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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DE ANZA COVE HOMEOWNERS ASSOCIATION, INC., et al, Plaintiffs, vs. CITY OF SAN DIEGO, et al, Defendants.	CASE NO. GIC 821191 **DEFENDANT CITY OF SAN DIEGO'S OBJECTIONS TO SPECIAL MASTER RECOMMENDATIONS** Hearing Date: May 6, 2014 Hearing Time: 1:00 p.m. Location: Presiding

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I. OBJECTIONS TO SPECIAL MASTER'S FIRST REPORT

A. The Special Master Erred In Recommending An 84-Month Rent Differential Period

In the Special Master's Report Re: (A) Rent Differential and (B) Date Class Membership is Determined Re: Residents Evicted After September 4, 2007 ("First Report" or "FR"), the Special Master recommended an 84-month rent differential period based on the Mission Valley Village ("MVV") park closure, concluding that (1) the City Council determined that the 48-month rent differential period based on the San Diego Housing Commission ("SDHC") guidelines was inadequate mitigation, and (2) the private developer's agreement to increase the period to 84 months to secure approval of its $120 Million apartment project set a precedent to be followed in all future park closures. These conclusions are not only erroneous, but an adoption of the Special Master's 84-month recommendation would constitute reversible error as it would result in a wholesale failure to satisfy the purpose and intent of the Mobilehome Residency Law ("MRL") (Civil Code, §798 *et seq.*) and Government Code to determine the adverse impacts of park closure *on the De Anza residents* and the "reasonable costs of relocation" based on the facts and circumstances *specific to the De Anza park closure.*

1. The Special Master misinterpreted what occurred at the MVV hearing. There is no evidence that the City Council determined the SDHC's 48-month rent differential benefit to be inadequate mitigation for the MVV residents. Rather, the MVV park closure as a one-off exception where private developer Archstone voluntarily agreed to pay for a longer rent differential period than was legally required in order to secure approval for its $120 Million apartment project.

2. The MVV City Council hearing in 2008 did not set a precedent that must be followed in all future park closures in San Diego or establish new City policy. In fact, the City Council subsequently approved the SDHC's recommendation to reduce the standard rent differential guideline from 48 to 42 months, the culmination of three years of meetings and debate among mobilehome residents and owners beginning in 2007 (including representatives from MVV).

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3. Forcing the City of San Diego to pay benefits which exceed the reasonable costs of relocation, as in the MVV closure, would constitute an unconstitutional gift of public funds.

4. Irrespective of the MVV park closure, the Special Master correctly concluded that (1) the 48-month rent differential under the SDHC guidelines provides adequate mitigation to the De Anza residents, and (2) the dissimilarities in demographics between the residents of MVV and De Anza and the substantially different circumstances surrounding the closures of the two parks warranted the application of the 48-month differential to De Anza rather than MVV's 84 months.

Accordingly, as demonstrated herein, the City respectfully requests that this Court reject the Special Master's 84-month rent differential recommendation and adopt the SDHC's standard 48-month guideline.

1. Contrary to the Special Master's Findings, There Was No Determination by the Housing Commission or City Council that the SDHC's 48-Month Rent Differential Benefit Was Inadequate to Mitigate the Adverse Impacts of Closure on the MVV Residents

As a threshold matter, the Special Master misinterpreted what occurred at the MVV hearing and speculates, not based on actual words but on the "entire dynamic" of the hearing, that the City Council determined that the SDHC's 48-month rent differential benefit was not adequate to mitigate the adverse impacts of park closure on the MVV residents. Not so. What actually occurred was simply a negotiation by the City Council on behalf of the MVV residents to obtain the most compensation as possible for the residents, resulting in Archstone's agreement to voluntarily increase the length of the rent differential period in order to secure approval for their development project.

a. The Relocation Impact Report Submitted by Archstone for the MVV Closure (48-Month Rent Differential) Complied with all Applicable Relocation Standards and Procedures

The 119-space MVV was a mobilehome park built in 1959 on private property as an interim use of the land. In 2007, MVV was purchased by one of the largest investors, developers and operators of apartment communities in the United States (Archstone) with the intent to close the park and redevelop the property into a 444-unit multi-family, luxury apartment complex on 10.2 acres on Mission Gorge Road ("Archstone Mission Gorge project"), at a cost of $120

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Million. (Exhibit ("Ex.") 76 to City's Notice of Lodgment of Exhibits, 01:16:10 - 01:17:25, 01:26:18 - 01:31:00 (owner representative Michael Walseth); 00:00:15 – 00:07:15 (City Staff Report).) [1]

Overland, Pacific & Cutler ("OPC"), the same mobilehome relocation specialist that is preparing the RIR in this case, prepared the relocation impact report for the MVV park closure ("MVV RIR"). (Ex. 71.) [2] As with OPC's draft report for De Anza, the MVV RIR provided for a 48-month rent differential period, consistent with the Government Code and the then-applicable SDHC Policy 300.401. (*Ibid.*) Under Policy 300.401, if it is feasible to relocate the mobile homes, the fiscal standard against which relocation plans will be measured is as follows:

Mobile Home Size	Relocation Amount	
	Maximum	Minimum
8' and 10' wide	$3,000	$5,000
12' and 14' wide	$5,000	$7,000
Doublewide	$7,500	$15,000

In addition, any and all appurtenances would be valued and compensated up to $1,000, and temporary lodging would be paid for up to seven (7) nights at $40 per night.

If it is not feasible to relocate the mobilehome, the park owner shall provide the homeowner with reasonably relocation expenses as follows:

(1) The difference between current space and rent for a comparable apartment unit of a size appropriate to accommodate the displaced household and that meets HUD Housing quality standards with this amount provided for 48 months;

(2) Total actual cost of moving expenses for furniture and personal belongings not to exceed $1,000; and

(3) All proceeds from the sale of the mobilehome. (Ex. 33.)

At the approval hearing for the Archstone Mission Gorge project, it was well settled that the MVV RIR submitted to the City for approval and the relocation benefits provided to the residents therein (including the 48-month rent differential) complied with all legal requirements

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[1] Exhibit 76 is a DVD of the entire MVV City Council meeting in 2008, which is cited in hours / minutes / seconds (00:00:00). The full written transcript has been lodged as Exhibit 76A.

[2] All exhibits cited by City herein, including certain of Plaintiffs' exhibits which are so designated, are attached to the City's Notice of Lodgment of Exhibits submitted concurrently herewith, and for consistency purposes, the original exhibit numbers from the briefing to the Special Master have been retained for the purposes of this briefing.

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for the discontinuance of a mobilehome park in San Diego, including Government Code section 65863.7(e), Civil Code section 798.56(g), SDMC sections 143.0610-143.0640, and SDHC Policy 300.401. (Ex. 76: 00:02:30 – 00:03:05 (City staff report); 00:16:40 – 00:19:07 (City recommendation for approval of MVV RIR); 01:13:00 – 01:16:08 (Paul Robinson), 01:18:50 – 01:26:18 (Walseth); 02:19:25 – 02:27:20 (various City staff); 02:37:56 – 02:40:26, 02:46:40 – 02:49:30 (Councilman Madaffer); 02:58:45 – 02:59:20, 03:27:50 – 03:28:39 (Councilperson Atkins); 03:32:10 – 03:33:30 (Councilman Peters).) Accordingly, the SDHC had approved the MVV RIR (with the 48-month differential) and City staff recommended its approval by City Council. (*Ibid.*) Therefore, any rent differential period longer than the 48 months provided under the then-current SDHC guidelines (Policy 300.401) would necessarily exceed the "reasonable costs of relocation," and therefore Archstone was not legally required to pay more than 48 months.

b. To Ensure Approval for its $120 Million Project, MVV's Private Park Owner Voluntarily Agreed to Pay a Rent Differential Period That Exceeded the Reasonable Costs of Relocation.

Archstone was not precluded from offering to pay benefits to MVV residents that exceeded the reasonable costs of relocation. The private park owner, in such cases, can determine whether enhanced benefits would be economically feasible and offer such benefits to gain approval for park closure and the intended future development. (Ex. 76: 02:37:56 – 02:40:26 (Madaffer / Walseth); 02:46:40 – 02:49:30 (Madaffer); 02:58:45 – 02:59:20, 03:27:50 – 03:28:39 (Atkins); 03:32:10 – 03:33:30 (Peters). Certainly, the Mission Gorge approval hearing was a highly emotional event, with nearly two hours of speakers both for and against the Mission Gorge project. (Ex. 76: 00:19:07 – 01:11:20 (speakers in opposition); 01:11:21 – 01:57:00 (speakers in support.) Councilman Madaffer, feeling the weight of responsibility to his constituents and with his term ending in a matter of days, asked Archstone if they would agree to lengthen the rent differential period to 84 months, an enhancement to the MVV RIR that was clearly not required under State and local laws. (Ex. 76: 02:37:56 – 02:40:26, 02:46:40 – 02:49:30 (Madaffer) 02:58:45 – 02:59:20, 03:27:50 – 03:28:39 (Atkins).) Archstone agreed to do so, and the City Council thanked Archstone and characterized its offer to so lengthen the rent differential period as

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both "huge" and "generous." (*Ibid* (emphasis added).) Archstone determined that it was both politically wise and economically feasible for it to agree to pay the 84-month benefit in order to gain City approval of its project, even though it was not legally required to do so.

Contrary to the Special Master's speculative assumptions, however, there is no evidence that the City Council determined that the 48-month rent differential period in the SDHC guidelines was not adequate to mitigate the impact of closure on the MVV residents. First, as the foundation for this conclusion, the Special Master erroneously relies on a presentation by the City Attorney wherein "the City Attorney's office registered specific opposition to the 48-month rent differential recommended in the OPC RIR," stating that "the plan does not sufficiently cover the rent differential in new mobile home parks." (FR, p. 17:20-28, citing Tr. 11/18/08 council hearing, pg. 34 [Ex. 76A].) Importantly, however, the City Attorney was not objecting the length of the rent differential period, i.e. that the residents should receive more than 48 months of rent subsidies. Rather, the City Attorney's concern was the per-month rent differential amount, which under the SDHC guidelines is to be calculated based on the difference between the space rent and HUD Fair Market Rents. The City Attorney opined that this subsidy would not be enough to cover the rent differential between the $725 space rent at MVV and the space rent in more expensive mobilehome parks. (Ex. 76: 02:10:15 – 02:11:52; Ex. 76A, p. 34; see also City Attorney Memo, Plaintiffs' Ex. 8, Appendix F, p. 6; MVV RIR, Ex. 71, pp. 14-15.) And notably, in our case, this is a non-issue because the Court has already ruled in its Statement of Decision that the De Anza rent differential is to be calculated based on the market rents for an apartment of comparable size in a comparable beach community, in lieu of using the HUD Fair Market Rents. (Statement of Decision, Ex. 68, p. 14.) As such, the City's Attorney's opposition concerning the rent differential had nothing to do with increasing the number of months of rent differential payments, and because it provides the entire basis for the Special Master's "fair reading of the transcript and interpretation of the video of the hearing," the 84-month recommendation must be rejected.

Second, as conceded by the Special Master, no one on City Council actually verbalized a belief (if any) that the length of the rent differential period under the SDHC guidelines was

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inadequate to mitigate the adverse impacts of closure. Nonetheless, the Special Master determined that "a careful review of not only what was said but the entire dynamic that existed during the hearing leads me to conclude that the Council was clearly signaling to Archstone that it considered the relocation benefits in the OPC RIR to be inadequate." (FR, p. 19:12-15.) This is not what occurred. There was complete agreement that Archstone's offer to pay 84 months well exceeded the reasonable costs of relocation. (Ex. 76: 02:37:56 – 02:40:26 (Madaffer / Walseth); 02:46:40 – 02:49:30 (Madaffer); 02:58:45 – 02:59:20, 03:27:50 – 03:28:39 (Atkins); 03:32:10 – 03:33:30 (Peters). In fact, as noted by the Special Master, Madaffer himself prefaced his request for 84 months by stating: "I'm troubled by only 48 months. Now, maybe that's over and above what should be done …So I get that and I understand that absent this project, these enhanced benefits (sic). So let's talk about enhancing the benefits a little bit more, and see if you couldn't go from say four years to say seven years for benefits." (FR, p. 18:14-18, citing Tr. 11/18/08 council hearing, p. 44 (emphasis added) [Ex. 76A].) Certainly, Madaffer is not "signaling" that he believed 48 months of rent differential to be inadequate mitigation, nor do any of the other Council members state anything about the SDHC guidelines not providing adequate mitigation. Madaffer was simply looking to negotiate the best deal possible for his constituents, using Archstone's project as leverage.

2. The MVV Park Closure Did Not Set an 84-Month Precedent for All Future Park Closures or Establish New City Policy Guidelines

As noted, the MVV closure was a one-off exception where Archstone made a business decision to increase the rent differential in order to secure approval for their development project. Further, despite the gratuitous comments of Archstone's counsel at the conclusion of the MVV hearing, the MVV case did not establish an 84-month precedent that would be required of all future park owners, or establish new City policy. In fact, after the 2008 MVV hearing, the City Council subsequently approved the SDHC's recommendation to reduce the standard rent differential period from 48 to 42 months, an update to the policy that had been in progress well before the MVV hearing.

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As with the Policy 300.401 that went into effect in 1995, revised guidelines (Policy 301.06) were adopted in 2010 after comment and discussion among mobilehome park owners and residents. In January of 2007, the SDHC began to consider a reduction of the 48-month rent differential period to 42 months, to be consistent with federal and state standards for rental subsidies. (City Exs. 72-75.)[3] In 2007, the SDHC staff presented its draft amendments to Policy 300.401 to MHCIC for discussion and comment on January 17, 2007, February 21, 2007 and April 18, 2007. (Ex. 72.) The proposed amendments included a reduction of the period of rent differential payments from 48 to 42 months. (Ex. 74.) The SDHC summarized this proposed revision as follows:

> Another suggested change to the policy is to reduce the number of months by which the rental subsidy is calculated. Currently it is calculated at 48 months. Pursuant to State Government Code Section 7264(b), the current state standard for rental subsidies to be paid to displaced tenants is 42 months. The Commission feels it is appropriate to establish the state standard as the standard in the City's regulations rather than rely upon an arbitrary number of 48 months.

(Ex. 74.) On January 16, 2008, the MHCIC unanimously approved the draft amendments. (Ex. 73.) Thereafter, the new policy (PO-BEF-301.06) was unanimously approved by the Land Use and Housing Committee on February 18, 2009 and finally approved by the Housing Authority on January 26, 2010. (Exs. 74, 75.)

Importantly, the San Diego guidelines adopted by the SDHC are intended to be the fiscal standard against which relocation plans were to be measured, and the mitigation to be afforded for each closure needs to be determined on a park-by-park basis, subject to the facts and circumstances of the particular property. (See Declaration of Thomas Kerr ("Kerr Decl."), ¶7.) Further, as noted, there is nothing in the SDHC guidelines which prevents the City Council from negotiating for tenants on an *individual basis* for benefits above the rent differential stated in the guidelines. Notably, in 2010, when the City Council, sitting as the Housing Authority, approved SDHC's proposed reduction of the rent differential period from 48 to 42 months, the meeting

[3] This discussion began before Archstone had even purchased the MVV property in 2007 (Ex. 76: 01:16:10 - 01:17:25, 01:26:18 - 01:31:00 (owner representative Michael Walseth); 00:00:15 – 00:07:15 (City Staff Report)) and before Archstone submitted its 2008 Relocation Impact Report for the MVV park closure. (City Ex. 71.)

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minutes stated:

> Councilmember Gloria reiterated that this policy sets the ground for relocation and that **nothing could prevent Council from negotiating for tenants on an individual basis beyond the 42 months stated in the policy**. (Plaintiffs' Exhibit 18 [emphasis added].)

This is clearly what Madaffer did for the residents in the MVV situation. And, Archstone congratulated City Council on its efforts , stating that it was "pure folly" that City Council did not accept Archstone's original offer and that "you've done a hell of a job for these people." (FR, p. 19:22-24.) The MVV RIR submitted to the City for approval (City Ex. 71) complied with all legal requirements for the discontinuance of a mobilehome park in San Diego. Accordingly, the SDHC approved the report (including the 48-month rent differential), and City staff recommended its approval by the City Council. (*Ibid.*) Thereafter, the City Council negotiated on behalf of the residents to increase the benefits, to which Archstone agreed in order to gain approval for its project. That scenario does not then somehow equate to a new 84-month precedent or new City policy wherein all residents in mobilehome parks are now entitled to the same 84-month rent differential at the time of park closure. If it did, City Council would have re-set the SDHC guideline at 84 months, instead of 42 months.

3. Significant Factual Differences in the Two Park Closures and Dissimilar Demographics Warrant the Application of the 48-Month Period Instead of MVV's 84 Months

In its Statement of Decision, the Court summarized the unique nature of this property and the circumstances of park closure:

> The original lease for the development of De Anza in 1953 was for a finite period of fifty years. The first permanent resident to occupy a mobilehome in De Anza and all who followed, knew or should have known the park would not permanently remain open. Moreover, residents knew in 1980 that the park faced closure because of the State Lands Commission. Then in 1982 they knew closure would come on a date certain when the Kapiloff Bill extended De Anza's operation to November 23, 2003. Every homeowner during the fifty years of its operation knew or should have known the park was not permanent. Moreover, in the last 21 years every new and existing owner and every resident was on notice that the park would close in November 2003 because of the Long Term Lease Agreement. The November 2003 closure of De Anza was no surprise to anyone within the park or the San Diego community at large, as De Anza has been a matter of public interest in San Diego for decades.

(Ex. 68, p. 5.) In all, the De Anza residents have had thirty years of notice of park closure though

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written notices, state legislation, and the terms of their rental agreements. By comparison, MVV was purchased by Archstone in 2007, and by at the time of City Council approval of the Mission Gorge project in November of 2008, Archstone projected that the MVV residents would have only three years notice of park closure. (Ex. 76: 01:16:08 - 01:19:00, 01:26:18 - 01:31:00 (owner representative Michael Walseth); 00:00:15 – 00:07:15 (City Staff Report).)

Further, unlike MVV, De Anza Cove is not a seniors community (age 55+). As of November 2003, the average age of the De Anza residents was 51 years old, with over half of the residents under the age of 55, and twenty two percent under the age of 35. (Plaintiffs' Ex. 108.) MVV was opened in 1959 with its 119 spaces as an adults-only park, and was later restrictively rented to seniors 55 years or older. After 1997, the MVV rules were amended to require at least one resident per space aged 55 or older and all others at least 45 years of age. (Ex. 103.)

In addition, in the 2000 Census, 50 percent of De Anza residents reported very low income ($30,000), 21 percent earned median income more than $60,000, and 7 percent earned more than $100,000. (Plaintiffs' Ex. 108.) By comparison, according to the MVV closure report, 94 percent of responding residents in 2007 reported extremely low to low income. (Ex. 71, p. 5.) Therefore, the resident demographics are simply not the same for the two parks. In all, the key differences between the De Anza and MVV mobilehome parks include:

	Mission Valley	**De Anza Cove**
Number of Spaces	119	510
Nature of real property	Private	Mission Bay tidelands intended for public use
Park ownership	Private apartment bldg owner / developer	Public entity ordered to keep park open after expiration of 50-year ground lease
Tenancies	Month-to-Month	Transferrable Long Term Lease Agreements (pre-2003)
Occupants	Homeowners only	Renters allowed
Income levels	94% extremely low to low income	50% low income, 21% $60,000+, 7% $100K+
Senior citizens in park	At least one senior 55+ per space, others 45+	No age restrictions, more than 70% under age 55

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	Mission Valley	De Anza Cove
Nature of park closure	Private re-development	State mandate to close park and revert to public use
Notice of intended park closure to mitigate adverse impacts	1 to 3 years	20+ years post Kapiloff legislation (with 85% moving out prior to 2003) plus 10 years of pending litigation

Not every park closure is the same and the City requests that these crucial differences must be considered with respect to the determination of the length of the rent differential period. Awarding the same 84-month period as in the MVV park closure would exceed the "reasonable costs of relocation" under the specific facts and circumstances of the *De Anza* park closure. Therefore, the SDHC's 48-month rent differential guidelines should be adopted in this case in lieu of the Special Master's 84-month recommendation.

4. Forcing the City to Pay Benefits that Exceed the Reasonable Cost of Relocation Would Constitute an Unconstitutional Gift of Public Funds

Unlike Archstone in the MVV situation, the City is not in a position to voluntarily agree to pay benefits that exceed the reasonable cost of relocation. The De Anza residents reside on public property in Mission Bay Park. This waterfront property was granted to the City in trust to be used for the benefit of the general public, not a select group of mobilehome park residents. Pursuant to State legislation, this park was only supposed to remain open until the expiration of the 50-year ground lease on November 23, 2003. Therefore, whereas private park owners and developers like Archstone have the option to either close the park and factor the expense of resident relocation into the cost of doing business or continue operating as a mobilehome park (Ex. 76: 01:13:00 – 01:16:08 (Archstone land use attorney Paul Robinson)), the City's only choice here is to comply with State mandate to close the park and allow the property revert to public access and use for the benefit of the taxpaying public.

By statute, based on the Court's Statement of Decision, the City is required under the Government Code to take steps necessary to mitigate the adverse impacts of park closure on the De Anza residents, in an amount not to exceed the "reasonable costs of relocation." The City could not offer to pay the De Anza residents more than is legally required, as Archstone offered to

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do in the MVV case, because doing so would render the De Anza process susceptible to challenge as an impermissible gift of public funds. Article XVI, section 6 of the California Constitution prohibits gifts of public funds by public entities, but does not apply to charter cities. (*Los Angeles Gas & Electric Corp. v. City of Los Angeles* (1922) 188 Cal. 307, 317.) Instead, a chartered city's powers are derived from a charter provided for by the Constitution, and that charter may provide restrictions and limitations on the city's municipal affairs. (*Ibid.*; *Tevis v. City and County of San Francisco* (1954) 43 Cal.2d 190, 197.) Here, the San Diego Charter ("Charter") section 93 states: "[t]he credit of the City shall not be given or loaned to or in aid of any individual, association or corporation; except that suitable provision may be made for the aid and support of the poor." Charter section 93 is the equivalent of Article XVI, section 6, and is the City's prohibition on gifts of public funds.

Settlement of a dispute with a private party is a valid use of public funds and does not constitute a gift "because the relinquishment of a colorable legal claim in return for settlement funds...is good consideration and establishes a valid public purpose." (*Orange County Foundation v. Irvine Co.* (1983) 139 Cal.App.3d 195, 200.) However, where settlement is of a "wholly invalid" claim then any payment constitutes an impermissible gift of public funds as no public purpose is achieved. (*Id.* at 201.) Similarly, a municipality cannot enter into a settlement agreement in which it is required to pay in excess of its maximum exposure, as any payment in excess of such amount is "akin to payment of a wholly invalid claim" and constitutes an impermissible gift of public funds. (*Jordan v. Dept. of Motor Vehicles* (2002) 100 Cal.App.4th 431, 450-451; see also *Page v. Miracosta Community College Dist.* (2009) 180 Cal.App.4th 471, 496 [Fourth District Court of Appeal reverses summary judgment based on finding that settlement payment exceeded District's maximum legal exposure].)

5. The Special Master Properly Concluded That, Irrespective of the MVV Closure, the SDHC's 48-Month Rent Differential Period Adequately Mitigates the Adverse Impacts of Park Closure on the De Anza Residents

The Special Master recommended MVV's 84-month rent differential period based on a misinterpretation of what occurred at the MVV City Council meeting. However, once the MVV situation is properly removed from the equation, a fair reading of the Special Master's First

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Report is that the SDHC's 48-month rent differential period provides adequate mitigation to the De Anza residents. Specifically, the Special Master determined: "The Special Master finds the RIR proposed by OPC for the closure of De Anza, containing the 48 month differential mitigation measure set forth in the SDHC guidelines, complies with applicable state and local law as well as the Court's [Statement of Decision]." (FR, p. 11:27-12:2.) Further, in the context of Plaintiffs' failed equal protection argument, the Special Master concluded that, because of the dissimilarities in demographics between the residents of De Anza and MVV and the significant factual differences between the circumstances of the two park closures, there were rational reasons for applying the 48 month rent differential period to De Anza rather than 84 months as in the MVV closure. (FR, p. 14:19-15:1.) This is the correct result. The history of this Park reflects the extensive steps that have already been taken over a period of decades to mitigate the adverse impact of the park closure before November of 2003, including:

- The 1981-1982 Kapiloff Bill which allowed residents to stay in the Park until the expiration of the ground lease on November 23, 2003, adopted with the expressly stated purpose of mitigating the hardship of relocating residents;

- The 1987-1988 Long Term Rental Agreements ("LTRAs") negotiated on behalf of the residents by mobilehome park residents advocate Henry Heater of the San Diego law firm of Endeman, Lincoln, Turek & Heater LLP ("ELTH"), which afforded all residents the value and security of a long-term lease until the Park's scheduled closure in 2003; and

- Decades of written notices to the residents, reminding them of the park's imminent closure to restore the property to public access and use as required by the State Lands Commission.

The LTRAs, in particular, were specifically designed to provide the residents an opportunity to recoup their investments and to take any steps necessary to prepare for and mitigate the impact of park closure. At that time, the residents' leasehold interest still had some value, but the residents also recognized that it would decline in value as the years remaining on the LTRA passed. This evidence must be considered in determining the actual adverse impact of closure on Plaintiffs and the amount that will "reasonably" compensate the residents.

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a. ***Compensation to De Anza Residents for the Adverse Impacts of Closure Is Discretionary***

The permissive language of Government Code subsection 65863.7(e) is clear and unambiguous – the agency "may" require the park owner to take steps to mitigate the adverse impacts of closure, or it may not. Further, subsection (i), which addresses public entities, specifically refers to and reiterates the permissive language in subsection (e). (Gov. Code, § 65863.7(i) ["as may be required in subdivision (e)"].) As such, pursuant to this clear language, compensation to the De Anza residents is not mandatory. Rather, the steps to be taken, whether it be monetary compensation or some form of relocation assistance, is subject to the discretion of the agency (or in this case, the Special Master) reviewing the impact report.

Similarly, compensation is not mandatory under the San Diego Municipal Code. (SDMC, § 143.0610 et seq. (Ex. 34).) The SDMC requires the preparation of an impact report under the guidelines developed by the SDHC. (SDMC, § 143.0630(c) (Ex. 34); SDHC Policy 300.401 (Ex. 33).) Specifically, the purpose of the SDHC guidelines is "to provide consistency in evaluating the adequacy of relocation plans, the fiscal standard against which relocation plans will be measured." (*Ibid.*) Thereafter, the relocation plan is subject to the approval of the SDHC. (SDMC, § 143.0630(d).)

b. ***There Can Be No Dispute that the 48-Month Rent Differential Period Would Provide Adequate Mitigation to the De Anza Residents, as the SDHC Guidelines Were Intended to Apply to All Mobilehome Park Closures in San Diego Except De Anza***

The 48-month differential period will adequately mitigate the adverse impacts of park closure on the De Anza residents, if any, as the SDHC guidelines are expressly intended to apply to all mobilehome parks in the City of San Diego except De Anza. As the Court is aware, the City has historically viewed the closure of De Anza to be a unique situation, and consistent with this view, the City exempted De Anza from the relocation guidelines applicable to all other parks. (Exs. 33, 34.) Ultimately, the Court ruled against the City on the issue of the residents' entitlement to mitigation and ordered the SDHC guidelines applied in this case. (Exs. 58, 59, 68.)

As demonstrated at trial, Policy 300.401 was the product of years of thoughtful debate

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among park owners and homeowner representatives, with both sides supporting the final resolution. (Kerr Decl., ¶ 7; Exs. 24-28, 31-33, 79 (pp. 1428-1453).) Beginning in 1989, citing the shortage of affordable housing and lack of development of new mobilehome parks, the SDHC decided to develop new policy which shifted the emphasis from the development of parks to the relocation and preservation of parks. (Exs. 24, 25, 79 (pp. 1430-1432).) The SDHC sought input on this issue from a wide ranging group of park owners and mobilehome owners in order to clarify the various positions and try to strike a balance between compensation for residents and maintaining the ability of park owners to close their parks without being overburdened. (*Ibid.*; Exs. 26-28, 79 (pp. 1433-1446).) In July of 1993, the SDHC created a Mobilehome Community Issues Committee (MHCIC) consisting of mobilehome owners and park owners to address mobilehome issues and advise SDHC on mobilehome policy. (Kerr Decl., ¶ 7; Exs. 31, 79 (pp. 1434, 1449).) In February of 1995, the MHCIC approved the 48-month rent differential benefit for homes that could not be relocated, defined as the difference between current space rent and rent for a comparable apartment, plus moving expenses. (Exs. 31, 79 (pp. 1448-1450).) On October 3, 1995, the City Council, sitting as the Housing Authority, adopted Resolution 00797 which implemented the revisions to Policy 300.401. (Exs. 31-33, 79 (pp. 1450-1452).)

As such, because the 48-month period had been vetted and endorsed by mobilehome park owners and residents for application to all parks in the City, it would be both unnecessary and illogical for the De Anza residents to benefit from a longer rent differential period than residents in other closing mobilehome parks. Accordingly, the 48-month differential period should be applied.

c. Based on the History of the Property and the Opportunities Already Afforded to the Residents to Mitigate the Adverse Impacts of Closure, the SDHC's 48-Month Rent Differential Period Provides More Than Adequate Mitigation to the De Anza Residents

Importantly, the parties' respective relocation experts agree that the history of notices of park closure over 20 years must be factored into the mitigation analysis. (Kerr Decl., ¶¶ 9-10; Ex. 78 (pp. 1119-1122, 1208-1215 (Plaintiffs' relocation expert Phillip Schwartze).) Here, based on the undisputed facts presented to the Special Master, the 48-month period under the SDHC

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guidelines is more than sufficient to mitigate the adverse impacts of closure on the De Anza residents, if any.

(1) Since the 1970s, the Use of this Public Property as a Mobilehome Park Has Been a High Profile, Politically-Charged Issue

As this Court is well aware, the State of California granted the subject property in trust to the City. (Ex. 1.) Thereafter, the City agreed to use the property solely for public, park and recreational purposes and approved a 50-year ground lease for the use of the property as a tourist and transient trailer park area, effective November 24, 1953, with expiration date on November 23, 2003. (Exs. 2-4.) De Anza Harbor Resort and Golf ("DHRG") eventually became the ground lessee and park manager. (Exs. 5, 6.)

In the 1970s, media and political pressure began to mount over the non-conforming use of this valuable, waterfront property as a mobilehome park at the expense of the public. (Ex. 7, 69.) In September of 1977, DHRG put the residents on notice of the situation. (*Ibid.*) DHRG reminded the residents of their month-to-month tenancies and that no greater interest should be represented to potential purchasers. (*Ibid.*) DHRG also alerted residents to the possible early termination of the master lease in 1988 due to a provision that allowed the City to terminate the lease in 35 years for a "condemnable public purpose." (*Ibid*; Ex. 4 (p. 15).)

In August of 1978, after reviewing the issue at the request of City Council, the City Attorney opined that the use of the property as a mobilehome park violated the tidelands trust and that steps should be taken to promptly return it to proper use. (Ex. 8.) In September of 1978, DHRG sent another notice to residents to advise them of the City Attorney's opinion. (Ex. 9.) In August of 1980, the State Lands Commission concurred with the City and agreed that residential use should be phased out. (Ex. 11.)

In the summer of 1980, in a cooperative effort involving the City, the residents, DHRG, and their respective attorneys, a resolution was proposed which provided for a long term, phased redevelopment of the property designed to both return the property to its intended use and mitigate the impact on the residents. (Exs. 10, 55 (p. 36).) Notably, the plan required the City to waive the 1988 review clause. (*Ibid.*) Instead, the residents would either remain in the Park for

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12 years or be relocated to a comparable park developed by DHRG. (*Ibid.*) The plan also provided for the payment of costs of relocation. (*Ibid.*) Alternatively, the City's options were to: (1) condemn the property for a public purpose in 1988 under the terms of the ground lease, triggering liability for relocation benefits; (2) permit the existing use to continue and risk losing the property to the State; and (3) permit the existing use to continue and risk a private citizen lawsuit to force the immediate eviction of the residents. (*Ibid.*) Again, DHRG provided the residents with written notice of the proposed resolution, its ramifications, and the alternatives available to the City. (Ex. 12.)

(2) Plaintiffs Forced Legislation to Keep the Park Open, Which Provided Residents with More Than Twenty (20) Years Notice of Park Closure

While the City Council considered the proposal, the residents approached then-State Assemblyman Lawrence Kapiloff and requested legislation to prevent closure of the Park in 1988. (Ex. 55 (p. 36).) As a result, Kapiloff introduced Assembly Bill 447 ("AB 447") to allow the residents to remain until the expiration of the ground lease on November 23, 2003. (1981 Stats. Ch. 1008; Exs. 20, 21.) The stated purpose of AB 447 was to balance the hardship of relocating tenants against the need to return the property to its intended use as public parkland. (*Ibid.*) To become effective, AB 447 required the City to concur by resolution no later than February 1, 1982. (*Ibid.*)

On January 22, 1982, the City Manager recommended the execution of a Tenth Amendment to the ground lease which would increase the rental and percentage rates, as well as allow DHRG to submit a plan for redevelopment of the portion of the leased property not utilized by the mobilehomes. (Exs. 13-16.) The plan would serve a two-fold purpose: (1) prevent the residents from being displaced during the remaining lease term; and (2) the City would receive substantially more income than if the property is used for a mobilehome and trailer/RV park. (*Ibid.*) Alternatively, the City could: (1) not allow DHRG to submit a redevelopment plan and insist on the increase in percentage rates; or (2) not modify the lease and condemn the property pursuant to the 1988 review clause, thereby triggering liability for relocation costs. (*Ibid.*) On January 25, 1982, the City adopted the findings of AB 447 pursuant to Resolution R-255718.

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(Exs. 17-19.) As required by AB 447, the residents were notified of the legislation, enacted with the express purpose of mitigating the hardship of relocation by allowing the residents to remain in the Park until the expiration of the lease in 2003. (Ex. 20, 21, 69.) The residents were further advised that under no circumstances would any occupant's term be extended after November 23, 2003, and that no relocation payments or benefits would be provided. (*Ibid.*) Instead, AB 447 had effectively provided Plaintiffs with more than 20 years notice of closure. (*Ibid.*)

(3) Plaintiffs Negotiated and Reaped the Benefits of Long Term Rental Agreements

In the late 1980s, DHRG considered a plan to redevelop the property into a resort hotel complex. (Ex. 19.) To secure the cooperation of residents in its effort to gain approval for development, DHRG engaged in extensive negotiations with the residents and their counsel regarding long term rental agreements (LTRAs). (Exs. 22, 23, 70.) The terms of the LTRAs were negotiated at arm's length between DHRG and the residents' counsel, Henry Heater, known as one of the premier mobilehome resident advocates in the State. (Exs. 22, 23, 55 (p. 88), 56, 69, 77 (pp. 889-891), 79 (1389-1400).) In addition, the LTRAs gave notice to the residents that DHRG intended to close the Park on November 23, 2003, thereby providing 15 years notice of park closure. (Ex. 70.) Further, the residents agreed that they would only receive relocation benefits if DHRG obtained redevelopment approval from the City. (*Ibid.*) Since 1989, nearly all residents have signed the LTRA, and all residents have received its benefits. (Exs. 56, 69, 70.)

In January of 1992, DHRG notified residents of its intention not to proceed with redevelopment and therefore no relocation benefits would be provided in accordance with the LTRAs. (Ex. 29.) Thereafter, on August 1, 1994, the State Lands Commission advised the San Diego City Council that: (1) the De Anza residents had no right to relocation benefits; (2) the 22-year period of non-conforming use authorized by the Kapiloff Bill was in fact a benefit already granted to the De Anza residents by the Legislature; and (3) any relocation assistance provided by the City to the De Anza residents would be an unconstitutional gift of public funds. (Ex. 30.)

In September of 1999, DHRG notified residents that the City Council had approved a Memorandum of Understanding with DHRG to negotiate a new ground lease that provided for

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hotel construction when the lease expired in 2003, in which case DHRG would assume responsibility for costs of park closure and relocation payments. (Exs. 35, 36.) In October of 1999, DHRG provided residents with additional notice of park closure and meetings concerning redevelopment plans. (Ex. 37.) Ultimately, DHRG elected not to re-develop the property. (Ex. 38.) As a result, in reliance on Plaintiffs' promises in the LTRAs, the City consistently maintained that it had no obligation to provide relocation benefits to the residents. (Exs. 55 (p. 69), 56, 57, 69, 70.)

(4) DHRG and the City Provided Numerous Additional Notices as the Date of Closure Approached

On November 15, 2002, DHRG notified the residents that the lease and all of the subleases would expire in just over one year, pursuant to the master lease, AB 447, and the LTRAs. (Exs. 38, 39.) On May 6, 2003, DHRG sent another notice to the residents that the ground lease and their subleases would expire in just over six months and that they should be prepared to vacate. (Exs. 40, 41.) In addition, DHRG personally served notice to the residents that the lease and LTRAs would expire on November 23, 2003. (Exs. 42, 43.) In anticipation of the return of the property to its possession, the City also sent letters to the residents reminding them that the lease would expire on November 23, 2003, by letters dated September 22 and October 22, 2003. (Exs. 44, 46.) DHRG sent an additional notice on October 17, 2003. (Ex. 45.)

(5) In the Years Prior to Lease Expiration, Park Residents Either Took Advantage of the Opportunities to Mitigate the Adverse Impact of Closure, or Elected to Move Into or Remain in the Park with the Knowledge of the Pending Closure

In all, the De Anza residents received the unprecedented benefit of more than twenty (20) years notice of Park closure to mitigate the adverse impacts of Park closure and make their relocation plans. (Kerr Decl., ¶9.) The LTRAs also provided the residents a unique opportunity to recoup their investments and to take any steps necessary to prepare for and mitigate the impact of park closure. (Exs. 69, 70.) At that time, the residents' leasehold interest still had value, but the residents also recognized that it would decline in value as the years remaining on the LTRAs passed. The LTRAs gave notice to the residents that DHRG intended to close the Park on

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November 23, 2003, thereby providing 15 years notice of park closure. (*Ibid.*) Since 1989, nearly all residents have signed the LTRA, and all residents have received its benefits. (Exs. 56, 69, 70.)

And importantly, the majority of residents did take advantage of the advance notice of closure and favorable lease terms to extract value from their leasehold interests and sell their homes, or make arrangements to relocate their mobilehomes to other parks in the area. (Ex. 69 [Plaintiffs' Trial Exhibit 3].) As evidenced in Plaintiffs' Exhibit 108, 85 percent of residents (436 units) moved into the Park after the 1982 Kapiloff Bill, 69 percent (354 units) of residents moving in after 1993, and 26 percent (113 units) moving in after 2000, less than 3 years prior to Park closure. (Plaintiffs' Ex. 108.) Only 9 percent of the residents resided in the Park prior to 1982. (*Ibid.*) The residents that still remained in the Park in October/November of 2003 (the Plaintiff class members in this case) generally fall into two groups: (1) residents that elected to forgo the opportunity to mitigate the impacts of Park closure, opting instead to simply accept the declining value of their leasehold interests and enjoy the remainder of their long term leases on waterfront property; or (2) residents that took advantage of the imminent closure to scoop up homes at significantly depressed prices. (Ex. 69; Ex. 77 (pp. 919-922, 1024-1032 (Plaintiffs' appraisal expert James Brabant); Ex. 78 (pp. 1167-1180) (Plaintiffs' expert Schwartze); Exs. 60-67 (resident survey examples).) In either case, it is well settled that the members of the class elected to remain in the Park and/or acquired mobilehomes with the express knowledge of the expiration of the master lease in 2003 and State-mandated closure. (Exs. 4, 7, 9, 12, 20, 21, 23, 29, 36, 37, 38, 40, 43, 44, 45, 46, 69, 70; Statement of Decision, Ex. 68, p. 5.)

Certainly, if any of the eligible class members were in the park prior to the 1981-1982 Kapiloff Bill, they received the benefit of the entire mitigation that was afforded the residents under that legislation. To the extent that class members moved in after that date, it is undisputed that all of these residents acquired their homes and/or moved into the park with knowledge that their right to occupy their spaces in the park would expire in 2003. And, particularly for those residents that purchased their mobilehomes in the final few years or months before the date set for closure (2003), they purchased their homes with knowledge that park closure was imminent and at steep discounts.

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(6) For the Last 10 Years, Class Members Have Continued to Live at the Park at the Space Rents Established in 2003

On November 18, 2003, five days before the expiration of the lease and the reversion of the property back to the City's possession, Plaintiffs filed the instant litigation. (Ex. 49.) The 50-year term of the ground lease then expired on November 23, 2003 (Ex. 4), and DHRG returned possession of the property to the City. (Exs. 44, 46.) Since that time, now nearly more than 10 years later, Plaintiffs have been allowed to remain on this waterfront property and at the space rental rates that have been in effect since 2003. (Kerr Decl., ¶ 10; Exs. 49, 51, 54.)

Based on this history, a rent differential period longer than 48 months would certainly exceed the "reasonable costs of relocation" in violation of the Government Code. (Kerr Decl., ¶¶ 8-10; Gov't Code, §65863.7(e).)

II. OBJECTIONS TO SPECIAL MASTER'S SECOND REPORT

A. The Special Master Erred In Recommending Benefits to Renters

The Special Master also erred in recommending the award of relocation benefits to renters. Notably, the Special Master agreed with the City that the MRL does not require the payment of mitigation to renters. However, because the Court's Statement of Decision provided for the payment of benefits to renters, the Special Master considered his hands tied. (Second Report ("SR"), pp. 29-31.) This portion of the Statement of Decision should be amended to exclude renters from the class.

The MRL creates a legal distinction between "homeowners" and all other types of mobilehome residents who "lawfully occupy" the mobilehome, such as subtenants. A "resident" is defined as a homeowner or other person who lawfully occupies a mobilehome. (Civ. Code, § 798.11.) "Homeowners" are often "residents" (if they actually occupy the mobilehome as opposed to subleasing it), but a "resident" is not necessarily a "homeowner." "Homeowner" is defined as a person who has a *tenancy* in a mobilehome park under a rental agreement. (Civ. Code. § 798.9.) "Tenancy" is the right of a *homeowner* to the use of a site within a mobilehome park. (Civ. Code, § 798.12.) "Rental agreement" is defined as an agreement between *management* and the *homeowner*. "Management" is defined as the owner of the mobile home

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park. (Civ. Code, § 798.2.) Taken together, "homeowners" are those persons that hold leases directly with the owner of the mobilehome park.

The distinction between "homeowners" and other types of "residents" is significant because the MRL's special protections regulating the termination of a mobilehome tenancy only apply to "homeowners." (Civil Code 798.56; see also Friedman, Garcia & Hagarty, CAL. PRAC. GUIDE: LANDLORD-TENANT (The Rutter Group 2011), § 11:25 (sublessees not protected by the special MRL provisions regulating termination of a mobilehome park tenancy and therefore the non-resident owner must evict the sublessee under normal tenancy termination procedures).) The special protections of the MRL apply to homeowners because the homeowners must remove and relocate their homes if evicted.[4] As such, their leases with management can only be terminated under certain circumstances and pursuant to the specific notice provisions of the MRL. (Civ. Code, § 798.56.) On the other hand, the special protections of the MRL do NOT apply to park residents that are NOT homeowners (i.e. residents that do not hold leases directly with park management) because they do not have homes to relocate if evicted. These other types of "residents" include subtenants/sublessees or any other occupants that are not "homeowners." Because the eviction of a subtenant does not involve relocating the mobilehome, the MRL's unique protections do not apply and the non-resident homeowner would need to evict the subtenant under the general landlord-tenant procedures in California.

Further, Government Code section 65863.7 only obligates the park owner to mitigate any adverse impact of the park closure on displaced park residents. (Gov't Code, § 65863.7.) Necessarily, if there are no adverse impacts, no mitigation is required. Most subtenants lease mobilehomes on a month-to-month basis, and in the case of a park closure, subtenants receive a minimum of six months' notice of closure, which is at least 120 days more notice of termination

[4] The intent of the MRL to provide this special protection to homeowners as opposed to other types of residents is expressly stated in Civil Code section 798.55(a): "The legislature finds and declares that, because of the high costs of moving mobilehomes, the potential for damage resulting therefrom, the requirements related to the installation of mobilehomes, and the cost of landscaping and lot preparation, it is necessary that the *owners* of mobilehomes occupied within mobilehome parks be provided with the unique protection from actual or constructive eviction afforded by the provisions of this chapter." (Civ. Code, § 798.55(a) (emphasis added).)

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of their tenancies than they would have received from their mobilehome owner landlords under California's landlord-tenant laws. As such, in the cases of subtenant renters, there are no adverse impacts that require mitigation. Notably, in an opinion dated September 19, 2012, the Legislative Counsel Bureau recently confirmed the City's position that subtenants (persons that rent from homeowners) or other non-homeowner occupants are not entitled to relocation benefits. (See Legislative Counsel Bureau Opinion, Ex. R.)

Finally, the SDHC guidelines also do not require the payments of relocation benefits to subtenants of mobilehomes, nor is there any evidence that the SDHC or Housing Authority contemplated that park owners would be required to pay benefits to persons with whom the park owner did not have a landlord-tenant relationship.

B. Non-Resident Owners as of the October 2003 Class Date Should Receive a Benefit Based on the Physical Cost to Relocate their Mobilehome, Not a Rent Differential

In addition to eliminating benefits to renters, the City also requests that non-resident homeowners with subtenants on the effective class date of October 22, 2003 receive a benefit in the amount of the cost to physically relocate the coach, in lieu of a rent differential benefit. Government Code section 65863.7 obligates the park owner to "take steps to mitigate any adverse impact of the conversion, closure, or cessation of use on the ability of the displaced mobilehome park residents to find adequate housing in a mobilehome park." (Gov't Code, § 65863.7.) The most immediate impact of a park closure is the effect on the resident owners who are actually displaced from their coaches and need to be relocated to another home or apartment. A rent differential-type benefit is intended to mitigate the impacts of park closure on these resident owners. However, unlike the resident homeowner that still lived in his/her coach on a full-time or part-time basis as of October of 2003, non-resident owners with subtenants would only face the disposition of their coaches at the time of park closure. Under these circumstances, to require the City to pay any rent differential benefits to non-resident owners, especially seven years of such benefits, would exceed the reasonable costs of relocation. The rent differential is intended for resident owners that need real relocation assistance in transitioning to new places to live. Therefore, as recognized by OPC in its Draft RIR (Ex. I, pp. 16-17), these non-resident owners

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should receive a relocation benefit based on the physical cost to move the mobilehome out of the park, as opposed to a rent differential-type benefit (see Table 4: Moving Reimbursement Schedule, p. 17). [5]

Like the renter issue, the Special Master found the arguments and rationale offered by the City in support of its request to be "logical and compelling." However, two concerns were cited. First, the Special Master opined that such a recommendation would be inconsistent with the Statement of Decision, wherein the Court held that "mobilehome owners, whether permanently residing at De Anza or temporarily residing at De Anza as in the case of a second home, where it is not feasible to move the motor home, are entitled under the Guidelines to the difference between current space rent and rent for a comparable apartment unit for the period of 48 months." (SR, p. 29:3-8.) Second, the Special Master concluded that, in granting the City's request, these non-resident owners would not receive any benefits because none of the homes are likely to be relocated. (SR, p. 29:8-13.)

As noted by the Court in the Statement of Decision, there are three categories of individuals in the park: (1) resident non-owners that pay rent (subtenants / renters); (2) resident owners who live full-time in De Anza or part-time by using their mobilehome as a second or vacation home, and (3) non-resident owners who rent their homes to others. (Ex. 68, p. 13:5-8.) Subsequent to the issuance of the Statement of Decision, the Court clarified that non-resident owner-investors are not eligible for benefits, but non-resident owners that lived in the mobilehome for a period of time prior to October 22, 2003 but moved out and were subleasing their units as of that date were still eligible for benefits. This is does not mean it would be appropriate or necessary to pay these (non-investor) non-residents a rent differential benefit. In its Statement of Decision, the Court concluded the following with respect to the rent differential benefit under the SDHC guidelines:

> The Housing Commission Guideline section 1(b) deals with situations where a mobile cannot be relocated. In such situations, the Guidelines are intended to apply only to resident owners and not to non-resident owners. The Guidelines state

[5] Non-resident owners in this context are distinguished from investors that owned coaches solely for a stream of income and never lived in them.

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> that the park owner shall provide "residence" (sic) "reasonable relocation expenses" defined as a rent differential between the "current space rent" and "rent for a comparable unit" for the period of forty-eight months.. . .The Court adopts the use of these Guidelines as consistent with the MRL and finds mobilehome owners, whether permanently residing at De Anza or temporarily residing at De Anza as in the case of a second home, where it is not feasible to move the motor home, are entitled under the Guidelines to the difference between current space rent and rent for a comparable apartment unit for the period of 48 months.

(Ex. 68, pp. 13:28–14:4 (emphasis added).)

Consistent with the Court's finding that the rent differential benefit is not intended for non-resident homeowners, it is the City's position that the (non-investor) non-resident owners with subtenants should receive a benefit based on the cost to physically relocate their homes under SDHC guideline 1(a) (regardless of whether there home can actually be physically moved or not), not the rent differential benefit under 1(b). As directed by the Court, resident homeowners that still lived their coaches on a full-time or part-time basis as of October of 2003 would still receive the rent differential benefit, whereas the non-resident owners with subtenants would not. Instead, the non-resident owners with subtenants on the class date would receive the physical relocation allowance to compensate them for the cost to physically relocate their home (i.e., the maximum allowance based on the home size), whether or not the mobilehome can be relocated. This result would more properly fulfill the intent of the statutes to mitigate the hardship of closure, but not in amounts that exceed the reasonable cost of relocation. Further, the parties have already determined which households had subtenants on the class date, and to the extent that disputes exist as to the residency status of certain homeowners, those disputes can be resolved during the administrative phase of the closure.

C. Comparable Rents Should Be Calculated On A Square Footage Basis Based on the Biannual San Diego County Apartment Association Surveys

The Court has ruled in its Statement of Decision that the rent differential in this case should be calculated based on the difference between park space rents and the rent for a comparable apartment unit, defined as a unit of comparable size in a comparable locale. (Ex. 68, p. 14:11-20.) In the Second Report, the Special Master recommended that that these comparable apartment rent figures be calculated, at least in part, based on data provided by the San Diego

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County Apartment Association. (SR, pp. 31-33.) The SDCAA publishes its Vacancy & Rental Rate Survey twice a year. (See for example, the SDCAA survey for the Fall of 2008, Ex. K.) This SDCAA survey information is based on a long established and industry-recognized confidential survey process which compiles information directly from these rental property owners and managers on a bi-annual basis. (See sample SDCAA survey form, Ex. L.) And notably, the surveys not only contain ZIP-code specific information, they also provide average apartment rents on a square foot basis. As such, to determine comparable rents based on units of comparable size and in a comparable locale, OPC can simply multiple the square footage of each coach by the average rent per square foot for an apartment of comparable size for the three selected ZIP code areas chosen by OPC (92106, 92107, 92109).

Further, in prior portions of the report, the Special Master recommended that (1) park space rents be adjusted according to CPI for the purposes of the rent differential calculation, and (2) rent differential payments be calculated based on the year that the class member household actually vacated the park. Therefore, for example, if a resident vacated in 2004, the space rent would be first be adjusted to 2004 based on the increase or decrease in CPI. Second, the comparable rent component for each class member would be determined by multiplying the square footage of their De Anza home by the price per square foot for an apartment unit of comparable size and in a comparable locale. The rent differential would then be the difference between the resident's CPI-adjusted space rent through 2004 and comparable rent for 2004 based on the specific size of the home. However, to accomplish the determination of the rent differential for each class member household based on the actual year they left the park, historical apartment rental survey information will be needed for the ZIP codes selected (92106, 92107, 92109). However, OPC will not be able to compile reliable, historical apartment rental information based on internet searches, and therefore would be unable to perform year-specific rent differential calculations. Therefore, as indicated by the Special Master, "the City's request that OPC utilize the SDCAA data makes a great deal of sense." (SR, p. 32:18.)

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Notably, however, the Special Master also recommended in the Second Report that:

> Rather than requiring OPC to use SDCAA data exclusively, in lieu of information from Internet websites, OPC should be allowed to exercise its expertise on this issue and, in its best judgment, use information from Internet websites in conjunction with SDCAA data unless that would result in an inconsistent or unfair calculation, in which case only SDCAA should be used. (SR, p. 33:4-8.)

As the Court is aware, after hearings with the Court and Special Master, OPC was recently requested to (1) conduct a current apartment survey in order to update its comparable rent numbers and (2) determine whether these new figures can be used in conjunction with the SDCAA surveys. In March of 2014, OPC completed that survey and determined the following median comparable rent numbers:

1	$1,300 ($2.01/sq.ft) – 1BR units are under 665 sq.ft
665	$1,750 ($1.75/sq.ft) – 2BR units are under 1060 sq.ft
1060	$2,600 ($2.18/sq.ft) – 3BR units are under 1380 sq.ft
1380	$3,395 ($1.88/sq.ft) – 4BR units are over 1380 sq.ft

On a conference call with counsel, however, OPC advised that it did not know how it could use this square footage data in conjunction with the SDCAA square footage data.

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Accordingly, as recommended by the Special Master, and to ensure that the final rent differential methodology is fairly and consistently applied to each class member based on the year that they relocated from the park or will relocate from the park, OPC should utilize the historical, current or future SDCAA rental survey information for the ZIP codes selected by OPC, and calculate the comparable rent for each unit by multiplying the square footage of each De Anza mobilehome by the price per square foot for an apartment unit of comparable size.[6] The monthly rent differential can then be calculated by subtracting the homeowner's CPI-adjusted space rent.

Dated: April 2, 2014

GORDON & REES LLP

By: _____

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[6] The current version of OPC's spreadsheet currently calculates the differential for each class member household by subtracting the resident's space rent from the **median** comparable rent numbers for each bedroom grouping (1BR, 2BR, etc.). This calculation does not represent a true calculation of that class members' comparable rent for a unit of comparable size. Instead, the comparable rent should be calculated on a price per square foot basis according to the actual square footage of each unit, and these square footages have already determined on a park-wide basis.