

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Rialto
Development Services Department
Attn. John Dutrey
150 S. Palm Ave.
Rialto, CA 92376

(FOR RECORDERS USE ONLY)

Pursuant to Government Code Section 27383, this document is being recorded as a benefit to the City of Rialto and recording fees shall not apply.

NO DOCUMENTARY STAMPS NEEDED

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR DEFERRAL OF
INSTALLATION OF STREET IMPROVEMENTS, LANDSCAPING, AND TUBULAR FENCING
UPON NOTICE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR DEFERRAL OF INSTALLATION OF STREET IMPROVEMENTS, LANDSCAPING, AND TUBULAR FENCING UPON NOTICE, (the "Declaration"), is made and entered into, to be effective this __ day of August, 2018, by and between the **CITY OF RIALTO**, a California municipal corporation (hereinafter referred to as "City"), and **BOB ZADINA TRUCKING, INC.** (hereinafter referred to as "Declarant"). Declarant is the owner of the Property (defined below). City and Declarant are sometimes hereinafter individually referred to as "Party" and are hereinafter collectively referred to as the "Parties".

RECITALS

- A. Declarant is the owner of that certain real property located in the City of Rialto, San Bernardino County, State of California, commonly known as 2010 Stonehurst Drive, Rialto, California 92376, more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference, and also identified by County Assessor Parcel Number ("APN") 1133-081-10, and 1133-061-04 (the "Property").
- B. The City has fee or easement interests in various streets, sidewalks, and other right-of-way property within the City and is responsible for the planning and development of land within the City in such a manner as to provide for the health, safety, and welfare of the residents of the City. Specifically, Stonehurst Drive is an east-west right-of-way designated as a local street with a 60 foot right-of-way, while North Alder Avenue is a north-south right-of-way designated as a major arterial with a 120 foot right-of-way, as shown on the City's General Plan
- C. Declarant desires to obtain building permits and other discretionary City approvals (the "City Approval") to permit Mobile Mini, Inc. ("Tenant"), the tenant on the Property, to construct certain on-site improvements upon the Property, including onsite utilities, a paved parking lot and a maintenance canopy (collectively, the "Tenant Improvements"). In exchange for the City Approval, Section 11.04.240 of the Rialto Municipal Code requires as a condition precedent to the City Approval, that Declarant (or Tenant) dedicate the southerly portions of

the Property, which are designated on the City's General Plan as Stonehurst Drive and North Alder Avenue, respectively, as more particularly described and depicted on **Exhibit "B"** (collectively, the "Public Parcels") and construct certain improvements on the Property and/or the Public Parcel, specifically: (1) half width street improvements across the Property frontage (740 linear feet); (2) certain landscaping (approximately 35,200 square feet); and (3) tubular fencing (approximately 840 linear feet), in the locations shown on **Exhibit "C"** attached hereto and incorporated herein by reference (the improvement described in subsections (1) – (3) above are collectively referred to herein as the "Stonehurst Improvements").

- D. Declarant desires to defer the construction of the Stonehurst Improvements, pursuant to Section 11.04.245, subsection B of the Rialto Municipal Code, and the Public Works Director/City Engineer has determined that the public health, safety, and welfare will not be adversely affected by a deferral of the construction of the Improvements can be deferred on the terms more particularly set forth herein.

NOW THEREFORE, the Declarant declares, covenants and agrees, by and for itself, its heirs, executors and assigns, and all persons claiming under or through it that if the Property shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the covenants and restrictions hereinafter set forth, which covenants are established expressly and exclusively for the use and benefit of the City and the Public Parcel.

1.0 Covenants, Conditions and Restrictions.

1.1 Dedication of Right-of-Way. Prior to the issuance of a certificate of occupancy for the Tenant Improvements, Declarant shall deliver an executed irrevocable offer of dedication to the City of its fee interest in the required right-of-way on Stonehurst Drive for the half-width improvements [being thirty-two feet (32') in width] described in Recital B(1) above, such offer of dedication to be in a form approved by the City Attorney. Until the City exercises its entitlement to construct or cause the construction of Stonehurst Drive in accordance with the terms of this Declaration, Declarant may use the right-of-way for purposes authorized by the City.

1.2 Lot Merger. Prior to the issuance of a certificate of occupancy for the Tenant Improvements, Declarant shall deliver such executed documentation, in recordable form, as approved by the City Attorney, to cause the merger of APN 1133-081-10 and APN 1133-061-04.

1.3 Conveyance of Laurel Avenue Landlocked Property. Promptly following Declarant's delivery of the offer of dedication and the lot merger documentation referenced in Section 1.1 and 1.2 above and Declarant's delivery of a legal description for the Laurel Avenue Landlocked Property (defined below), the City will grant to Declarant, and will deliver to Declarant such documents as reasonably necessary and in a form approved by the City Attorney to convey to Declarant, fee simple title to that certain thirty (30) foot by seventy-nine (79) foot area of landlocked land along Laurel Avenue (the "Laurel Avenue Landlocked Property"), free and clear of any public access easements across such property.

1.4 Delay; Construction of Landscaping, Tubular Fencing, and Street Improvements on Stonehurst Drive. In connection with this Declaration, and in connection with the development and/or improvement to the Property, the City agrees to allow the Declarant, and his/her successors and assigns, to delay the making, constructing, installing and providing for the Stonehurst Improvements. If at any time after the Declarant executes this Declaration, one of the following conditions has occurred, then the City shall notify Declarant in writing that Declarant

must commence construction of, or enter into a development agreement with the City of Rialto for construction of, the Improvements (the "Stonehurst Notice"):

- (i) the City obtains right-of-way dedications from the owners of the following twelve (12) APN 1133-071-01, 1133-071-02, 1133-071-04, 1133-071-08, 1133-071-09, 1133-071-10, 1133-081-02, 1133-081-03, 1133-081-05, 1133-081-06, 1133-081-07, and 1133-081-08 along Stonehurst Drive west of Locust Avenue, such that a public street may be constructed to the full width of a collector street per the City's standards along the full length of the parcels listed above (collectively, the "Stonehurst Street Improvements") and construction of such Stonehurst Street Improvements has commenced or is set to commence within ninety (90) days, or
- (ii) the City has acquired right-of-way, full project funding (through separate agreements with the property owners or through the City's general fund), and is prepared to proceed with a public improvement project that will cause construction of the entirety of the Stonehurst Street Improvements, which construction has commenced or is set to commence within ninety (90) days.

Within one hundred and twenty (120) days from the date of the Stonehurst Notice, Declarant shall, at its sole cost and expense, prepare construction drawings and apply for all necessary permits and approvals required by the City to construct the Stonehurst Street Improvements. Within sixty (60) days after receipt of all necessary permits and approvals, Declarant shall, at its sole cost and expense, commence construction of the Stonehurst Street Improvements. The construction of the Stonehurst Street Improvements shall be completed in accordance with all laws, ordinances, and regulations of the City and any other governmental entity with jurisdiction in effect at the time construction is commenced. Declarant shall complete the construction of the Stonehurst Street Improvements no later than one year (365 days) after the date of the Stonehurst Notice. Alternatively, Declarant shall reimburse the City for its actual costs of constructing the Stonehurst Street Improvements within 180 days of the Stonehurst Notice. If the City elects to construct the Stonehurst Street Improvements pursuant to Section 1.4 below, then Declarant shall be relieved of responsibility for construction of the Stonehurst Street Improvements, other than for payment of such costs as provided above, but shall complete the balance of the Improvements within the time frames set forth above.

1.2 Dedication of Improvements. Upon the completion of the construction of the Improvements and final inspection by the City, Declarant shall irrevocably offer to dedicate the Stonehurst Street Improvements to the City in a form approved by the City Attorney

1.3 Maintenance of Improvements. Until the dedication of the Stonehurst Street Improvements is accepted by the City, Declarant shall maintain and repair or cause to be maintained and repaired the Stonehurst Street Improvements in a first class condition and repair, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction, at Declarant's sole cost and expense.

1.4 Right of City to Construct Stonehurst Street Improvements. The City may, at its sole discretion, elect to construct the Stonehurst Street Improvements, either alone or as part of a larger project, through the establishment of an improvement district, assessment district, benefit area, or any other lawful plan or procedure for the construction and financing of public improvements (the "District"). If the City elects to establish a District, the City shall permit

Declarant, at Declarant's option, to review the District terms and to provide cost saving ideas and to require a minimum of three (3) competitive bids for the Stonehurst Street Improvements, following which the Declarant hereby agrees to join the District and pay its proportionate share of the cost of constructing the Stonehurst Street Improvements. Further, Declarant hereby waives its right to protest the formation of the District or the imposition of an assessment under the Special Assessment Investigation, Limitation and Majority Protest Act of 1931, California Streets and Highways Code Section 2800 *et seq.* or any other procedure for the establishment of a District and/or the implementation of an assessment.

1.5 Insurance. Prior to commencement of construction of the Stonehurst Street Improvements, the Declarant shall provide proof of insurance to the City as set forth in the Exhibit "D" in a form reasonably acceptable to the Public Works Director/City Engineer. In addition, to the insurance requirements set forth in Exhibit "D", the Declarant shall ensure the City, its officers, officials, employment, representatives, agents and volunteers are named as additional insured on the Commercial General Liability Insurance and Auto Insurance Policies identified in Exhibit "D." The insurance policies identified in Exhibit "D" may be in the name of the Declarant or in the name of the general contractor that Property Owner(s) contracted with to construct the Improvements.

1.6 Prevailing Wages. The Declarant is aware of the requirements of California Labor Code Sections 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Sections 1600, *et seq.*, ("Prevailing Wage Laws"), which require (i) the payment of prevailing wage rates, (ii) all contractors and all subcontractors be registered with and pay the registration fee to the Department of Industrial Relations ("DIR"), (iii) the Declarant and/or any general contractor retained by Declarant to construct the Stonehurst Street Improvements be subject to the monitoring and enforcement by the DIR, and (iv) the performance of other requirements on "Public Works" and "Maintenance" projects. If the services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$25,000 or more, then the Declarant agrees to fully comply with such Prevailing Wage Laws. The Declarant or general contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the services available to interested parties upon request, and shall post copies at the Declarant's principal place of business and at the Stonehurst Street Improvements site. The Declarant shall defend, indemnify and hold harmless the City, its elected officials, officers, employees and agents from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

2.0 Enforcement.

2.1 Rights of City. In the event of any violation or threatened violation of any of the provisions of this Declaration, then in addition to, but not in lieu of, any of the rights or remedies the City may have to enforce the provisions hereof, the City shall have the right (i) to enforce the provisions hereof as a party hereto and as an owner of the Public Parcel, (ii) to withhold or revoke, after giving written notice of said violation, any building permits, occupancy permits, certificates of occupancy, business licenses and similar matters or approvals pertaining to the Property or any part thereof or interests therein as to the violating person or one threatening violation and (iii) to obtain from a court of competent jurisdiction an injunction against such violation or threatened violation.

2.2 Failure to Perform: Lien. If any owner of the Property defaults on the performance of any of their obligations hereunder, the City, its employees, contractors and agents may, at their sole

option, and after making reasonable demand of the owners of the Property that it cures said default, cure the default. In making a cure, the City shall give the owners of the Property, or their representative, notice in writing and at the address described at Section 4.5 below of the time and manner of said action and said action shall only be at such times and in such manner as reasonably necessary to carry out this Declaration. In such event, the owners of the Property shall reimburse the City for all costs and expenses related to the curing of said default plus interest at a rate of ten percent (10%) per annum commencing on the date that is thirty (30) days after the date notice thereof is given and ending on the date said sum is fully repaid. Any and all delinquent amounts, together with said interest, costs and reasonable attorney's fees shall be a personal obligation of the owners of the Property as well as a lien and charge, with power of sale, upon the Property. The City may bring an action at law against the owners of the Property to pay any such sums. The lien provided for in this Section may be recorded by the City as a Notice of Lien against the Property in the Office of the San Bernardino County Recorder, signed and acknowledged, which Notice of Lien shall contain a statement of the unpaid amount of costs and expenses. Such lien may be enforced and foreclosed in a -suit or action brought in any court of competent jurisdiction or in accordance with the provisions of Section 2924 of the California Civil Code applicable to the exercise of powers of sale for mortgages and deeds of trust, or in any other manner permitted by California law. Upon the timely curing of any default for which such lien was recorded, the City shall record an appropriate release of such lien, upon payment by the owner of the Property of a reasonable fee to cover the costs of preparing and recording such release, together with the payment of such other costs, including, without limitation, reasonable attorney's fees, court costs, interest or other fees which have been incurred.

2.3 Indemnification. To the furthest extent authorized by law, Declarant shall hold harmless, defend, and indemnify City and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses including attorney fees and litigation expenses arising out of the performance of the work. the Stonehurst Improvements, the Declaration, or operations described herein, caused in whole or in part by any negligent act or omission of the Declarant, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the City

3.0 Covenants to Run With the Land.

3.1 Covenants Running With the Land. This Declaration is designed to create equitable servitudes and covenants appurtenant to the Public Parcel and running with the Property. Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the covenants, conditions, restrictions and equitable servitudes of this Declaration, all of which are for the purposes of uniformly enhancing or protecting the value, attractiveness and desirability of the Property, including the Public Parcels. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth herein shall run with the Property and shall be binding upon all persons having any right, title or interest in the Property, or any part thereof, their heirs, successive owners and assigns; shall inure to the benefit of every portion of the Public Parcel and any interest therein; shall inure to the benefit of the City and its successors and assigns and successors in interest; shall be binding upon the Declarant, its successors and assigns and successors in interest; and may be enforced by the City.

3.2 Agreement among Declarants and City. In exchange for granting of the City Approval by the City, the Declarant hereby agrees to hold, sell and convey the Property subject to the

covenants, conditions, restrictions and reservations of this Declaration. Declarant also grants to the City the right and power to enforce the covenants, conditions, restrictions and reservations contained in this Declaration against the Declarant and all persons having any right, title or interest in the Property, or any part thereof, his heirs, successive owners and assigns.

4.0 Miscellaneous.

4.1 Term. The covenants, conditions and restrictions contained in this Declaration shall remain in effect until the Stonehurst Improvements are constructed and accepted by the City, unless otherwise terminated, by the City.

4.2 Modification. This Declaration may not be modified, terminated or rescinded, in whole or in part, except by a written instrument duly executed and acknowledged by the parties hereto, their successors or assigns and duly recorded in the Office of the County Recorder, San Bernardino County.

4.3 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of California.

4.4 Severability. The invalidity or inability to enforce any provision of this Declaration with respect to a particular party or set of circumstances shall not in any way affect the validity and enforceability of any other provision hereof, or the same provision when implied to another party or to a different set of circumstances.

Notices. Any notice to be given under this Declaration shall be given by personal delivery or by depositing the same in the United States Mail, certified or registered, postage prepaid, to the address set forth on the first page of this Declaration. 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. Notice shall be addressed as follows:

If to City: City of Rialto
 335 W. Rialto Ave.
 Rialto, CA 92376
 Attn: Public Works Director/City Engineer
 Tel: (909) 820-2525
 Fax: (909) 820-2527

If to Declarant: [NAME]
 Attn. [NAME]
 [ADDRESS]
 Tel:
 Fax:
 Email:

4.5

4.6 Attorney's Fees. In any action between the parties seeking enforcement of any of the terms and provisions of this Declaration, the prevailing party in such action shall be awarded, in addition to any damages, injunctive or other relief, its reasonable costs and expenses, including

attorney's fees.

4.7 Counterparts. This Declaration 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 have executed this Declaration to be effective as of the date first written above.

Declarant:

BOB ZADINA TRUCKING, INC.,
a California corporation

By: _____
Robert Zadina, President

City:

CITY OF RIALTO,
a California municipal corporation

By: _____

Name: _____

Title: _____

ATTEST:

By _____
Barbara McGee
City Clerk

APPROVED AS TO FORM:

By _____
Fred Galante, Esq.
City Attorney

ACKNOWLEDGEMENTS

STATE OF _____)
)
COUNTY OF _____) ss.

Before me, a notary public, on this day personally appeared _____, known to me to be the person whose name is subscribed to the forgoing document and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the document the person, or the entity upon behalf of which the person acted, executed the instrument.

Given under my hand and seal of office this ____ day of _____, 2018.

Notary Public

[SEAL]

STATE OF _____)
)
COUNTY OF _____) ss.

Before me, a notary public, on this day personally appeared _____, known to me to be the person whose name is subscribed to the forgoing document and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the document the person, or the entity upon behalf of which the person acted, executed the instrument.

Given under my hand and seal of office this ____ day of _____, 2018.

Notary Public

[SEAL]

Exhibit A

LEGAL DESCRIPTION:

PARCEL I:

PARCEL 3 OF PARCEL MAP NO. 9038, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 96 PAGE(S) 73 OF PARCEL MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA.

PARCEL II:

THAT PORTION OF THE SOUTH 660 FEET OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, THAT LIES EAST OF THE WEST LINE OF THE EAST 1319.36 FEET OF SAID SOUTH 660 FEET, AND NORTHERLY OF A STRAIGHT LINE WHICH BEARS NORTH 79°11'45" EAST FROM A POINT IN THE WEST LINE OF SAID NORTHWEST QUARTER THAT IS NORTH 01°05'10" WEST 270 FEET THEREON FROM THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER TO A POINT IN THE EAST LINE OF SAID NORTHWEST QUARTER THAT IS NORTH 0°54' WEST 749.78 FEET FROM THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER;

EXCEPTING AN UNDIVIDED 50% INTEREST IN AND TO ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS INCLUDING GEOTHERMAL RESOURCES LYING IN AND UNDER SAID LAND ABOVE DESCRIBED, OR PRODUCED AND SAVED THEREFROM; AND FURTHER EXCEPTING AND RESERVING TO GRANTOR THE SOLE AND EXCLUSIVE RIGHTS TO DRILL INTO, FROM AND THROUGH SAID LAND, AND ALL SURFACE EASEMENTS NECESSARY OR CONVENIENT TO PROSPECTING FOR, PRODUCING AND DEVELOPING OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS BY MEANS OF SLANT DRILLING OPERATIONS CONDUCTED FROM SURFACE LOCATIONS OUTSIDE OF SAID LAND, INTO OR THROUGH SAID LAND, TO PRODUCING INTERVALS EITHER WITHIN OR BEYOND SAID LAND; ALL SUBJECT, HOWEVER, TO THE CONDITION THAT, IN THE ENJOYMENT OF SAID RESERVED AND EXCEPTED RIGHTS AND INTERESTS, GRANTOR SHALL NOT ENTER UPON THE SURFACE OF SAID LAND OR INTO THE UPPER 300 FEET THEREOF MEASURED VERTICALLY FROM SAID SURFACE, AS RESERVED BY FIRST INTERSTATE BANK OF CALIFORNIA, AS TRUSTEE, BY DEED RECORDED FEBRUARY 4, 1988 AS INSTRUMENT NO. 88-34488 OF OFFICIAL RECORDS.

Exhibit B

LEGAL DESCRIPTIONS OF PUBLIC PARCELS

EXHIBIT “C”

STONEHURST IMPROVEMENTS

EXHIBIT "D"

INSURANCE REQUIREMENTS

The Declarant shall procure and maintain, at his/her/its/ their sole cost and expense, or shall require that the general contractor maintain in a form and content satisfactory to City, during the entire period associated with the construction of the Stonehurst Improvements, as determined by the Public Works Director/City Engineer, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Commercial General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.

(b) Workers Compensation Insurance. A policy of workers compensation insurance in such amount as will fully comply with the laws of the State of California.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Contractor and Subcontractors. The Declarant or the general contractor hired by the Declarant to construct the Stonehurst Improvements shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with the contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Moreover, the insurance policy must specify when the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. All of said policies of insurance shall provide the insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Declarant or contractor shall, prior to the cancellation date, submit new evidence of insurance. No work or services under the Declaration shall commence until the Declarant or contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.