

RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:

City of Chino
City Clerk
P.O. Box 667
Chino, CA 91708

Exempt from recording fees according to
Government Code Section No. 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

COVENANT AGREEMENT TO ANNEX AND FOR SANITARY SEWER SERVICE

This Covenant Agreement ("**Agreement**") is made this ____ day of _____, 2025, by and between the City of Chino, a municipal corporation, hereinafter referred to as "**City**", and Moses Gutierrez hereinafter referred to as "**Owner**."

RECITALS

A. Owner owns that certain real property located at 13140 Roswell Avenue, in the County of San Bernardino, State of California, and more particularly described in Exhibit "A" attached hereto ("**Property**").

B. The Property is outside of City's territorial boundaries but within City's Sphere of Influence.

C. Owner has requested permission to connect the Property, and existing and/or proposed improvements on the Property, to the City's sanitary sewer system ("**Sewer**").

D. City is willing to allow Owner to connect the Property to the Sewer on the condition that Owner (i) enter into an irrevocable agreement to annex the Property to the City at such time as the City determines a sufficient number of parcels are assembled for annexation and the number of parcels or area qualifies for annexation in accordance with the Local Agency Formation Commission (LAFCO) policy pertaining to such annexations, and (ii) that Owner agrees to develop the Property in accordance with the City's General Plan and in conformance with all City codes and standards pertaining to the Sewer.

E. As required by Government Code Section 56133, the City has requested and received approval from the Local Agency Formation Commission (LAFCO) of San Bernardino County ("**LAFCO**") to provide Sewer service to the Property.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are incorporated herein by reference.
2. **Effective Date; Duration.** This Agreement shall be effective ("**Effective Date**") on the date it is recorded in the Official Records of San Bernardino County ("**Official Records**") and shall continue in full force and effect until terminated in accordance with Section 7 below. Owner shall execute and acknowledge this Agreement and deliver it to City for execution after which City shall have it recorded in the Official Records and send a recorded copy to Owner.
3. **Owner's Representations and Warranties.** Owner represents and warrants to the City that, as of the Effective Date, Owner is the fee owner of the Property, that there are no other owners of the Property other than those listed in this Agreement, and that Owner has authority to execute this Agreement which shall be binding on the Property.
4. **Covenants, Restrictions and Obligations.** Owner covenants and agrees as follows:
 - (a) **Annexation.**
 - (i) At such time as the City decides to seek annexation of the Property to the City ("**Annexation**"), in the City's sole discretion, Owner shall consent to the Annexation, shall fully cooperate with and provide all necessary assistance to the City during the Annexation process, and shall take all actions required to effectuate the Annexation. Owner waives all rights to protest or otherwise oppose the Annexation of the Property to the City of Chino. Specifically, Owner shall not present any written or oral protest of or objection to Annexation to LAFCO, and shall not object (either orally or in writing) to any proposal by LAFCO to waive protest proceedings concerning the Annexation, whether at a public hearing or otherwise.
 - (ii) Additionally, Owner shall pay all fees and costs, at the time that they become due and payable, as would ordinarily be charged to an Owner whose property is being considered for annexation or is annexed to the City, if any.
 - (b) **Development of Property.** Upon and after connecting the Property to the Sewer, Owner shall use and develop the Property only in a manner consistent with the permitted use(s) for the Property as show in the Land Use Element of the City's General Plan ("**General Plan**"), in addition to any other land use and development standards imposed by the County of San Bernardino. Prior to connecting to and receiving Sewer service, Owner shall provide the City with sufficient information and documentation, including plans, drawings, and specifications, if necessary, to demonstrate to the City's reasonable satisfaction that the existing or proposed use of the Property is consistent with the General Plan. Notwithstanding any other provision of this Agreement, a current or proposed use that is not consistent with the General Plan will not be permitted to connect to the Sewer.

(c) **Sewer Connection.** Owner shall (i) pay all fees, charges, and deposits required by the City for connection to and use of the Sewer including but not limited to fees for Sewer Maintenance and IEUA Sewage Treatment; (ii) shall complete all improvements required to extend the Sewer to the Property, in accordance with City standards (as determined by the City Engineer), at Owner's sole expense; and (iii) shall comply with all City codes and standards regarding use of the Sewer, including but not limited to, discharge regulations.

5. **Extension of Sewer Service.** City agrees to allow the Property to connect to the Sewer, subject to Owner's compliance with the terms of this Agreement and subject to any conditions imposed by LAFCO in its approval of City's request to extend Sewer service to the Property, if any, which are incorporated herein.

6. **Runs with the Land.** This Agreement shall run with and burden the Property and all future owners, tenants, and occupants of the Property, and shall run in favor of the City in gross as a covenant and equitable servitude and shall benefit all real property owned by the City from time to time.

7. **Release of Covenant.** Provided Owner is not in default of this Agreement, Owner may request that this Agreement be released by sending written notice to City requesting the release after the Property has been annexed to the City of Chino. Upon confirmation of compliance with the foregoing to the reasonable satisfaction of the City, City shall execute a release in a form approved by the City Attorney, which shall be executed and acknowledged by the City and recorded in the Official Records. The release may be executed by the City Manager.

8. **Violations; Remedies.**

(a) **Breach of Annexation Covenant.**

(i) Owner's breach of Section 4(a)(i) of this Agreement will cause substantial injury to the City, including but not limited to delaying and potentially preventing City's ability to annex the Property and other properties to the City, which is the City's primary aim and intent in entering into this Agreement. Since the determination of actual damages caused by a breach of Section 4(a)(i) would be difficult or impractical to determine, City and Owner agree that if Owner breaches Section 4(a)(i) either by making a protest or objection as described in Section 4(a)(i) or refusing to take any actions required to effectuate the Annexation, Owner shall be liable for and shall pay to the City the sum of Ten Thousand Dollars (\$10,000), and shall also reimburse the City for all costs (including legal fees) incurred by the City as a result of Owner's breach, all of which shall be due upon demand by the City, and shall be due whether or not Owner's breach prevents Annexation. City may also seek any other remedy for such breach available under law.

(ii) If Owner refuses or fails to timely make any payment described in Section 4(a)(ii), Owner authorizes City to make such payment on Owner's behalf and Owner shall reimburse City for such payment within (30) days of a written demand by the City.

(b) **Breach of Sewer Regulations.** If the City believes Owner has violated Section 4(c) of this Agreement, City may provide written notice of breach and demand that Owner

remedy the breach within thirty (30) days of receipt of the notice. If Owner fails to remedy the breach in the specified time period and provide proof thereof to the reasonable satisfaction of the City, Owner shall be liable for and shall pay to the City One Hundred Dollars (\$100.00) per day until the breach is cured to the City's reasonable satisfaction.

(c) **Rights and Remedies are Cumulative.** The rights and remedies of the City listed in this Section 8 are cumulative and the exercise by City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by Owner.

(d) **Lien.** If any amount due to the City under this Section 8 is not paid within thirty (30) days of a written demand by the City, City shall have the right to record a lien against the Property for such amount.

9. **Amendment or Modification.** This Agreement may not be amended or modified except (i) in writing executed by the then current owner(s) of the Property and the City, and (ii) recorded in the Official Records.

10. **Notices.** Any notice to be given under this Agreement shall be given by personal delivery or by depositing the same in the United States Mail, certified or registered, postage prepaid, at the following addresses:

City: City of Chino
13220 Central Avenue
Chino, CA 91710
Attn: Director of Development Services

With Copy to: City of Chino
13220 Central Avenue
Chino, CA 91710
Attn: City Attorney

Owner: Moses Gutierrez
13140 Roswell Avenue
Chino, CA 91710

Any notice delivered personally shall be effective upon delivery. Any notice given by mail as above provided shall be effective forty-eight (48) hours after deposit in the mail. Any party may change address for notice by giving written notice of such change to the other party.

11. **Miscellaneous.**

(a) **Severability.** If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

(b) **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California and any legal action shall be brought in a court of competent jurisdiction in San Bernardino County.

(c) **Attorney's Fees.** In the event of any litigation or other legal proceeding arising from this Agreement, the prevailing party will be entitled to recover, in addition to any other relief awarded or granted, its reasonable costs and expenses, including attorney's fees, incurred in the proceeding.

(d) **Final Agreement.** This Agreement contains the entire understanding and agreement with respect to the subject matter of this Agreement and all prior or contemporaneous documents, communications, understandings, representations, and statements shall be of no force or effect.

(e) **Construction.** This Agreement shall be construed according to its fair meaning as if prepared by all parties to this Agreement. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

(f) **No Waiver.** The failure to enforce any term, covenant, or condition of this Agreement shall not be construed as a waiver of the right to enforce this, or any other, term, covenant, or condition of this Agreement.

(g) **Counterparts.** This Agreement may be executed in any number of counterparts each of which shall be an original but all of which shall constitute one and the same document.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective officials thereunto duly authorized.

CITY:

CITY OF CHINO, a municipal corporation

Dr. Linda Reich, City Manager

ATTEST:

Natalie Gonzaga, City Clerk

**APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP**

Fred Galante, City Attorney

APPROVED AS TO CONTENT:

Hye Jin Lee
Director of Public Works

OWNER:

By: _____

Name: Moses Gutierrez

[OWNER’S SIGNATURE SHALL BE NOTARIZED]

EXHIBIT A

PROPERTY DESCRIPTION

THAT CERTAIN REAL PROPERTY IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, LEGALLY DESCRIBED AS FOLLOWS:

LOT 84 OF TRACT NO. 3200, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 42, PAGES 91 AND 92 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN:1019-262-14

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2025 before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

SEAL:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

In _____, 2025 before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

SEAL: