NOTICE AND APPLICATION FOR APPEAL OF DECISION OF RENT ADMINISTRATOR RE: JUNE 27, 2019 APPLICATION FOR RENT ADJUSTMENT FOR THE OAKS MOBILE HOME PARK, SANTA PAULA, CALIFORNIA [SPMC 152.07(E)]

The below-named Residents of the Oaks Mobile Estates hereby give Notice of their Application for Appeal of the Decision of the Rent Administrator of the City of Santa Paula dated November 26, 2019, as referenced in that certain undated "Notice of Determination for Rent Increase" issued by James Mason, Community Development Director of the City of Santa Paula. The grounds for such appeal, which is hereby iled pursuant to SPMC 152.07(E) are as follows:

1. **The City has Improperly Allowed the Pass-Through of Sub-metered Gas and Electric Repairs which are Prohibited by Law.**

Many mobilehome park owners in California have taken over responsibility from the serving utility for maintenance and repair of a park's gas and electric utility systems. In those parks, the park owner also reads the meters and collects the utility amounts, rather than the serving utility. In recognition of the responsibility which the park owner has removed from the serving utility, the park owner is provided by law with a monthly "differential discount" on the utility rates. In effect, the park owner is authorized to purchase the energy at a "wholesale price" from the utility, and bill it to the homeowners at a "retail price". These discount amounts are determined for separate utilities pursuant to "Tariffs" which appear in California Public Utilities Commission (CPUC) "Rate Schedules", and are designed to provide the park owner with funds to keep the system repaired and operational.

CPUC Electric Schedule Tariffs specifically state that this discount ***"prohibits further recovery by mobilehome park owners for the costs of owning, operating and maintaining their electric sub-metered system. This prohibition also includes the cost of the replacement of the sub-metered electric system."***

In its landmark 1995 ruling (*Re: Rates, Charges, and Practices of Electric and Gas Utilities Providing Services to Master-metered Mobile Home Parks (1995) 58 Cal. P.U.C. 2d 709)* the CPUC ruled the monthly sub-metering discount received by park owners compensating them for operating sub-metered systems includes "among other things, a factor for investment-related expenses for all initial and ongoing capital upgrade costs, and return on investment." That decision is cited in the CPUC Tariffs as the authority for applying the discount, and has not been altered by any subsequent Commission decision. In effect, this decision held that because the park owner was already being compensated by the discount, it would be "double-dipping" to then have the residents reimburse the park owner for the repair cost.

The courts have also weighed in on this issue. In the case of *Rainbow Disposal Company, Inc. v. Escondido Mobilehome Rent Review Board 64 Cal. App. 4th 1159 (1998)* a $200,000.00 expense amount was disallowed by the hearing officer in an administrative rent case brought under a mobilehome rent ordinance, and later upheld by the Court based upon the authority of the above-

quoted *Rates, Charges, and Practices* decision. The Tenants' expert in that case, Dr. Kenneth Baar, testified in the *Rainbow* hearing, and was extensively quoted by the Court of Appeal. The Court found his exclusion of gas and electric expenditures in the hearing below was proper, given that the CPUC *Rates, Charges, and Practices* decision precluded their recovery.

In this case the Park is sub-metered for energy, since the park owner bills the residents monthly for their gas and electric usage which is itemized on each monthly space rent billing in addition to base space rent. The massive utility project undertaken in the Park involved replacement of the entire gas and electric system infrastructure, as appears from the California Dept. of Housing and Community Development Inspection Report contained in the Application, however Residents have not been provided with any invoices, reports or billing detail which describe the nature or location of the work. This is important, since the discount does not apply to the common areas of the park or that portion of the system which is "behind the meter"; i.e. between the utility pedestal and the home. But the portion from the pedestal to the master meter located at the street <u>is</u> covered by the discount, and that portion of the project in question cannot be passed through to the park residents as provided by the above-described law. It appears the City's determination may have violated the law, and a full hearing should be convened to investigate the scope and cost of the project and break down the project components. The Park for some reason did not wait to be included in the queue for the state-wide CPUC pilot program upgrade program, which would have resulted in a new energy system at little cost to the Park.

In conclusion, the Park is **not** allowed to pass through costs to repair or refurbish the gas/electric infrastructure for which CPUC-allowed discount rates have already been provided.

Any and all street repair expenses, since they are related to the utility system replacement, would also be prohibited under the same rationale.

As to any allowable portion of repair or replacement of the energy system, Residents are entitled to view bids, receipts, bills, invoices and a description of the work done, so as to verify (a) that it is a capital expense; (b) that the work was actually accomplished; (c) that the cost was properly amortized over the useful life of the work; and (d) that the work was not occasioned or made more expensive by a lack of ongoing maintenance, such that 'deferred maintenance' is an issue. No proper authentication of the project scope or cost has been provided to Residents.

2. Clubhouse-related Repairs, while allowable in theory, have not been properly Identified or Amortized

Clubhouse-related repairs are an allowable capital pass-through category, but would need to be broken out from the remainder of the work and separately amortized. Residents are entitled to view bids, receipts, bills, invoices and a description of the work done, so as to verify (a) that it is a capital expense; (b) that the work was actually accomplished; (c) that the cost was properly amortized over the useful life of the work; and (d) that the work was not occasioned or made more expensive by a lack of ongoing maintenance, such that 'deferred maintenance' is an issue. No proper authentication of the project scope or cost has been provided to Residents.

Residents additionally make the following objections:

A. The 15-day timeframe to respond to the undated Notice of Determination for Rent Increase was insufficient to allow for a thorough study of the Application. The application is 169 pages long and the residents should have been informed and then given reasonable time to review. As such, Residents hereby specifically reserve the right to amend or supplement this Appeal if and when further grounds for appeal are discovered.

B. The Application is vague, ambiguous and incomplete, in that it does not include any bids, invoices, purchase order or project descriptions. The Residents were subjected to months of disruption without any idea of the scope or details of the project.

C. Residents are informed and believe that large cost overruns occurred when the Park encountered large underground boulders during the project, due to the fact that the Park was built on a river bed. This was said by the park owner in his only meeting with the residents. The cause and justifiability of these increased expenses must be fully investigated by the Mobile Home Rent Review Commission.

D. Residents are unclear whether any fee is required to be paid by them to file this Appeal. Presumably the Park has paid an application fee when its June 27, 2019 application was filed. In the event that the City would require Residents to also pay an application fee, Residents hereby request that same be waived, due to their inability to pay a $5,000.00 application fee. Requiring payment of a large sum which they cannot pay deprives Residents of due process under SPMC Chapter 152. Reverend Jill Martinez appeared before the City Council on Tuesday, December 2nd and requested that the City waive any such fee requirement.

Based upon the foregoing, the undersigned Residents hereby Appeal from that certain Decision of the Rent Administrator of the City of Santa Paula dated November 26, 2019 in this matter, and request a hearing before the Mobile Home Rent Review Commission in accordance with SPMC 152.09.

Dated: December 11, 2019

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