upon expiration of three (3) business days after mailing or, (c) if sent by express delivery service, one (1) business day after deposit with such express delivery service (so long as deposited prior to that day's cut-off for such class of service), and with regard to subsections (b) and (c) above unless actually received sooner. Each party may change its address by written notice to the Owners given in the manner hereinabove stated.

Section 16.4 No Joint Venture. The provisions of this Declaration are not intended to create, nor shall they in any way be interpreted to create, a joint venture, a partnership, or any other similar relationship between the Owners. Notwithstanding the foregoing, the Owners may be affiliates.

Section 16.5 Captions/Headings. The captions heading the various sections of this Declaration are for convenience and identification only and shall not be deemed to limit or define the contents of their respective sections.

Section 16.6 Right to Farm. Majestic and all future Owners acknowledge that it is aware of and understands Chapter 20.16 of the City of Chino Municipal Code which provides, in part:

"No agricultural operations conducted or maintained in a manner consistent with proper and accepted customs and standards, as established and followed

by similar agricultural operations in the same locality, shall be or become a nuisance, private or public, due to any changed condition in or about the locality if the agricultural operation was existing at the time of annexation or thereafter legally expanded, and if it was not a nuisance at the time it began.”

Section 16.7 No Waiver. The failure of an Owner or Manager to insist upon strict performance of any of the provisions of this Declaration shall not be deemed a waiver of any rights or remedies that such Owner or Manager may have and shall not be deemed a waiver of any subsequent breach or default of any of the obligations contained herein.

Section 16.8 Time of Essence. Time is of the essence with respect to matters in this Declaration wherein time limitations are mentioned.

Section 16.9 Remedies Cumulative. All remedies provided in this Declaration shall be deemed cumulative and, notwithstanding the exercise of any remedy hereunder, Manager and Owners shall have recourse to all other remedies as may be available at law or in equity.

Section 16.10 Binding Effect/Covenants Running With Land. The covenants contained in this Declaration shall constitute covenants running with the land and shall be binding upon, and shall inure to the benefit of the Total County Land and the Parcels. Further, such covenants, conditions, easements and restrictions also shall be mutual equitable servitudes upon the Parcels and shall bind each and every Person having any interest in the Total County Property, whether such interest is easement, leasehold, beneficial or otherwise, and each successor and assign of such Person.

Section 16.11 Recordation. This Declaration shall be recorded in the official records of San Bernardino County, California and this Declaration shall be effective upon recordation.

Section 16.12 Governing Law. This Declaration and the obligations of the parties bound hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of California with venue for any proceeding, legal or otherwise, exclusively in San Bernardino County, State of California.

Section 16.13 Counterparts. This Declaration may be executed in any number of counterparts, each of which, when fully executed, shall be deemed to be an original, and all of which together shall be deemed to constitute one and the same instrument.

Section 16.14 Estoppel Certificate. Upon the written request of Manager or any Owner, the Owners shall provide a written certificate stating that, to its actual knowledge, such entities are not in violation of any of the provisions of this Declaration, or if there are any such violations, stating in sufficient detail the nature of such violations. The certification shall be delivered to the requesting Owner or Manager, as applicable, no later than thirty (30) days after request. Any prospective purchaser or Mortgagee of a Parcel shall be entitled to rely on the information contained in the certificate.

Section 16.15 Mechanic's Liens. If an Owner (the “Responsible Owner”) shall permit or allow any mechanic's liens to be filed against an Owner's Parcel (an “Affected Owner”) the Responsible Owner shall either pay the same pursuant to the terms of this Declaration and have it discharged of record promptly, or take such action as may be required to reasonably and legally object to the lien, and in all events the Responsible Owner shall cause the lien to be discharged prior

to the entry of judgment for foreclosure of the lien. Upon request of an Affected Owner, the Responsible Owner shall furnish such security or indemnity as may be required to and for the benefit of the Affected Owner to permit a title endorsement or title policy to be issued relating to the Affected Owner's Parcel without showing thereon the effect of the lien.

Section 16.16 Duration. This Declaration and each term, easement, covenant, restriction and undertaking contained herein shall only become effective on the date a Ground Lease for Parcel 1 has been executed by Majestic and the County, a memorandum of which shall be recorded, and will remain in effect until the expiration (or earlier termination) of the Ground Lease; provided, however, that the easements referred to herein which are specified as continuing beyond the term of this Declaration shall continue in force and effect. Upon termination of this Declaration, all rights and privileges derived herefrom and all duties and obligations created and imposed hereunder, except as relate to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this Declaration shall not limit or affect any remedy at law or in equity which may be available with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such termination.

Section 16.17 Severability. If any clause, sentence, or other portion of this Declaration shall become illegal, null, or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect.

Section 16.18 Attorneys' Fees/Court Costs. Should suit, arbitration or other legal action be instituted to enforce this Declaration, including any of its terms, covenants, conditions, restrictions, and encumbrances, then each party, including the prevailing party, shall pay its own attorneys' fees and court costs as may be awarded in any such suit, arbitration or other proceeding, unless payable under an indemnity obligation.

Section 16.19 Force Majeure. If any Owner or any other party shall be delayed or hindered in or prevented from the performance of any act required to be performed by such party by reason of Acts of God, acts of terrorism, pandemics, strikes, lockouts, unavailability of materials, failure of power, prohibitive governmental laws, regulations, actions or inaction, riots, insurrections, adverse weather conditions preventing the performance of work as certified to by an architect, war or other reason beyond such party's control, then the time for performance of such act shall be extended for a period equivalent to the period of such delay. Lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond the control of such party.

Section 16.20 Nuisance. The result of every act or omission whereby any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Owner or Manager.

Section 16.21 Subleases. Any agreement for the subleasing of a Parcel or any Improvement thereon (such as the lease of a building to an occupant thereof) shall state therein that such sublease agreement shall be subject in all respects to the provisions of this Declaration. The sublease shall further provide that any failure by the Sublessee thereunder to comply with the terms of this Declaration shall be a default under the sublease. All subleases shall be in writing. The Owner of said subleased Parcel or Improvement has the duty and obligation to timely furnish the Manager with the name or names of the Persons currently subleasing said Parcel and the current address for

providing notice to said Sublessee. Any Owner who subleases its Parcel or Improvement thereon shall be responsible for assuring compliance by such Owner's Sublessee with this Declaration.

Section 16.22 Construction. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development of a planned industrial, commercial and retail business park. Unless the context otherwise requires, any specific gender reference shall not be exclusive, the singular number includes the plural and the plural includes the singular.

Section 16.23 Constructive Notice and Acceptance. Every Person who now or hereafter owns or acquires any right, title, or interest in or to any portion of a Parcel 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 this Declaration is contained in the instrument by which such Person or entity acquired an interest in the Total County Land.

Section 16.24 No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Majestic or its agents or employees in connection with the Total County Land, any Parcel, or any Improvement, including, without limitation, physical condition, zoning, compliance with applicable laws, or fitness for intended use, operations, maintenance, cost of maintenance, level of assessments or taxes.

Section 16.25 Management and Operation Acknowledgment and Disclaimer. Majestic acknowledges that it is a Delaware limited liability company comprised of a managing member and non-managing member(s). The duties and obligations of the managing and non-managing members are set forth in such operating agreements. Nothing contained in this Declaration shall in any way amend, modify, alter or change the terms and provisions in such operating agreements.

Section 16.26 Amendment. Any amendment to this Declaration, including without limitation any amendment which alters the allocation of expenses to any Parcel, and any Change under Section 13.2 shall require the unanimous approval of the Owners at the time of such amendment and the written consent of the City.

*The remainder of this page is intentionally blank.*

IN WITNESS WHEREOF, the Parties hereto have executed this Declaration as of the date and year first written above.

**COUNTY:**

SAN BERNARDINO COUNTY

By: \_\_\_\_\_  
Dawn Rowe  
Chair, Board of Supervisors

**MAJESTIC and MANAGER:**

MAJESTIC CHINO FLIGHT LLC,  
a Delaware limited liability company

By: Majestic Realty Co.,  
Manager's Agent

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

[Additional Signature Follows Immediately on Next Page]

**APPROVAL AS TO SUBSTANCE:**

City of Chino Director of Community Development

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

City of Chino Director of Public Works

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

**APPROVAL AS TO FORM:**

City of Chino City Attorney

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



EXHIBIT A  
(Total County Land Legal Description)

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CHINO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

LOTS 4 AND 13 AND LOT 3, EXCEPT THE EASTERLY ONE-HALF (1/2) THEREOF, AND LOT 14, EXCEPT THE EASTERLY ONE-HALF (1/2) THEREOF, OF SECTION 28 TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, IN THE CITY OF CHINO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT THEREOF RECORDED IN BOOK 6, PAGE 15 OF MAPS, RECORDS OF SAID COUNTY.

APN: 1055-051-01, 1055-051-02 AND 1055-061-01

PARCEL 2:

LOTS 2 AND 15, AND THE EASTERLY ONE-HALF OF LOT 3, AND THE EASTERLY ONE-HALF OF LOT 14, OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, IN THE CITY OF CHINO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 6, PAGE 15 OF MAPS, RECORDS OF SAID COUNTY.

TOGETHER WITH ALL THAT PORTION OF VACATED BAKER AVENUE LYING WITHIN SAID PARCEL 2 AS SAME WAS VACATED BY RESOLUTION OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, CALIFORNIA, A CERTIFIED COPY OF WHICH WAS RECORDED JANUARY 27, 1961 IN BOOK 5337, PAGE 359 OF OFFICIAL RECORDS, WHICH WOULD PASS BY OPERATION OF LAW.

APN: 1055-071-01, 1055-071-02 AND 1055-061-02

APN: 1055-051-01, 1055-051-02 AND 1055-061-01, 1055-071-01, 1055-071-02 AND 1055-061-02

EXHIBIT B

(Depiction of the Total County Land, the Parcel 1 and the Remaining County Land)

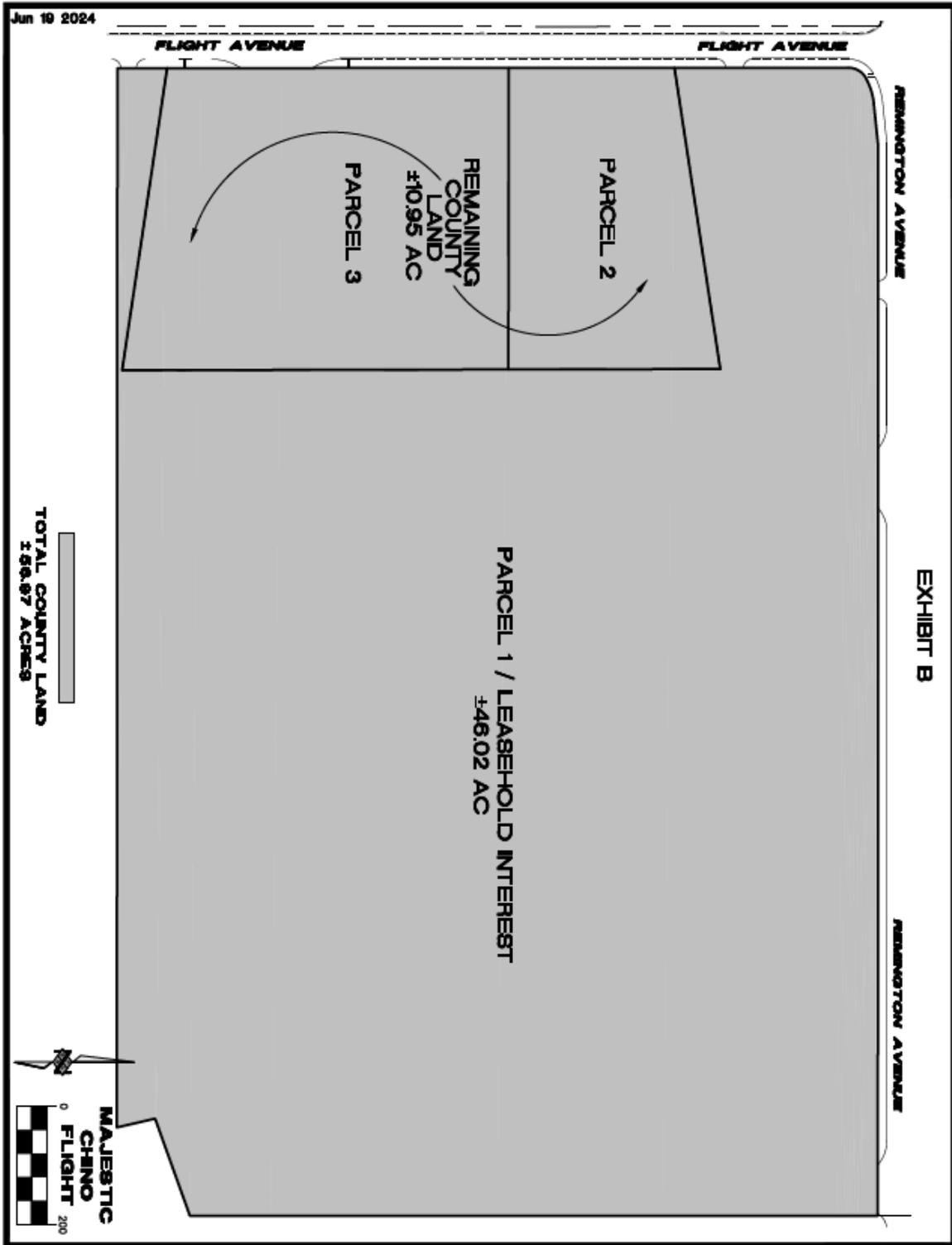
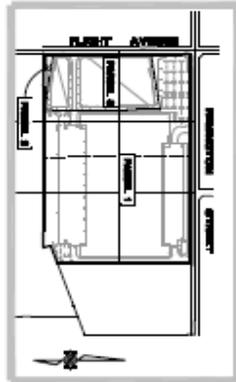


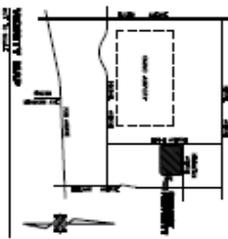
EXHIBIT C  
(Vesting Tentative Parcel Map)

VESTING TENTATIVE PARCEL MAP NO. 20561

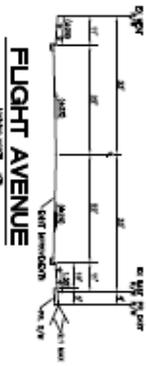
**PROPERTY LINE, REMINGTON AVENUE**  
 THE LINE BETWEEN THE PROPERTY OF SAID TRACT AND THE PROPERTY OF THE TRACT OF SAID MAP NO. 20561 IS THE CENTER LINE OF SAID AVENUE. THE PROPERTY OF SAID TRACT IS THE AREA TO THE NORTH OF SAID CENTER LINE AND THE PROPERTY OF SAID MAP NO. 20561 IS THE AREA TO THE SOUTH OF SAID CENTER LINE. THE CENTER LINE OF SAID AVENUE IS THE PROPERTY LINE OF SAID TRACT AND SAID MAP NO. 20561.



**NOTES**  
 1. THE PROPERTY OF SAID TRACT IS THE AREA TO THE NORTH OF THE CENTER LINE OF SAID AVENUE AND THE PROPERTY OF SAID MAP NO. 20561 IS THE AREA TO THE SOUTH OF SAID CENTER LINE.  
 2. THE CENTER LINE OF SAID AVENUE IS THE PROPERTY LINE OF SAID TRACT AND SAID MAP NO. 20561.  
 3. THE PROPERTY OF SAID TRACT IS THE AREA TO THE NORTH OF SAID CENTER LINE AND THE PROPERTY OF SAID MAP NO. 20561 IS THE AREA TO THE SOUTH OF SAID CENTER LINE.

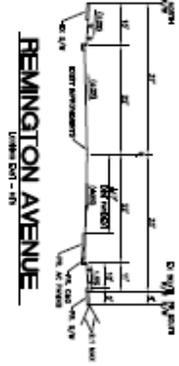


**LEGEND**  
 ...



**NOTES FOR REMINGTON AVENUE**  
 THE PROPERTY OF SAID TRACT IS THE AREA TO THE NORTH OF THE CENTER LINE OF SAID AVENUE AND THE PROPERTY OF SAID MAP NO. 20561 IS THE AREA TO THE SOUTH OF SAID CENTER LINE. THE CENTER LINE OF SAID AVENUE IS THE PROPERTY LINE OF SAID TRACT AND SAID MAP NO. 20561.

**NOTES FOR REMINGTON AVENUE**  
 THE PROPERTY OF SAID TRACT IS THE AREA TO THE NORTH OF THE CENTER LINE OF SAID AVENUE AND THE PROPERTY OF SAID MAP NO. 20561 IS THE AREA TO THE SOUTH OF SAID CENTER LINE. THE CENTER LINE OF SAID AVENUE IS THE PROPERTY LINE OF SAID TRACT AND SAID MAP NO. 20561.



**NOTES FOR REMINGTON AVENUE**  
 THE PROPERTY OF SAID TRACT IS THE AREA TO THE NORTH OF THE CENTER LINE OF SAID AVENUE AND THE PROPERTY OF SAID MAP NO. 20561 IS THE AREA TO THE SOUTH OF SAID CENTER LINE. THE CENTER LINE OF SAID AVENUE IS THE PROPERTY LINE OF SAID TRACT AND SAID MAP NO. 20561.

**NOTES FOR REMINGTON AVENUE**  
 THE PROPERTY OF SAID TRACT IS THE AREA TO THE NORTH OF THE CENTER LINE OF SAID AVENUE AND THE PROPERTY OF SAID MAP NO. 20561 IS THE AREA TO THE SOUTH OF SAID CENTER LINE. THE CENTER LINE OF SAID AVENUE IS THE PROPERTY LINE OF SAID TRACT AND SAID MAP NO. 20561.

**CONTRACTOR**  
 ...

**RECORDING INFORMATION**  
 ...

**SEAL**  
 ...

**DATE**  
 ...



EXHIBIT D  
(Common Facilities Plan)

