

REPORT TO CITY COUNCIL

DATE: OCTOBER 26, 2022

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: NATHAN HAMBURGER, CITY MANAGER

SUBJECT: REQUEST TO APPROVE A LEASE AGREEMENT FOR USE OF THE AGOURA HILLS/CALABASAS COMMUNITY CENTER WITH THE CITY OF CALABASAS

The Cities of Agoura Hills and Calabasas, along with the assistance and land donation of Los Angeles County, were able to fund the construction of a jointly shared Community Center in the City of Calabasas that has been overseen and operated through a Joint Powers Agreement (JPA) since June 1996. With the onset of the COVID-19 Pandemic in 2020, the JPA was forced to close its doors and layoff the existing staff as there was no reliable revenue source to provide for overhead and operations of the Community Center.

The two Cities committed to certain levels of funding to keep the building maintained during the closure with the hope that it could once again be open and available to the general public for recreational uses. Unfortunately, as the pandemic continued, the viability of the services previously offered via the JPA were realized to no longer be able to be offered under the past operational model due to costs, mainly related to administration and maintenance and repair costs. This has limited the available options to reopen the facility or hire staff. The major repairs to the building stemmed around the roof, over the gymnasium portion of the building, which is in need of repairs and partial replacement in areas. Through the generous support of Los Angeles County Supervisor, Sheila Kuehl, the JPA was able to secure funding for the roof repairs, which will be managed by the City of Calabasas. In addition, the City of Agoura Hills was able to secure one million dollars in federal grant funds for additional repairs to the facility. Repairs are expected to occur over the next 12 to 18 months.

The staffs and elected officials have met over the past year on multiple occasions to discuss viable options in regards to the future of the Community Center and how to fill any voids left from past programs and services, which ultimately led to a proposal that would allow the City of Calabasas to lease the City of Agoura Hills' interest in the facility. This provides the City of Calabasas the opportunity to expand on their existing programs and services that are provided to the community at-large through their Community Services Department. City of Calabasas staff will operate the facility and no JPA staff necessary. The proposed lease would be for a one-year term with two additional year extensions available for a fixed cost per year. The agreement was structured similar to a triple net lease, in which the City of Calabasas would assume the responsibilities for the facility and premises except for several items identified as shared obligations.

The lease agreement provides clarity on the responsibilities of each City and is intended to provide a short-term solution to allow for the Community Center facility to reopen for programs and activities with a long-term solution timeline established. The JPA Cities will continue to discuss the best path forward in order to keep the facility operational and available to the public.

The lease agreement being presented is consistent with previous direction from the City Council and has only a few minor requested adjustments in regards to improvements to the building beyond those already identified through grant funds. The Calabasas City Council will also be considering approval of this lease agreement at their meeting of October 26, 2022. If this lease agreement is approved by both Cities then staff will provide a detailed update to the JPA Board Members at their next meeting.

The agreement has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff respectfully recommends the City Council approve the Lease Agreement for the Agoura Hills Calabasas Community Center with the City of Calabasas and authorize the Mayor to sign all related documents.

Attachment: Lease Agreement

GROUND LEASE

CITY OF AGOURA HILLS,
as Owner and Lessor of an Undivided Half-Interest in the Community Center

and

CITY OF CALABASAS
as Owner of an Undivided Half-Interest in the Community Center and Lessor of the other
Undivided Half-Interest in the Community Center

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GROUND LEASE

This Ground Lease (“Lease”) is entered into as of the “Effective Date” (as defined in Section 1.1 below) by and between the City of Agoura Hills (“Agoura Hills”) and the City of Calabasas (“Calabasas”), (together the “Parties”), as defined in Sections 1.2 and 1.3 below.

ARTICLE 1 BASIC LEASE PROVISIONS

1.1 Effective Date. November 1, 2022.

1.2 Agoura Hills. City of Agoura Hills, a California municipal corporation.

1.3 Calabasas. City of Calabasas, a California municipal corporation.

1.4 Premises. This Lease effects a lease by Agoura Hills of its undivided half-interest in the land described on Exhibit “A” attached hereto and the improvements thereon to Calabasas, who also owns the other undivided half-interest in the land and improvements thereon (having a street address of 27040 Malibu Hills Road, Calabasas, CA 91301).

1.5 Term. The term of this Lease shall commence on the Effective Date (“Term Commencement Date”) and shall expire one (1) calendar year thereafter, unless otherwise agreed by the Parties in writing. Calabasas has two further one-year renewal extension options, at its option, exercisable by providing written notice to Agoura Hills at least 30 days before expiration, unless otherwise agreed by the Parties in writing.

1.6 Rent. The rent payable by Calabasas to Agoura Hills for its undivided half-interest under this Lease shall be \$1.00 per year, payable on or before the Effective Date and each anniversary thereof if renewed.

1.7 Use of Premises. The Premises shall be used solely as a recreational, public, emergency, and community facility, open to the residents of the City of Calabasas, the residents of the City of Agoura Hills and the residents of other incorporated and unincorporated areas, on the same terms (subject to payment of any applicable fees imposed or adjusted by Calabasas under applicable law). Calabasas shall retain all programming fees and facility revenues.

1.8 Parking. Calabasas shall have the right to use surface parking for the parking of the users of the facility and Calabasas’s patrons, employees, and contractors.

1.9 Financial Provisions. Agoura Hills and Calabasas both agree that the existing Joint Powers Agreement, entered into by each of them on November 24, 1997, as amended in 1999, 2000, 2004, and 2006, continues in effect and governs the Agoura Hills Calabasas Community Center Authority, a California public entity separate from the two Cities. Agoura Hills and Calabasas further agree that, unless and until otherwise agreed by the Parties, the Agoura Hills Calabasas Community Center Authority (the “Authority”) shall continue to bear its own costs under its contract with the California Public Employees Retirement System incurred for past employees through February 2021 and for insurance for its Board Members. The two Cities agree to voluntarily continue to contribute one-half shares to the Authority as needed to pay for

these costs incurred by the during the Lease term, without assuming any obligations or debts of the Authority.

1.10 Notices.

To Agoura Hills: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301
Attn: City Manager

To Calabasas: City of Calabasas
100 Civic Center Way
Calabasas, CA 91302
Attn: City Manager

1.11 Broker(s). None.

**ARTICLE 2
PREMISES; TRIPLE NET GROUND LEASE**

Agoura Hills leases to Calabasas and Calabasas leases from Agoura Hills, for the “Term” (as defined in Article 3) and upon the covenants and conditions set forth in this Lease, the premises described in Section 1.4 above (“Premises”). It is intended that this Lease be a so-called “triple net” lease, such that Calabasas bears all responsibility for maintenance, repairs, utilities, insurance, property taxes and assessments, and operation of the Premises, unless otherwise specified in this Lease.

**ARTICLE 3
TERM**

3.1 Term. The term of this Lease (“Term”) shall commence upon the Term Commencement Date, and shall end on the date that is one (1) calendar year thereafter, unless extended by renewal or as otherwise agreed by the Parties in writing.

3.2 Discussion of Long Term “Resolution”; Mediation. During the Term of this Lease, Agoura Hills and Calabasas shall use good faith efforts to discuss the future of the Premises (*i.e.*, the community center included in the Premises), which are currently jointly owned by Agoura Hills and Calabasas. If Agoura Hills and Calabasas shall not have agreed upon terms by March 31, 2023, then Agoura Hills and Calabasas shall submit the matter to a mediator, to be approved by both Agoura Hills and Calabasas, and within thirty (30) days after the appointment of the mediator, both Agoura Hills and Calabasas shall meet together with the mediator (which may be online or by phone) to discuss possible terms of a long term resolution. Agoura Hills and Calabasas shall each pay fifty percent (50%) of the charges and costs of the mediator.

**ARTICLE 4
POSSESSION; CONDITION**

4.1 Delivery of Possession. Agoura Hills shall deliver possession of the Premises on the Term Commencement Date.

4.2 Condition of Premises. Calabasas acknowledges that: (i) neither Agoura Hills nor any employee, representative or agent of Agoura Hills has made any representation or warranty (express or implied) with respect to the Premises or any other portion of the Premises, and (ii) Agoura Hills shall have no obligation to improve or alter the Premises for the benefit of Calabasas. Calabasas acknowledges that Calabasas has thoroughly inspected the Premises and Calabasas shall accept the Premises in their current "AS-IS" condition, without representation or warranty, express or implied, subject to all matters of record.

4.3 Construction-Related Accessibility Standards. The Premises have not been inspected by a Certified Access Specialist (CASp). A Certified Access Specialist (CASp) can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, the commercial property owner or lessor may not prohibit the lessee or Calabasas from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of the lessee or Calabasas, if requested by the lessee or Calabasas. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

In that regard, the parties agree that in the event Calabasas requests a CASp inspection, Calabasas shall pay any such inspection fees and the cost of making any such repairs, unless otherwise agreed by Agoura Hills and Calabasas.

**ARTICLE 5
IMPROVEMENTS**

5.1 Improvements. Calabasas shall notify Agoura Hills of proposed capital improvements to the Community Center. Calabasas shall bear the cost of noticed improvements unless otherwise specified herein or as previously agreed between the Parties. . Both of the Agoura Hills and Calabasas City Managers must consent for Calabasas to complete improvements to the Premises costing up to \$25,000. Both the Agoura Hills and Calabasas City Council must consent for Calabasas to complete improvements to the Premises costing over \$25,000. The Parties agree consent may not be unreasonably withheld and a failure by any City to respond to a request for consent within 60 days shall constitute consent. Calabasas may seek funding from local, state, or federal grant or earmark funds for said projects.

5.2 Roof Repairs Project. Agoura Hills acknowledges that Calabasas has separately secured permission to administer certain roof repairs of the Premises via agreement between Calabasas and the Agoura Hills/Calabasas Community Center Joint Powers Authority and nothing herein shall modify the responsibilities for that separate project.

5.3 Miscellaneous Improvement Projects. Calabasas acknowledges that Agoura Hills has secured federal funding for certain improvements to the Community Center. Agoura Hills and Calabasas shall use good faith efforts to discuss and prepare a list of capital improvement projects for the Premises (*i.e.*, the Community Center) and the financing thereof, including use of any available capital improvements funding from any federal, state, or local grant or earmark funds. Such improvements shall be governed by a separate project-specific agreement among the Parties, which shall include indemnification provisions.

5.4 Mechanics' Liens. Calabasas shall keep the Premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises by or at the request of Calabasas during the Term.

ARTICLE 6 RENT AND PROPERTY TAXES

6.1 Rent. Calabasas shall pay the rent without prior demand and without offset, abatement or deduction.

6.2 Property Taxes and Assessments. Calabasas shall pay, prior to delinquency, all taxes and assessments assessed or imposed upon the Premises, if applicable under governing law.

ARTICLE 7 PERMITTED USE

7.1 Permitted Use. Calabasas shall use the Premises solely for the use specified in Section 1.7 and for no other use or purpose.

7.2 No Nuisance. Calabasas shall conduct its operations in a manner that shall not create a nuisance, as defined by the Calabasas Municipal Code, Section 8.20.030.

ARTICLE 8 MAINTENANCE AND REPAIRS

8.1 Calabasas's Maintenance Obligations. Calabasas shall at Calabasas's cost and expense maintain in good, clean and safe condition and repair, the entirety of the Premises and community center, including the roof, the parking areas, any HVAC systems and any utility systems. Calabasas shall perform maintenance and custodial services.

8.2 Agoura Hills's Right of Entry. Agoura Hills, its agents, contractors, servants and employees may enter the Premises following not less than twenty-four (24) hours' prior written notice to Calabasas (except in the event of an emergency, in which case no notice shall be required) and Agoura Hills's good faith efforts to coordinate such entry with Calabasas's on-site management if any so as to minimize interference with Calabasas's operations (except in a case of emergency, in which case no notice shall be required): (a) to examine the Premises; (b) to perform any obligation required of Agoura Hills under applicable law; (c) to exercise any right or remedy of Agoura Hills under this Lease; and (d) to cure Calabasas's failure to perform its

obligations under this Lease, including work necessary to comply with laws, ordinances, rules or regulations of any public authority – but in all such cases, shall also secure Calabasas’ consent as owner of an undivided half-interest in the Premises.

**ARTICLE 9
DAMAGE TO CALABASAS’S PROPERTY; WAIVER**

Notwithstanding anything contained in this Lease to the contrary, Agoura Hills and its agents and employees shall not be liable for (a) loss or damage to any property by theft or otherwise, or (b) any injury or damage to person or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Premises or from pipes, appliances or plumbing work therein or from the roof, street, sub-surface or from any other place or resulting from dampness or any other cause whatsoever, except to the extent (i) resulting from the gross negligence or willful misconduct of Agoura Hills or its contractors, agents, servants or employees or breach of this Lease by Agoura Hills and (ii) not covered by the insurance maintained by Calabasas (or which would not have been so covered if Calabasas had maintained the insurance required to be maintained by Calabasas pursuant to this Lease). Agoura Hills or its agents shall not be liable for interference with light or other similar intangible property interests. Calabasas shall give prompt notice to Agoura Hills in case of fire or accidents in the Premises and of defects therein or in the fixtures or equipment located therein.

**ARTICLE 10
INSURANCE AND INDEMNITY**

10.1 Insurance. Calabasas, at its sole cost and expense, commencing on the date Calabasas is given access to the Premises, and continuing during the Term, shall procure, pay for and thereafter keep in full force and effect the following types of insurance, in at least the amounts and in the forms specified below, for the protection of Agoura Hills for the specified perils related to Calabasas’ use and operation of the Premises. Calabasas is not obligated to insure Agoura Hills for any other matter unrelated to the Premises. Agoura Hills agrees that Calabasas may provide the requested insurance coverages via a risk pooling joint powers agency, as a California public entity.

(a) **Commercial General Liability (CGL)** with limits no less than Two Million Dollars (\$2,000,000.00) per occurrence basis including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than Two Million Dollars (\$2,000,000) per occurrence. Calabasas shall maintain in force liability insurance, at all times during the term of this Lease and any renewal or extension thereof, which shall insure and indemnify Agoura Hills, the City Council and each member thereof, and every officer and employee of Agoura Hills against liability or financial loss resulting from any suits, claims or actions brought by any person or persons and from all costs and expense of litigation brought against Agoura Hills, the City Council and every member thereof solely for any injury to persons and/or damage to property in, on or about the Premises by reason of the use or occupation by Calabasas or by any other person or persons of the Premises and the activities of Calabasas related to Calabasas’ and its officials, employees, volunteers, invitees, program participants, or any other person or persons’, use and operations of the Premises.

(b) A policy or policies of **Workers Compensation** insurance in the amount required by the State of California related to Calabasas' use and operations of the Premises.

(c) **Accident Insurance** covering all authorized volunteers for accidental death, dismemberment, or paralysis related to Calabasas' and its officials, employees, volunteers, invitees, program participants, or any other person or persons', use and operations of the Premises. Calabasas shall provide evidence of Accident Insurance coverage that provides the same or more coverage than the AH/CCC Authority's current Accident Insurance coverage effective as of July 1, 2022.

(d) **Crime Insurance** against employee theft, forgery or alteration, inside premises theft of money and security, inside premises robbery and safe burglary, outside the premises theft of money and security, compute fraud, fund transfer fraud, money orders and counterfeit paper currency in the amount of One Million Dollars (\$1,000,000) related to Calabasas' and its officials, employees, volunteers, invitees, program participants, or any other person or persons', use and operations of the Premises. Calabasas shall provide evidence of Accident Insurance coverage that provides the same or more coverage than the AH/CCC Authority's current Crime Insurance coverage effective as of July 1, 2022.

(e) **Property Insurance** against all risks of Direct Physical Loss or Damage Including Flood for a total of \$500,000 with sub-limits to apply as follows: (1) \$10,000,000 for Flood Coverage; (2) \$50,000,000 Course of Construction Final Contract Value – Real Property; (3) \$25,000,000 for Newly Acquired Property (reported within 60 days); (4) \$250,000 for Newly Acquired Fine Arts; (5) \$500,000 for Animals; and (6) \$10,000 for Limited Mold—\$100,000 Limited Mold Aggregate Limit - related to Calabasas' and its officials, employees, volunteers, invitees, program participants, or any other person or persons', use and operations of the Premises.

(f) **Automobile Liability:** Covering any auto, or if Calabasas has no owned autos, hired, and non-owned autos, with limits no less than the amount required by law per accident for bodily injury and property damage related to Calabasas' and its officials, employees, volunteers, invitees, program participants, or any other person or persons', use and operations of the Premises.

10.2 Additional Insureds. Agoura Hills shall be **named as an additional insured** on Calabasas's liability and property policies related to Calabasas' and its officials, employees, volunteers, invitees, program participants, or any other person or persons', use and operations of the Premises. Said policies shall be issued by an insurer rated in Best's Insurance Guide with a financial rating of A+ VII or better. If commercially available, said policies shall provide that the insurance coverage shall not be cancelled or reduced by the insurance carrier without Agoura Hills having been given thirty (30) days' prior written notice thereof by such carrier. Calabasas shall not cancel or reduce said insurance coverage.

10.3 Certificate(s) of Insurance. At all times during the term of this Lease and prior to taking possession of the Premises, Calabasas shall maintain on file with Agoura Hills a certificate of insurance issued by the insurance carrier or carriers and showing that the aforesaid insurance policies related to Calabasas' and its officials, employees, volunteers, invitees,

program participants, or any other person or persons', use and operations of the Premises are in effect in the amounts above provided and if requested by Agoura Hills, a copy of each insurance policy. Notwithstanding any other provision to the contrary contained in this Lease, Calabasas shall not have the right to take possession of the Premises until such certificate or certificates are delivered to Agoura Hills.

10.4 Agoura Hills Cure Right. If Calabasas does not keep the insurance required by this Lease in full force and effect, Agoura Hills may obtain the necessary insurance related to Calabasas' use and operations of the Premises and pay the premium thereon, and the repayment thereof shall be paid by Calabasas as additional rent within ten (10) days after written demand by Agoura Hills.

10.5 Waiver of Subrogation. Calabasas's insurance shall be primary to coverage available to Agoura Hills. Calabasas hereby waives any rights of subrogation against the Agoura Hills.

10.6 Indemnity.

(a) "Agoura Hills" for the purposes of this Article shall mean and include Agoura Hills, and its councilmembers, officers, agents and employees. To the fullest extent permitted by law, Calabasas covenants with Agoura Hills that Agoura Hills shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Calabasas or any other person from any cause whatsoever related to the use, occupancy or enjoyment of the Premises by Calabasas or its officials, employees, volunteers, invitees, program participants, or any other person on the Premises or holding under Calabasas or this Lease. Calabasas shall pay for, defend (with an attorney reasonably approved by Agoura Hills), indemnify, and save Agoura Hills harmless against and from any real or alleged damage or injury and from all claims, judgments, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees and costs, arising out of or connected with Calabasas's and its officials, employees, volunteers, invitees, program participants, or any other person or persons', use of the Premises or any repairs, replacements or improvements which Calabasas may make or cause to be made upon the Premises, or any breach of this Lease by Calabasas.

(b) The obligations to indemnify set forth in this Article shall include all reasonable attorneys' fees, litigation costs, investigation costs and court costs and all other costs, expenses and liabilities incurred by the indemnified party from the first notice that any claim or demand is to be made or may be made. All obligations under this Section shall survive the expiration or termination of this Lease.

**ARTICLE 11
DAMAGE**

11.1 Insured Casualty. In the case of damage by fire or other perils covered by insurance, the following provisions shall apply:

(a) Within a period of sixty (60) days after all applicable permits have been obtained (which permits Calabasas shall promptly apply for and diligently seek), Calabasas shall commence such repair, reconstruction and restoration of the Premises to the extent they have been affected by fire or other casualty, and shall diligently prosecute the same to completion.

(b) Notwithstanding the foregoing, if destruction of the Premises occurs during the last nine (9) months of the Term and the estimated time to repair the Premise is more than ninety (90) days, Agoura Hills and Calabasas shall each have the right to terminate this Lease. In each case of a termination under this Article, the termination right shall be exercised by the terminating party giving written notice to the other party within thirty (30) days after the date of destruction, provided that Calabasas shall not have the right to terminate unless all insurance proceeds are delivered to Agoura Hills.

11.2 Uninsured Casualty. If the Premises are materially damaged as a result of any casualty not covered by a deductible (i.e., the cost to repair exceeds the deductible), then Calabasas may terminate this Lease by written notice to Agoura Hills given within ninety (90) days following the date of such damage. If Calabasas does not so terminate, then Calabasas shall promptly commence repair, reconstruction or restoration of the Premises and shall diligently prosecute the same to completion.

11.3 Waiver of Termination. Calabasas waives any statutory rights of termination which may arise by reason of any partial or total destruction of leased premises or improvements, it being intended that this Article 11 shall govern.

ARTICLE 12

ASSIGNMENT AND SUBLETTING

12.1 Assignment. Calabasas may not assign all or any part of this Lease or sublet the Premises (collectively "Transfer") during the Term without consent of Agoura Hills for purposes as allowed by Section 1.7, which consent may not be unreasonably withheld by Agoura Hills and shall be provided within 60 days of a request from Calabasas.

12.2 No Release; Form. No assignment or subletting whether with or without Agoura Hills's consent, shall relieve Calabasas from its covenants and obligations under this Lease.

ARTICLE 13

DEFAULTS

13.1 Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" by Calabasas under this Lease:

(i) failure to pay any sum when due and failure to cure such default within five (5) days after written notice from Agoura Hills to Calabasas;

(ii) failure to perform any other of the promises, covenants or agreements of Calabasas contained in this Lease for more than thirty (30) days after written notice from Agoura Hills (provided, however, if the default cannot be rectified or cured within such thirty (30) day period, the default shall be deemed to be rectified or cured if Calabasas, within such thirty (30) day period, shall have commenced to rectify or cure the default and shall thereafter diligently and continuously prosecute same to completion);

(iii) an assignment or subletting by Calabasas without Agoura Hills's prior written consent; or

(iv) failure to maintain the insurance required of Calabasas under this Lease.

13.2 Agoura Hills Remedies. Any notice required to be given by Agoura Hills above shall be in lieu of, and not in addition to, any notice required under Section 1161 of the Code of Civil Procedure of California or any similar, superseding statute. Upon the occurrence of an Event of Default by Calabasas, Agoura Hills may elect to terminate this Lease, and/or exercise all or any of the rights and remedies afforded Agoura Hills by California law given its rights as an owner of an undivided half-interest of the Premises, and as subject to Calabasas' rights as an owner of the other undivided half-interest of the Premises.

13.3 Default by Agoura Hills. Agoura Hills shall not be in default hereunder unless Agoura Hills fails to perform the alleged obligations required of Agoura Hills under this Lease within thirty (30) days after written notice by Calabasas to Agoura Hills specifying wherein Agoura Hills has failed to perform such obligation; provided, however, that if the nature of Agoura Hills's obligation is such that more than thirty (30) days are required for performance, then Agoura Hills shall not be in default if Agoura Hills commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. .

ARTICLE 14 MATTERS OF RECORD

Calabasas agrees that it and all persons in possession or holding under it will conform to and will not violate the terms of any covenants, conditions, restrictions, easements and any other matters currently of record. Calabasas acknowledges that Calabasas has had an opportunity to obtain and review a title report and title exception documents from a title insurance company selected by Calabasas.

ARTICLE 15 UTILITIES AND SERVICES

Calabasas shall pay directly to the appropriate utility company all charges for utility services supplied to the Premises or community center.

In addition, Calabasas, at Calabasas's expense, will cause the Premises to be treated for termites, rodents, and other pests and vermin as often as reasonably necessary.

Regardless of the entity which supplies any of the utility services, Agoura Hills shall not be liable for any failure or interruption of any utility or service. Except as otherwise provided herein, no failure or interruption of any utility or service shall entitle Calabasas to terminate this Lease; provided, however, that Agoura Hills shall use good faith efforts to cooperate with Calabasas to attempt to cause such service to be reasonably restored.

**ARTICLE 16
MISCELLANEOUS**

16.1 Hazardous Materials. During the Term of this Lease, Calabasas, at its sole cost and expense, shall comply with all laws relating to the storage, use, handling and disposal of hazardous, toxic or radioactive matter, including, without limitation, petroleum products, asbestos, and those materials identified in Sections 66680 and 66685 of Title 22 of the California Administrative Code, Division 4, Chapter 30 (“Title 22”), as amended from time to time (collectively, “Hazardous Materials”); provided, however, that the foregoing shall not apply to Hazardous Materials in, on or surrounding the Premises not released by Calabasas or its contractors, employees, agents or customers. Calabasas shall notify Agoura Hills and provide to Agoura Hills a copy or copies of any environmental entitlements or inquiries related to the Premises. The clean-up and disposal of any Hazardous Materials released onto or about the Premises by Calabasas or its agents, contractors or employees shall be performed by Calabasas at Calabasas’s sole cost and expense and shall be performed in accordance with all applicable laws, rules, regulations and ordinances, pursuant to a site assessment and removal/remediation plan prepared by a licensed and qualified geotechnical engineer and submitted to and approved in writing by Agoura Hills prior to the commencement of any work. The foregoing notwithstanding, Agoura Hills in Agoura Hills’s sole and absolute discretion may elect, by written notice to Calabasas, to perform the clean-up and disposal of such Hazardous Materials from the Premises. In such event, Calabasas shall pay to Agoura Hills the actual cost of same upon receipt from Agoura Hills of Agoura Hills’s written invoice therefor. Notwithstanding any other term or provision of this Lease, Calabasas shall permit Agoura Hills or Agoura Hills’s agents or employees to enter the Premises at any time, upon at least one (1) business day’s notice, to inspect, monitor and/or take emergency or long-term remedial action with respect to Hazardous Materials on or affecting the Premises or to discharge Calabasas’s obligations hereunder with respect to such Hazardous Materials when Calabasas has failed, after demand by Agoura Hills, to do so. All costs and expenses incurred by Agoura Hills in connection with performing Calabasas’s obligations hereunder shall be reimbursed by Calabasas to Agoura Hills within thirty (30) days of Calabasas’s receipt of written request therefor.

Calabasas shall defend, indemnify, and hold Agoura Hills harmless from and against any and all claims, liabilities, damages, losses, costs, and expenses (including, without limitation reasonable attorneys’ fees) incurred or suffered by Agoura Hills as a result of Calabasas’s or its invitees’, licensees’, contractors’, agents’ or employees’ storage, use, handling, disposal or release of Hazardous Materials in or about the Premises or the Premises.

16.2 Notices. Every notice, demand or request (collectively “Notice”) required hereunder or by law to be given by either party to the other shall be in writing. Notices shall be given by United States certified mail, postage prepaid, return receipt requested, or by same-day or overnight private courier, addressed to the party to be served at the address indicated in Section 1.9 or such other address as the party to be served may from time to time designate in a Notice to the other party. The delivery of a Notice shall be deemed made within 3 days after deposit into the U.S. mail with respect to certified mail or within 1 business day after deposit with an overnight private courier for overnight delivery.

16.3 Time of the Essence. Time is of the essence of every provision hereof in which time is a factor.

16.4 Surrender; Waiver. At the expiration or any earlier termination of the Term, Calabasas shall peaceably and quietly surrender to Agoura Hills the possession of the Premises free and clear of all claims to or against them by Calabasas or any third person or party. Calabasas shall leave the Premises in good, safe and broom-clean condition. .

16.5 Successors and Assigns. Subject to the terms of this Lease restricting assignment and subletting, all rights and obligations of Agoura Hills and Calabasas under this Lease shall extend to and bind the respective heirs, executors, administrators and the permitted concessionaires, successors, subtenants, and assignees of the parties.

16.6 Waiver of Lease Terms. Any waiver by either party of a breach by the other party of a covenant of this Lease must be in writing, and shall not be construed as a waiver of a subsequent breach of the same covenant.

16.7 Interest on Past Due Sums. Except where another rate of interest is specifically provided for in this Lease, any amount due from either party to the other under this Lease which is not paid when due, shall bear interest at the rate per annum ("Interest Rate") equal to the prime interest rate published from time to time by the Wall Street Journal plus two (2) percentage points (but in no event to exceed the maximum lawful rate) from the date such amount was originally due to and including the date of payment.

16.8 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of California without giving effect to the choice of law provisions thereof.

16.9 Attorneys' Fees. In the event that, at any time after the Effective Date of this Lease, either Agoura Hills or Calabasas shall institute any action or proceeding against the other relating to the provisions of this Lease or any default hereunder, the party not prevailing in such action or proceeding shall reimburse the prevailing party for its actual attorneys' fees, and all fees, costs and expenses incurred in connection with such action or proceeding, including, without limitation, any post-judgment fees, costs or expenses incurred on any appeal or in collection of any judgment.

16.10 Quiet Enjoyment. Provided a default by Calabasas does not occur, Calabasas shall have the right of quiet enjoyment of the Premises free from interference by Agoura Hills or by any person or entity claiming rights granted by Agoura Hills.

16.11 Severability. If any provision of this Lease is held or adjudicated to be invalid or unenforceable for any reason, each such portion or provision shall be severed from the remaining portions or provisions of this Lease and the remaining portions or provisions shall be unaffected and remain in full force and effect.

16.12 Memorandum of Lease. Concurrently with the execution and delivery of this Lease, Calabasas shall also execute, acknowledge and deliver to Agoura Hills a Memorandum of Lease in the form attached hereto as Exhibit "B" for recording. Upon the expiration or any earlier termination of this Lease, Calabasas shall execute, acknowledge and deliver to Agoura Hills a

termination of such recorded Memorandum of Lease and/or quitclaim deed in the form prepared by Agoura Hills and submitted to Calabasas.

16.13 Entire Agreement; Amendments. It is understood that there are no oral or written agreements or representations between the parties hereto affecting this Lease and this Lease supersedes and cancels any and all previous negotiations, arrangements, representations, brochures, agreements and understandings, if any, between Agoura Hills and Calabasas. No provision of this Lease may be amended except by an agreement in writing signed by Agoura Hills and Calabasas.

IN WITNESS WHEREOF, Agoura Hills and Calabasas have duly executed this Lease on the day and year first above written.

AGOURA HILLS:

CITY OF AGOURA HILLS

By: _____

ATTEST:

_____, City Clerk

APPROVED AS TO FORM:

Candice K. Lee, City Attorney

CALABASAS:

CITY OF CALABASAS

By: _____

ATTEST:

_____, City Clerk

APPROVED AS TO FORM:

Matthew Summers, City Attorney

EXHIBIT "A"

DESCRIPTION OF LAND

The land referred to herein is situated in the State of California, County of Los Angeles, City of Calabasas and described as follows:

That portion of Lot 17, Tract No. 32952, as shown on Map filed in Book 1081, Pages 30 to 34 inclusive, of Maps, in the office of the recorder of the County of Los Angeles, within the following described boundaries:

Beginning at the intersection of the southeasterly boundary of those certain easements, in said lot, as shown on and dedicated by said map to Los Angeles County Flood Control District for flood control, storm drain and appurtenances, and storm drain ingress and egress purposes with the northeasterly boundary of said lot; thence southeasterly, southerly, westerly, northwesterly and northerly along the northeasterly, easterly, southerly, southwesterly, and westerly boundaries of said lot and following the same in all its various courses and curve to said first mentioned southeasterly boundary; thence northeasterly, southeasterly, easterly and northwesterly along the southeasterly, southwesterly, southerly and northeasterly boundaries of said certain easements and following the same in all its various courses and curve to the point of beginning.

APN: 2064-004-270

EXHIBIT "B"

FORM OF MEMORANDUM OF LEASE

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301
Attn: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

The undersigned declare that this Memorandum of Lease is exempt from Recording Fees pursuant to California Government Code Section 27383 and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922.

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "Memorandum") is dated as of _____, 2022, and is entered into by and between the CITY OF CALABASAS ("Calabasas"), and the CITY OF AGOURA HILLS ("Agoura Hills").

RECITALS

A. Calabasas and Agoura Hills have entered into that certain Ground Lease dated _____, 2022 (the "Lease"), pursuant to which Agoura Hills has agreed to lease and demise to Calabasas, and Calabasas has agreed to lease and accept from Agoura Hills, Agoura Hills's undivided half interest in that certain building and premises located in the City of Calabasas commonly known as the Agoura Hills/Calabasas Community Center at 27040 Malibu Hills Road, Calabasas, California 91301 (the "Premises") . The Premises are more particularly described in the Lease.

B. Agoura Hills and Calabasas now desire to enter into this Memorandum to comply with applicable law requiring that municipal leases be recorded.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Calabasas and Agoura Hills agree as follows:

1. Lease. Agoura Hills hereby leases and demises the Premises to Calabasas, and Calabasas hereby leases and accepts the Premises from Agoura Hills, for a term commencing on _____ and expiring one (1) calendar year thereafter, unless renewed or modified by the Parties, and at the rental rates and upon the other terms and conditions set forth in the Lease, which are incorporated herein by this reference.

2. Counterparts. This Memorandum may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

Exhibit "B"
Page 2 of 5

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the date first written above.

AGOURA HILLS:

CITY OF AGOURA HILLS

By: _____
_____, City Manager

CALABASAS:

CITY OF CALABASAS

By: _____
_____, City Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, 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 _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, 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 _____ (Seal)