

**MEMORANDUM OF UNDERSTANDING
REGARDING PERMISSIVE CONTINUATION OF
ENCROACHMENT ON DISTRICT PROPERTY**

This Memorandum of Understanding (“Agreement”) is made between the Auburn Recreation and Park District (“District”) and the [*name of corporate entity/land owner*], a [*state and type of business*] (“Owner”), who are sometimes referred to within individually as a “Party” or collectively as “Parties.” This agreement is effective as of September __, 2020 (“Effective Date”).

WHEREAS, The District is a California recreation and park district that owns in fee the property on which it operates and maintains Regional Park in Auburn, California.

WHEREAS, Owner owns in fee the land immediately to the east of Regional Park more particularly described as Assessor Parcel No. [*insert*] (“Mobilehome Park Property”).

WHEREAS, the Property is improved as a mobilehome park and 29 of its 296 lots back up to the District’s Regional Park property (“Regional Park Property”);

WHEREAS, the Parties recognize that the backyards behind these 29 lots (“Encroaching Lots”) have landscaping, structures, concrete, and improvements that partially encroach into the Regional Park Property, as more particularly depicted in Exhibit A, which is attached and incorporated by reference;

WHEREAS, the Parties desire to memorialize the terms and conditions under which the Encroaching Lots will be allowed to maintain, and not expand, their existing encroachments with the express permission of the District;

WHEREAS, the Parties enter into this Agreement for the purposes of avoiding litigation, and reserving their respective rights, concerning the encroachment by the Encroaching Lots on the Regional Park Property.

NOW THEREFORE, in consideration of mutual covenants contained herein, the parties to this Agreement mutually agree as follows:

1. Continued Encroachment Expressly Permitted

The District expressly consents to the continued encroachment by the Encroaching Lots of the Mobilehome Park Property, as depicted in Exhibit A, so long as such encroachments at all times remains in full compliance with the terms and conditions of this Agreement.

2. Permissive Use

The Parties expressly recognize that the right of the Encroaching Lots to continue encroaching on Regional Park Property conferred by this Agreement is permissive in

nature and nothing in this Agreement shall be deemed to confer, create, or establish any agreed boundary between the Regional Park Property and Mobilehome Park Property, and nothing in this Agreement is intended to confer or create any prescriptive right or claim of adverse possession by any party or person.

The Parties further expressly recognize that the public may continue to use the area of the Regional Park Property in which the Encroaching Lots encroach into that property. Neither Owner nor any of its residents, tenants, or occupants may install or maintain any fencing, barrier, or other device to prevent the public from using such area or any portion of such area.

3. No Expansion of Encroachment

No tenant, resident, or occupant of any Encroaching Lott shall increase the area of the encroachment of his, her, or its lot into Regional Park Property that existed as of July 1, 2020. Nor shall any such tenant, resident, or occupant add any new or additional landscaping, structure, concrete, or other improvement that did not exist in the encroachment area by that same date. Upon notification by District that the resident or tenant of lot has violated this Section, Owner shall promptly take such actions as are necessary to cause and supervise the elimination of the additional encroachment or the removal of the unauthorized landscaping, structure, concrete, or improvement.

4. Notification to Tenants, Residents, and Occupants

Owner shall take such steps as are reasonably necessary to notify residents, tenants, and occupants of the Encroaching Lots on Regional Park Property of the terms and conditions of this Agreement and to notify new residents or tenants of such lots of such terms and conditions before the effective date any lease, tenancy, or occupancy commences.

5. Effect and Term of Agreement; Termination

The Parties expressly recognize that they have entered into this Agreement to avoid litigation concerning any claims, defenses, rights, or obligations they may have concerning the encroachment by the Encroaching Lots on Regional Park property. For so long as this Agreement is in effect, no Party may commence any lawsuit, legal action, or proceeding concerning such encroachment. The Parties reserve the right upon termination of this Agreement, as provided in this section below, to assert any claims, defenses, cross-claims, rights, or interests that existed on the Effective Date. Notwithstanding the foregoing, the Parties agree that the running of any statute of limitations as to any claim they may have shall be suspended, stayed, and tolled for the duration of this Agreement.

Any Party may withdraw from this Agreement by giving the other Party 90 days' notice in writing, as provided below in Section 13. This Agreement shall remain effective

until such time as Any Party exercises its right to terminate this Agreement under this Section or the Parties mutually agree in writing to such termination.

6. Indemnification by Owner

For the duration of this Agreement, Owner shall indemnify, defend, and hold harmless the District from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees arising out of, resulting from any negligent or wrongful act or omission of the Owner; or of Owner's agents, officers, or employees; or of any tenant, resident, occupant, guest, or invitee of the Mobilehome Park Property, that occurs on or involves or relates to the area of encroachment on Regional Park Property by any of the Encroaching Lots.

7. Entire Agreement

This Agreement, including the attached exhibit, constitutes the entire agreement and understanding between the parties regarding its subject matter and supersedes all prior or contemporaneous negotiations, representations, understandings, correspondence, documentation and agreements (written or oral).

8. Written Amendment

This Agreement may only be changed by written amendment signed by the duly appointed representatives of the Parties to this Agreement on the effective date of the amendment. Any oral representations or modifications concerning this Agreement shall be of no force or effect.

9. Severability

If any provision in this Agreement is held by any court of competent jurisdiction to be invalid, illegal, void, or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining provisions shall nevertheless continue in full force and effect as fully as though such invalid, illegal, or unenforceable portion had never been part of this Agreement.

10. Choice of Forum

The Parties agree that this Agreement is to be enforced in accordance with the laws of the State of California, is entered into and is performed in the County of Placer, that all claims or controversies arising out of or related to performance under this Agreement shall be submitted to and resolved in a forum within the County of Placer at a place to be determined by the rules of the forum.

11. Attorney Fees

The prevailing party in any litigation brought to enforce or interpret this Agreement shall be entitled to recover its attorneys' fees and all costs of litigation including, but not limited to, expert witness fees, in addition to any other relief to which it may be entitled. Fees and costs not included within those allowed by Code of Civil Procedure § 1033.5 shall be set forth in the Parties' pleadings and shall be proved in a bifurcated trial before the trial judge alone, the right to trial by jury being hereby waived, after the conclusion of the trial on all other issues.

12. Agreement Jointly Drafted

The Parties agree that this Agreement has been jointly drafted and that each Party has had the opportunity to have its legal counsel review, comment upon, and suggest amendments to the Agreement prior to its execution. The Parties recognize that in any legal action or proceeding concerning the interpretation of this Agreement, the trier of fact shall not be authorized to employ any presumption against the drafter of this Agreement to resolve any dispute.

13. Notices

If any Party is required to give notice to the other Parties under this Agreement, the notice shall be sent by United States Mail, postage prepaid, as follows:

To District

Auburn Recreation and Park District
Attention: District Administrator
123 Recreation Drive
Auburn, CA 95603

To Owner

[Insert]

14. Heirs and Successors

This Agreement shall be binding on all heirs, assigns, successors, and transferees of the Parties.

15. Counterparts

This Agreement may be executed in counterpart signatures.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Memorandum of Understanding.

Kahl Muscott
District Administrator
Auburn Recreation and Park District

Date

[Name]
[Title]
[Company]

Date

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