

RECORDING REQUESTED BY:

Office of the City Attorney
City of San José
200 East Santa Clara Street, 16th Floor Tower
San José, CA. 95113

WHEN RECORDED MAIL TO:

Lee Price, City Clerk
Office of the City Clerk
200 East Santa Clara Street, 2nd Floor Wing
San José, California 95113

**AGREEMENT
FOR SUBMETERING OF WATER**

THIS AGREEMENT is made and entered into on this _____ day of _____, 2010, by and between the CITY OF SAN JOSE, a municipal corporation, hereinafter referred to as "CITY" and BRANDENBURG, STAEDLER AND MOORE-WOODBRIDGE, L.P., a California Limited Partnership, hereinafter referred to as "OWNER".

RECITALS:

WHEREAS, OWNER owns certain real property located at 3051 Towers Lane, San José, CA 95121, as more particularly described in **Exhibit A** attached hereto and incorporated by reference herein ("PROPERTY"); and

WHEREAS, OWNER operates a 176 space mobile home park, commonly known as WOODBRIDGE MOBILE HOME PARK, hereinafter referred to as ("WOODBRIDGE") on the PROPERTY and

WHEREAS, CITY provides water service to WOODBRIDGE; and

WHEREAS, WOODBRIDGE presently has one master water meter and OWNER is responsible to CITY for payment for water service provided to the PROPERTY; and

WHEREAS, OWNER desires to install and maintain, at no cost or expense to CITY, separate water meters to service each mobile home dwelling unit and require the

tenants of each unit to pay for water based upon metered usage at a rate no higher than that charged to OWNER by CITY; and

WHEREAS, CITY wishes to assure that there shall be compliance with all applicable laws and regulations and that there shall be reasonable assurance that the rights of tenants under applicable federal, state and local laws and regulations shall be protected at all times; and

WHEREAS, WOODBRIDGE contains mobile homes which are subject to the City's Mobilehome Rent Control Ordinance, San Jose Municipal Code Chapter 17.22 and CITY wishes to assure that the submetering process and any subsequent tenant fees and charges are compliant with the Mobilehome Rent Control Ordinance; and

WHEREAS, OWNER has held at least two community meetings at WOODBRIDGE and CITY's Rental Rights and Referrals Program Staff has reviewed the OWNER's water usage report for WOODBRIDGE dated June 29, 2010; and

WHEREAS, Section 15.08.500 of the San José Municipal Code provides as follows:

"15.08.500 Resale of Water Prohibited.

Except by special AGREEMENT with the City upon such terms as the City elects, no person shall resell any of the water provided from the municipal water system nor shall such water be transmitted to premises other than those specified in such person's application for service."

WHEREAS, the purpose of this AGREEMENT is to set forth the terms and conditions which shall assure CITY that OWNER shall at all times comply with all applicable laws and regulations, that the rights of tenants shall be reasonably protected,

and to provide OWNER with reasonable guidelines by which they may install and maintain water meters and collect for water actually furnished to tenants.

NOW, THEREFORE, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. If water meters are installed by OWNER to measure the quantity of water used by each tenant, each meter shall be installed on the same space as the mobile home dwelling unit serviced by the meter and the tenant(s) thereof shall pay only for the water actually used as determined by the meter reading, unless there is proof that said meter is inaccurate. To the extent permitted under Chapter 17.22 of Title 17 of the San José Municipal Code and any other applicable laws, rules or regulations, OWNER may charge a meter charge as a component of OWNER's water service charge to each tenant, provided that the meter charge by OWNER shall not exceed the meter charge that would be charged by CITY for a comparable size meter if service were provided directly by CITY to the tenant. In addition to the meter charge, the OWNER may charge each tenant for water delivered to the mobile home dwelling unit, provided that each tenant shall be required to pay no more to OWNER as a water quantity charge than the amount that CITY would charge for an equal quantity of water, if the tenant were receiving such water directly from the CITY, including consideration of special CITY rate schedules and proration of rebates, as and when, and only to the extent that, such special rates and rebates are given by CITY to OWNER. CITY and OWNER intend that the total water quantity charges that OWNER is permitted to charge to its tenants for water shall not exceed the total costs and expenses, including taxes, paid by OWNER to CITY, as quantity charges for the water it delivers to its tenants, with each tenant being charged the for the quantity of water delivered to that tenant. This Section is not

intended to authorize any fees or charges that are in any way inconsistent with those allowed pursuant the Mobilehome Residency Law, Civil Code Section 798 *et seq.*

2. Only water meters which have been certified for accuracy and meet the requirements of the American Waterworks Association may be installed on the PROPERTY. Evidence of said certification shall be furnished by OWNER to CITY's Director of Environmental Services prior to installation of the meters. Water meters shall be serviced and tested as recommended by the American Waterworks Association. OWNER shall maintain records of meter testing and maintenance for a period at least sixty (60) months following the time to which they relate and hereby grants permission to CITY to examine said records during normal hours of business upon reasonable notice.

3. OWNER shall maintain a book of accounts or system of records relating to tenant charges for water service in a manner which shall allow tenants and CITY representatives reasonable access to same to insure compliance with the terms and conditions of the herein AGREEMENT. OWNER hereby grants permission to CITY to examine said book of accounts or records for the purpose stated during normal hours of business on a reasonable basis, and upon reasonable notice. OWNER shall also permit each tenant to examine records pertaining to said tenant's water service and CITY's charges to OWNER for water service during normal hours of business on a reasonable basis, and upon reasonable notice. Such records shall be maintained by OWNER for at least sixty (60) months following the time to which they relate.

4. OWNER shall be responsive to the complaints of tenants concerning water service within the PROPERTY to the extent that such complaints relate to water delivery facilities and meters which are owned and maintained by OWNER. Each such complaint shall be investigated by OWNER as soon as reasonably practical, and within

no more than five (5) business days the initial investigation shall be completed and a response sent to the tenant. If, after investigation, the complaint is determined to have merit, the problem or condition shall promptly be corrected or adjusted. OWNER shall advise the tenant of the action, if any, which is being taken in response to the complaint. OWNER shall maintain, for a period of thirty-six (36) months, a record of OWNER's handling of the complaint, and such record shall be available for review by CITY upon request and during normal business hours.

5. In addition to any other legal requirements which may apply to the termination of water service to any mobile home by OWNER, prior to the termination of water service to any mobile home, OWNER agrees to comply with all legal requirements applicable to the termination of water by a public utility furnishing water service in the State of California.

6. Prior to any scheduled interruption in water service to any mobile home within the PROPERTY, OWNER shall provide written notice to the tenant(s) of said mobile home, informing the tenant(s) of the effective date on which the water service will be interrupted and the reason(s) for such termination. The Notice shall also advise the tenant(s) that they have the right to have a meeting, prior to the interruption of service, with a designated representative of the OWNER, by submitting a written request for such meeting to OWNER or its designated representative on or before the effective date for termination of water service as specified in the notice. The designated representative shall be a person empowered to resolve any disputes concerning the interruption of service. OWNER shall maintain a written record of all notices and meetings relating to interruption of service which shall be available to CITY in the same manner and for the same length of time as provided for tenant water charges in Section 4 herein.

7. Notwithstanding of any provisions of the herein AGREEMENT which may imply to the contrary, the Parties agree that the contractual relationship for furnishing of water service to the PROPERTY by CITY and payment for same by OWNER which existed prior to the installation of the water meters referred to herein shall remain unchanged by said installation, subject to Section 1 above. Collection of payments from tenants for water service provided to each mobile home dwelling unit shall be the sole responsibility of OWNER.

8. OWNER hereby agrees to defend, indemnify and hold harmless CITY, its officers, agents and employees from any and all claims, loss or liability, whether with or without merit, arising from the installation, maintenance and administration of water delivery facilities, submeters and meters owned and maintained by OWNER within the PROPERTY contemplated by this AGREEMENT or otherwise arising from the performance by OWNER of its obligations under this AGREEMENT, and shall, at its own expense, defend CITY, and pay any judgments, legal expenses and costs arising from any such actions.

9. OWNER agrees to observe and comply with all laws, orders, regulations, rules, ordinances or requirements, now in force or which may hereafter be in force, of federal, state, county or city, or other lawful governmental bodies, or any or their departments, bureaus or officers, having jurisdiction over the water delivery facilities and meters which are owned and maintained by OWNER within the PROPERTY or otherwise pertaining to the performance by OWNER of its obligations under this AGREEMENT, including but not limited to Civil Code §§789.3, 798.38, 798.40, 798.41, and §4090 of Title 4 of the California Code of Regulations and San José Municipal Code Chapters 4.68 and 17.22.

10. OWNER agrees to provide tenants with copies of all information provided by the CITY to OWNER concerning water service, including but not limited to, rate notices, water quality reports, and conservation information.

11. Unless sooner terminated by either of the Parties, this AGREEMENT shall be effective for an initial term of twenty (20) years and shall thereafter be automatically renewed for an additional terms of five (5) years each. Either Party may terminate this AGREEMENT effective as of the expiration of the then term by giving written notice to the other Party, which notice, in order to be effective, must be delivered to the other Party at least thirty-six (36) months before the expiration of the then term.

12. In addition to all other rights and remedies that CITY may have in the event of a default by OWNER under this Agreement, CITY may provide a written notice of default to OWNER, specifying the nature of the default and demanding that the default be corrected as soon as reasonably practicable. OWNER shall be responsible correct the default within thirty (30) days of the date of the notice, provided however, if the default cannot reasonably be corrected within thirty (30) days of the date of the notice, OWNER shall be responsible for commencing the correction and OWNER shall, within thirty (30) days of the date of the notice, provide CITY with a schedule acceptable to CITY for completing the correction. If a noticed default is not corrected within thirty (30) days of the date of a notice of default, or a schedule for correction is not provided within said thirty (30) day period, and correction is not completed within such additional reasonable time as may be set forth in the schedule provided by OWNER, CITY may, at its sole option, in addition to any and all other remedies it may have in law or equity, terminate this AGREEMENT immediately by providing written notice of termination to OWNER.

13. CITY's Director of Environmental Services Department ("ESD Director") is empowered to exercise on behalf of CITY any termination rights CITY may have under this AGREEMENT.

14. The Parties agree that the law governing this AGREEMENT shall be that of the State of California.

15. All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY: Director, Environmental Services Department
 Attn: Manager Municipal Water System
 3025 Tuers Road
 San José, CA 95121

To OWNER: Brandenburg, Staedler & Moore
 Attn: Property Management Department
 1122 Willow Street, Suite 200
 San José, CA 95125

Notice that is personally delivered shall include a "proof of service" and must be delivered during normal business hours, Monday through Friday, except for days on which federally chartered banks are closed. Notice shall be deemed effective on the date personally delivered or, if mailed, five (5)_business days after deposit in the mail.

16. In the event that suit shall be brought by any party to this AGREEMENT, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

17. In the event that CITY shall no longer be the entity providing water service to WOODBRIDGE, or the Property shall no longer be operated as mobilehome park with submetered service to tenants, CITY or OWNER shall each have the option to terminate this AGREEMENT upon the provision of written notice to the other party.

18. The Parties agree that this AGREEMENT shall be recorded in the Office of the Santa Clara County Recorder and shall be binding upon OWNER and its successors and assignees and all agents, employees and authorized representatives of OWNER who are engaged in or connected with the operation and management of WOODBRIDGE.

19. OWNER represents and warrants that OWNER has full authority to execute and record this AGREEMENT and OWNER's signature shall constitute a representation and warranty that no person other than OWNER is required to consent to or approve this AGREEMENT.

20. The above recitals are hereby incorporated and made a part hereof.
Executed the day and year first above written.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

APPROVED AS TO FORM:

Senior Deputy City Attorney

"CITY"

CITY OF SAN JOSE, a municipal corporation

By _____
Name:
Title:

"OWNER"

BRANDENBURG, STAEDLER AND
MOORE-WOODBRIDGE, L.P., a

California Limited Partnership

By: Brandenburg, Staedler and Moore-
Woodbridge, LLC, a California
Limited Liability Company, General
Partner

By: _____
Managing Member

By: _____
Managing Member

RD:MD1
10/14/2010

State of California)
County of Santa Clara)

On _____ before me, _____, 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.

Signature _____

State of California)
County of Santa Clara)

On _____ before me, _____, 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.

Signature _____

EXHIBIT A

The land referred to herein is described as follows:

All that certain real property situate in the County of Santa Clara, State of California, described as follows:

BEGINNING at the Northern most corner of the 20 acre tract in the Rancho Yerba Buena, described in the Deed by Charles Brandt, et ux, to A. Mucia by Deed dated February 21, 1918 and recorded February 28, 1918 in book 469 of Deeds, page 274, said point of beginning being distant North 51° 30' East 9.33 chains from the Westernmost corner of that certain 71.027 acre tract conveyed by John Weber, et al to Charles Brandt, et ux, by Deed dated August 27, 1913 and recorded August 28, 1913 in Book 405 of Deeds, page 259, and running thence from said point of beginning, along the Northwesterly line of said 71.027 acre tract North 51° 30' East 11.712 chains to a stake marked B.1 thence leaving the Northwesterly line of said 71.027 acre tract and running parallel to the North-easterly line of said Mucia's 20 acre tract South 37° 54' East 21.29 chains to a stake marked B.2 standing in the Southeasterly line of said 71.027 acre tract; thence along said Southeasterly line of said 71.027 acre tract, South 51° West 11.712 chains to a stake marked 20 A standing at the Easternmost corner of said A Mucia's 20 acre tract and thence along the Northeasterly line of said Mucia's 20 acre tract North 37° 54' West 21.385 chains to the place of beginning, and being a part of the above mentioned 71.027 acre tract in the Rancho Yerba Buena.

EXCEPTING THEREFROM that portion included in Loupe Road 40 feet in width, as granted by Amelie Loupe to the County of Santa Clara, by Deed dated August 11, 1899, recorded August 23, 1899 in book 222 of deeds, page 66, Santa Clara County Records.

ALSO EXCEPTING THEREFROM that certain tract of land as granted in the deed from Antone B. Paschoal et ux to the State of California, dated March 8, 1964 and recorded June 9, 1964 in book 6534 Official Records, page 554 and more particularly described as follows:

COMMENCING at the most Southerly corner of that parcel of land conveyed to Antone B. Pashoal, et ux, by deed recorded December 22, 1943, in book 1177 at page 307, Official Records of Santa Clara County; thence along the Southeasterly line of said parcel North 51° 36' 25" East 344.81 feet; thence North 38° 23' 35" West, 70.00 feet; thence South 57° 15' 33" West 210.30 feet; thence

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(Cont'd on next page)

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along a tangent curve to the right with a radius of 352.00 feet, through an angle of $22^{\circ} 44' 47''$, an arc length of 139.74 feet to the Southwesterly line of said Parcel; thence along last said line South $37^{\circ} 10' 35''$ East 131.39 feet to the point of commencement.

The bearings and distances used in the above description are on the California Coordinate System, Zone 3. Multiply the above distances by 1.0000486 to obtain ground level distances.

ALSO EXCEPTING THEREFROM that certain tract of land as granted in the deed from Antone B. Paschoal et ux, to County of Santa Clara, dated August 28, 1964 and recorded June 9, 1964 in book 6534 Official Records, page 556, and more particularly described as follows:

BEGINNING for reference at the most Southerly corner of that parcel of land conveyed to Antone B. Paschoal, et ux, by deed recorded December 22, 1943 in book 1177 at page 307, Official Records of Santa Clara County; thence along the Southeasterly line of said parcel North $51^{\circ} 36' 25''$ East 344.81 feet to the TRUE POINT OF COMMENCEMENT; thence North $38^{\circ} 23' 35''$ West 70.00 feet; thence North $51^{\circ} 36' 25''$ East 434.04 feet to the Northeasterly line of said parcel thence along last said line South $37^{\circ} 17' 35''$ East 70.01 feet to said Southeasterly line; thence along last said line South $51^{\circ} 36' 25''$ West 432.70 feet to the true point of commencement.

CONTAINING 0.696 of an acre, more or less.

The bearings and distances used in the above description are on the California Coordinate System, Zone 3. Multiply the above distances by 1.0000486 to obtain ground level distances.

