

RECORDING REQUESTED
BY:

CITY OF SUNNYVALE

WHEN RECORDED MAIL
TO:

CITY OF SUNNYVALE

Fee Exempt: Government Code Section 27383

**ATTN: COMMUNITY
DEVELOPMENT
DEPARTMENT**

APN:

**MOBILEHOME PARK MEMORANDUM OF UNDERSTANDING
AND DECLARATION OF RESTRICTIVE COVENANTS**

THIS MOBILEHOME PARK MEMORANDUM OF UNDERSTANDING AND DECLARATION OF RESTRICTIVE COVENANTS (the "MOU ") is entered into as of _____, 2021 ("Effective Date") by and among the CITY OF SUNNYVALE (the "City"), a California chartered municipal corporation, and the owners ("Owners") of the mobile home parks ("Parks") identified on Exhibit A. Each individual Owner of a park will execute an identical version of the MOU. This copy of the MOU is executed by the Owner of that Park commonly known as:

[name of mobile home park ("**Park**")]

RECITALS

A. The City adopted a Housing Strategy in October 2020 that addressed a variety of housing issues confronting the City. The goal of the strategy is to identify potential improvements to existing housing programs and as well as approaches to increase the affordable housing stock and improve housing affordability in the City, including the preservation of mobile home parks as an important housing resource to the City.

B. Mobile homes account for 6.3% of the City's housing stock. Based on American Community Survey data, residents of mobile homes tend to have high homeownership rates while also having incomes that on average are significantly below the City average incomes suggesting that mobile homes provide a relatively affordable home ownership option.

C. It is uncommon for mobile homes, once placed in a mobile home park, to be moved due to the high moving costs and the lack of alternative sites. The immobility of

mobile homes coupled with the cost of purchasing the mobile home makes unexpected space rent increases particularly harmful to mobile home residents.

D. The City desires to protect the Homeowners from unreasonable space rent increases while at the same time recognizes the need for mobile home park Owners to receive a just and reasonable income sufficient to cover the operating costs and receive a reasonable return on investment.

E. The Housing Strategy identified as a priority strategy the negotiation of a memorandum of understanding/accord pursuant to which park owners would voluntarily regulate annual rent increases, rent increases upon sale of the mobile home, pass through of certain costs and other matters to provide certainty to homeowners and mobile home park owners. The memorandum of understanding/accord is an alternative to the City adopting a rent stabilization ordinance.

F. The City has facilitated discussions between the Owners and Homeowners to determine the terms of the MOU holding approximately fifteen meetings that included separate meetings with the Owners and the Homeowners as well as joint meetings with all stakeholders.

G. The Owners contend that as many as 80% of the mobile home spaces in Sunnyvale are subject to long term leases that extend beyond January 1, 2025 which under current Civil Code Section 798.17 would be exempt from any local rent stabilization ordinance until at least January 1, 2025.

H. Each Owner has independently established rents at its Park, including the rent each Owner charges following a change in tenancy at its Park. Once rented to a new tenant, all or most of the Owners have kept their rents at below market rates, especially those spaces that are occupied by long term residents. All or most of the Owners intended to increase those rents to market when the current resident moved out and a new tenant moved in.

I. The Owners contend that if a rent stabilization ordinance were enacted, some or all of the Owners would have the right to apply for a "Vega adjustment" to increase below market rents to reflect general market conditions and that the Owners would have a right to apply for individual rent increases as necessary to maintain a fair return on the Parks.

J. In order to avoid the negative consequences of a rent stabilization ordinance, including potential costly litigation and to maintain cordial relationships with their tenants, the Owners have agreed to attempt to negotiate a memorandum of understanding with the City that will (1) apply the provisions of this MOU to all existing tenants including amending the rent increase provisions in any existing long term lease to conform to the terms of this MOU; and (2) waive any right an Owner would have had under a rent stabilization ordinance to apply for a Vega adjustment or an individual rent increase to maintain a fair return.

K. This MOU: (1) is intended to operate as an alternative to a rent stabilization ordinance; (2) avoid excessive rent increases for the spaces in the Parks; and (3) is intended by the City to provide the Owners with the opportunity to receive a reasonable return on their investment in the parks.

L. The City and Owners intend that this MOU will govern the Parks and the rights of the Owners and Homeowners in those Parks (who are third party beneficiaries) during the Term, and provide protections and benefits to the Owners and Homeowners of those Parks. The real property comprising the above-named Park is set forth in Exhibit C and this MOU shall be recorded against that real property until such time as this Agreement expires or terminates.

M. The City and the Owners agree that these Recitals are for informational purposes only and that in the event of any future dispute between the City and one or more Owners, these Recitals shall not be binding. However, in the event of such a dispute, nothing herein shall preclude either the City or the Owner from presenting evidence to prove the existence of any fact in these Recitals.

AGREEMENT

NOW, THEREFORE, for the consideration of the mutual benefits, promises, and other valuable consideration identified herein, the receipt of which is hereby acknowledged, City and Owner agree as follows:

1. DEFINITIONS

- a. **"Anniversary Date"** means the calendar date of the last Base Rent increase for a Space at the Park prior to the Effective Date of this MOU. For example, if the Base Rent for a Space at the Park was last increased on December 1, 2020, the Anniversary Date for that Space during the term of this MOU will be December 1.
- b. **"Base Rent"** shall be the rent for each space in the Park occupied by a Homeowner exclusive of utilities and other separate itemized charges in effect pursuant to any lease or rental agreement between the Homeowner and the Owner as of the Effective Date of this MOU, as adjusted by any Base Rent Increase allowed under this MOU during the term of this MOU.
- c. **"Capital Improvement"** means any improvement other than one made for purposes of maintenance and repair completed after the Effective Date, which materially adds to the value of the Park, which primarily benefits the residents and which is permitted to be amortized over the useful life of the improvement under the U.S. Internal Revenue Code or under generally accepted accounting principles.
- d. **"Capital Replacement"** means replacement of a previous capital improvement which is completed after the Effective Date, which qualifies under the U.S. Internal Revenue Code and applicable regulations, as a capital

improvement and does not constitute maintenance and repair. Capital Replacements shall not include replacements of the gas or electric systems serving the Park but shall include replacements to the water and sewer systems.

e. **"CPI"** means the Consumer Price Index -All Urban Consumers for the San Francisco/Oakland/Hayward region, published by the United States Department of Labor, Bureau of Labor Statistics. If the 1982-84 base period or the CPI is changed during the term of this MOU, the CPI used shall be converted according to any conversion factor provided by the Bureau of Labor Statistics. If the CPI is discontinued then any successor Consumer Price Index of the United States Bureau of Labor Statistics, or successor agency thereto, which includes Santa Clara County shall be used, unless there is a successor index that includes City of Sunnyvale, in which case the successor index that includes the City of Sunnyvale shall be used.

f. **"Disaster Related Event"** shall mean a sudden event resulting from earthquake, fire, flood, or other natural occurrence over which the Owner has no reasonable control, and which was not caused by the Owner's acts or negligence.

g. **"Effective Date"** means the date of this MOU set forth on page 1.

h. **"Government Fees and Assessments"** shall mean any fee, assessment or other charge imposed by the City, the County of Santa Clara, the state or federal government upon the Park or the Space and shall include any monetary amounts assessed against the Owner for non-real estate (i.e., non-Property) taxes, fees, assessments, bonds, or bond-related costs required or mandated by any governmental body or agency, including but not limited to the City of Sunnyvale, the County of Santa Clara, the State of California or the United States of America.

i. **"Homeowner"** shall have the meaning set forth in Civil Code Section 798.9.

j. **"MRL"** means the California Mobilehome Residency Law, beginning with Section 798 of the California Civil Code.

k. **"Mobile Home"** shall have the meaning set forth in Civil Code Section 798.3.

l. **"Prime Rate"** shall mean the prime rate charged by Bank of America, NT & SA to its most credit worthy borrowers.

m. **"Property Taxes"** shall mean any and all general and special real estate taxes and personal property taxes which are levied or assessed against the Park. Property taxes shall include any tax or excise on rents, or any other tax, however described, which is levied or assessed against the Park as a direct substitution, in whole or in part, for any real property taxes.

n. **"Space"** shall mean a space or lot in the Park rented to a Homeowner and upon which is located a Mobile Home.

o. **"Transfer"** means any transfer of legal title or ownership to a Mobile Home except for the following:

(1) The transfer of a Mobile Home to the surviving joint tenant by devise, descent, or operations of law on the death of the joint tenant;

(2) A transfer of the Mobile Home to the spouse or domestic partner of the Homeowner;

(3) A transfer of the Mobile Home resulting from a decree of dissolution of marriage, legal separation or from an incidental property settlement agreement by which the spouse becomes the owner of the Mobile Home;

(4) A transfer to an inter vivos trust in which Homeowner is and remains the trustee or beneficiary and occupant of the Mobile Home; and

(5) A transfer to a person who does not qualify as a "homeowner" for purposes of the MRL and who does not have, and/or will not receive a "tenancy" in the Park for purposes of the MRL.

2. SUPPLEMENTAL LEASE AGREEMENT.

a. Obligation to Make Offer. Except as provided below, Owner shall, within thirty (30) days of the Effective Date of the MOU, offer all existing Homeowners an amendment to their existing lease or rental agreement consistent with the terms of this MOU and substantially in the form set forth in the Model Supplemental Lease Agreement Addendum attached hereto as Exhibit B and made a part hereof by this reference, which upon acceptance by the Homeowner will amend any existing lease or rental agreement covering the Homeowner's space in the Park. If the Homeowner fails to sign the Model Supplemental Lease Agreement Addendum within sixty (60) days after the date upon which a copy is delivered by the Owner, the Owner may continue to enforce the terms of any existing rental agreement or lease for the Space. Owner shall deliver with the Model Supplemental Lease Agreement Addendum any informational material prepared by and provided to the Owner by the City explaining the terms of this MOU or the Model Supplemental Lease Agreement Addendum provided such materials are clearly identified as being prepared by the City and do not constitute any representation of the Owner.

b. During the term of this MOU a rental agreement containing terms consistent with the Model Supplemental Lease Agreement Addendum shall be offered to all existing Homeowners upon expiration of the existing lease or

rental agreement and to all prospective Homeowners prior to occupying a Space in the Park.

c. Exceptions to Obligation to Make Offer. Park owned Mobile Homes are exempt from this MOU. Accordingly, Owner is not obligated to offer a Model Supplemental Lease Agreement Addendum for any tenancy of a Mobile Home owned by the Owner.

d. Alternative Lease Forms Permitted. In addition to and along with the Model Supplemental Lease Agreement Addendum, the Owner may offer any alternative form of rental agreement permitted under the MRL, provided that (1) the Owner provides a written plain language summary of this MOU prepared by the City that explains the terms of this MOU, (2) the alternative lease agreement contains the same Homeowner protections included in the Model Supplemental Lease Agreement Addendum; and (3) the Owner allows the Homeowner at least 72 hours, or any longer period as may be required by law, to compare the terms of the Model Supplemental Lease Agreement Addendum and the terms of this MOU with any alternative form of rental agreement, and to accept or reject the Model Supplemental Lease Agreement Addendum. Owner shall provide the City with a copy of any alternative lease agreement no later than ten (10) days after receiving a written request from the City to do so.

3. ANNUAL BASE RENT INCREASE.

On the first Anniversary Date during the term of this Agreement, and on each and every Anniversary Date thereafter, the Owner may increase the then existing Base Rent by the greater of seventy five percent (75%) of the increase in the CPI, or three percent (3%), using the most recently published CPI data for the twelve month period prior to the notice of rent increase ("**Annual Base Rent Increase**").

4. INCREASE TO BASE RENT UPON TRANSFER.

Owner shall only increase the Base Rent for any Space upon Transfer of the Mobile Home by the Homeowner as set forth below:

a. If the Transfer occurs on or before the first anniversary of the Effective Date of the MOU, the Base Rent may not be increased more than five percent (5%) above the Base Rent in effect immediately prior to the effective date of the Transfer.

b. If the Transfer occurs after the first anniversary of the Effective Date but before the second anniversary of the Effective Date, the Base Rent may not be increased more than ten percent (10%) above the Base Rent in effect immediately prior to the effective date of the Transfer.

c. If the Transfer occurs on or after the second anniversary of the Effective Date of the MOU, the Base Rent may not be increased more than fifteen percent (15%) above the Base Rent in effect immediately prior to the effective date of the Transfer.

d. Following the second anniversary of the Effective Date of the MOU, if a Mobile Home is Transferred more than once in a twenty-four month period, Owner may only increase the then existing Base Rent upon the second Transfer in the twenty-four month period by the amount which when added to the increase imposed at the time of the immediately prior Transfer would not result in a cumulative Base Rent increase of more than fifteen percent (15%) for the Space.

e. Notwithstanding anything set forth in this Section 4, the Owner of the Plaza del Rey Mobile Home Park agrees that in no event will any Homeowner's Base Rent be increased upon a Transfer to an amount that exceeds Two Thousand Two Hundred Fifty Dollars (\$2,250) as that amount is increased each year during the Term of this MOU by the Annual Base Rent Increase amount. Nothing herein shall require the Owner of the Plaza del Rey Mobile Home Park to reduce any Base Rent that may exceed the amount set forth above.

f. Notwithstanding anything set forth in this Section 4, Owner shall not be subject to any limitation on Base Rent increases in the event of a Transfer that is the result of (1) a true vacancy, where the Homeowner voluntarily surrenders possession of the Space and removes the Mobile Home from the Park; (2) the Mobile Home being abandoned in accordance with Civil Code Section 798.61; (3) the Homeowner being evicted as evidenced by entry of a judgment or a stipulation and order in an unlawful detainer proceeding; (4) the Mobile Home being sold to a dealer as defined in Health and Safety Code Section 18002.6; or (5) the Mobile Home being repossessed by a legal owner or lien holder.

5. PASS THROUGH ADJUSTMENTS.

In addition to the increases in Base Rent authorized in Sections 3 and 4, Owner may pass through to the Homeowner the following costs ("**Pass Throughs**").

a. Government Fees and Assessments. If the cost of Government Fees and Assessments exceeds the cost for any such Government Fees and Assessments from the prior fiscal tax year by more than the annual CPI increase, the Owner may pass through such increase to the Homeowners. The amount of any Government Fees and Assessments Pass Through shall be the total annual amount of such increase in the Government Fees and Assessments divided by twelve (12) and then divided by the total number of spaces in the Park.

b. Capital Improvements. The Owner may pass through to the Homeowners, the amortized cost of any Capital Improvement, provided that such Capital

Improvement has been approved by a majority of the residents of the Park by a written ballot with each Space having one vote. The Owner shall provide the residents of the Park with at least thirty (30) days to consider the approval of the Capital Improvement. Any written ballot shall include the estimated cost of the Capital Improvement Pass Through for each resident. The amount of any Capital Improvement Pass Through shall be determined by amortizing the actual cost of the Capital Improvement plus interest at the actual rate of interest paid by the Owner for any financing associated with the Capital Improvement over the applicable amortization schedule of the U.S. Internal Revenue Code. The annual amortized amount determined in accordance with this subsection shall be divided by twelve (12) and then divided equally among all spaces in the Park. Any Capital Improvement Pass Through shall be eliminated as a rent obligation at the conclusion of the amortization period.

c. Capital Replacements. The Owner may pass through to the Homeowners the amortized cost of any Capital Replacement in accordance with the following.

(1) Prior to implementing any Capital Replacement Pass Through, except a Capital Replacement necessitated by an emergency, the Owner must: (A) provide the Homeowners with advance notice of the proposed Capital Replacement and an opportunity to comment on the need, design, and conduct of the work; (B) solicit at least two bids for the Capital Replacement work and (C) award the contract to the lowest bidder or provide an explanation to any Homeowner so requesting why the contractor without the lowest bid was selected.

(2) The amount of any Capital Replacement Pass Through, including a Capital Replacement necessitated by an emergency, shall be determined by subtracting from the actual cost of the Capital Replacement any insurance proceeds, rebates, tax credits or warranty payments received by the Owner defraying the costs of the Capital Replacement and amortizing the remaining cost of the Capital Replacement plus interest at either the actual rate of interest paid by the Owner for any financing associated with the Capital Replacement or the Prime Rate plus two percent (2%) over the applicable amortization schedule of the U.S. Internal Revenue Code. The annual amortized amount determined in accordance with this subsection shall be divided by twelve (12) and then divided equally among all spaces in the Park.

(3) Any Capital Replacement Pass Through shall be listed separately from the base rent on monthly Space rent billings and shall be eliminated as a rent obligation at the conclusion of the amortization period.

(4) Notwithstanding anything set forth above in this subsection (c), Owner shall be allowed a Capital Replacement Pass Through for Capital Replacements that were commenced and completed prior to the Effective Date, as long as (i) the Capital Replacement was completed no earlier than

six (6) months prior to the Effective Date; (ii) the cost of the Capital Replacement has not already been passed through to the Homeowners; and (iii) the Capital Replacement Pass Through amount conforms to the requirements of subsection (c)(2) above. Owner shall list in Exhibit D any Capital Replacements that were completed prior to the Effective Date that meet the criteria of this Section 5.c(4).

d. Property Tax Increases. The Owner may pass through to the Homeowners the amount by which Property Taxes increase in any given fiscal tax year by more than two percent (2%) over and above the prior fiscal tax year Property Taxes, subject to the following.

(1) A Property Tax Pass Through may be imposed in the amount of any Property Tax increase that exceeds two percent (2%) in a given fiscal tax year that is caused by an involuntary Property Tax reassessment including but not limited to a death of a person holding an ownership interest in the Park or as the result of any new general or special real estate property tax imposed by the City of Sunnyvale, the County of Santa Clara or the State of California.

(2) If the Park is sold to a third party pursuant to an arms-length transaction, the Owner may pass through to the Homeowners the increase in Property Taxes resulting from a reassessment of the Park upon such sale to the extent that such increase exceeds two percent (2%) in a given fiscal tax year, provided, however, the total amount of any Property Tax Pass Through resulting from a sale shall be phased in over five (5) years with equal increases each year until the full amount of the Property Tax Pass Through has been implemented.

(3) Owner shall not be entitled to any Property Tax Pass Through due to an increase in Property Taxes which is triggered solely by or based upon a voluntary internal reorganization resulting in a "change of ownership" or a transfer of a joint venture or partnership interest among the current persons holding an ownership interest that triggers a reassessment of the Property or the Park.

(4) All Property Tax Pass Throughs shall be divided by twelve (12) and then shall be allocated equally among all spaces in the Park.

(5) Notwithstanding anything in this MOU to the contrary, the Owner of Plaza del Rey has the right to pass through the increase in its Property Taxes that occurred prior to the Effective Date in accordance with the terms of its existing leases, without a five-year phase in. However, the Owner of Plaza Del Rey agrees that the Property Tax increase that occurred prior to the Effective Date will be phased in over five (5) years, as set forth in paragraph 5.d(2) above.

e. Emergency or Disaster Related Costs. Owner may pass through to the Homeowners any costs to repair damage to the Park arising from any Disaster Related Event in excess of the initial fifty thousand dollars (\$50,000) of such costs, provided such costs are amortized in accordance with the procedure for amortizing Capital Replacements under paragraph 5.c above and such costs are divided equally among all spaces in the Park. Any Disaster Related Event costs passed through to the Homeowners shall be net of any insurance proceeds or disaster grants or assistance received by the Owner for such costs. Owner shall not be entitled to pass through to the Homeowners any Disaster Related Event costs unless the Owner has continued to maintain throughout the term of this MOU the types and amounts of property insurance in effect on the Effective Date, if those types and amounts of property insurance are commercially available throughout the term of this MOU, at the same price in effect on the Effective Date, adjusted each year by the increase in the CPI. If those types and amounts of property insurance are not commercially available throughout the term of this MOU, at the above described price, Owner reserves the right, in its sole and absolute discretion, to purchase whatever property insurance it deems reasonable for the Park. Owner shall disclose Owner's property insurance coverage to any Homeowner so requesting, provided however, no Homeowner shall be entitled to such disclosure more than once in any twelve-month period.

f. Requirements applicable to all Pass Throughs.

(1) No Pass Through shall be implemented unless Owner gives the Homeowners at least ninety (90) days written notice of the Pass Through including documents evidencing the costs being passed through to the Homeowners and the calculations that serve as the basis for the Pass Through.

(2) Pass Throughs shall be separately itemized in the monthly space rent bills.

(3) Pass Throughs shall be considered the same as rent for purposes of the MRL, however, Pass Throughs shall not be deemed part of Base Rent for purposes of calculating the Annual Base Rent Increase pursuant to Section 3 or the increase in Base Rent upon Transfer pursuant to Section 4 above.

6. SAFETY NET PROGRAMS.

Owner agrees to implement a safety net program within the Park designed to provide relief from Annual Base Rent Increases and Pass Throughs to Homeowners that due to financial circumstances are unable to pay the increased Base Rent or Pass Throughs. The safety net program shall be summarized in a written document and at a minimum provide relief from Annual Base Rent Increases and Pass Throughs to Homeowners pursuant to the following terms and conditions:

- a. Any Homeowners with a household income at or below \$34,480 per year shall be eligible, provided household assets are at or below \$150,000, excluding the Mobile Home, furniture, and vehicles;
- b. Qualifying Homeowners would receive a rent credit for the amount of any rent increase that causes their monthly rent including all Pass Throughs to exceed one third of their household income;
- c. Qualifying Homeowners would not be required to reimburse the Owner for any rent credits received, although the qualifying Homeowner's Base Rent would be adjusted upward to account for all allowable increases under the MOU;
- d. The \$34,480 household income and \$150,000 asset amounts will be adjusted by the Annual Base Rent Increase percentage;
- e. Owner will be responsible for managing its safety net program. City shall have no responsibility for and right to manage any safety net program established by an Owner;
- f. Qualifying Homeowners must have resided at the Park for at least five (5) years to be eligible for the safety net program and, and must reapply each year they remain in the program;
- g. Participation in the safety net program can be limited for each qualifying Homeowner household at Owner's reasonable, good faith discretion, but must be provided for a minimum two (2)-year period;
- h. The number of qualifying tenants can be limited to two percent (2%) of the total number of Spaces at the Park;
- i. Items a through h represent minimum requirements, to assist the neediest Homeowners at each park. Owner is free to establish more generous guidelines but cannot be required to do so.

Owner shall provide the City with information on the Owner's safety net program at the City's request. Nothing herein shall prevent Owner from offering a safety net program that serves Homeowners not meeting the qualifications stated herein or provides greater protections to Homeowners. Nothing herein shall require Owner to provide the City with confidential financial information of any Homeowner, unless said Homeowner authorizes the release of said information to the City, in writing.

7. OWNER'S BUSINESS PRACTICES.

Each Owner hereby covenants with the City that the Owner will act in good faith in all the Owner's dealings with the Homeowners in the Park under this MOU. No Owner shall

declare a Homeowner's Space abandoned or seek to terminate a Homeowner's tenancy for purposes of obtaining a Base Rent increase or a Pass Through in contravention of this MOU.

Nothing herein shall preclude Owner from proceeding with abandonment and/or eviction proceedings to the full extent allowed by law, including, but not limited to the MRL.

8. CONTINUED COMMUNICATION AND UPDATES.

During the first two years of the term of this MOU, the Owners or their delegates agree to meet with City staff as designated by the City Manager and with Homeowner representatives to discuss any issues that may arise with regards to the implementation and interpretation of this MOU. The City shall determine the manner in which Homeowner representatives shall be chosen. The meetings shall be conducted at least twice per year during the first year of the Term of this MOU but shall be held more often if issues or concerns are raised by Homeowners or Owners that need to be addressed. If after the first two years, the Owners and the Homeowners determine that there is a need to continue meeting the Owners and the Homeowners may determine a schedule for meetings going forward. The purpose of the meeting with Owners and Homeowners is to address issues of a general and common nature related to the MOU rather than individual disputes between a Homeowner and an Owner.

9. CITY AS ENFORCEMENT AGENCY.

If any Owner fails to comply with the terms of this MOU or any Model Supplemental Lease Agreement Addendum entered into pursuant to this MOU, the City may initiate an action on behalf of the affected Homeowner or Homeowners to enforce the terms of this MOU or Model Supplemental Lease Agreement Addendum entered into pursuant to this MOU.

10. EXCEPTION FROM RENT CONTROL ORDINANCES.

Provided that the Owner is not in material breach of this MOU, and during the period in which this MOU remains in effect, the City shall not enforce or impose the provisions of any City ordinance or regulation, with respect to the amount of rent charged by Owner for occupancy of any mobile home spaces or any City adopted rent stabilization ordinance, within the Park.

11. TERM.

The term of this MOU ("**Term**") shall commence on the Effective Date and continue for a period of twenty (20) years, provided however, this MOU shall automatically be extended for successive ten (10) year periods unless one or more Owners provide written notice to the City and the Homeowners in the Owner's Park at least one hundred eighty (180) days prior to the expiration of the Term of the Owner's intent not to renew the MOU.

This MOU shall automatically terminate prior to the end of its Term with respect to any Park that is closed in accordance with federal, State, or local law, including but not limited to the Sunnyvale Municipal Code. Upon request of the Owner or a successor in interest to the Owner of a Park that is scheduled to close in accordance with law, the City and the Owner shall execute and deliver within a reasonable period of time such documents or other instruments as may be necessary to evidence the termination of this MOU with respect to the Park as of the date it closes pursuant to the MRL.

Nothing in this MOU shall preclude any Owner from closing and/or going out of business if the Park is destroyed, or substantially destroyed, by factors beyond Owner's control, including war, terrorist attack, earthquake, fire, or other acts of nature.

Nothing in this MOU shall preclude any Owner from applying for a Vega adjustment and/or a rent increase based on fair return on investment, following the termination of this MOU and/or the enactment of any rent stabilization law that supersedes this MOU, or is otherwise applicable to its park.

12. COVENANTS RUNNING WITH THE LAND; RECORDING OF MOU.

The obligations of the Owner contained within this MOU with respect to the Park are covenants running with the land to the benefit of the City and to each present or future Homeowner leasing any Space within the Park during the term of this MOU as an intended third party beneficiary to this MOU. The parties intend that these covenants touch and concern the Park, and that they shall be binding upon the Owner and all successors, heirs, and assigns of the Owner with respect to the Park during the term of this MOU. This executed and notarized MOU shall be recorded in the Official Records of the Santa Clara County Recorder's Office with respect to that real property legally described in Exhibit C. The obligations under this MOU and the covenants contained in this MOU shall terminate and cease to exist simultaneously with the termination of this MOU, at which time Owner may take any action allowed by law to remove or otherwise extinguish those covenants.

13. RESOLUTION OF DISPUTES.

a. Mediation. In the event any dispute arises between the Owner and City with respect to the enforcement of any provisions of this MOU, or between the Owner and any Homeowner who is an intended third party beneficiary with respect to the interpretation or enforcement of any provisions of this MOU, the party claiming a violation of the MOU shall give written notice to the other party specifying the nature of the dispute, and if the party claiming a violation of the MOU is a Homeowner, the Homeowner shall give written notice to both the Owner and the City. If the issue raised in the written notice is not corrected within thirty (30) days of such notice, then the Owner and City agree that the parties will first try to resolve the dispute through mediation using a third party City-funded mediation service, such as Project Sentinel, for example. Any party to mediation may propose an alternate mediation service, provided the party proposing the alternate mediation service pays the full cost of such mediation service. The parties to any such mediation shall

make a good faith effort to resolve such dispute through mediation prior to filing any action or lawsuit or seeking judicial relief, unless doing so would cause any action or lawsuit to be barred by any applicable statute of limitations, in which case a protective action may be filed, without prejudice to the continuation of the mediation.

b. Resolution of Disputes Not a Waiver of Rights or Benefits. None of the rights, liabilities, or obligations of the Owner, City, Homeowner, or prospective Homeowner to one another shall be waived, suspended, or delayed pending the recommendations of a mediator, or other person designated to administer and make recommendations under any dispute resolution proceeding of this MOU or Model Supplemental Lease Agreement Addendum. For example, during any dispute resolution proceeding, the Owner remains obligated to offer the Model Supplemental Lease Agreement Addendum under the circumstances described in this MOU, and the Homeowner remains obligated to pay any rents due.

14. GENERAL PROVISIONS.

a. Notices. All notices and other communications required or permitted under this MOU, unless otherwise expressly stated, shall be made in writing and shall be delivered to the party whom addressed by personal service or by deposit in any U.S. mail depository, first class postage paid, and shall be deemed received: (1) if personally delivered, upon the date of actual receipt by the person to receive such notice, or (2) if mailed, two business days after the date of any proof of deposit in the United States mail. Notices to any Owner shall be given to the address for such Owner listed on Exhibit A. Notices to the City shall be given to the City of Sunnyvale, 456 W. Olive Ave, Sunnyvale, CA 94086, Attention: City Manager, with a copy of such notice sent to such address to the attention of the City Attorney. The address for delivery of notices may be changed by either party by giving notice to such change to the other party in accordance with this paragraph.

b. Complete Agreement. This MOU shall: (1) constitute the parties' entire agreement, (2) merge all prior discussions and negotiations between the parties, and (3) supersede and replace all prior agreements and understandings, whether oral or written, with respect to the subject matter hereof.

c. Amendments. This MOU may not be amended, altered, or modified except by a writing signed by the City and the Owners, unless the amendment, alteration or modification impacts less than all of the Owners, in which case only the impacted Owner or Owners and the City must sign.

d. Successors and Assigns. Except as provided in paragraph h below, this MOU shall be binding upon and inure to the benefit of the parties and their prospective successors and assigns.

e. Severability. If any portion of this MOU shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining portions of this MOU shall remain in effect and enforceable to the fullest extent permitted by law, if such enforcement would not frustrate the overall intent of the parties as such intent is manifested by all provisions of this MOU. If the MOU or any portion of this MOU is held by a court of competent jurisdiction to be invalid, void, contrary to public policy, ultra-vires, or otherwise unenforceable (collectively, "**Impairment**") the City shall not be liable to the any Owner, any Homeowner, or anyother party in law, equity, or in an action for damages for such Impairment.

f. Extension Not a Waiver. The failure by any party or intended third party beneficiary to require strict performance of the obligations of another party to this MOU, or the failure to exercise or delay in the exercise of any power, remedy, or right provided in this MOU or otherwise available to any party or intended third party beneficiary, upon any failure of another party to perform the other party's obligations under this MOU, shall not be deemed a waiver and shall not impair or affect the right of such party or intended third party beneficiary to require strict performance and to exercise the power, remedy, or right on any other or subsequent occasion for the same or any other failure of the other party to perform its obligations under this MOU.

g. Applicable Law. This MOU shall be construed in accordance with, and governed by, the law of the State of California. Nothing herein shall preclude any party from challenging any law, on its face, or as applied, on the ground that it violates the state or federal constitution.

h. MOU Not Applicable to Resident-owned Parks. The MOU shall not apply to any resident-owned park. In the event the ownership of the Park to which this MOU applies is transferred to the residents of the Park, this MOU shall immediately and finally terminate with respect to the Park upon the effective date of the transfer of ownership. A "resident-owned" park shall mean a park in which fifty percent (50%) or more of the spaces are owned by the residents of the park, directly or indirectly, through any means of devices.

i. Exhibits. Exhibits A through D are attached hereto and are incorporated herein by this reference.

j. Execution in Multiple Counterparts. This MOU may be executed in multiple counterparts and becomes binding with respect to each Owner when originally signed by an authorized representative of the Owner and delivered to the City Manager of the City.

k. Enforcement of Rules and Regulations. Nothing in this MOU shall preclude Owner from enforcing the Park's rules and regulations that are not in conflict with this MOU.

APPROVED AND EXECUTED to be effective as of the Effective Date.

CITY OF SUNNYVALE, a chartered
municipal corporation

By: _____

By: _____
KENT STEFFENS, CITY MANAGER NAME/TITLE

ATTEST:

By: _____
DAVID CARNAHAN, CITY CLERK

APPROVED AS TO FORM:

By: _____
JOHN A. NAGEL, CITY ATTORNEY

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**EXHIBIT A
LIST OF PARKS**

Adobe Wells

Cape Cod

Casa de Amigos

El Dorado

Fair Oaks

Fox Hollow

Mary Manor

Plaza Del Rey

Rancho La Mesa

Willow Ranch

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EXHIBIT B
FORM OF MODEL SUPPLEMENTAL LEASE AGREEMENT

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MODEL SUPPLEMENTAL LEASE AGREEMENT ADDENDUM

[Insert Name of Park Owner] ("Owner") and _____ ("Homeowner") agree as of _____, 2021 to the terms and conditions set forth in this Supplemental Lease Agreement Addendum ("Addendum") herein which amends and supplements the currently existing [Lease] or [Rental Agreement] dated _____ ("Agreement") for Space _____ ("Space") at the _____ [Insert Park] ("Park") previously entered into by the Owner and Homeowner. Homeowner is the owner of a mobile home which is located on the Space.

ACKNOWLEDGEMENT: Homeowner and Owner acknowledge and agree that this Addendum modifies the provisions of the Agreement regarding the manner in which rent increases are computed including rent increases upon Homeowner's sale of the mobile home and the amount and method by which certain costs can be passed through to the Homeowner by the Owner. This Addendum is being offered to the Homeowner by Owner in accordance with the terms of that certain Memorandum of Understanding dated _____ ("MOU") entered into by Owner with the City of Sunnyvale pursuant to which Owner agreed to certain limitations on rent increases and pass through of costs to Homeowner. In the event of any conflict between this Addendum and the MOU, the MOU shall prevail. All provisions of the Agreement not otherwise amended by the Addendum shall remain in full force and effect.

1. Definitions.

- a. **"Anniversary Date"** means _____, the calendar date of the last Base Rent increase for the Space.
- b. **"Base Rent"** means the rent for the Space exclusive of utilities and other separate itemized charges in effect pursuant to the Agreement, as adjusted by any Base Rent Increase allowed under this MOU during the term of the MOU. Base Rent as of the date of this Addendum is _____.
- c. **"Capital Improvement"** means any improvement other than one made for purposes of maintenance and repair completed after the MOU Effective Date, which (i) materially adds to the value of the Park, (ii) which primarily benefits the residents of the Park, (iii) which is permitted to be amortized over the useful life of the improvement under the U.S. Internal Revenue Code or under generally accepted accounting principles, and (iv) which has been approved by a majority of the residents in the Park pursuant to a written ballot provided to the residents at least thirty (30) days prior to the date ballots are due and with each space in the Park having one vote.
- d. **"Capital Replacement"** means replacement of an existing capital improvement which is completed after the MOU Effective Date, which qualifies under the U.S. Internal Revenue Code and applicable regulations, as a capital improvement and does not constitute maintenance and repair. Capital Replacements shall not include replacements of the gas or electric systems serving the Park but shall include replacements to the water and sewer systems.

e. **"CPI"** means the Consumer Price Index -All Urban Consumers for the San Francisco/Oakland/Hayward region, published by the United States Department of Labor, Bureau of Labor Statistics. If the 1982-84 base period or the CPI is changed during the term of this MOU, the CPI used shall be converted according to any conversion factor provided by the Bureau of Labor Statistics. If the CPI is discontinued then any successor Consumer Price Index of the United States Bureau of Labor Statistics, or successor agency thereto, which includes Santa Clara County shall be used, unless there is a successor index that includes the City of Sunnyvale, in which case the successor index that includes the City of Sunnyvale shall be used.

f. **"Disaster Related Event"** shall mean a sudden event resulting from earthquake, fire, flood, or other natural occurrence over which the Owner has no reasonable control, and which was not caused by the Owner's acts or negligence.

g. **"Government Fees and Assessments"** shall mean any fee, assessment or other charge imposed by the City of Sunnyvale, the County of Santa Clara, the state or federal government upon the Park or the Space and shall include any monetary amounts assessed against the Owner for non-real estate (i.e. non-Property) taxes, fees, assessments, bonds, or bond-related costs required or mandated by any governmental body or agency, including but not limited to the City of Sunnyvale, the County of Santa Clara, the State of California or the United States of America.

h. **"MOU Effective Date"** means _____, 2021 the effective date of the MOU.

i. **"MRL"** means the California Mobilehome Residency Law, beginning with Section 798 of the California Civil Code.

j. **"Mobile Home"** shall have the meaning set forth in Civil Code Section 798.3.

k. **"Prime Rate"** shall mean the prime rate charged by Bank of America, NT & SA to its most credit worthy borrowers.

l. **"Property Taxes"** shall mean any and all general and special real estate taxes and personal property taxes which are levied or assessed against the Park. Property taxes shall include any tax or excise on rents, or any other tax, however described, which is levied or assessed against the Park as a direct substitution, in whole or in part, for any real property taxes.

m. **"Transfer"** means any transfer of legal title or ownership to the Mobile Home except for the following:

i. The transfer of a Mobile Home to the surviving joint tenant by devise, descent, or operations of law on the death of the joint tenant;

ii. A transfer of the Mobile Home to the spouse or domestic partner of the Homeowner;

iii. A transfer of the Mobile Home resulting from a decree of dissolution of marriage, legal separation or from an incidental property settlement agreement by which the spouse becomes the owner of the Mobile Home;

iv. A transfer to an inter vivos trust in which Homeowner is and remains the trustee or beneficiary and occupant of the Mobile Home; and

v. A transfer to a person who does not qualify as a "homeowner" for purposes of the MRL and who does not have, and/or will not receive a "tenancy" in the Park for purposes of the MRL.

2. **Annual Increase to Base Rent.** Homeowner shall continue to pay the Base Rent for the Space established pursuant to the Agreement as of the date of this Addendum until the Owner provides the Homeowner with a rent increase notice in accordance with Civil Code Section 798.30 but in no event shall any rent increase be effective before the Anniversary Date. As of the Anniversary Date and on each Anniversary Date thereafter, the Owner may increase the Base Rent by no more than the greater of seventy-five percent (75%) of the increase in the CPI, or three percent (3%), using the most recently published CPI data for the twelve month period prior to the notice of rent increase.

3. **Increase to Base Rent Upon Transfer.** Upon Transfer of the Mobile Home by the Homeowner, Owner may increase Base Rent as follows:

a. If the Transfer occurs on or before the first anniversary of the MOU Effective Date, the Base Rent may not be increased more than five percent (5%) above the Base Rent immediately prior to the effective date of the Transfer.

b. If the Transfer occurs after the first anniversary of the MOU Effective Date but before the second anniversary of the MOU Effective Date, the Base Rent may not be increased more than ten percent (10%) above the Base Rent immediately prior to the effective date of the Transfer.

c. If the Transfer occurs on or after the second anniversary of the MOU Effective Date, the Base Rent may not be increased more than fifteen percent (15%) above the Base Rent immediately prior to the effective date of the Transfer.

d. Following the second anniversary of the Effective Date of the MOU, if a Mobile Home is Transferred more than once in a twenty-four month period, Owner may only increase the then existing Base Rent upon the second Transfer in the twenty-four month period by the amount which when added to the increase imposed at the time of the immediately prior Transfer would not result in a cumulative Base Rent increase of more than fifteen percent (15%) for the Space.

e. **To be included in Addendum for Plaza Del Rey:** Notwithstanding anything set forth in this Section 3, the Owner agrees that in no event will Homeowner's Base Rent be increased upon a Transfer to an amount that exceeds Two Thousand Two Hundred Fifty Dollars (\$2,250) as that amount is increased each year during the Term of the MOU by the Annual Base Rent Increase amount. Nothing herein shall require the Owner to reduce any Base Rent that may exceed the amount set forth above.

f. Notwithstanding anything set forth in this Section 3, Owner shall not be subject to any limitation on Base Rent increases in the event of a Transfer that is the result of (i) a true vacancy, where the Homeowner voluntarily surrenders possession of the Space and removes the Mobile Home from the Park; (ii) the Mobile Home being abandoned in accordance with Civil Code Section 798.61; (iii) the Homeowner being evicted as evidenced by entry of a judgment or a stipulation and order in an unlawful detainer proceeding; (iv) the Mobile Home being sold to a dealer as defined in Health and Safety Code Section 18002.6; or (v) the Mobile Home being repossessed by a legal owner or lien holder.

4. **Pass Through Adjustments to Base Rent.** In addition to the increases in Base Rent authorized in Sections 2 and 3 above, Owner may pass through to the Homeowner the following costs ("Pass Throughs").

a. Government Fees and Assessments. If the cost of Government Fees and Assessments in any fiscal tax year exceeds the cost for any such Government Fees and Assessments in the prior fiscal tax year by more than the CPI increase, the Owner may pass through such increase to the Homeowner. The amount of any Government Fees and Assessments Pass Through shall be the total annual amount of such increase in the Government Fees and Assessments divided by twelve (12) and then divided by the total number of spaces in the Park.

b. Capital Improvements. The Owner may pass through to the Homeowner the actual cost of any Capital Improvement plus interest on the cost at the actual rate of interest paid by the Owner for any financing associated with the Capital Improvement amortized over the applicable amortization period in accordance with the U.S. Internal Revenue Code divided by twelve (12) and then divided by the total number of spaces in the Park. Any Capital Improvement Pass Through shall be eliminated as a rent obligation at the conclusion of the amortization period.

c. Capital Replacements. The Owner may pass through to the Homeowner the amortized cost of any Capital Replacement in accordance with the following.

i. Prior to implementing any Capital Replacement Pass Through, except a Capital Replacement necessitated by an emergency, the Owner must: (A) provide the Homeowner with advance notice of the proposed Capital Replacement and an opportunity to comment on the need, design, and conduct of the work; (B) solicit at least two bids for the Capital Replacement work and (C) award the contract to the lowest bidder or provide an

explanation to the Homeowner if the Homeowner so requests why the contractor without the lowest bid was selected.

ii. The amount of any Capital Replacement Pass Through, including a Capital Replacement necessitated by an emergency, shall be determined by subtracting from the actual cost of the Capital Replacement any insurance proceeds, rebates, tax credits or warranty payments received by the Owner defraying the costs of the Capital Replacement and amortizing the remaining cost of the Capital Replacement plus interest at either the actual rate of interest paid by the Owner for any financing associated with the Capital Replacement or the Prime Rate plus two percent (2%) over the applicable amortization period in accordance with the U.S. Internal Revenue Code. The amount of the Capital Replacement Pass Through shall be the annual amortized amount determined in accordance with this subsection divided by twelve (12) and then divided by the total number of spaces in the Park.

iii. Any Capital Replacement Pass Through shall be listed separately from the Base Rent on monthly Space rent billings and shall be eliminated as a rent obligation at the conclusion of the amortization period.

iv. Notwithstanding anything set forth above in this subsection c, Owner shall be allowed a Capital Replacement Pass Through for Capital Replacements that were commenced and completed prior to the MOU Effective Date, as long as (i) the Capital Replacement was completed no earlier than six (6) months prior to the MOU Effective Date; (ii) the cost of the Capital Replacement has not already been passed through to the Homeowners; (iii) the Capital Replacement Pass Through amount is determined in accordance with the requirements of subsection c(ii) above; and (iv) the Capital Replacement was listed in Exhibit D of the MOU between the Owner and the City.

d. Property Tax Increases. The Owner may pass through to the Homeowner the amount by which Property Taxes increase in any given fiscal tax year by more than two percent (2%) over and above existing Property Taxes, subject to the following.

i. A Property Tax Pass Through may be imposed in the amount of any Property Tax increase that exceeds two percent (2%) in a given fiscal tax year that is caused by an involuntary Property Tax reassessment including but not limited to a death of a person holding an ownership interest in the Park or as the result of any new general or special real estate property tax imposed by the City of Sunnyvale, the County of Santa Clara, or the State of California.

ii. If the Park is sold to a third party pursuant to an arms- length transaction, the Owner may pass through to the Homeowner the increase in Property Taxes resulting from a reassessment of the Park upon such sale to the extent that such increase exceeds two percent (2%) in a given fiscal tax year, provided, however, the total amount of any Property Tax Pass Through resulting from a sale shall be phased in over five (5) years with equal increases each year until the full amount of the Property Tax Pass Through has been implemented. **[To be added to Plaza del Rey Addendum: The Property Tax Pass Through allowed pursuant to this section d(ii) shall include the amount of the Property Tax increase**

that resulted from the most recent sale of the Park occurring prior to the MOU Effective Date.]

iii. Owner shall not be entitled to any Property Tax Pass Through due to an increase in Property Taxes which is triggered solely by or based upon a voluntary internal reorganization of the Owner that is considered a "change of ownership" or a transfer of a joint venture or partnership interest among the current persons holding an ownership interest that triggers a reassessment of the Park.

iv. The amount of the Property Tax Pass Through paid by the Homeowner shall be the total annual amount of the Property Tax Pass Through allowed divided by twelve (12) and then divided by the total number of spaces in the in the Park.

e. Disaster Related Event Costs. Owner may pass through to the Homeowner any costs to repair damage to the Park arising from any Disaster Related Event in excess of the initial fifty thousand dollars (\$50,000) of such costs, provided such costs are amortized in accordance with the procedure for amortizing Capital Replacements under section 4.c above and such costs are divided equally among all spaces in the Park. Any Disaster Related Event costs passed through to the Homeowner shall be net of any insurance proceeds or disaster grants or assistance received by the Owner for such costs. Owner shall not be entitled to pass through to the Homeowner any Disaster Related Event costs unless the Owner has continued to maintain throughout the term of the MOU the types and amounts of property insurance in effect on the MOU Effective Date if those types and amounts of property insurance are commercially available throughout the term of the MOU, at the same price in effect on the Effective Date, adjusted each year by the increase in the CPI. If those types and amounts of property insurance are not commercially available throughout the term of the MOU, at the above described price, Owner reserves the right, in its sole and absolute discretion, to purchase whatever property insurance it deems reasonable for the Park. Owner shall disclose Owner's property insurance coverage to Homeowner if Homeowner so requests, provided however, no Homeowner shall be entitled to such disclosure more than once in any twelve (12) month period.

f. Requirements applicable to all Pass Throughs.

(i) No Pass Through shall be implemented unless Owner gives the Homeowner a ninety (90) days written notice of the Pass Through including documents evidencing the costs being passed through to the Homeowner and the calculations that serve as the basis for the Pass Through.

(ii) Pass Throughs shall be separately stated in the monthly space rent bills

(iii) Pass Throughs shall be considered the same as rent for purposes of the MRL, however, Pass Throughs shall not be deemed part of Base Rent for purposes of calculating the Annual Base Rent Increase pursuant to Section 2 or the increase in Base Rent upon Transfer pursuant to Section 3 above.

EXECUTED as of the date first written above:

HOMEOWNER:

(Signature)

Print Name

(Signature)

Print Name

OWNER:

By: _____
Its: _____

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EXHIBIT C
LEGAL DESCRIPTION OF REAL PROPERTY

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EXHIBIT D
LIST OF CAPITAL REPLACEMENTS PURSUANT TO SECTION 5.C(4)

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