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**Attachment 4**

March 24, 2022

VIA EMAIL AND U. S. MAIL

Anky van Deursen  
Mountain View City Hall  
500 Castro Street  
Mountain View, California 94041-2010

**Re: Terms for Proposed Memorandum of Understanding**

Dear Ms. van Deursen:

As you know, this office represents the owners of the Sahara Village and Santiago Villa mobilehome parks, both of which are located in the City of Mountain View. I am writing to advise you of the terms my clients are willing to consider if a Memorandum of Understanding (MOU) can be negotiated with the City and/or the tenants at either Sahara Village or Santiago Villa:

**1. No Vega Adjustments:** In *Vega v. City of West Hollywood* (1990) 223 Cal. App. 3d 1342, the Court found that “[w]hen base date rents can be adjusted to reflect prevailing rents for comparable units, everyone within the ambit of the rent control scheme participates on an equal footing.” *Id.* at 1349. Unlike the ordinance adopted by the City, the *Vega* Court determined that a landlord is entitled to “base year” rents that reflect general market conditions, regardless of whether the landlord is making a fair return on its investment, writing as follows:

“Most significantly, *the critical questions are not whether the base date rents establish a ‘fair and reasonable’ return* and whether base date rents, even if low, are within the range that can be charged. . . . Rather, the critical question is whether the base date rents can reasonably be deemed to reflect general market conditions.” *Id.* at 1351. (Emphasis added).

In December of 2018, an appraiser named David Beccaria was retained to perform

market rent surveys with respect to Sahara Village and Santiago Villa. Mr. Beccaria is one of the most respected mobilehome park appraisers in California, having worked for cities and tenant organizations many times over the years, in disputes involving rent control.

Mr. Beccaria concluded the fair market rent for spaces at Sahara Village was \$1,500 per month, while the fair market rent for Santiago Villa was \$2,000 per month. Accordingly, my clients are entitled to *Vega* adjustments for many current tenants ranging from \$300 to \$900 per space per month, or more. My clients are willing to forego their right to seek a *Vega* adjustment, if an MOU is agreed to by the relevant parties.

**2. No Fair Return Applications:** The owners of rent controlled properties have a constitutional right to a “fair return on investment.” *Cacho v. Boudreau* (2007) 40 Cal. 4th 341, 350. That right is so fundamental that if it is not specifically included in a rent control ordinance, it “will be implied therein.” *152 Valparaiso Associates v. City of Cotati* (1997) 56 Cal. App. 4<sup>th</sup> 378, 383.

Landlords also have a constitutional right to a fair return on all capital expenditures at their properties. In fact, in *Sierra Lake Reserve v. City of Rocklin* (9<sup>th</sup> Cir. 1991) 938 F.2d. 951, 958, the Ninth Circuit Court of Appeal held that the failure to provide a fair return on capital expenditures would result in a violation of the due process clause of the United States Constitution.

The *Sierra Lake* court is not the only one to hold that the owners of rent controlled properties have a constitutional right to a fair return on capital expenditures. To the contrary, the California Supreme Court has cited the *Sierra Lake* case with approval, finding that the right to a fair return would be “an empty promise” if it did not include a fair return on capital expenditures. *Kavanau v. Santa Monica Rent Control Board* (1997) 16 Cal. 4<sup>th</sup> 761, 773.

My clients have purchased almost 200 mobilehomes at Sahara Village and Santiago Villa, at a cost that is estimated at approximately \$50 million, or more. Because the City has decided to regulate mobilehomes and mobilehome spaces, my clients’ “investment base” must be increased by \$50 million, or more.

Although my clients have not yet calculated the exact dollar amount of the rent increases that will be required to provide a fair return on its total investment, they are estimated to be at least as much as those that would be required under *Vega*. My clients are willing to forego their right to seek a fair return adjustment while an MOU is in effect, if the MOU is agreed to by the relevant parties.

**3. Park Closures:** No mobilehome park will last forever. Every mobilehome park will be closed at some point.

The United States Supreme Court has held that property owners have a constitutional right to “exclude” others from their property, and that the government cannot take that right away without paying just compensation. See *Kaiser Aetna v. United States*, 444 U.S. 164, 179-180 (1979). See also *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2072-2074, 2077-2078 (2021). Should my clients decide to close either Sahara Village or Santiago Villa, they reserve the right to challenge any federal, state or local law that exists at the time, which attempts to prevent them from excluding others, including any law that would require them to pay tens of millions of dollars to go out of business.

My clients attempted to raise “park closure” at the session the government conducted earlier this month regarding the MOU. However, the government not only prohibited discussion of that topic, the government literally silenced my telephone, so I could not speak on that subject, in blatant violation of the First Amendment to the United States Constitution.

Although my clients reserve the right to challenge the government’s violation of its First Amendment rights, my clients will abide by the government’s dictate at this point, so as not to risk a complete shutdown of debate by the City on the MOU. Accordingly, my clients makes no offer regarding park closure at this time.<sup>1</sup>

**4. Annual CPI Increase for Existing Tenants:** In exchange for foregoing their rights to seek fair return and *Vega* adjustments, my clients must be allowed to increase the base rent for existing tenants once each year by 100% of the increase in the Consumer Price Index, which is the same inflationary rent increase allowed under the Mountain View Ordinance for Apartments.

**5. Limited Increases for New Tenants:** In exchange for foregoing their rights to seek fair return and *Vega* adjustments, my clients must be allowed to increase the “space” rent for new tenants by the lesser of \$200 or 20%. For spaces that are less than \$200

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It should be noted that the City of Mountain View’s attempt to prevent some mobilehomes or spaces from being removed from the market, unless the entire park is closed, is also contrary to California law. More specifically, under the Mobilehome Residency Law, parkowners can evict tenants to change the use of “the park or any portion thereof.” See *Civil Code Section 798.56(g)*. See also *Civil Code Section 798.10*

below the \$2,000 and \$1,500 market rents established by David Beccaria, the parkowner will limit the beginning rent for new tenants at those spaces to \$2,000 or \$1,500, respectively, with those \$2,000 or \$1,500 amounts to be adjusted by the Consumer Price Index each year.

With respect to park owned homes, my clients will retain their right to increase the rent to market when a new tenant rents a mobilehome, as is allowed under state law, the Mountain View Ordinance for mobilehome parks, and the Mountain View Ordinance for Apartments.

**6. Capital Improvement Pass Throughs:** My clients must have protection in the event a significant capital expenditure is required to keep the park operating. Accordingly, the parkowner must have the right to pass through capital expenditures in excess of \$50,000 on a pro-rata basis, to be amortized at the actual or prime interest rate, over the expected useful life of the improvement.

As required by California law, those pass throughs would be considered “rent,” and would require at least 90 days notice before the pass through could take effect. See *Civil Code Sections 798.30 and 798.31*. However, the right to pass through capital expenditures would not apply to capital improvement projects to the extent the expenditure is reimbursed by any insurance the parkowner may have for that expenditure.

**7. Rent Subsidy Program for Low Income Tenants:** My clients recognize that there may be some tenants at their parks who are on fixed incomes. In order to assist those tenants, my clients are willing to offer a private subsidy program.

More specifically, my clients will establish a “rent credit program” for qualifying households with a total income at or below \$34,480, which is the minimum income currently required to qualify for PG&E’s CARE program. Under that program, qualifying households will receive a rent credit each month, up to the full amount of their annual rent increase, to the extent their annual rent increase causes their new rent to be more than one third of their household income. In order to participate, the household must submit an application verifying income, with assets totaling no more than \$150,000, not including their mobilehome or their vehicles.

**8. Conclusion and Reservation of Rights:** My clients would prefer to avoid endless litigation with their tenants and the City regarding rents, or the legality of many of the provisions in the recently adopted rent control ordinance. Accordingly, my clients are

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willing to make significant concessions with respect to their rights to a *Vega* adjustment and fair return petitions, in exchange for peace.

As always, my clients do not waive any rights with respect to Sahara Village or Santiago Villa, including their constitutional rights to (1) petition for “fair return,” *Vega* and *Kavanau* adjustments, (2) go out of the mobilehome rental business, (3) “exclude” tenants from their “park owned” homes before selling them to third parties, and/or (4) challenge any attempt by any governmental entity to make them pay their tenants tens of millions of dollars in order to exercise their constitutional rights. See *Kaiser Aetna v. United States*, 444 U.S. 164, 179-180 (1979). See also *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2072-2074, 2077-2078 (2021).

If you would like to discuss these issues in more detail, you may contact me on my direct line at (510) 336-1538. Thank you for your attention to this matter.

Very truly yours,



Anthony C. Rodriguez

cc: Karen M. Tiedemann, Esq.  
Terry Dowdall, Esq.  
Doug Johnson, WMA  
Clients