

Date: November 1, 2012
Case: Oakcrest Estates

ADMINISTRATIVE HEARING FINAL AWARD

Enclosed is the Final Award with regards to the rent increase petition for the Oakcrest Estates Mobilehome Park.

If you are being represented in this hearing, please contact your representative for additional information. Otherwise, if you have any inquiries, please contact Program staff, Theresa Ramos at (408) 975-4475.

NOTICE TO PARTIES

Please note the time within which judicial review must be sought to review this decision is governed by the provisions of California Code of Civil Procedure Section 1094.6.

RENTAL RIGHTS AND REFERRALS PROGRAM

PROOF OF SERVICE BY MAIL

Case: Oakcrest Estates

(eff. 3/1/2012)

Resident at space:

I am a citizen of the United States, over 18 years of age, a resident of Santa Clara County and not a party to the within action. My business address is 200 East Santa Clara Street, San José, California, 95113-1905.

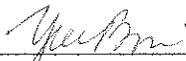
On November 1, 2012, I served the documents listed below on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San José, California addressed as shown on the attached list:

Document	Landlord*	Tenant*	Hearing Officer
Administrative Hearing Final Award dated November 1, 2012	X	X	X
Oakcrest Estates Mobilehome Park, Final Award dated October 15, 2 012	X	X	X

** Includes representatives, if any.*

I declare under penalty of perjury that the foregoing is true and correct.

Executed in San José, California on November 1, 2012.



Yen T. Bui

OCT 17 12 AM 05:58

1 Michael J. Lowy (SBN 92241)
2 Attorney at Law
3 2600 El Camino Real, Suite 506
4 Palo Alto, CA 94306
5 Tel: (650) 856-6262
6 Fax: (650) 856-7723

7 BEFORE THE CITY OF SAN JOSE
8 CITY OF SAN JOSE MOBILEHOME RENT
9 ORDINANCE

<p>10 In Re:</p> <p>11 OAKCREST ESTATES</p> <p>12 MOBILEHOME PARK</p>	<p>FINAL AWARD</p> <p>MICHAEL J. LOWY, HEARING OFFICER</p>
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14 This Final Award is made up of Five Sections as follows:

- 15 1. PARTIAL AWARD:
- 16 2. LIST OF NEW SPACE RENTS FOR THE PARK:
- 17 3. REDUCTION IN SERVICE AGREEMENT:
- 18 4. CLAIMS FOR SERVICE REDUCTIONS:
- 19 5. RESPONSE TO REQUEST FOR RECONSIDERATION OF PARTIAL AWARD:

20 Sections 4 and 5 are addressed below:

21 CLAIMS FOR SERVICE REDUCTIONS:

22 The parties have entered into an agreement for settlement of service reduction claims.

23 Paragraphs 9(b) and 10 of that document states as follows:
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MICHAEL J. LOWY
2600 EL CAMINO
REAL, SUITE 506
PALO ALTO, CA
94306
(650) 856-6262

1 Paragraph 9(b) states, "The Hearing Officer shall take under submission any related
2 Claims submitted based upon previous gate interruptions as submitted and as alleged during the
3 Hearings."

4 Paragraph 10 states, "The parties agree that the Hearing Officer shall take under
5 submission any related Claims submitted based upon responsibility for mailbox maintenance as
6 submitted and as alleged during the Hearings."
7

8 **GATES**

9 **Tenant's Position:**

10 The problem was that the front gate frequently broke down over the years which resulted
11 in lengthy service interruptions.

12 **Land Owner's Position:**

13 The Land owner has agreed to purchase replacement entry and exit gates to be available
14 for quick repair in case of future damage to the existing gate system.
15

16 **FINDINGS AND ANALYSIS**

17 The residents have the Burden of Proof to demonstrate that there has been a reduction in
18 service with regard to the replacement of the gates.

19 The residents complain about long delays in repairing the damaged gates but have failed
20 to show that this owner provided a service in the past which has been reduced. It appears to this
21 Hearing Officer that the current owner is actually agreeing to an increase in service.
22

23 **ORDER:**

24 I therefore find that the tenants have not met their burden of proof with regard to their claim and it
25 is therefore denied.

26 /// /// ///

27 /// /// ///

1 **MAILBOXES**

2 **Tenant's Position:**

3 The residents believe that the landowners were responsible for painting the mailboxes in
4 the past. Seven coaches have received notices that their mailboxes need to be painted.

5 **Land Owner's Position:**

6 The Land Owner made reference to a handout entitled: "Rules and Regulations use
7 concerning mailboxes" The handout states in pertinent part "you must maintain your home site
8 and mobile home and all lands, structures, improvements, other things attached to or placed on
9 the mobile home or home site in good condition and repair and in a neat, clean, attractive, and
10 well-kept fashion."
11

12 **FINDINGS AND ANALYSIS:**

13 The tenants have the Burden of Proof in regards to this claim for service reduction. The
14 Hearing Officer is not convinced that the painting of the mailboxes was a service offered by the
15 Land Owner in the past.
16

17 **FINDINGS AND ORDER:**

18 I find that the tenants have not met their burden of proof and therefore I find there is no
19 reduction in service as claimed.
20

21 **5. RESPONSE TO REQUEST FOR RECONSIDERATION OF PARTIAL AWARD:**

22 On or about September 7, 2012, David Spangenburg, attorney on behalf of Oakcrest
23 Estates Mobilehome Park, submitted a request for reconsideration of two rent increase items that
24 were denied in the Partial Award dated July 10, 2012 and a request for attorney's fees which was
25 not part of the Partial Award and was not a part of any of the Hearings. Mr. Stanton has objected
26 to a review of these items based on jurisdictional grounds. The Hearing Officer agrees with Mr.
27
28

1 Stanton with regard to these issues but believes the attorney's fees request should be handled
2 differently than the requests for reconsideration of trenching and the cost of generators.

3 **A. ATTORNEY FEES**

4 The Ordinance addresses the matter of Attorney's fees in two different ways. In
5 Section 17.22.540A (7) legal expenses may be considered an operating expense if it is in
6 connection with "... {a} successful good faith attempts to recover rents.... And legal expenses
7 necessarily incurred in dealing with respect to the normal operation of the park...." Such
8 expenses which recur annually shall be considered operating expenses. Such expenses which do
9 not recur annually shall be amortized over a reasonable period of time.

10
11 Section 17.22.540B(3) specifically states that operating expenses shall not include the
12 following: "Legal expenses, including attorney's fees and costs, incurred in relation to
13 administrative or judicial proceedings in connection with this chapter and legal expenses when
14 the pass-through of the expenses would constitute a violation of public policy." The matter of
15 attorney's fees was not addressed during any of the Hearings.

16
17 Pursuant to Section 17.22.820(A): The burden of proving the reasonableness of the rent
18 increase based on attorney's fees shall be on the Land Owner. No evidence other than the listing
19 of the attorney's fees and the Maintenance Breakdown dated 2010-2011, which was attached to
20 the letter from St. John and Associates dated March 5, 2012, was introduced at the Hearing.
21 Therefore the Land Owner has failed to meet his burden of proof and therefore the claim for
22 attorney's fees is denied.

23
24 **B. JURISDICTION**

25 The Hearing Officer agrees with Mr. Stanton's analysis of the jurisdictional issues
26 concerning the reconsideration of two items that were denied based on the information that was
27 available and introduced during the hearing process.

1 The Partial Award was issued by the Hearing Officer on July 10, 2012. The NOI (net
2 operating income) issue in the case was completed at that time. The total rent increase was
3 determined to be \$37.99 per month and all that remained to be decided was the issue of service
4 reductions. The parties were given the opportunity to voluntarily resolve the service reduction
5 issues which they did with the exception of the delays in repairing the front gate and the
6 maintenance of the mailboxes. The Hearing Officer believes that the fact that the service
7 reduction issues were not completely resolved does not mean that the NOI rent increase issue was
8 still open.

10 Section 17.22.840 states the following "Except as provided in Section 17.22.850, the
11 decision of the administrative hearing officer shall be final and binding on the landlord and all
12 mobile home owners and mobile home tenants who are parties to the hearing..." The Ordinance
13 allows either party to ask the city to inform the Hearing Officer that there are mathematical or
14 clerical inaccuracies which must be corrected within five days. No such request was made.

16 Section 17.22.1020 provides that an aggrieved party has the right to file a written
17 statement of objection to the program director within 10 working days of the Decision. Again, no
18 such request was made. I believe that the Land Owner in this case must seek judicial review if he
19 wishes to have the matter of the "trenching" and "generators" changed.

22
23 **IT IS SO ORDERED.**

24 Dated: 10/15/12

25
26 
27 Michael J. Lowy
28 Hearing Officer

1 Michael J. Lowy (SBN 92241)
2 Attorney at Law
3 2600 El Camino Real, Suite 506
4 Palo Alto, CA 94306
5 Tel: (650) 856-6262
6 Fax: (650) 856-7723

7 BEFORE THE CITY OF SAN JOSE
8 CITY OF SAN JOSE MOBILEHOME RENT
9 ORDINANCE

10 In Re:	PARTIAL AWARD
11 OAKCREST ESTATES	MICHAEL J. LOWY,
12 MOBILEHOME PARK	HEARING OFFICER

13
14
15 APPEARANCES

16
17 Appearing for the Homeowners:

- 18 Bruce Stanton, Esq.
- 19 Dr. Kenneth K. Baar
- 20 Jeffrey A. Nahigian

21 Appearing for the Landowner:

- 22 David Spangenberg, Esq.
- 23 Dr. Richard McCann
- 24 Dr. Michael St. John
- 25 Susy Nelson, Park Manager
- 26 Brian Fitterer, for the Investment Property Group, dba Oakcrest Estates Mobilehome Park
- 27 Jeff Morris

LAW OFFICES OF
MICHAEL J. LOWY
2600 EL CAMINO
REAL, SUITE 506
PALO ALTO, CA
94306
(650) 856-6262

EXHIBITS

Homeowners:

- A. Analysis of Oakcrest Mobile home Park Fair Return Application – Dr. Kenneth K. Baar – Dated February 2012
- B. Public Utilities Commission decision 04-04-043
- C. Letter dated February 2, 2012 on letterhead of David Spangenberg (2 pages)
- D. Response to New Submission of Oakcrest Mobilehome Park Fair Return Application (Supplement to Original Report by Kenneth Baar – Dated March 20, 2012
- E. Replacement page 8 of Homeowner’s Exhibit “A”
- F. Report of Jeffrey A. Nahigian Concerning the Application of the Oakcrest Estates Mobilehome Park for a Rent Increase – Dated March 7, 2012
- G. Electric Schedule ET – Mobilehome Park Service
- H. Decision of the Public Utilities Commission – Dated February 22, 1995

Landowners:

- 1. Park’s Electrical Expert, Richard McCann Report
- 2. Amended Arbitration Decision which is part of the 1995 Decision
- 3. Park’s Ground Lease – Dated September 1, 1993
- 4. Memo dated 4-14-2008 specific to Base Year for Oakcrest MH Park (3 pages)
- 5. Map of Oakcrest Estates
- 6. Oakcrest Estates MH Park – Billing Report from October 2010 to September 2011 specific to electrical maintenance (62 pages)
- 7. Department of Housing and Community Development Activity Report re: Oakcrest MHP dated 3-10-11 (4 pages)
- 8. Dr. Richard J. McCann, MOO, PhD, Aspen Environmental Group – list of his prior testimony (6 pages)
- 8B. Dr. Richard McCann’s academic background and professional experiences (6 pages)

LAW OFFICES OF
MICHAEL J. LOWY
2600 EL CAMINO
REAL, SUITE 506
PALO ALTO, CA
94306
(650) 856-6262

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9. Decision Adoption Electric Marginal Costs, Revenue allocation and Non-Residential Rate Design for Pacific Gas and Electric Company, Date of Issuance 12/22/11
10. Electric Express - Proposal and Contract - Dated February 16, 2012
11. Robert Hambly vs. Hillsboro Properties and City of Novato – Opinion Resolving Case Decision - August 23, 2001
12. Robert Hambly vs. Hillsboro Properties –Order Instituting Rulemaking and Investigation – Dated March 19, 2003
13. Decision 04-04-043 April 22, 2004, Before the Public Utilities Commission of the State of California, regarding Case 00-01-017, Interim Opinion Resolving Phase 1 Complaint
14. Oakcrest Estates Mobilehome Park—Maintenance and Repair Breakdown (2010-2011)
15. Before the Public Utilities Commission of the State of California, Application 10-03-14, Joint Response of the Utility Reform Network and Pacific Gas and Electric Company to the Western Manufactured Housing Communities Association’s Application for Rehearing
16. Executive Summary of a November 30, 2011 windstorm that struck the Southern California Edison (SCE) Territory
17. Email dated April 2, 2012 from Richard McCann to David Spangenberg regarding storm outages reference-use as an example of an extended outage
18. Supplemental Declaration of Richard J. McCann re: Oakcrest Estates Rent Control Case
19. Oakcrest Estates Mobilehome Park—Billing Report from October 2010 to September 2011
20. Letter dated April 5, 2012 from St. John and Associates to Hearing Officer, Mr. Lowy, regarding Oakcrest Estates Mobilehome Park Rent Increase Petition
21. Oakcrest Estates Mobilehome Park—Billing Report from October 2010 to September 2011 specific to the Clubhouse
22. Oakcrest Estates Mobilehome Park—Billing Report from October 2010 to September 2011 specific to the Pump Station/Sewer
23. Oakcrest Estates Mobilehome Park—Billing Report from October 2010 to September 2011 specific to the Tree Work

LAW OFFICES OF
MICHAEL J. LOWY
2600 EL CAMINO
REAL, SUITE 506
PALO ALTO, CA
94306
(650) 856-6262

1 24. Oakcrest Estates Mobilehome Park—Billing Report from October 2010 to September
2 2011 specific to the Maintenance on the Front Gate

3 25. Oakcrest Estates Mobilehome Park—Billing Report from October 2010 to September
4 2011 specific to the Gas Lines

5 26. Oakcrest Estates Mobilehome Park—Billing Report from October 2010 to September
6 2011 specific to the Pool

7 27. Oakcrest Estates Mobilehome Park—Billing Report from October 2010 to September
8 2011 specific to Maintenance Required by the City and County

9 **PROCEEDINGS**

10 The Petition for a NOI review was filed in this matter on November 21, 2011. The
11 Hearing Officer was assigned and Pre-Hearings took place on January 13, 2012, February 17,
12 2012, April 6, 2012, and April 9, 2012. It was agreed by the parties and the Hearing Officer that
13 the Hearing Officer would come to the mobilehome park and tour it with counsel, which he did
14 on February 8, 2012. Testimony was given on January 13, 2012, February 8, 2012, February 17,
15 2012 and April 20, 2012.

16 It was agreed between the parties that the Hearing Officer should provide the answers to
17 seven outstanding questions on or before June 4, 2012, and all other matters pertaining to the
18 Landowner NOI Petition have been resolved. The resolution of the Homeowners complaint for
19 reductions in service have been reserved until after the seven questions have been answered.
20

21 This partial award answers the seven questions that were posed to the Hearing Officer by
22 the parties. The actual rent that each Homeowner will be ordered to pay will be calculated and
23 attached to a final order which shall be written after the parties have decided how they intend to
24 resolve the service reduction claims. In particular, the parties must decide if the request by the
25 Landowner to enter into an agreement with the residents to essentially pre-pay for the repair of
26 the park roads will be acceptable to the Homeowners.
27
28

1 **THE SEVEN QUESTIONS**

2 **1. WHETHER OR NOT THE SPA EXPENSES SHOULD BE TREATED AS A**
3 **REPAIR OR CAPITAL IMPROVEMENT?**

4 The evidence produced during the hearing showed that before opening the spa and pool
5 areas in 2011, an inspection revealed that the spa had two cracks that needed to be repaired. The
6 estimate for the repair was \$3,680. This included the repair of the filters and a complete check of
7 the system (see Landowner's Exhibit 26). Once the pool was drained and repair work began
8 further problems were identified. The coping was cracked and not connected to the decking. That
9 additional work cost \$2,449.99. The Homeowners argued that the two contracts should be
10 aggregated so as to be above the \$5,000 limit and therefore treated as a capital improvement. The
11 Landowner disagrees. The Hearing Officer believes the Landowner has the better argument.
12 There were two separate maintenance and repair items. There was no replacement of the item,
13 merely a repair. Therefore the Hearing Officer finds that the amount of \$6,129.99 is properly
14 considered maintenance and repair and not a capital improvement.
15
16

17 **2. TREATMENT OF SLURRY SEAL COSTS**

18 The question is, whether the slurry seal should be treated as an expense or a capital
19 improvement? The landowner spent \$161,443.28 to install 48,124 sq. feet of patches and slurry
20 seal. At \$ 0.12 per square foot the total cost of the slurry seal is \$16,001.28 plus an additional
21 \$1,058.00 for restriping and painting the curbs (see Landowner's Exhibit 14). The home owners
22 believe the expense is a capital improvement and should be amortized over 5 years. The
23 Landowners expert Jeff Morris testified that the slurry seal will last between 3 to 5 years, as a
24 result the Landowner argues that the \$17,059.28 should be treated as cost of operation and
25 maintenance.
26
27
28

1 The Hearing Officer believes that the landowner has carried his burden of proof not only
2 does the slurry seal have a useful life of less than 5 years, it appears that the slurry seal will be
3 necessary on a more frequent basis. The \$17,059.28 should be divided by the number of units and
4 then divided by 12 to determine the per month increase.

5
6 **3. FORESEEABLE ROAD REPLACEMENT COSTS**

7 The Landowner has sought agreement from the residents to prepay for future road repairs.
8 The Homeowners have taken the position that such future road repair is projected and there is no
9 authority in the San Jose Ordinance to allow for such budgeted expenses.

10 The Hearing Officer concludes that there is no provision in the ordinance for budgeting
11 expenses and therefore finds that the park incurred an expense of \$144,384.00 (out of a total of
12 \$161,443.28, see Landowner's Exhibit #14) with American Asphalt Co. which meets the standard
13 of capital improvement and therefore orders that the monthly rent be increased by that number,
14 divided by 60 and then divided by the number of units. If the parties agree to a budgeted
15 agreement we will work towards a solution which will not run afoul of the ordinance.

16
17 **4. SEWER PUMP COSTS**

18 Whether the cost to fix the break in the underground electrical serving the sewer pump
19 station is a repair or a capital improvement?

20 The park experienced a power failure to the Lift Station Control Panel. The Landowner paid
21 \$23,533.00 to find the break in the cables. Four cables were re-spliced. The Homeowners' expert
22 offered an opinion that this should be treated as a capital improvement and is non-recurring and
23 involves the replacement of cable and conduit and the addition of new asphalt and base rock. The
24 Landowner states that this is a simple repair to an existing improvement. He argues that a capital
25 improvement is an addition or a replacement of an improvement not just a repair of an existing
26 improvement.
27
28

1 The Hearing Officer believes that the Landowner has the better argument. If we were to
2 take the Homeowners approach, every repair over \$5,000.00 would be considered a capital
3 improvement. The Hearing Officer therefore concludes that the park incurred an expense of
4 \$23,533.00 to find the break in the cables. That expense should be divided by the number of
5 affected units and that amount shall be an allowable increase in the rents.
6

7 **5. EMERGENCY GENERATOR COSTS**

8 The Oakcrest Estates Mobilehome Park is a sub-metered park. Therefore, in exchange for
9 a discount, the owner of the park takes over responsibility for the cost of owning, operating and
10 replacing the sub-metered systems to tenants in the park. The Petitioner has requested to be able
11 to pass on some of the costs of maintenance of the sub-metered system in the form of a rent
12 increase. In particular, the park owner wishes to pass on the costs of the rental of two electrical
13 generators which were used to maintain the electrical service in the park while the electrical
14 system was being repaired. In addition, the owner of the park wishes to pass through the cost of
15 trenching made necessary by the need to repair an underground high voltage line. Dr. McCann,
16 the landowner's expert, claims that these costs can be legally passed on to the tenants pursuant to
17 UPC decision Dec.04-04-043. In order to be allowed to pass through an expense to the
18 homeowner, the park owner must prove that the cost passed through does not violate these three
19 requirements:
20
21

- 22 1. They cannot violate PUC §739.5(a)
23 2. They cannot violate related case and statutory law
24 3. They cannot violate any rent control ordinance.

25 The report of Jeffrey A. Nahigian who is the homeowner's expert, takes the position that
26 no costs of the sub-metered system can legally be passed on in rent to the homeowners unless it is
27 downstream of the meter. He is of the opinion that if the landowner can pass on these two cost
28

1 items it would violate PUC §739.5(a), which states that the sub-metered tenants may not be
2 allowed to pay more for their electricity in a sub-metered park than if they were living in a
3 directly served park.

4 The PG&E electric and gas tariffs prohibit the park from passing on any of its sub-
5 metered costs to tenants. This is known as the "special condition". According to Mr. Nahigian
6 special conditions #9 is the CPUC's precedent, not the PUC decision Dec.04-04-043. Mr.
7 Nahigian is scornful of Dr. McCann's analysis which is focused on one year in which the
8 Mobilehome Park received \$49,354 in electric and gas sub-metered credits, leaving \$52,416
9 uncompensated. Mr. Nahigian looking at the broader picture estimates that over the 32 years the
10 park has been in existence, the owner has received revenue from the discount of close to 1.29
11 million dollars, plus an additional \$100,000 in diversity base line adjustments.
12

13 With regard to the electrical generator rental expense, apparently an underground high
14 voltage wire failed. It was connected to two electrical transformers which served one-third of the
15 parks residents. The repair of that line took approximately one month. The Department of
16 Housing and Community Development required that the landowners rent a couple of generators
17 to maintain power to those effected residents until the repair was completed.
18

19 Mr. Nahigian relies on CPUC Dec.95-02-090, which states ". . . the sub-metered discount
20 provides the park owner adequate compensation to own, operate, maintain and replace its sub-
21 metered system." (Page 2 of Homeowner's Exhibit F) This also includes repairing the system.
22 "What PG&E may or may not do in a directly served park is irrelevant." (Page 6 of Homeowner's
23 Exhibit F)
24

25 If the landowner is able to pass through the cost of the repair including the generators, the
26 tenants would be paying more for utility service than they would if directly served by PG&E
27
28

1 which would violate PUC 739.5(a). The hearing officer therefore concludes that the cost of the
2 generators cannot be passed through to the homeowners.

3 **6. REPAIRS OF UNDERGROUND HIGH VOLTAGE LINE**

4 Mr. Nahigian was critical of Dr. McCann's claim that the cost of trenching are
5 recoverable pursuant to CPUC Dec.11-12-053. Mr. Nahigian claims that Dr. McCann is wrong.
6 According to Mr. Nahagian, "That decision did not mention, let alone authorize, park owners to
7 pass on the repair costs associated with trenching, conduits, or substructures. . .". Furthermore,
8 Dr. McCann is criticized for providing an incomplete quote from Attachment "A", Page 4 of CPU
9 Dec.04-04-043. Dr. McCann's quote, of the Attachment "A", Section 4 stated that the following
10 costs were not covered by the discount:
11

- 12 " - Cost related to common area
13 - Purchase and capitol related installation, repair and maintenance costs for: pedestals,
14 meter sockets, circuit breakers, service panels, and support pads...
15 - Operations and maintenance expenses for the interconnection between the meter set and
16 each sub-metered dwelling unit (mobile home) including associated taxes"
17

18 Significantly what Dr. McCann leaves out from the quote (where he puts three asterisks)
19 Attachment "A" states:

20 "*** Trenching (excavation) for (1) underground service reinforcements, as defined by Rule
21 16.F.1; and (2) expansion of sub-metered distribution and services under Rules 15.B.1.a
22 and 16.D.1.a (2) (Trenching for maintenance and repair is included in the discount)."

23 Page 4 of Attachment "A" of Homeowner's Exhibit F.

24
25 In addition, Landowner's Exhibit 9 PUC Decision 11-12-053 issued December 22,
26 2011 at pages 47 and 48 the Commission states, "We shall continue to apply the current
27 interpretation and the directives in Attachment A to D.04-04-043."
28

1 Therefore, the Hearing Officer is persuaded that the cost of Trenching to repair the
2 underground high voltage line was not an expansion of service and therefore it is included in the
3 discount and may not be passed on to the homeowners.

4 **7. IS THE LAND OWNER GETTING A FAIR RATE OF RETURN ?**

5 The Landowner has raised the issue of the unfairness of the San Jose NOI Formula
6 which is based on allowing the Park Owner a return based on 85% of the CPI rather than 100%.
7 The Landowner takes the position that to provide the Park Owner with a fair rate of return 100%
8 of the CPI is necessary. Mr. Spangenberg and Dr. St. John highlight §17.22.030 which states, "No
9 provision of Chapter 17.22 of Title 17 of this code shall be applied so as to prohibit the
10 Administrative Hearing Officer from granting a rent increase that is demonstrated necessary to
11 provide a Mobilehome Park Owner for a fair return on investment."
12

13 The Homeowners on the other hand take the position that the Ordinance clearly identifies
14 85% of the CPI as the multiplier. They point out that there are many jurisdictions in California
15 that use NOI formulas with 85%, or even less. They say that the Hearing Officer is not in a
16 position to make policy decisions. They further contend that a hearing on the Petition is not the
17 place for discussion of constitutional issues.
18

19 The Hearing Officer was impressed by Dr. Baar's analysis of the problem, particularly
20 that in the typical situation the Landowners not only receive the regular rent increase and NOI
21 increases, but when they sell the property they receive the presumed increased value of the park.
22 The Landowner's rebuttal to that argument is that in this case the Landowner and the Park Owner
23 are two different entities, so that at the end of the lease the Park Owner will only receive the rent
24 increases, but not the increased value of the land, which belongs to the Landowner. From the
25 point of view of the Home owners it makes no difference. Also, the division between the park
26
27
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1 owner and the owner of the land has no doubt been taken into account in determining the price of
2 the lease.

3 I believe that the structure of the relationship between the Landowner and Park Owner
4 could make a difference to the constitutionality of using the 85% of the CPI in mobilehome rent
5 control cases as applied. However, I am not a judge and I do not believe that it is my job to make
6 policy changes based on a constitutional challenge to the ordinance. Therefore I am declining
7 Landowners request to use 100% of CPI. The record is clear and the Landowner may wish to
8 pursue this issue further.
9

10 **FINDINGS AND AWARD**

11 The Land Owner may pass on the following costs to the Homeowners as maintenance and
12 repairs. Each amount shall be divided by the number of affected units and then divided by 12.
13 That number shall be added to the monthly rent.
14

- 15 - The amount of \$6,129.99 for the repair of the Spa
- 16 - The amount of \$17,059.28 for the Slurry Seal and Restriping and painting of the curbs
- 17 - The amount of \$23,533.00 for the repair of the Sewer Pump

18 The Land Owner is allowed to pass on the following amounts as Capital Improvements
19 which will be amortized over 60 months, divided by the number of affected units and added to
20 the rent for 60 months and then eliminated from the rent.

- 21 - The amount of \$144,384.00 for the Road Replacement

22 The Land Owner will not be allowed to pass through the cost of the underground electrical
23 repairs and the emergency generator costs. He may not pass on the cost of Trenching
24 necessary to repair the underground high-voltage line, nor the emergency generator.
25

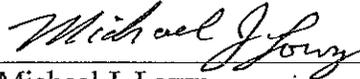
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LAW OFFICES OF
MICHAEL J. LOWY
2600 EL CAMINO
REAL, SUITE 506
PALO ALTO, CA
94306
(650) 856-6262

1 Finally the Hearing Officer declines to change the San Jose NOI Formula from 85% to 100%
2 of the CPI.

3
4 **IT IS SO ORDERED.**

5 Dated: July 10, 2012

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8 Michael J. Lowy
9 Hearing Officer

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22 LAW OFFICES OF
23 MICHAEL J. LOWY
24 2600 EL CAMINO
25 REAL, SUITE 506
26 PALO ALTO, CA
27 94306
28 (650) 856-6262

List of New Space Rents for Oakcrest Estates

Site	Date of Last Increase	Rent Prior to Last Increase	Last Increase Amount	Rental Total as of 9/30/12	2012 Capital Reimbursement	Total due till Feb 2017	\$75198 Surcharged Rent for three months	3 Month Rent Reimbursement	Total due till NOV 2012
POOL		0	0	\$0.00					
SPA		0	0	\$0.00					
21	3/2009	0	0	\$0.00					
93-CC		0	0	\$0.00					
BIDA	9/2012	927	5.6	\$932.60	\$32.39	\$964.99	\$64.78	\$11.20	\$1,040.97
1	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
2	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36
3	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
4	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
5	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
6	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
7	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
8	9/2012	980.33	5.6	\$985.93	\$32.39	\$968.32	\$64.78	\$11.20	\$1,044.30
9	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
10	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
11	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
12	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
13	9/2012	880.18	5.6	\$885.78	\$32.39	\$918.17	\$64.78	\$11.20	\$994.15
14	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
15	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
16	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
17	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
18	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
19	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36
20	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
22	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
23	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
24	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
25	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
26	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
27	9/2012	864.54	5.6	\$860.14	\$32.39	\$892.53	\$64.78	\$11.20	\$968.51
28	9/2012	930.33	5.6	\$935.93	\$32.39	\$968.32	\$64.78	\$11.20	\$1,044.30
29	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
30	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36
31	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
32	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
33	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
34	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36

Site	Date of Last Lease	Rent Paid to Landlord	Rent Increase Amount	Estimated Amount	Rent Total as of Sept. 30	2011 Capital Reimbursement	Total due till Feb 2012	3 Month Capital Reimbursement	3 Month Rent Reimbursement	Grand Total Nov. 2012
35	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
36	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
37	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
38	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
39	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
40	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
41	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
42	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
43	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
44	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
45	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
46	9/2012	930.33	5.6	\$935.93	\$32.39	\$968.32	\$64.78	\$11.20	\$1,044.30	
47	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
48	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36	
49	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36	
51	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
52	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
53	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36	
54	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
55	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
56	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
57	3/2012	818.81	5.6	\$824.21	\$32.39	\$856.60	\$64.78	\$11.20	\$932.58	
58	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
59	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
60	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
61	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36	
62	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
63	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36	
64	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
65	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
66	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
67	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36	
68	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
69	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36	
70	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
71	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
72	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
73	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
74	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	
75	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78	

Site	Date of Last Increase	Revised 2010 Lease Amount	Last Increase Amount	Reimburse-ment for Sept. 2010	2010 Capital Reimbursement	Total due till Feb. 2017	3 Month Capital Reimbursement	3 Month Rent Reimbursement	Total due till Nov. 2012
76	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
77	9/2012	1192.59	5.6	\$1,198.19	\$32.39	\$1,230.58	\$64.78	\$11.20	\$1,306.56
78	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36
79	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36
80	9/2012	840.59	5.6	\$846.19	\$32.39	\$878.58	\$64.78	\$11.20	\$954.56
81	9/2012	1157.85	5.6	\$1,163.45	\$32.39	\$1,195.84	\$64.78	\$11.20	\$1,271.82
82	9/2012	725.62	5.6	\$731.22	\$32.39	\$763.61	\$64.78	\$11.20	\$839.59
83	9/2012	901.77	5.6	\$907.37	\$32.39	\$939.76	\$64.78	\$11.20	\$1,015.74
84	9/2012	877.9	5.6	\$883.50	\$32.39	\$915.89	\$64.78	\$11.20	\$991.87
85	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
86	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
87	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
88	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36
89	9/2012	818.61	5.6	\$824.21	\$32.39	\$856.60	\$64.78	\$11.20	\$932.58
90	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
91	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
92	9/2012	904.24	5.6	\$909.84	\$32.39	\$942.23	\$64.78	\$11.20	\$1,018.21
101	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
102	9/2012	904.24	5.6	\$909.84	\$32.39	\$942.23	\$64.78	\$11.20	\$1,018.21
103	9/2012	818.61	5.6	\$824.21	\$32.39	\$856.60	\$64.78	\$11.20	\$932.58
104	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
105	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36
106	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
107	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
108	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
109	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
110	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
111	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
112	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
113	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
114	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
115	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36
116	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
117	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
118	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
119	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
120	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78

Site	Date of Last Increase	Rent Prior to Last Increase	Last Increase Amount	Rent Total as of Sept. 15	2012 Capital Reimbursement	Total due till Feb 2017	3 Month Capital Reimbursement	3 Month Rent Reimbursement	12/31 due till Nov 2014
121	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
122	9/2012	981.73	5.6	\$987.33	\$32.39	\$1,019.72	\$64.78	\$11.20	\$1,095.70
123	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
124	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
125	9/2012	795	5.6	\$800.60	\$32.39	\$832.99	\$64.78	\$11.20	\$908.97
126	9/2012	928.82	5.6	\$934.42	\$32.39	\$966.81	\$64.78	\$11.20	\$1,042.79
127	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
128	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
129	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
130	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
131	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
132	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
133	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
134	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
135	9/2012	847.66	5.6	\$853.26	\$32.39	\$885.65	\$64.78	\$11.20	\$961.63
136	9/2012	880.18	5.6	\$885.78	\$32.39	\$918.17	\$64.78	\$11.20	\$994.15
137	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
138	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
139	9/2012	1228.37	5.6	\$1,233.97	\$32.39	\$1,266.36	\$64.78	\$11.20	\$1,342.34
140	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
141	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
142	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
143	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
144	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
145	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
146	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
147	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
148	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36
149	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
150	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36
151	9/2012	1228.37	5.6	\$1,233.97	\$32.39	\$1,266.36	\$64.78	\$11.20	\$1,342.34
152	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36
153	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
154	9/2012	840.59	5.6	\$846.19	\$32.39	\$878.58	\$64.78	\$11.20	\$954.56
155	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
156	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
157	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
158	9/2012	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
159	9/2012	886.98	5.6	\$892.58	\$32.39	\$924.97	\$64.78	\$11.20	\$981.36
160	9/2012	747.39	5.6	\$752.99	\$32.39	\$785.38	\$64.78	\$11.20	\$861.36

Site	Date of Last Increase	Rent Paid to Land Increase	Useful Increase Amount	Rent Total as of Sept. 30, 2012	2012 Capital Reimbursement	Total due till Feb. 2012	3 Month Capital Reimbursement	3 Month Rent Reimbursement	Total due till Nov. 2012
161	9/20/12	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
162	9/20/12	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
163	9/20/12	769.81	5.6	\$775.41	\$32.39	\$807.80	\$64.78	\$11.20	\$883.78
164	9/20/12	913.58	5.6	\$919.18	\$32.39	\$951.57	\$64.78	\$11.20	\$1,027.55

REDUCTION IN SERVICE AGREEMENT

AGREEMENT FOR SETTLEMENT OF SERVICE REDUCTION CLAIMS

WHEREAS, INVESTMENT PROPERTY GROUP, doing business as Oakcrest Estates Mobilehome Park (hereinafter "the OWNER") filed a Petition initiating an administrative hearing to determine whether the OWNER is entitled to a fair return rent increase pursuant to the San Jose Mobilehome Rent Ordinance (hereinafter "the Ordinance");

AND WHEREAS, the Homeowners residing in Oakcrest Estates Mobilehome Park (hereinafter "HOMEOWNERS") have filed multiple Service Reduction Claims (hereinafter "Claims") in the administrative proceeding which allege a reduction in services with respect to several areas of Oakcrest Estates Mobilehome Park (hereinafter "the Park");

AND WHEREAS, OWNER has disputed and denied the validity of said Claims and opposes same;

AND WHEREAS, as an alternative to proceeding to a hearing on said multiple Claims, the parties hereto desire to reach a settlement and compromise which avoids the costs and uncertainties of litigating the Claims, and which attempts to resolve them to the mutual benefit of the parties so as to promote and create a spirit of cooperation and an improved relationship between the OWNER and the HOMEOWNERS;

NOW, THEREFORE, the parties agree to resolve each of the following categories of Claims as follows:

1. The Pond

In exchange for the withdrawal of any and all related Claims, it is agreed as follows:

- a. OWNER shall engage its own contractor to review and provide cost estimates in connection with work described in the Kilik Engineering Report dated September 8, 2009, and to investigate and report upon conditions in the Pond area. OWNER shall present same to HOMEOWNERS for future discussion. The investigation by OWNER's contractor shall include, but not be limited to, the following:
 - Site clearing and demo so as to make pumps and storm drains operational;
 - Re-grading and Re-compacting of Pond bed;
 - Replacing Rip Rap and rebuild Pond bank;
 - Providing plans and a Soils Report;
- b. OWNER agrees to perform the following "Category 1" work, which shall be considered a park maintenance expense for purposes of calculating future Net Operating Income, thus allowing OWNER to claim the cost of same in future administrative rent hearings, and shall not be a separate or new capital expense:
 - Clear pond of weeds, grasses and deleterious materials to unbury and clear storm drain inlet pipes and the outlet pipe, and to ensure a working pumping system;
 - Dredge, re-grade and re-compact the Pond bed, so as to allow proper water retention;

-It is agreed that performance of such work is subject to any restrictions or requirements imposed by any governmental body in connection with wetlands protection, environmental concerns and the like, and OWNER's obligation to perform same shall be conditioned upon its ability to legally proceed with same;
-Rehabilitate and maintain landscaping surrounding the Pond area.

- c. OWNER agrees to investigate the projected cost, need and feasibility of the following "Category 2" work, which the parties shall agree to discuss in the future so as to determine how such costs are to be categorized (i.e. capital improvement vs. maintenance) and propose how they are to be compensated (i.e. a separately budgeted pass through item or an expense subject to recovery in an administrative rent hearing):

-Repair or construction of a dyke or levee to protect neighboring properties;
-Repair or replacement of Rip Rap and rebuild Pond bank;
-Soils report or plans in connection with same;

- d. Once the work set forth in paragraph (b) above is complete, HOMEOWNERS agree to investigate the cost and feasibility of providing a connection to pump reclaimed water into the Pond, the cost of which the parties shall agree to discuss in the future so as to determine how such costs are to be labeled (i.e. capital improvement vs. maintenance) and propose how the expense is to be compensated (i.e. a separately budgeted pass through item as in paragraph 1 above or an expense subject to recovery via an administrative hearing petition). This shall include the cost of the pipe itself and the feasibility of access, including easement rights.

2. Pool/Hot Tub

In exchange for the withdrawal of any and all related claims, OWNER agrees to establish the following hours for Pool and Spa use during the calendar year, and to maintain said facilities as required by law:

- a. The Pool shall be open year round, but shall only be heated from April 1-September 30 at a temperature of 75-80 degrees.
- b. The Spa shall be heated year round at a temperature of 90-100 degrees.
- c. The gate leading to the Pool/Spa area shall not be padlocked, but will remain locked but accessible to park residents via keys issued to them, year round.

3. Street Sweeping

In exchange for the withdrawal of any and all related claims, and based upon price quotations obtained by OWNER, it is agreed that OWNER shall engage a professional company to sweep the park streets using professional, industry standard street sweeping equipment, on a schedule of twice per month. Any costs associated with this service shall be considered a park maintenance expense for purposes of calculating future Net Operating Income in any administrative rent proceeding.

4. Eucalyptus Trees Located along Highway 237

In exchange for the withdrawal of any and all related claims, OWNER agrees to cooperate with the pending resident petition to have Cal Trans remove said trees, and in the meantime agrees to be responsible for removing any large limbs or debris from these trees which fall upon any rented space. For purposes of this paragraph, debris shall not include leaves, small branches or twigs. HOMEOWNERS shall assist OWNER to obtain required signatures from affected HOMEOWNERS to authorize the required work, and specifically shall attempt to obtain the pending Petition from the former HOA President. The parties shall cooperate in obtaining any required survey or map descriptions for purposes of establishing the location of and responsibility for maintenance of said trees.

5. Wild Animal Intrusion/Infestation

In exchange for the withdrawal of any and all related claims, the parties agree as follows:

- a. In connection with the Pond Category 1 maintenance described in paragraph 1 above, OWNER shall clear the southwestern tip of the park property which borders the Pond of any weeds, reeds, underbrush or other debris which could harbor raccoons or other animals, or otherwise contribute to their breeding.
- b. The parties each continue to communicate to park residents that all residents should refrain from feeding wild or feral animals, or from engaging in any conduct which attracts or encourages their intrusion onto park property.
- c. HOMEOWNERS shall assist park management by designating a committee which can be contacted by management for the purpose of assisting with telephone calls or letters to local animal enforcement agencies in connection with requests to removed or control wild or feral animals.

6. Landscaping/Fencing

In exchange for the withdrawal of any and all related claims, the parties agree as follows:

- a. OWNER shall investigate and confirm that water service to the front entrance of the park is available to OWNER, and shall agree to install and maintain flowers and attractive landscaping in said area when such water service is available.
- b. OWNER agrees to rebuild the "privacy fence" separating the park from the neighboring Lamplighter Mobile Home Park vehicle storage lot. There is no need for a gate on this fence.
- c. OWNER agrees to consistently maintain grass and landscaping surrounding the clubhouse.
- d. Any and all costs incurred by OWNER in connection with this paragraph 6 shall be considered a park maintenance expense for purposes of calculating future Net Operating Income in any administrative rent proceeding.

7. Gas/Electric

In exchange for the withdrawal of any and all related claims, OWNER agrees that it shall monitor the progress of pending proceedings before the Public Utilities Commission in connection with the transfer of sub-metered systems back to the serving utility, and at the conclusion of said proceedings give good faith consideration to requesting such a transfer back to P G & E as a way of ensuring that a new or fully repaired system might be attained.

8. Streetlights

In exchange for the withdrawal of any and all related claims, the parties agree as follows:

- a. HOMEOWNERS shall provide OWNER with a written list of all current streetlight conditions.
- b. OWNER shall obtain a price estimate for replacing or cleaning streetlight glass panes or, where required, the entire pole assembly or concrete rebar support due to damage, and shall replace and/or clean each streetlight as set forth in HOMEOWNERS' list.
- c. The parties shall agree upon a schedule/plan for repairing or replacing each streetlight according to what is required.
- d. OWNER agrees to keep the lamp areas clean and free of webs, etc. for maximum lighting efficiency.
- e. Any and all costs incurred by OWNER in connection with this paragraph 8 shall be considered a park maintenance expense for purposes of calculating future Net Operating Income in any administrative rent proceeding.

9. Front Entrance/Exit Gates

The parties agree as follows:

- a. Based upon OWNER's investigation, OWNER shall purchase replacement entry and exit gates, to be available for quick replacement in case of future damage to the existing gate system, and so as to avoid lengthy service interruptions.
- b. The Hearing Officer shall take under submission any related Claims submitted based upon previous gate interruptions as submitted, and as alleged during the hearings.
- c. Any and all costs incurred by OWNER in connection with this paragraph 9 shall be considered a park maintenance expense for purposes of calculating future Net Operating Income in any administrative rent proceeding.

By Name/Title: My Member
Committee

2012

Russel E Walker

Name/Title: RUSSEL E. WALKER
COMMITTEE CHAIR

2012

[Signature]

Name/Title: Sean Conflin
Committee Member

2012

[Signature]

Name/Title: Committee member

2012

[Signature]

Name/Title: HOA President

2012

[Signature]

Name/Title: Committee member