

Item 7 Attachment D

Calabasas Village Homeowners Association
Derol Caraco, President
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Calabasas CA 91302

April 1, 2021

To: Mayor James R. Bozajian and
Members of the City Council
City of Calabasas
100 Civic Center Way
Calabasas, California 91302

From: Calabasas Village Homeowners Association

Re: Proposed Memorandum of Understanding

Dear Mayor Bozajian and Members of the City Council:

Thank you for circulating and providing the opportunity to present comments on the Memorandum of Understanding (MOU) that was received by the City of Calabasas. We understand the proposed MOU is the work of the owners of Calabasas Village, and not of the Calabasas City Council, commissions, or staff.

The proposed MOU seems to be a reaction to California's enactment of AB 2782 in August 2020, ending a rent control exemption for "long term" (more than 12 months) leases of homesites for mobilehomes. This bill was supported by, among others, GSMOL (Golden State Manufactured-Home Owners League) which advocates for the interests of mobilehome owners and residents.

After careful discussion and consideration with our CVHOA board, park residents, and our attorney, we all agree that unless there were to be significant changes, clarifications, and distinct defining of statements that are incorrect and/or contradict our lease, this document (that would bind the City in its future decision making) should Not be signed.

This MOU, as written, contradicts the current lease language. Multiple sections in the MOU, (highlighted below), indicate the park owner **waives all reimbursements for capital improvements**. This is inaccurate, because the lease specifically includes capital improvement as pass through charges (see lease section 3). Also, what would the City of Calabasas be getting that is of significant value in return for the proposed MOU?

Before considering the MOU, even with modifications, we believe the City should first receive satisfactory answers to these and other questions:

1. Would the 2020 leases be modified to remove section 3, which details capital pass throughs to residents? Thus, reflecting that the owners waive **all reimbursements for capital improvements**? Note, the proposed MOU incorrectly claims repeatedly that in the 2020 lease (drafted by the owners), mobilehome owners and residents are not obligated to pay for capital improvements.
2. Would the MOU language regarding the park owners' waiver of pass through reimbursements supersede the signed leases, or just create confusion?

3. Would a transfer of ownership or sale of the park nullify the MOU? This is not in the park owners' draft.
4. Would the MOU become null and void if the park owners cancel or opt out of the current lease at any time? (They have an opt-out option at years 9 (2029) and 14 (2034))
5. How long would the proposed MOU be in force?
6. Can the park owners legally bypass a state law by signing an MOU agreement with the local jurisdiction?
7. Is the MOU a binding contract if signed?

Without satisfactory answers to the above points and sufficient consideration flowing to the City, our viewpoint again is that the City should NOT sign the MOU as proposed by the park owners.

Even with answers to those points, why would the City bind its hands in regard to any future decisions involving Calabasas Village?

Thank you so much for considering our opinions in this matter.

Sincerely,

Derol Caraco
President, CVHOA

Attachments:

- Attachment 1 – MOU statements in conflict with existing resident Leases
- Attachment 2 – Lease Language with which MOU conflicts
- Attachment 3 - Additional comments from CVHOA

Attachment 1 – MOU statements in conflict with existing resident leases

Calabasas Village Owners' proposed MOU states the following (CVHOA comments are in red.):

1. Page 2 paragraph – “One example is the agreed waiver of all reimbursements for capital improvements made within the community, a constitutional right given up as a concession in return for an agreeable rent schedule.” Reimbursements from tenants under a lease or contract are **not** constitutional rights. They depend on what the lease or contract says. In addition, the lease paragraph 3 does **not** waive all reimbursements, as explained in the cover letter and below.
2. Page 2 paragraph 4 – “For example, the updated long-term lease understanding deletes legal rights to reimbursement for capital improvements (which cannot be required by mandatory regulation or imposition).” Same comment as under 1.
3. Page 2 last paragraph – “It is the intent of this Memorandum Of Understanding (MOU) that the parties implement and abide by the terms of the lease agreement attached hereto as Exhibit “A.” Calabasas Village management agree to distribute and offer a copy of the MOU to all homeowners and potential homeowners.” (A) The “parties” to the proposed MOU would be the park owners and the City of Calabasas. The City is not a party to any of the leases and there is nothing in the leases the City is required to implement. (B) Does this conflict with the other statements pledging the owner waives his right to reimbursement for capital pass throughs given the language in lease section 3? Or do the multiple pledges of waiving reimbursement supersede section 3? (Text of Section 3 is below.)
4. Page 3 – **BE IT RESOLVE** paragraph includes “Accordingly, the City Council determines that the mutually negotiated long-term lease agreement constitutes necessary and sufficient safeguards against the imposition of any unfair, exploitive, or unreasonable terms and conditions upon mobilehome tenancy.” Why should the City do this? Does the City do this for leases between other landlords and tenants, or other businesses and customers?

Owners state in **Discussion** section, page 2

Generally – “Note well: The Calabasas leasing solution is to voluntarily waive capital improvement reimbursements. No rent stabilization ordinance could provide for such a requirement. The benefits of fair bargaining between the stakeholders produces advantages for tenants way beyond any regulation that government can impose.” Saying that under the lease, park owners “voluntarily waive capital improvement reimbursements” is like saying that tenants “voluntarily agree to pay rent.” “Voluntarily” ends when a contract is signed.

Owners further state “In other quote MOU’s, sometimes referred to as “accords,” capital improvements are amortized over a period agreed upon by the negotiating parties. Some provide that mobilehome park management may pass on 50% of costs related to capital projects, as per the Rancho Cucamonga MOU, unless the Resident Committee deems the project to be unnecessary as it would have been avoidable by regular maintenance and upkeep. In the case of a dispute arising from a rent increases tied to capital projects, the parties shall submit to third party binding arbitration. The costs of arbitration shall be shared equally by park residents and park owner.

In Calabasas, the solution is to give up the right to capital improvement reimbursements in return for a fixed rent formula for a very long term. The tenants pay nothing, ever, for capital improvements. This type of positive problem-solving should be recognized, endorsed, and officially prescribed as a public policy objective of the city of Calabasas.” Again, it is not accurate to say that the “tenants pay nothing, ever, for capital improvements.” See attachment 2

The lease provisions in Section 3 and 4 (attachment 2) conflict with the MOU wording representing “The tenants pay nothing, ever, for capital improvements.” Does the MOU language negate the Section 3 pass throughs when/if those project meet the definition of “capital.”

Attachment 2 – Lease Language with which MOU conflicts

The lease sections read as follows.

3. OTHER IMPROVEMENTS: For the purpose of this Agreement, "Other Improvements" shall be defined as our costs of constructing new improvements or repairing or replacing old improvements in the Park that WE ARE REQUIRED TO MAKE BY A GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY, UTILITY COMPANY, SOME OTHER PERSON OR ENTITY OVER WHOM WE HAVE NO CONTROL OR BECAUSE OF AN UNINSURED LOSS, OR PORTION THEREOF OR A DEDUCTIBLE PORTION OF AN INSURANCE POLICY:

a.) **PARK’S ELECTRICAL, GAS AND WATER DISTRIBUTION SYSTEMS:** In the event that Owner or a Serving Utility determines that any or all of the Park’s electrical, gas or water distribution systems need replacing in whole or part Owner shall bear the first Two Hundred and Fifty Thousand Dollars (\$250,000.00) of the cost of each replacement and any amount or amounts above Two Hundred and Fifty Thousand Dollars (\$250,000.00) of the cost of each replacement shall become a monthly pass-through paid back to Owner with interest at the lower of Bank of America (B of A) prime rate plus one half of one percent (.5%) or (six percent (6%). The monthly pass through(s) shall be paid to Owner in Sixty (60) equal monthly instalments beginning on the next Anniversary Date. In the event of a pass-through charge pursuant to this paragraph you have the right to pay all of your allocable costs at the time of notice in one lump sum without interest.

b.) **GOVERNMENT RELATED EXPENSES:** For the purposes of this Agreement, "Government Related Services" shall be defined as services required by governmental agencies which are new or in addition to those services legally required to be provided by Owner to Homeowner or to the Park as of January 1, 2020. "Government Related Expenses" include: all expenses required by any government entity subsequent to January 1, 2020. These include all expenses of licenses, permits, approvals, fees, assessments, utility operations, professional services, other services or facilities provided and maintained according to law, including the Mobilehome Residency Law (*Civ C § 798, et seq.*), the California Mobilehome Parks Act (*Health and Safety Code § 18250, et seq.*), Title 25 of the Code of Regulations, Div. 1, Ch. 2 ("Title 25"); the cost of complying with additions, deletions or modifications for disability laws, access and accommodations per state or federal law, or other applicable law, as required or voluntarily provided; and labor, materials, exactions, and other costs or expenses Owner incurs to comply. In the event that Owner complies with any of the above mentioned "Government Related Expenses" Owner shall bear the first Twenty-Five Thousand Dollars (\$25,000.00) of the cost of each requirement and the amount or amounts above Twenty-Five Thousand Dollars (\$25,000.00) of the cost of each requirement shall become a monthly pass-through paid back to Owner with interest at the lower of Bank of America (B of A) prime rate plus one half of one percent (.5%) or six percent (6%).

Section 4 OWNER BEARS THE COSTS OF CAPITAL IMPROVEMENTS INITIATED BY OWNER: Owner will bear the cost of all Capital Improvements that Owner initiates that are not separately mentioned as pass-through charges elsewhere in this Lease Agreement.

Attachment 3 - Additional comments

For the first time in nearly 40 years park owners' lease agreements are not exempt from rent control measures. That choice was made by the legislature and signed into law by the governor. The City Council should equally not be restricted in making appropriate decisions in the future, consistent with the law, not handcuffed by a very one-sided and unnecessary MOU. Park Owner immunity from AB 2782 is at least part of the intent of this MOU.

For example, it appears the proposed MOU would prevent the City of Calabasas from adopting an ordinance or taking other action, even if the City were to determine adoption of an ordinance or other City action is needed, now or at any point in the future.

The proposed MOU seems to be an attempt to circumvent AB 2782, but would do much more. It would effectively prevent the City from protecting owners and residents of mobilehomes from future actions of the park owners or their successors – not simply rent increases – even if City leadership and staff believe a future ordinance or other action is necessary.

In 2020, the owners of Calabasas Village entered into leases with each of the owners of the approximately 210 separate homesites, who each own their mobilehomes. The leases appear to run from January 1, 2020, to December 31, 2039. However, the park owners insisted on the right to terminate each lease without cause in years 9 (2029) and 14 (2034) of the lease term.

While Calabasas Village is currently zoned solely for mobilehomes, the zoning could be changed by a future vote of the City Council. However, the first part of AB 2782 prohibits local authorities from approving any change in use unless they find it will not result in a shortage of affordable housing in the local jurisdiction. Would the MOU in effect nullify that portion of AB 2782 – by preventing the City Council from making or taking action on a finding that a proposed future change in use does result in a shortage of affordable housing?

The 2020 leases between the park owners and the park residents are already in place. So the park owners would not be “trading” the leases for the MOU. First, the leases are between the park owners and individual mobilehome owners, not the City. Second, the park owners (as well as the individual mobilehome owners) are already bound by the 2020 leases.

Nothing in the leases gives the City or residents anything of value in return for the exemption from rent control or rent justification and other benefits that the MOU would give park owners – the ability to take whatever future action they may wish, without concern that the City of Calabasas might challenge their actions or motivations.

The MOU could also make it more difficult for mobilehome owners to obtain financing. At present, a very limited number of lenders finance the purchase of mobilehomes. All lenders consider what protections they will have or risks they will face for mortgage loans they make on all kinds of property, including mobilehomes. The less power local government has to protect a tenant or resident (or mortgage lender) against bad acts by a landlord, the greater the risk the mortgage lender will face that its loan will become valueless.

The saying that “words matter” is far more true for contracts, such as the proposed MOU. The long preamble or recitals in the proposed MOU would bind the City even more securely in any future dispute. This is true even if the recitals in the MOU are not factually accurate, as in the case of the misstatements in the MOU regarding capital improvement costs not being passed through to residents.

Memorandum of Understanding
Agreement between the City of Calabasas and Owners of Calabasas Village
Providing for an Annual Maximum Rent Adjustment
and Secure Tenancy for Period of Accord

BE IT RESOLVED,

Whereas, the City, Management and Residents of Calabasas Village have agreed to various programs, principles and guidelines for the mutual benefit of the mobile home owners and management of Calabasas Village including terms of a long term lease agreement. The lease agreement reflects a continuing accord to long-term resolution of pricing and rights and entitlements to the security offered by long-term lease covenants, without the reliance upon the resources of local government and taxpayer expense.

Whereas, it is in the mutual interest of the stakeholders to work together for advancement of entitlements for all. Fair bargaining and appreciation for the interests of others succeeds in long and stable relationships. Everyone benefits. Costly intervention of government is avoided and unnecessary. Stability enhanced.

Whereas, due to changes in state law embodied in AB 2782, governmental authority to provide leasing price regulations previously authorized since 1986 under state law, has been delegated to the authority of local government, An updated lease has been offered and accepted by Calabasas residents, reflecting the changes required by AB 2782 (i.e., the deletion of references to previously authorized lease exemptions from local controls).

Whereas, the stakeholders desire to continue leasing based on the terms and conditions previously which were previously agreed to between management and resident committee.

Whereas, it is in the interest of the City to recognize and and encourage efforts of our citizens to achieve consensus without imposing new expensive burdens on Calabasas taxpayers.

ACKNOWLEDGMENTS,

Calabasas Village and community residents have enjoyed stable and secure long-term relations embodied in leasing throughout the resident community for more than 30 years.

The terms of a new and restated long-term lease agreement have been reached and the lease has been unanimously accepted throughout the resident community.

The culmination of a long term lease agreement reflects the hard work of mutual commitment of both sides of a “landlord/tenant” relationship. In this instance, the mutual benefits and long term security offered by leasing is recognized and reflects that it is unnecessary and without purpose for any form of superfluous governmental regulation to be asserted amid this well-balanced apportionment of rights and duties between the parties.

This memorandum of understanding (“MOU”) is an official recognition of the hard work and effort put forth by all parties to achieve a mutual long-term coalescence of understanding and to do so without the need, benefit, and cost of government intervention or participation.

It is recognize that the duration of the long term lease assures an ongoing mutual agreement of terms and conditions which both balances the rights of both parties and offers benefits of the management which neither government may extract nor require of the park owner. One example is the agreed waiver of all reimbursements for capital improvements made within the community, a constitutional right given up as a concession in return for an agreeable rent schedule.

Jurisdictions considering a government remedy for increasing mobilehome space rent have opted for a cooperative alternative – model leases negotiated among residents and the park owner.

Mutual Benefits Secured by Agreement: By providing protections to Calabasas residents in the form of voluntary price constraints and concessions, there are many advantageous benefits no longer allowable to be provided in accordance with state law. For example, the updated long-term lease understanding deletes legal rights to reimbursement for capital improvements (which cannot be required by mandatory regulation or imposition). The Calabasas long-term lease reflects a mutually negotiated balance between the interests of park owners and mobilehome owners.

Untold Tax Savings: The cost savings for the city with the recognition of long-term leasing agreed upon as a product of mutual negotiation by the stakeholders results in untold tax savings for the taxpayers of the City of Calabasas. Taxes imposed from the general fund to cover the staffing for rent control regulation, applications, enforcement, registration, enforcement, and defense of the administrative bureaucracy of the rent board results in the saving of millions of dollars. More than this, the quality of life for the stakeholders is dramatically improved when long-term understandings are amiably achieved.

Long-Term Peace and Security: The success of the private agreement results in the absence of any fiscal impact upon the taxpayer. The potential for unfortunate and needless legal disputes with and between the stakeholders, but always necessarily entangling city involvement, produces significant deterioration of relationships. More than this, the acrimony legal disputes increases distrust, fear and anxiety about the future. It results in other psycho-social ramifications which occur when the stability and sanctity of one’s home life are unsettled and disturbed. The use of a mutually beneficial long-term private resolution, like any peace accord, enhance harmony and avoid local government resources from being wastefully drained.

Model leasing Is a Superior Solution To Housing Pricing: Seeking to avoid these encumbrances while still achieving the goal of stabilized rents, aired as many California jurisdictions have begun looking into model leases as a cooperative alternative to rent stabilization /stabilization.

It is the intent of this Memorandum Of Understanding (MOU) that the parties implement and abide by the terms of the lease agreement attached hereto as Exhibit “A.” Calabasas Village

management agree to distribute and offer a copy of the MOU to all homeowners and potential homeowners.

The parties intend for this MOU to promote success and stability of management-resident relations and to continue to improve communication and understanding between park residents and management,

Therefore, the parties agree:

1. The signatories below agree to the foregoing policies, principles and guidelines for future efforts to promote long time security in manufactured home tenancy in Calabasas Village;
2. The signatories below agree to honor and cooperate in assuring respectful communications with any stakeholder and shall maintain an “open door” policy to discourse, discussion, with good faith efforts to appreciate and understand the interests and position of both sides to the management-resident relationship in Calabasas village,
3. The park owners also recognize that there are residents whose incomes have not kept pace with rising living costs and that these residents need assistance from private and governmental sources to remain in their homes. Calabasas Village agrees to continue providing subsidy contributions in the form and manner previously requested by the city of Calabasas.
3. Guidelines for rent adjustments, park maintenance and capital improvements: Calabasas management has waived the right to reimbursement for capital improvements under the terms of the long term lease as restated. Space rent adjustments should be fixed based upon the terms of the lease attached as Exhibit “A.”
4. Each year, or more, Calabasas Village management should communicate with the Residents Committee regarding any plans for park maintenance, repair, or capital improvements.

BE IT RESOLVED that the City Council of the City of Calabasas, with due consideration for rights of mobilehome park residents and park owners and in recognition of the intent of these parties to work together to implement innovative and exemplary leasing to improve the quality of life in the mobilehome park within the City of Calabasas, acknowledges the recitals and recitations set forth In This “Memorandum of Understanding.” The Council of the City of Calabasas endorses and encourages all stakeholders to continue their good faith efforts to maintain long-term, secure, and positive relationships with each other and with the city. Accordingly, the City Council determines that the mutually negotiated long-term lease agreement constitutes necessary and sufficient safeguards against the imposition of any unfair, exploitive, or unreasonable terms and conditions upon mobilehome tenancy. It is the commitment of the city of Calabasas therefore, that Calabasas Village shall not be subject to government intervention in the form of regulation or control of pricing. Accordingly, there will not be impact upon taxpayers, fiscal consequences, or imposition of revenue losses which would

result from unnecessary regulation and bureaucratic interference with the negotiated terms of the understandings and agreements of the stakeholders.

* * *

The city clerk shall certify to the passage of this resolution and cause the same to be published in a daily newspaper printed and published in the City of Calabasas.

I hereby certify that the foregoing resolution was passed by the City Council of the City of Calabasas at its meeting of____, 2021.

City Clerk

(Deputy)

Approved: _____, 20__

Approved as to form and legality,

City attorney

By: _____

Deputy