

PROOF OF SERVICE BY MAIL

Case: 2013 Colonial Mobile Manor

(eff. 6/1/2013)

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 December 4, 2013, 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
Final Rent Adjustment Award Notice dated December 4, 2013	X	X	X
2013 Colonial Manor, LLP Rent Adjustment Award dated November 25, 2013	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 December 4, 2013.

Theresa Ramos, M.A.

Date: December 4, 2013

Case: Colonial Mobile Manor Mobilehome Park

FINAL RENT ADJUSTMENT AWARD

Enclosed is the Final Rent Adjustment Award with regards to the rent increase petition for the Colonial Mobile Manor 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.

CITY OF SAN JOSE
RENTAL RIGHTS AND REFERRALS PROGRAM

Building Relationships in Rental Communities

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2 Attorney at Law
3 2600 El Camino Real, Suite 506
4 Palo Alto, CA 94306
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7 BEFORE THE CITY OF SAN JOSE
8 CITY OF SAN JOSE MOBILEHOME RENT
9 ORDINANCE

10 In Re:

11 COLONIAL MOBILE MANOR
12 MOBILEHOME PARK

AWARD

13 MICHAEL J. LOWY,
14 HEARING OFFICER

15 APPEARANCES

16 Appearing for the Homeowners:

17 Ms. Martha O'Connell, In Pro Per, Space #31, and representing the following 81 Spaces:

18 Numbers:

19 1,2,7,9,11,13,14,15,16,18,19,20,22,24,25,36,38,40,42,47,48,49,50,51,52,55,57,58,67,68,70,73,76,

20 78,79,80,81,82,87,89,90,91,92,96,98,107,109,111,112,114,116,123,124,125,127,134,135,137,

21 138,140,144, 147,150,152,155,158,162,163,166,167,171,173,175,178,181,182,184,

22 185,188,193,197,and 198

23 Ms. Candy Coleman, In Pro Per, Space #88

24 Mr. Sandy Perry with Affordable Housing Network, representing Mr. Don Nick, Space #136,

25 53,153,183 and 200

26 Mr. William Bronner and Inger Parker, In Pro Per, Space #199

1 Jessica Latham representing the following 11 spaces: #17, 23, 29, 59, 93, 129, 132, 157, 161 and
2 165

3 Mr. Roger Venable, In Pro Per, Space #172

4 Ms. Stephanie Little with Bay Area Legal Aid, representing Ms. Vivian Perez, Space #85

5 Mr. Aracele I. Thompson, In Pro Per, Space #66

6 Ms. Sandra L. Berry, In Pro Per, Space #183

7 Mr. Kenneth P. Dura and Mr. Peter R. Hilton, In Pro Per, Space #139

8 Dr. Kenneth Baar

9 Bruce Stanton, Esq.

10 Appearing for the Landowner:

11 Anthony C. Rodriguez, Esq., representing Colonial Mobilehome Park, LLP

12 Mr. Peter Wang, Managing Partner of Colonial Mobilehome Park, LLP

13 Ms. Shuchum "Kimmee" Huang, Bookkeeper of Colonial Mobilehome Park

14 Mr. Gerald C. Taylor,

15 Dr. Richard Fabrikant

16
17
18 **EXHIBITS**

19 Stephanie Little, Representing Vivian Perez

20 VP-1 February 26, 2013 Colonial Mobile Manor Rent Increase Petition

21 VP-2 February 27, 2012 Colonial Mobile Manor rent Increase Petition

22 VP-3 Analysis on Return on Investment Claim, Property Tax Calculation, and Claim for Costs
23 of Prior Rent Increase Application in Colonial Manor Mobilehome Park, Fair Return Application
24 - 2013, by Kenneth K. Baar.

25
26 VP-4 2012 Analysis of Colonial Manor Mobilehome Park Fair Return Application by Dr.
27 Kenneth K. Baar
28

- 1 VP-5 2013 Fair Rate of Return Analysis by Dr. Richard Fabrikant
- 2 VP-6 2012 Fair Rate of Return Analysis by Richard Fabrikant
- 3 VP-7 2013 Market Rent Survey and Analysis, by Gerald Taylor
- 4 VP-8 2012 Market Rent Survey and Analysis by Gerald Taylor
- 5 VP-9 2012 Rent Comparability Study and Analysis by David F. Beccaria
- 6 VP-10 September 12, 2012 Rent Adjustment Award, *In re: Colonial Mobile Manor*
- 7
- 8 VP-11 Resume of Bruce Stanton
- 9 VP-12 May 8, 2013 Memorandum from Leslye Cosiglia, Director of Housing, to San Jose Mayor
- 10 and city Council

11 Homeowners:

- 12 R-1 Galland v. City of Clovis, 24 Cal.4th 1003, 2 pages of the decision
- 13
- 14 R-2 Judicial order regarding attorney's fees for Case # 111CV191322, Colonial Mobile
- 15 Manor v. Vivian Perez
- 16 R-3 Notice of Meeting re: Proposed rent increase – Dated February 17, 2010
- 17 R-4 Addendum to February 17, 2010 Meeting re: Proposed rent increase
- 18 R-5 Colonial Mobile Manor Rent Credit Program Application
- 19 R-6 Colonial Mobile Manor 2012 General Ledger
- 20 R-7 Homeowners' analysis of the summary of expenses
- 21 R-8 Letter (with exhibits) from Candy Coleman to Bear Neff – Dated April 3, 2013
- 22 R-9 Letter from Candy Coleman to Michael Lowy – Dated April 24, 2013
- 23 R-10 Letter (with exhibits) from Candy Coleman to Michael Lowy – Dated June 24, 2013
- 24 R-11 2011 Schedule BC and 2012 Schedule BC
- 25 R-12 California Civil Code Section 1102.6(c)
- 26
- 27 R-13 Spreadsheet comparing Landowner claims under the MNOI theory from the February
- 28 2012 Application and the May 11, 2012 Submission

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- 1 R-14 Memo entitled Total Management Expenses as a percent of Gross for Colonial Mobile Manor for 2012
- 2
- 3 R-15 California Mobile Home Park Management Co. materials from their website
- 4 R-16 Letter from Jessica Scheiner to Anthony Rodriguez – Dated March 8, 2013
- 5 R-17 Schedule DR from the March 13, 2013 Letter, Enclosure #2
- 6 R-18 Adjustments to Income and Expenses, 5 pages, received May 29, 2013
- 7 R-19 Bio of Bruce Stanton
- 8 R-20 Legal bills for Bruce Stanton for 2012, Colonial Case, 16 pages
- 9
- 10 R-21 Pre-Hearing Brief, 2012 Colonial
- 11 R-22 Post-Hearing Brief, 2012 Colonial
- 12 R-23 April 4, 2012 letter

13 (R is being used to designate Homeowners Exhibits. HO is not being used so as to avoid
 14 confusion with Hearing Officer.)

15 Landowners:

- 16 LO-1 90-day notice of rent increase
- 17 LO-2 California Secretary of State printout
- 18 LO-3 Buyer financial closing statement
- 19 LO-4 Grant deed for Colonial
- 20 LO-5 Income statement for 2012
- 21 LO-6 General Ledger for 2012
- 22 LO-6(a) General Ledger
- 23 LO-6(b) Water
- 24 LO-6(c) 5 Notices – rent credit
- 25 LO-6(d) Legal bills
- 26 LO-7 Rent for park owned homes
- 27
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- 1 LO-8 Expenses for park owned units
- 2 LO-9 Expenses for special projects
- 3 LO-10 General ledger and legal expenses
- 4 LO-11 PG&E discount rates
- 5 LO-12 PG&E electric schedule
- 6 LO-13 Electrical replacement projects
- 7 LO-14 Investment rate
- 8 LO-15 Comparable July report
- 9 LO-16 2012 Decision by Hearing Officer
- 10 LO-17 Definitions of terms
- 11 LO-18 Definition
- 12 LO-19 Depreciation rates
- 13 LO-20 Mailing list
- 14 LO-21 January 2012 expenses
- 15 LO-22 February 2012 expenses
- 16 LO-23 March 2012 expenses
- 17 LO-24 April 2012 expenses
- 18 LO-25 May 2012 expenses
- 19 LO-26 June 2012 expenses
- 20 LO-27 July 2012 expenses
- 21 LO-28 August 2012 expenses
- 22 LO-29 September 2012 expenses
- 23 LO-30 October 2012 expenses
- 24 LO-31 November 2012 expenses
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- 1 LO-32 December 2012 expenses
- 2 LO-33 Rent rolls
- 3 LO-34 Rents at time of notice
- 4 LO-35 Rate of return data
- 5 LO-36 Copies of checks
- 6 LO-37 Property tax information
- 7 LO-38 Mr. Rodriguez' legal bills
- 8 LO-39 CPI charts and table
- 9 LO-40 All mobile home parks in San Jose
- 10 LO-41 Mobile home Parks in area
- 11 LO-42 Park rules and regulations
- 12 LO-43 Emergency preparedness plan
- 13 LO-44 Hours for common area facilities
- 14 LO-45 Memo for key for laundry room
- 15 LO-46 Photographs of park and improvement projects
- 16 LO-47 San Jose Ordinance
- 17 LO-48 San Jose Regulations
- 18 LO-49 Report by Gerald Taylor
- 19 LO-49(a) Market rent survey and analysis
- 20 LO-50 Dr. Fabrikant's report
- 21 LO-51 Expenses table, 14 pages
- 22 LO-52 Account activity statement, 1 page
- 23 LO-53 Attorney fee invoices for disputed bills, 5 pages
- 24 LO-54 Pre-Hearing Brief, June 12, 2012, 29 pages
- 25
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- 1 LO-55 Park owner Post Hearing Brief, 29 pages
- 2 LO-56 Post Hearing Reply Brief, 31 pages
- 3 LO-57 Colonial Mobile Manor Income and expense, 2011 (chart) 3 pages
- 4 LO-58 Colonial Mobilehome Manor income and expenses 2011, adjustments by the parties and
- 5 stipulated and disputed items
- 6
- 7 LO-59 Joint Exhibit list 2012, Colonial hearing, 2 pages
- 8 LO-60 Revised Joint Exhibit List, 5 pages
- 9 LO-61 Packet of emails re: Bruce Stanton and Anthony Rodriguez, 3 pages
- 10 LO-62 Pictures of Colonial Mobile Home Park (15)
- 11 LO-63 Emails-Hearing Offices, residents, 12 pages attorneys invoice attachment
- 12 LO-64 rent for park owned homes February 2012 and February 2013
- 13
- 14 LO-65 page 19 of Dr. Baar's 2012 report
- 15 LO-66 Chart comparing the money gained from Petitions
- 16 LO-67 Letter from City of Palm Desert concerning Silver Spur Mobilehome Park, 2 pages
- 17 LO-68 Dr. Baar's report for El Dorado
- 18 LO-69 90-day notice dated February 27, 2012
- 19 LO-70 Chart on Vega adjustment
- 20
- 21 LO-71 Check to Dr. Baar for Villa Vista
- 22 LO -72 Property Tax payments by Colonial to Santa Clara County
- 23 Hearing Officer:
- 24 HO- 1 Colonial Mobile Manor Mobilehome Park space rent
- 25 HO-2 Schedule DR
- 26
- 27
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1 PROCEEDINGS

2 The current Landowner, Mr. Peter Wang, purchased the Mobilehome Park on April 29,
3 2009 for \$14,000,000. Counting Closing Costs he invested \$14,023,380.00. As of December 31,
4 2012 the adjusted investment equaled \$14,192,695.00. Taking the adjusted investment prior to
5 December 31, 2012 and adding the capital improvements of \$169,315.00 equals 14,192,695.00.
6
7 Adjusting that number for inflation, the adjusted investment equals \$15,182,798.00. In February
8 2012 the Landowner previously applied for a rent increase of \$104.79. The matter was heard by
9 Hearing Officer Suzanne Nusbaum, who increased rent \$46.30 per unit, per month.

10 The current hearing was started when the Landowner filed a Petition for an increase on or
11 about February 20, 2013. The Landowner was seeking an increase of \$85.01. There was no claim
12 for reduction in service. The parties agreed that the Hearing Officer could tour the Mobilehome
13 Park. The walk-through took place on May 30, 2013.

14 There were additional pre-trial requests made.

- 15
- 16 a. Ms. Coleman's request for a dismissal of the Petition was denied.
 - 17 b. Ms. Perez' letter dated April 10, 2013 requesting that the proceedings be open to
18 the public was denied.
 - 19 c. Ms. Stephanie Little's request for an extension of time to provide documents to the
20 City until 14 (fourteen) days after Landowner's submission was granted.
 - 21 d. The Hearing Officer offered his services as a mediator. This offer was declined by
22 the parties.
 - 23 e. The allowable 3% increase of the rent was imposed effective June 1, 2013.
- 24

25 There are 207 spaces in the mobilehome park. 7 RV spaces and 200 mobilehome spaces.
26 10 spaces are owned by the mobilehome park and 7 spaces are exempt from the ordinance since
27 they were permitted after September 7, 1979.
28

1 The Hearing Officer was appointed on or about April 3, 2013, and a Pre-Hearing
2 Conference was held on May 17, 2013. There were requests by both the Landowner and
3 Homeowners that the Hearing Officer make certain orders before the hearings began. Pre-Hearing
4 Briefs were filed and the parties engaged in a total of seven hearings beginning on July 22, 2013
5 and ending on July 30, 2013, where testimony was offered and arguments were heard.

7 This Award will first review the Pre-Hearing Orders issued by the Hearing Officer. Then
8 the Hearing Officer will review the parties' positions on the issues as reflected in their Pre-
9 Hearing Briefs. In particular, the Hearing Officer will focus on the MNOI approach to the request
10 for a rent increase.

11 Pre-Hearing Orders

- 12 1. Anthony Rodriguez, Landowner's attorney, requested a continuance dated June 20,
13 2013 based on the following facts:
 - 14 a. Ms. O'Connell submitted eight documents to the city that were not received by
15 Mr. Rodriguez. Four of the eight documents were already in the Landowner's
16 possession.
 - 17 b. Mr. Rodriguez did not receive a copy of Dr. Baar's report until June 6, 2013.
 - 18 c. Landowner's attorney claimed he would be at a disadvantage in his pre-hearing
19 brief because of the late submissions.

20 The Hearing Office denied the request for a continuance because:

- 21 i. The eight documents contained the following: two letters between Mr.
22 Rodriguez and the city; two letters from Ms. O'Connell to Peter Wang; and
23 four pages from a newspaper article.

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ii. Any critique of Dr. Baar’s report would come during his cross-examination at the end of July. Mr. Rodriguez will have until July 15th to respond in writing to Dr. Baar’s report.

2. The Landowner’s Attorney requested that the Hearing Officer make a ruling that unpublished cases cannot be cited in the proceedings:

a. On June 8, 2013, relying on CRC §81115, the Landowner’s attorney wrote an email to the Hearing Officer requesting that the Hearing Officer admonish Mr. Kanada for citing an unpublished case and clarification of Mr. Perry’s and Ms. O’Connell’s status. Mr. Rodriguez claimed that the Hearing Officer cannot rely on any unpublished cases not certified for publication, citing California Rules of Court (hereinafter CRC) §81115, “...an opinion ...must not be cited or relied on by a Court or a party in any other action” (CRC 81115(a)). The question to be decided is whether “any other action” includes an administrative hearing such as this rent control hearing. The Ordinance states “The rules of evidence generally applicable in the court, shall not be binding on the Administrative Hearing Officer.” (§17.22.790(C))

b. The Hearing Officer found that the logic and the ideas contained in an unpublished opinion can be used to make an argument to the Hearing Officer, but it is inappropriate to cite an unpublished case with the intent that the Hearing Officer rely on it as a precedent. See CRC §8.1115(b).

3. The Landowner’s attorney also sought clarification of whether or not Mr. Perry and Ms. O’Connell are bound by the California Rules of Professional Conduct and/or the California Rules of Court.

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- a. The simple answer is no. The Hearing Officer is certain that the non-attorneys are not bound by the CRC since they are not attorneys and therefore Mr. Rodriguez is free to contact the people who are “represented” by Mr. Perry and Ms. O’Connell.
- 4. At the pre-hearing conference which took place on May 17, 2013, the Landowner’s attorney challenged the representation of Homeowners by non-attorneys, claiming that they are practicing law without a license. Mr. Rodriguez submitted a “letter brief” dated May 28, 2013 in support of this request, as did Mr. Perry from the Affordable Housing Network and Martha O’Connell who also submitted a letter brief. Mr. Rodriguez cited the case of *Baron v. City of San Jose* (1970) 2 Cal.3rd 535) in support of his argument. However, the City of San Jose Rent Ordinance states, “The parties in any administration hearing are entitled and encouraged to be represented at the hearing by a person of the parties choosing. The representative need not be an attorney.” (§17.22.800(A)). The Hearing Officer denied the Landowner’s request. An intelligent lay person can help people understand the proceeding without practicing law.
- 5. At the Pre-Hearing Conference on May 30, 2013, Landowner’s attorney raised a possible conflict of interest on the part of Mr. Kanada who works for a law firm which represented the Landowner Mr. Wang in the past.
 - a. The Hearing Officer does not have the authority to remove Mr. Kanada from the case. It was left to him to decide whether there is a conflict or the appearance of a conflict and whether or not he should withdraw. He subsequently withdrew.
- 6. Ms. Perez requested that the proceedings be open to the public.
 - a. The Hearing Officer decided that the following people were allowed to be present at the Hearings:

- 1 1. The Press and Media
- 2 2. One representative from each mobilehome park in San Jose and
- 3 3. The staff of 2 (two) City Council Members.

4 **Summary of Pre-Hearing Briefs**

5 A. Landowner's position:

6 Mr. Rodriquez submitted a Landowner Pre-Hearing Brief in support of an \$85.01 rent
7 increase. His contention was that the owners of rent control property have a constitutional right
8 to a fair return on their investment; he further contended that the City of San Jose Ordinance
9 approach (MNOI formula) does not provide Mr. Peter Wang, the Park owner, with a fair return on
10 his investment.
11

12 Mr. Rodriquez points out that the San Jose Ordinance has a "safety valve" in Section
13 17.22.030: "No provision of Chapter 17.22 of Title 17 of this code shall be applied so as to
14 prohibit the administrative hearing officer from granting a rent increase that is demonstrated
15 necessary to provide a mobile home park owner with a fair return on investment".
16

17 Mr. Rodriquez believes Ms. Nusbaum in the 2012 decision found that attorney's fees
18 incurred with respect to the Petition could not be arbitrarily excluded and should in fact, be
19 amortized over five years. A review of Ms. Nusbaum's Award does not support that
20 interpretation. (See pages 23 – 27 of Hearing Officer Nusbaum's 2012 Decision) Hereinafter
21 "Nusbaum Decision". Furthermore, the attorney's fees awarded by Ms. Nusbaum were not fees
22 incurred in respect to the Hearing process or anything related to the filing of the Petition under the
23 San Jose Ordinance. The Landowner's attorney took the position that the determination of fair
24 rate of return must be measured by the then-existing market condition, implying that rent control
25 does not enter into the calculation (See Mr. Rodriquez' Pre-Hearing Brief, page 2). The
26 Landowner had retained Dr. Richard Fabrikant, who provided an opinion regarding fair rate of
27
28

1 return. He concluded that 8.15% is a fair rate of return as of December 31, 2012. Dr. Fabrikant is
2 of the opinion that the Landowner's requests for a fair rate of return would support a rate increase
3 of at least \$104.79 per space, per month. The Landowner created his own assistance program to
4 help any resident who would suffer a hardship as a result of an \$85.01 rent increase.
5

6 Using the MNOI approach, Mr. Rodriguez concludes that a rent increase of \$65.30 is required
7 (See page 4 of Mr. Rodriguez' Pre-Hearing Brief)

8 The Landowner retained Gerald Taylor who conducted a current fair market analysis of the
9 mobilehome space rent. He concluded, as of April 3, 2013, fair market rent for spaces at Colonial
10 Manor Mobile Home Park is \$875.00 per month. Mr. Rodriguez concludes that even if an \$85.01
11 rent increase is awarded, no space rent will be collected above "market".
12

13 The Landowner makes the following adjustments to the City's MNOI formula:

- 14 1. Interest and depreciation are excluded from NOI
- 15 2. NOI must exclude "the reserves for maintenance of gas and electric systems"
- 16 3. Capital improvements must be added to Landowner's Investment Base
- 17 4. Landowner's legal expenses which are "extraordinary" should be amortized. (See Rules
18 and Regulations 2.03.02 and 2.03.03)

19 MNOI Approach:

20
21 The Landowner's attorney takes the position that '...a former Hearing Officer's decision
22 regarding 'base year' NOI is binding on the parties in subsequent hearings'. (Park Owner's Pre-
23 Hearing Brief , page 8, line 28 – Page 9, line 2) Using the 1985 NOI in this year's hearing,
24 Landowner's NOI during the year ending December 31, 2012 was only \$958,777.10 compared
25 with the 1985 NOI of \$552,683.79. The expected NOI in 2012 is \$1,120,978.00. The actual NOI
26 for 2012 was \$958,773.00 therefore, the short fall amount of \$162,205.03, divided by 207 spaces,
27 divided by 12 months provides for a \$65.70 rent increase per space, per month.
28

1 Mr. Rodriguez believes that once it is demonstrated that the MNOI approach does not
2 provide a fair rate of return. The presumption that MNOI provides a fair rate of return disappears
3 and the Hearing Officer must decide the rent increase based on the fair rate of return. The
4 Landowner's attorney states that no court has held adjusting base year profit for inflation always
5 results in a fair return. In order to pass Constitutional scrutiny, a rent control ordinance which
6 contains a MNOI formula must provide a safety valve when the formula does not provide a fair
7 return.
8

9 Mr. Rodriguez claims that failing to adjust NOI for the impact of inflation will ultimately
10 result in a confiscatory rate of return.

11 Mr. Rodriguez takes the position that failing to compare current NOI with base year NOI
12 results in the confiscatory taking of Landowner's property (see Park Owner's Post-Hearing Brief,
13 page 7). The Landowner's representative believes that the Hearing Officer conclusively
14 presumes that 85% of the increase in inflation results in a fair return. However, Mr. Rodriguez
15 argues that the return on investment changes over time and therefore the 85% may not be
16 conclusively presumed.
17

18 In conclusion, the Landowner's attorney claims that the Landowner is entitled to a rent
19 increase of \$104.79 to receive a fair return on investment. Under the MNOI approach, the
20 Landowner is entitled to an increase of \$65.30 and Landowner is willing to accept \$85.01 per
21 space, per month.
22

23 Homeowner's positions:

- 24 1. Vivian Perez, represented by Stephanie Little and Joseph Kanada

25 The Pre-hearing Brief of respondent Vivian Perez was submitted by Stephanie Little of
26 Bay Area Legal Aid and by Joseph Kanada of the law firm of Morrison Forrester. It should be
27 noted that the Landowner withdrew his rent increase as to Ms. Perez and therefore Ms. Little and
28

1 Mr. Kanada terminated their representation and their participation in the case ended. Ms. Perez'
2 attorney focused on three areas:

- 3 a. Fair rate of return theory should not be considered
4 b. Certain property taxes incurred by petitioner by 2012 should be excluded and
5 c. \$130,000 in legal fees barred by the Ordinance should be excluded.
6

7 2. Martha O'Connell:

8 Ms. O'Connell is appearing in pro per and on behalf of home owners in 72 other spaces.

9 Ms. O'Connell points out that the requested space rent increase of \$85.01 taken together
10 with the 3% permissible annual rent increase will result in an increase which exceeds \$100.00 per
11 space, per month.

12 For the average Homeowner that would represent a 16.66% rent increase which would be
13 a catastrophic event for the park residents. Ms. O'Connell points out that the San Jose Ordinance
14 relies on the MNOI formula and not a fair return standard. Hearing Officer Nusbaum, in her 2012
15 Decision, rejected the Landowner's fair rate of return theory and the Landowner is asking for an
16 \$85.01 increase based on the fair rate of return theory which was rejected in 2012.
17

18 Ms. O'Connell believes that the rent increase must be based solely on the MNOI standard
19 and the \$85.01 fair rate of return request should be rejected. The reasons for rejecting the rate of
20 return theory are set out in the 2012 Report done by Dr. Baar. Dr. Fabrikant's 2012 report,
21 arguing in favor of fair rate of return theory, was specifically rejected by Ms. Nusbaum. (See
22 2012 Award by Hearing Officer Nusbaum, pages 60 and 61)
23

24 Similarly the Landowner presented a Market Rent Survey by Gerald C. Taylor. His
25 testimony on this issue was not even considered by Ms. Nusbaum in making her award.
26

27 Ms. O'Connell points out that the Landowner's MNOI formula calculations contain
28 several errors and needs correction. She is concerned that income from the park owned homes

1 has decreased even though the number of park owned homes has increased from 9 to at least 11.
2 Parking income was \$37,887.71 in the 2012 petition and in the 2013 petition it was eliminated.

3 There is a \$1,568.27 reduction in other income that needs to be explained. The rent credit
4 program appears as an expense in the Landowner's ledger. To the extent that the Landowner is
5 voluntarily giving up income for some Homeowners that decision should not adversely affect
6 remaining Homeowners. The following 2012 expenses should be excluded:
7

- 8 1. Building and ground maintenance: The 2013 category increased from \$68,933.81 to
9 \$97,526.27.
- 10 2. Legal expenses: The residents reserved the right to challenge all such legal expenses
11 depending on the testimony during the hearings.
- 12 3. Utilities: Water, the 2012 award reduced water expenses by 19.87% based on testimony
13 that water was being used for the benefit of a neighboring property.
- 14 4. Capital Improvements: Capital improvements amortized over 5 years including paving,
15 fencing, laundry room and shuffle board must be calculated separately from the base rent
16 and will be reopened after 5 years.
17

18 Ms. O'Connell points out that Section II; line 6 of Schedule DR requires the CPI index as of
19 the effective date of the last rent increase. In this case, June 1, 2012, the CPI factor on that date
20 was 239.806. The Landowner has erroneously used the CPI for the 1985 base year in the current
21 Petition. The petitioner has already received an increase based on inflation from 1985 to 2011 in
22 the 2012 Award. The correct CPI comparison which should be inserted in Schedule DR would be
23 line 6 (239.806) line 7 (239.533). Ms. O'Connell believes there has been a decrease in inflation
24 since the last rent increase. Therefore, Ms. O'Connell argues that the rent increase must be
25 denied in its entirety.
26
27
28

1 market rent survey and analysis with relevant comparable park sites of the subject space rents as
2 of April 3, 2013. Based on his research and conclusion, the average market rent for the subject
3 spaces, as of April 3, 2013 is \$875.00/month. Mr. Taylor established his credentials as a Real
4 Estate Appraiser. He compared Colonial Manor Mobile Home Park with 10 other mobile home
5 parks in San Jose and an additional five mobile home parks in Sunnyvale. He found that
6 Colonial's rents are currently substantially below market rent and his conclusion was that the
7 average market rent for the subject spaces, excluding water, trash, and sewer service, as of April
8 3, 2012 is \$875/month
9

10 During cross-examination of Mr. Taylor, homeowners objected to the comparability of
11 several of the mobile home parks. They believed that some of the higher priced parks were
12 clearly superior to Colonial despite Mr. Taylor's contrary opinion.
13

14 2. Dr. Richard Fabrikant, Fair Rate of Return Analysis 2013:

15 Dr. Fabrikant was retained by the Landowner as an expert witness. Dr. Fabrikant
16 established his credentials and submitted a fair rate of return on Investment Economic Analysis
17 for petitioned rent increases dated April 10, 2013. Dr. Fabrikant summarized his arguments as
18 follows:
19

20 1. He concluded that the request for \$85.01 with a cap of \$875.00/month is not excessive.
21 2. 2012 nominal fair rate of return on capital invested in mobile home parks is 9.1%. In
22 current 2012 dollars the real fair rate of return is 8.15% as of December 31, 2012. Colonial's rate
23 of return was 6%.

24 3. Fair rate of return used 3 different economic approaches. 1. Calculation of a risk
25 premium for equivalent investments. 2. Deriving a fair rate of return from publications. 3.
26 Analyzing rates of return for alternative comparative investments in public financial markets.
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1 4. As of December 31, 2012, the inflation adjusted capital investment was \$1,518,279.00
2 based on capitalized improvements. To get a fair rate of return, the Landowner needs to increase
3 the rent between \$104.79 and \$146.95 per space.

4 5. If Colonial charged prevailing space rents in 1985, the MNOI formula would require
5 an increase of \$65.30 per space.
6

7 6. MNOI approach is criticized because there is no existing data reflecting what mobile
8 home parks earned as a fair return in 1985 or that adjusting 1985 NOI for 85% of the increase in
9 inflation will result in a fair return in all future years.

10 Dr. Fabrikant pointed out that Sections 17.22.550(B) and (C) of the Ordinance make a
11 distinction between the calculation of the CPI the first time there is a rent increase Petition and all
12 subsequent requests for rent increases. The expert stated, "A second Petition did not meet the
13 criteria for a rent increase unless the inflation from the first Petition to the second Petition was
14 equal or greater than the inflation from the base year to the first Petition." (Fair Rate of Return on
15 Investment Economic Analysis on Petition Rent Increase, page 39) Section 17.22.550(C) is made
16 up of two sentences. The second sentence addresses the adjustment in CPI for the first net
17 operating income adjustment. The increase is measured from the effective date of the last rent
18 increase to the filing date of the current Landowner's Petition. By definition, the first net
19 operating income adjustment must be 1985. (see §17.22.490) All subsequent Petitions for rent
20 increase based on the increase of the CPI are controlled by the first sentence of Section
21 17.22.550(C). The increase in CPI is measured from the filing date of the last Landowner's
22 Petition to the filing date of the current Landowner's Petition. Dr. Fabrikant states that "a second
23 Petition would not meet the criteria for a rent increase unless inflation from the first Petition to
24 the second Petition was equal or greater than the inflation from the base year to the first Petition."
25 The Hearing Officer disagrees. The increase in the CPI from 1985 to 2012 has already been
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1 accounted for. The second and subsequent Petitions do not go back to 1985, rather pursuant to
2 Section 17.22.550(C), the increase in CPI, if any, goes back to the filing date of the last
3 Landowner Petition, not 1985.

4 3. Dr. Kenneth Baar, Analysis For Return Of Investment Claim, Property Tax
5 Calculation, and Claim for Costs of Prior Rent Increase Application in Colonial Manor
6 Mobile Home Park Fair Return Application - 2013:
7

8 Dr. Baar was an expert hired by the Homeowners to critique Dr. Fabrikant's report. Dr.
9 Baar established his credentials. Dr. Baar focused on three issues regarding the Petition.

- 10 1. The Landowner's return on investment claim
- 11 2. Landowner's calculation of property tax costs.
- 12 3. Landowner's claim as to legal expenses for the 2012 fair return application.

13 In last year's case, the Landowner requested an increase of \$114.22 per space. The
14 Hearing Officer rejected the \$114.22 increase and instead increased the rent by \$46.30. She
15 concluded that the MNOI calculations set out in the Ordinance provides a fair and reasonable
16 return on investment.
17

18 Dr. Baar cited California Court of Appeals cases which stand for the proposition that a
19 MNOI standard is fair and the rate of return determined by comparing the rent control rent with
20 non-rent control rent is not required to provide a fair return on investment. Dr. Baar concluded
21 under a rate of return standard an owner can set allowable return by setting the investment. This
22 standard is circular according to Dr. Baar.

23 **A review of income and expenses included or excluded from the**
24 **Calculation of Net Operating Income**

25 The Mobilehome Park income is fairly straight-forward. The Landowner believes the total
26 income is \$1,618,143.73. The residents claim the income is \$1,787,670.19. The difference is that
27 the sub metered gas and electric is included in the residents' income figure and they are excluded
28

1 by the Landowner. The Hearing Officer is persuaded that the sub-metered gas and electric income
2 should be excluded since surplus money is needed as a reserve to pay for emergencies. This
3 decision is consistent with Ms. Nusbaum's Decision dated August 30, 2012. The Park income is
4 \$1,618,143.73. **The Hearing Officer believes that the MNOI formula provides the**
5 **Landowner with a fair return on the investment.** The Hearing Officer will review the income
6 and expenses for the year 2012.

7
8 1. Expenses:

9 Mr. Rodriguez and Ms. Latham submitted adjustments to expense exhibits attached to
10 their respective Post-Hearing Briefs.

11 Six issues were raised by the parties concerning whether certain expenses should be
12 included or excluded from determining the net operating expenses.

- 13 1. Rent credit adjustment
- 14 2. Management fee
- 15 3. Property taxes in 2012
- 16 4. Utility adjustments
- 17 5. PG&E sub-metering for electricity and gas
- 18 6. Attorney fees

19
20 The Hearing Officer will consider each in turn.

21 The following expenses are disallowed:

22 The Hearing Officer, being persuaded that in each case the expense was either prohibited
23 by the ordinance or the party failed to meet their burden of proof.

- 24 1. Rent Credit Adjustment: The Homeowners cite §17.22.530(A) (1), "Gross rents
25 calculated as gross rental income at one hundred percent occupancy. . ." However the
26 Homeowners failed to consider §17.22.30(A) (4). "All other income consideration
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28

1 received or receivable in connection with the use or occupancy of the rental unit.”

2 Based on these two sections of the Ordinance, rent credits given to employees would
3 be considered a legitimate park expense. However, when the Landowner submitted
4 Exhibit LO #51 expenses, there was no backup documentation such as an employment
5 agreement or contract provided. The Landowner did not offer any testimony
6 concerning the rent credits that were claimed. Since the Landowner has the burden of
7 proof to establish these expenses, the Hearing Officer finds that the Landowner did not
8 meet his burden of proof and therefore the Hearing Officer will exclude this rent credit
9 adjustment of \$24,098.37 from expenses.
10

11 2. Management Fee: The Landowner testified that the management fee was determined
12 by using 4.5% of the gross income of the park. The adjusted gross income that the
13 Landowner used was \$1,618,143.73. Multiplying that number by 4.5% is \$72,816.43.
14 The income and expense statement (Petition’s Exhibit 5) lists management fees of
15 \$72,750.00. The math was done incorrectly and the Hearing Officer will use
16 \$72,816.43. The Landowner testified at the hearings that 1% of the fee is
17 compensation for his work as an asset manager. That 1% may not be included as an
18 expense. (1% of 4.5% equals 22%. 22% of \$72,816.43. = \$16,619.61.) It must be
19 excluded since it is not work performed for the benefit of the residents of the mobile
20 home park. (see §17.22.120) In addition, the Landowner did not document the date,
21 time, and nature of his work as required by §17.22.540.
22

23 3. Property Tax: The parties all agree the property tax each year should include two
24 payments. They further agree that in the year 2012 the actual amount paid for property
25 tax was \$277,667.68. Since the parties have agreed to include only the first two
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1 payments of 2012, the total property tax which will be included for this year is
2 \$254,784.08, which is a reduction in operating expenses of \$21,510.

3 4. Utility Adjustments (PG&E, Water, and Recycle): The parties are in agreement that
4 the utility bills should be divided into monthly payments. The parties are in further
5 agreement that there should only be twelve payments to PG&E in a year and therefore
6 the amount of \$17,039.88 should be removed as an expense. Only eleven months of
7 bills for water was included as an expense, therefore an additional water payment of
8 \$3,815.87 shall be included in 2012 operating expenses. An extra recycle payment of
9 \$378.70 shall be included in 2012 operating expenses bringing the total to 12 monthly
10 payments, since only eleven months of bills were initially included.

11 5. PG&E Sub-metering: The Homeowners' request that both the expenses and income
12 from PG&E sub-metering be counted as they appear in the general ledger. The
13 Landowner takes the position that the income and expense related to PG&E sub-
14 metering is a separate enterprise and does not properly belong in this analysis. The
15 Hearing Officer agrees with the Landowner. Any excess of income over expense in
16 the short run may very well be wiped away based on unforeseen events. Therefore
17 both the expense and income from PG&E sub-metering shall be excluded.

18 6. Attorney fees: Mr. Rodriguez believes that legal fees and costs of the rent petition
19 process must be passed through to the homeowners based on the Galland Decision.
20 (Galland v. City of Clovis, (2001) 24 Cal.4th 1003) He states in his post-hearing brief
21 "local government may not arbitrarily exclude the reasonable expense of seeking rent
22 increases" [at page 2] including attorney fees. Mr. Rodriguez believes that legal fees
23 and costs in the amount of \$130,922.88 of the current rent Petition process must be
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1 passed through to the Homeowners based on the Galland Decision. The Hearing
2 Officer's decision to exclude attorney fees from expenses needs further analysis.

3 The City of San Jose Ordinance specifically excludes "legal expenses, including
4 attorney's fees and costs, incurred in relation to administrative or judicial proceedings in
5 connection with this chapter, and legal expenses where the pass-through of the expenses would
6 constitute a violation of public policy." §17.22.540(B)(3).
7

8 In 1995 the San Jose City Council added two new Rules concerning the amortization of
9 legal fees on rent increases based on Net Operating Expenses. If the City Council had intended to
10 amend or overrule Section 17.22.540(B)(3), they could have done so. They did not.

11 Section 2.03.02 of the Mobilehome Rent Rules and Regulations refers to legal fees as
12 operating expenses with respect to the normal operation of the mobilehome park. The Hearing
13 Officer finds that the petition for an increase in space rent is not with respect "to the normal
14 operation of the mobile home park" A comparison between the Galland decision and the present
15 case is instructive.
16

17 The City of Clovis Mobilehome Rent Review and Stabilization Ordinance is based on the
18 Clovis Rent Review Commission reviewing requests for rent increases based on whether or not
19 the increases were reasonable or unreasonable. In 1988, the commission denied a request for an
20 increase in part because the Landowners were earning pre-tax returns of 11.2% or 14.62%
21 depending on which CPI was used. At the same time, certificates of deposit were earning pre-tax
22 returns of 7% – 8%. The Landowner appealed the decision to the city council. The city council
23 required the Landowner to provide extensive accounting and financial documents. The
24 commission re-heard the matter and decided that the Landowner was receiving a fair rate of
25 return and no rent increase was justified. Again, the Landowner appealed to the city council. The
26 city council supported the commission's decision. In 1989, the Landowner again petitioned for a
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28

1 rent increase. The Landowners contended that return on investment calculations must be adjusted
2 for inflation. The commission misinterpreted the statistic concerning the amount of household
3 income spent on housing. The commission denied the rent increase and the decision was appealed
4 to the city council in 1992. Again the city council upheld the commission's decision, "... finding
5 it reasonable and supported by the preponderance of the evidence." In 1990, the landowner once
6 again requested a rent increase. Ten days before the hearing, the commission asked the
7 Landowner to provide additional information, including an auditor's statement. The Landowner
8 complied. The commission requested substantial additional information which the Landowner
9 provided. The commission approved an increase of half of what the Landowner requested. The
10 matter was appealed to the city council in 1992. In 1990, the Landowner sued the City of Clovis,
11 "... for damages for inverse condemnation, denial of substantive and procedural due process
12 from the state and federal constitutions and for violations of civil rights under §1983" (1018). In
13 1994, the Court found that the administration of the city ordinance by the commission and city
14 council violated the land owner's procedural and substantive due process rights. The Court found
15 there was no "taking" under the Fifth Amendment. "The Court concluded the Gallands were
16 entitled to damages under Section 1983 for their loss of a fair ROI and for the expenses, costs,
17 and reasonable attorney fees incurred as a result of Clovis's arbitrary and unreasonable actions"
18 (1020). The facts of the current case are quite different from Galland. The Colonial Manor
19 Mobilehome Park had received a rent increase of \$46.30 last year. They have come back a year
20 later and have asked for an additional increase of \$85.01. Most of this increase is due to the
21 attorney fees for the 2012 Petition. The differences between Galland and Colonial Manor are
22 significant.

23
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25
26 The Galland court explained : 1) "The overall result of the rent-setting process, not the
27 method employed or any particular exemption legislated, that determine whether a rent control
28

1 regime is confiscatory [citation omitted]. Thus, the exclusion of attorney fees and costs of
2 obtaining a rent increase is not per se confiscatory. . . . if a rent control ordinance as applied
3 operates to impose a large and unnecessary cost on the landlords, and as a result of that
4 imposition a landlord is only able to garner a rate of return that is deemed confiscatory, we may
5 not ignore the confiscation simply because these costs have been classified as exempt expenses.”
6 (page 1028). The *Galland* court pointed out that a Landowner may be entitled to recover attorney
7 fees when the costs are a result of the city’s deliberately obstructing legitimate rent increases or if
8 the Landowner suffers confiscation as a result of the imposition of such costs. Neither basis for
9 passing through attorney fees are found in this case.

11 The Landowner in this case chose to use two different methods to seek a rent increase:
12 one is the MNOI approach and the other is the return on investment theory. The excess costs from
13 presenting the return on investment theory was unreasonable in light of the pronouncements of
14 the City of San Jose ordinance and the California Supreme Court in *Galland*: As the Supreme
15 Court stated in *Galland* referring to the *Fisher* case, “. . . it is obviously not the case that a rent-
16 controlled investment must earn the same as a non-rent control one . . . [s]ome lessening of
17 appreciation is a necessary consequence of any rent-control. . .” (*Galland*, 1026)

19 In the *Galland* case, the Landowner claimed that the city intentionally drove up the costs
20 of the rent increase process to the Landowner in order to avoid granting an increase. In this case
21 (Colonial), the residents are claiming that the Landowners were themselves responsible for the
22 large attorney’s fees for pursuing a legal theory that they knew, or should have known, would not
23 be successful in securing a rent increase based on fair rate of return.
24

25 The California Supreme Court noted “. . . a comparison of the rate of return of rent-
26 controlled mobilehome parks with those of non-rent control parks . . . is of limited utility in
27 establishing the constitutional minimum rate of return” (*Galland*, 1026-1027).
28

1 A Landowner's focus on establishing a benchmark against which to measure the mobile
2 home parks return on investment is not appropriate. The Legal issue is "reasonableness", not the
3 comparison of regulated vs. non-regulated investments.

4 Ms. Latham argues that Mr. Rodriguez's legal fees should be denied in total, citing
5 Section 17.22.540(B)(3) of the Ordinance. She argues that Mr. Stanton, who represented the
6 homeowners, spent 117 hours on the case and was paid \$17,750. Mr. Stanton testified that Mr.
7 Rodriguez did do some of the joint work required by the Hearing Officer, and that Mr. Rodriguez
8 did extra work because the records for the base year of 1985 were unavailable. Ms. Latham
9 argues that Dr. Fabrikant and Mr. Taylor's expenses should be excluded since their testimony was
10 not used to determine the allowable rent increase by the Hearing Officer. Based on Dr. Baar's
11 report, Ms. Latham states the average attorney fees and costs of four similar cases would be
12 \$36,699.
13

14
15 The Ordinance does not give any guidance as to what would constitute a violation of
16 public policy. However, clearly a public policy which would discourage homeowners from
17 contesting rent increases is such a policy. The *Galland* court found that the petitioners incurred
18 legal costs as a result of an arbitrary and unreasonable administrative proceeding. The *Galland*
19 court contended that the rent control process itself was an independent source of injury "... by
20 imposing on them exorbitant costs for what the trial court termed overbroad, unduly burdensome,
21 arbitrary, unreasonable inconsistent requests for information," in order to obtain a legitimate rent
22 increase. (*Galland*, 24 Cal, 1003; 1030).
23

24 The decision by Hearing Officer Nusbaum did not include any findings of unduly
25 burdensome, arbitrary and unreasonable request for information. The decision did not include any
26 findings that the Landowner's Petition for a rent adjustment included unreasonable, arbitrary or
27 unduly burdensome requests for information.
28

1 Hearing Officer Nusbaum relied on §17.22.540(B)(3): “Legal expenses, including attorneys’
2 fees and costs, incurred in relation to administrative or judicial proceedings in connection with
3 this chapter and legal expenses, where the pass-through of the expenses would constitute a
4 violation of public policy.” In reading the Nusbaum award there is no indication that the City had
5 made any demand on the Landowner “not in order to obtain more information or increase the
6 reliability of the eventual decision, but rather to obstruct or discourage Landowner from
7 requesting or obtaining reasonable rent increase to which they are constitutionally entitled.”
8 Galland 1003; 1036.

10 Under the San Jose Ordinance, a base year NOI determination must be made.
11 Landowners are on notice that 1985 NOI must be established.
12 In order to do so, if such information is not available, the Hearing Officer may estimate the 1985
13 NOI by using information from tax returns, bank statements or other financial data, information
14 from the City of San Jose’s Rental Rights and Referral Program, previously issued rental
15 mediation and arbitration decisions. (§17.22.495)

17 While the Hearing Officer is impressed by Mr. Rodriguez’s experience and preparation,
18 the outcome for his efforts was not exceptional. Taking into account all of the factors mentioned
19 above, I find that not including attorney fees as an expense in the present situation is supported by
20 the Galland decision and the City of San Jose Ordinances.

22 The Landowner stated the costs of Dr. Fabrikant and Mr. Taylor should be passed through
23 to the Homeowners even though the decision by Ms. Nusbaum rejected their approach entirely.
24 Mr. Rodriguez takes the position that as an attorney, he must argue every potential issue which
25 may benefit his client. While the Hearing Officer agrees that zealous representation is to be
26 commended, filing a NOI petition and then including a fair rate of return analysis, which the
27 previous Hearing Officer found of little value under the circumstances should not be rewarded.
28

1 The expense of hiring, preparing and putting on these expert witnesses was a risk which the
2 Hearing Officer believes the Homeowners should not be required to subsidize. Based on the
3 above, the Hearing Officer finds that the Landowner is not entitled to include \$130,922.88 as a
4 park expense.

5
6 **Determination of the MNOI**

7 The adjusted gross income for the year 2012 (#4 on Schedule DR) is \$1,618,143.73. This
8 is based on the attachment to Mr. Rodriguez' post hearing brief and it agrees with Ms. Latham's
9 spreadsheet with two exceptions (the sub-metered electricity and gas) in the amounts of
10 \$93,267.03 and \$76,259.43, for a total of \$169,526.46. Subtracting \$169,526.46 from
11 \$1,787,670.19 equals \$1,618,143.73. The current operating expenses on Landowner's Exhibit 5
12 of the Petition, shows total expenses of \$1,724,620.89. Again, comparing the spreadsheets of Ms.
13 Latham and Mr. Rodriguez, there are adjustments in expenses that must be calculated.

14
15 Mr. Rodriguez and Ms. Latham each prepared adjusted expense spreadsheets. The
16 Hearing Officer has combined them in order to make clear how the Hearing Officer arrived at the
17 NOI for 2012.

18 The following expenses are excluded with the agreements of both parties: amortization,
19 depreciation, mortgage interest, property taxes, common areas gas and electric, park owned
20 homes, travel expense (not for park), contractor personal expense, extra water payment (one
21 month agreed) and extra recycle payments (one month agreed). The following expenses were not
22 agreed to and the Hearing Officer has analyzed the categories of expenses and has included or
23 excluded them *supra*: The parties agreed to include only the first two property tax bills for the
24 year which will reduce the operating expenses by \$21,510.00. We must further reduce the
25 expenses by \$17,039.88 for an extra PG&E payment in 2012. The management fee will be
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1 reduced by \$16,619.61. The legal fees per *Galland* of \$130,922.88. Rent credits for employees of
 2 \$24,098.37 are not being accepted.

3
 4 Adjusted Expense

5		
6	1. Actual expenses	\$1,724,620.89
7	2. Amortization expense	-601.00
8	3. Depreciation expense	-284,937.00
9	4. Mortgage interest	-484,234.15
10	5. Property Tax expense	-21,510.00
11	6. Utilities: Electricity	-92,874.84
12	7. Utilities: Gas	-44,240.13
13	8. Utilities: Meter Reading	- 5,715.55
14	9. Utilities: Taxes and Surcharges	-14,198.61
15	10. Sub Meter: Gas & Electric repairs	-17,304.60
16	11. Common Area: Gas & Electric	+15,703.00
17	12. Park owned homes	-17,696.02
18	13. Travel Expenses	-1,597.64
19	14. Personal Expenses	-101.03
20	15. Extra water payment	+3,815.87
21	16. Extra recycle payment	+378.70
22	17. Rent Credit for Employee housing	-24,098.37
23	18. 2012 Legal fees (Galland)	-130,922.88
24	19. 2012 Legal: amortized	.00
25	20. 2011 Legal: amortized	+850.00
26	21. 2012 Improvements	-53,404.14
27	22. 2012 Improvements	+14,468.70
28	23. 2011 Improvements	+1,901.66
	24. Management Fees for 2012	-16,619.61*
	25. Extra PG&E payment	-17,039.88
	26. Legal Fees re: Partnership Issues	-7,453.00

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1 * Mr. Rodriguez does not include management fees in his spreadsheet. Ms. Latham lists
2 \$17,145.77.

3 The Hearing Officer used base year gross income for the year 2011 and the base year
4 operating expense for the year 2011 from the Nusbaum Decision that provided the NOI for 2011.
5 The current gross income was used for the year 2012. The current operating expenses were lower
6 than the Landowners requested. In particular, the Hearing Officer did not allow over \$130,000.00
7 in attorney fees and costs and did not allow approximately \$24,098.37 for employee housing
8 credit.
9

10 The calculations on Schedule DR relied on the first sentence of §17.22.550 (C): “The
11 increase in the consumer price index shall be the increase from the filing date of the last
12 Landowner Petition to the filing date of the current Landowner’s Petition.” The calculations done
13 last year, which was the first year of the net operating income adjustment, used the base year of
14 1985 for income and expenses which the Hearing Officer believes is referenced in the second
15 sentence of §17.22.550 (C): “For the first net operating income adjustment, the increase in the
16 consumer price index shall be the increase from the effective date of the last rent increase to the
17 filing date of the current Landlord Petition.” As previously stated, the Landowner has already
18 received an increase covering the expenses and the increase in inflation from 1985 to 2011. The
19 City of San Jose is encouraged to examine Schedules DR and DP and the accompanying
20 instructions to make it clear that requests for rent increases after the first MNOI Petition does not
21 use the base year 1985 to the current year to determine the increase in the CPI.
22

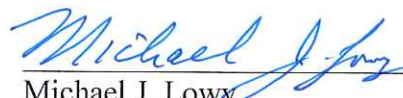
23 The Calculation of Fair Return and Rent Increase, Schedule DR, is attached as Exhibit
24 HO-2. The base year gross income was \$1,481,122.88 (based on Ms. Nusbaum’s findings,
25 Nusbaum Report, page 24). The base year operating expenses per Ms. Nusbaum’s Report was
26 \$497,942.45. The base year net operating income was \$983,180.43. The current gross income is
27
28

1 \$1,618,143.73. The Homeowner's list totals adjusted expenses of \$725,096.21 for 2012.
2 According to the Landowner the total adjusted expenses are \$637,371.44 for 2012. The Hearing
3 Officer finds that the current operating expenses are \$526,663.37. The CPI is calculated using the
4 filing date of the Landowner's last Petition, which was February of 2012 (236.88). A year later,
5 the CPI was 242.677. (see Landowner's Exhibit 39) To calculate the increase in the CPI, the
6 Hearing Officer subtracted the CPI on February 2012 from the CPI on February 2013, which
7 equals 5.797. Dividing that by the CPI of February 2012, equals 2.44%. The next part of the
8 formula, multiplies the inflation adjustment (85%) by the increase in the CPI (2.44%) times the
9 base year NOI (\$983,180.43), which gives the inflation factor of \$20,351.83.

11 The next step is to calculate the fair return. You start with the base year NOI
12 (\$983,180.43), add the inflation factor (\$20,351.83) which equals \$1,003.532, which is the fair
13 return. In order to determine the gross income necessary to produce a fair return, we must take the
14 fair return (\$1,003,532), add the current operating expenses (\$526,663.37), which equals
15 \$1,530.195. In order to get the total annual rent increase we must take the required gross income
16 (\$1,530,195) and subtract the current year gross income (\$1,618,143.73) which equals a total
17 annual rent increase of negative \$87,949. Therefore, no rent increase is justified under the MNOI.
18 This result is not surprising since the Landowner's Petition only covers one year's increase in
19 expenses and inflation.
20

21
22 **IT IS SO ORDERED.**

23 Dated: November 25, 2013

24
25 

26 Michael J. Lowy
27 Hearing Officer
28

SCHEDULE DR

CALCULATION OF FAIR RETURN AND RENT INCREASE

I. SUMMARY OF INCOME AND EXPENSES STATEMENTS

1. Base Year Gross Income	<u>1,481,122.88 (2011)</u>
2. Minus: Base Year Operating Expenses	<u>497,942.45 (2011)</u>
3. Base Year Net Operating Income	<u>983,180.43 (2011)</u>
4. Current Gross Income	<u>1,618,143.73 (2012)</u>
5. Current Operating Expenses	<u>526,663.37 (2012)</u>

II. INCREASE IN CPI

6. CPI - Effective ^{Filing} Date of Last Rent XXXXXXXX Landowner's Petition (2/12)	<u>236.88</u>
7. CPI - Filing Date of Current Petition Landowner's (2/13)	<u>242.677</u>
8. Increase in CPI	<u>5.797 ÷ 236.88 = 2.44</u>

III. CALCULATION

<u>.60 85</u>	x	<u>2.44</u>	x	<u>983,180.43</u>	=	<u>20,351.83</u>	
Inflation Adjustment		9. Increase in CPI		10. Base Year NOI		11. Inflation Factor	
<u>983,180.43</u>		+	<u>20,351.83</u>	=	<u>1,003,532</u>		
12. Base Year NOI			13. Inflation Factor		14. Fair Return		
<u>1,003,532</u>		+	<u>526,663.37</u>	=	<u>1,530,195</u>		
15. Fair Return			16. Current Operating Expenses		17. Required Gross Income to Produce Fair Return		
<u>1,530,195</u>		-	<u>1,618,143.73</u>	=	<u>- 87,949 = 0</u>		
18. Required Gross Income			19. Current Year Gross Income		20. Total Annual Rent Increase		
<u>0</u>		+	<u>N/A</u>	+	<u>12</u>	=	<u>0</u>
21. Total Annual Rent Increase			22. No. of Units		23. Allowable Rent Increase Per Space		

EXHIBIT 1: Colonial Mobile Manor
Rent Increase June 1, 2013

SPACE	TENANT NAME	CURRENT RENT	3% INCREASE	RENT AFTER 3% INCREASE	MNOI INCREASE	TOTAL INCREASE	TOTAL% INCREASE	NEW RENT STARTING JUNE 01 2013
1		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
2		\$ 496.09	\$ 14.88	\$ 510.97	\$ -	\$ 14.88	3.00%	\$ 510.97
3		\$ 669.57	\$ 20.09	\$ 689.66	\$ -	\$ 20.09	3.00%	\$ 689.66
4		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
5		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
6		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
7		\$ 763.00	\$ 22.89	\$ 785.89	\$ -	\$ 22.89	3.00%	\$ 785.89
8		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
9		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
10		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
11		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
12		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
13		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
14		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
15		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
16		\$ 779.42	\$ 23.38	\$ 802.80	\$ -	\$ 23.38	3.00%	\$ 802.80
17		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
18		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
19		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
20		\$ 728.42	\$ 21.85	\$ 750.27	\$ -	\$ 21.85	3.00%	\$ 750.27
21		\$ 547.36	\$ 16.42	\$ 563.78	\$ -	\$ 16.42	3.00%	\$ 563.78
22		\$ 572.35	\$ 17.17	\$ 589.52	\$ -	\$ 17.17	3.00%	\$ 589.52
23		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
24		\$ 597.98	\$ 17.94	\$ 615.92	\$ -	\$ 17.94	3.00%	\$ 615.92
25		\$ 572.35	\$ 17.17	\$ 589.52	\$ -	\$ 17.17	3.00%	\$ 589.52
26		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
27		\$ 572.35	\$ 17.17	\$ 589.52	\$ -	\$ 17.17	3.00%	\$ 589.52
28		\$ 697.72	\$ 20.93	\$ 718.65	\$ -	\$ 20.93	3.00%	\$ 718.65
29		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
30		\$ 1,133.00	\$ 33.99	\$ 1,166.99	\$ -	\$ 33.99	3.00%	\$ 1,166.99
31		\$ 572.35	\$ 17.17	\$ 589.52	\$ -	\$ 17.17	3.00%	\$ 589.52
32		\$ 763.85	\$ 22.92	\$ 786.77	\$ -	\$ 22.92	3.00%	\$ 786.77
33		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
34		\$ 521.20	\$ 15.64	\$ 536.84	\$ -	\$ 15.64	3.00%	\$ 536.84
35		\$ 704.69	\$ 21.14	\$ 725.83	\$ -	\$ 21.14	3.00%	\$ 725.83
36		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
37		\$ 1,030.00	\$ 30.90	\$ 1,060.90	\$ -	\$ 30.90	3.00%	\$ 1,060.90
38		\$ 548.68	\$ 16.46	\$ 565.14	\$ -	\$ 16.46	3.00%	\$ 565.14
39		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
40		\$ 633.80	\$ 19.01	\$ 652.81	\$ -	\$ 19.01	3.00%	\$ 652.81
41		\$ 690.41	\$ 20.71	\$ 711.12	\$ -	\$ 20.71	3.00%	\$ 711.12
42		\$ 572.35	\$ 17.17	\$ 589.52	\$ -	\$ 17.17	3.00%	\$ 589.52
43		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
44		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
45		\$ 490.86	\$ 14.73	\$ 505.59	\$ -	\$ 14.73	3.00%	\$ 505.59
46		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
47		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
48		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
49		\$ 750.13	\$ 22.50	\$ 772.63	\$ -	\$ 22.50	3.00%	\$ 772.63
50		\$ 548.48	\$ 16.45	\$ 564.93	\$ -	\$ 16.45	3.00%	\$ 564.93
51		\$ 738.27	\$ 22.15	\$ 760.42	\$ -	\$ 22.15	3.00%	\$ 760.42
52		\$ 572.35	\$ 17.17	\$ 589.52	\$ -	\$ 17.17	3.00%	\$ 589.52
53		\$ 695.20	\$ 20.86	\$ 716.06	\$ -	\$ 20.86	3.00%	\$ 716.06
54		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
55		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
56		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
57		\$ 490.30	\$ 14.71	\$ 505.01	\$ -	\$ 14.71	3.00%	\$ 505.01

EXHIBIT 1: Colonial Mobile Manor
Rent Increase June 1, 2013

SPACE	TENANT NAME	CURRENT RENT	3% INCREASE	RENT AFTER 3% INCREASE	MNOI INCREASE	TOTAL INCREASE	TOTAL% INCREASE	NEW RENT STARTING JUNE 01 2013
58		\$ 704.69	\$ 21.14	\$ 725.83	\$ -	\$ 21.14	3.00%	\$ 725.83
59		\$ 785.51	\$ 23.57	\$ 809.08	\$ -	\$ 23.57	3.00%	\$ 809.08
60		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
61		\$ 609.75	\$ 18.29	\$ 628.04	\$ -	\$ 18.29	3.00%	\$ 628.04
62		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
63		\$ 609.75	\$ 18.29	\$ 628.04	\$ -	\$ 18.29	3.00%	\$ 628.04
64		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
65		\$ 1,084.59	\$ 32.54	\$ 1,117.13	\$ -	\$ 32.54	3.00%	\$ 1,117.13
66		\$ 724.72	\$ 21.74	\$ 746.46	\$ -	\$ 21.74	3.00%	\$ 746.46
67		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
68		\$ 718.17	\$ 21.55	\$ 739.72	\$ -	\$ 21.55	3.00%	\$ 739.72
69		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
70		\$ 583.89	\$ 17.52	\$ 601.41	\$ -	\$ 17.52	3.00%	\$ 601.41
71		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
72		\$ 844.02	\$ 25.32	\$ 869.34	\$ -	\$ 25.32	3.00%	\$ 869.34
73		\$ 718.17	\$ 21.55	\$ 739.72	\$ -	\$ 21.55	3.00%	\$ 739.72
74		\$ 590.01	\$ 17.70	\$ 607.71	\$ -	\$ 17.70	3.00%	\$ 607.71
75		\$ 627.27	\$ 18.82	\$ 646.09	\$ -	\$ 18.82	3.00%	\$ 646.09
76		\$ 477.85	\$ 14.34	\$ 492.19	\$ -	\$ 14.34	3.00%	\$ 492.19
77		\$ 613.53	\$ 18.41	\$ 631.94	\$ -	\$ 18.41	3.00%	\$ 631.94
78		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
79		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
80		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
81		\$ 849.06	\$ 25.47	\$ 874.53	\$ -	\$ 25.47	3.00%	\$ 874.53
82		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
83		\$ 763.85	\$ 22.92	\$ 786.77	\$ -	\$ 22.92	3.00%	\$ 786.77
84		\$ 542.68	\$ 16.28	\$ 558.96	\$ -	\$ 16.28	3.00%	\$ 558.96
85		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
86		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
87		\$ 597.98	\$ 17.94	\$ 615.92	\$ -	\$ 17.94	3.00%	\$ 615.92
88		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
89		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
90		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
91		\$ 704.69	\$ 21.14	\$ 725.83	\$ -	\$ 21.14	3.00%	\$ 725.83
92		\$ 544.20	\$ 16.33	\$ 560.53	\$ -	\$ 16.33	3.00%	\$ 560.53
93		\$ 477.85	\$ 14.34	\$ 492.19	\$ -	\$ 14.34	3.00%	\$ 492.19
94		\$ 810.49	\$ 24.31	\$ 834.80	\$ -	\$ 24.31	3.00%	\$ 834.80
95		\$ 810.49	\$ 24.31	\$ 834.80	\$ -	\$ 24.31	3.00%	\$ 834.80
96		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
97		\$ 1,100.00	\$ 33.00	\$ 1,133.00	\$ -	\$ 33.00	3.00%	\$ 1,133.00
98		\$ 718.17	\$ 21.55	\$ 739.72	\$ -	\$ 21.55	3.00%	\$ 739.72
99		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
100		\$ 583.90	\$ 17.52	\$ 601.42	\$ -	\$ 17.52	3.00%	\$ 601.42
101		\$ 524.14	\$ 35.00	\$ 559.14	\$ -	\$ 35.00	6.68%	\$ 559.14
102		\$ 609.12	\$ 18.27	\$ 627.39	\$ -	\$ 18.27	3.00%	\$ 627.39
103		\$ 749.38	\$ 22.48	\$ 771.86	\$ -	\$ 22.48	3.00%	\$ 771.86
104		\$ 567.87	\$ 17.04	\$ 584.91	\$ -	\$ 17.04	3.00%	\$ 584.91
105		\$ 740.25	\$ 22.21	\$ 762.46	\$ -	\$ 22.21	3.00%	\$ 762.46
106		\$ 564.41	\$ 16.93	\$ 581.34	\$ -	\$ 16.93	3.00%	\$ 581.34
107		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
108		\$ 751.97	\$ 22.56	\$ 774.53	\$ -	\$ 22.56	3.00%	\$ 774.53
109		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
110		\$ 1,236.00	\$ 37.08	\$ 1,273.08	\$ -	\$ 37.08	3.00%	\$ 1,273.08
111		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
112		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
113		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
114		\$ 631.40	\$ 18.94	\$ 650.34	\$ -	\$ 18.94	3.00%	\$ 650.34

EXHIBIT 1: Colonial Mobile Manor
Rent Increase June 1, 2013

SPACE	TENANT NAME	CURRENT RENT	3% INCREASE	RENT AFTER 3% INCREASE	MNOI INCREASE	TOTAL INCREASE	TOTAL% INCREASE	NEW RENT STARTING JUNE 01 2013
115		\$ 572.35	\$ 17.17	\$ 589.52	\$ -	\$ 17.17	3.00%	\$ 589.52
116		\$ 692.53	\$ 20.78	\$ 713.31	\$ -	\$ 20.78	3.00%	\$ 713.31
117		\$ 548.68	\$ 16.46	\$ 565.14	\$ -	\$ 16.46	3.00%	\$ 565.14
118		\$ 1,100.00	\$ 33.00	\$ 1,133.00	\$ -	\$ 33.00	3.00%	\$ 1,133.00
119		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
120		\$ 502.59	\$ 15.08	\$ 517.67	\$ -	\$ 15.08	3.00%	\$ 517.67
121			\$ -	\$ -	\$ -	\$ -		\$ -
122			\$ -	\$ -	\$ -	\$ -		\$ -
123		\$ 750.13	\$ 22.50	\$ 772.63	\$ -	\$ 22.50	3.00%	\$ 772.63
124		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
125		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
126		\$ 724.72	\$ 21.74	\$ 746.46	\$ -	\$ 21.74	3.00%	\$ 746.46
127		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
128		\$ 740.25	\$ 22.21	\$ 762.46	\$ -	\$ 22.21	3.00%	\$ 762.46
129		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
130		\$ 609.75	\$ 18.29	\$ 628.04	\$ -	\$ 18.29	3.00%	\$ 628.04
131		\$ 821.86	\$ 24.66	\$ 846.52	\$ -	\$ 24.66	3.00%	\$ 846.52
132		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
133		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
134		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
135		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
136		\$ 477.98	\$ 14.34	\$ 492.32	\$ -	\$ 14.34	3.00%	\$ 492.32
137		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
138		\$ 978.50	\$ 29.36	\$ 1,007.86	\$ -	\$ 29.36	3.00%	\$ 1,007.86
139		\$ 763.00	\$ 22.89	\$ 785.89	\$ -	\$ 22.89	3.00%	\$ 785.89
140		\$ 505.14	\$ 15.15	\$ 520.29	\$ -	\$ 15.15	3.00%	\$ 520.29
141		\$ 611.28	\$ 18.34	\$ 629.62	\$ -	\$ 18.34	3.00%	\$ 629.62
142		\$ 662.48	\$ 19.87	\$ 682.35	\$ -	\$ 19.87	3.00%	\$ 682.35
143		\$ 704.69	\$ 21.14	\$ 725.83	\$ -	\$ 21.14	3.00%	\$ 725.83
144		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
145		\$ 609.75	\$ 18.29	\$ 628.04	\$ -	\$ 18.29	3.00%	\$ 628.04
146		\$ 987.97	\$ 29.64	\$ 1,017.61	\$ -	\$ 29.64	3.00%	\$ 1,017.61
147		\$ 597.99	\$ 17.94	\$ 615.93	\$ -	\$ 17.94	3.00%	\$ 615.93
148		\$ 597.99	\$ 17.94	\$ 615.93	\$ -	\$ 17.94	3.00%	\$ 615.93
149		\$ 843.99	\$ 25.32	\$ 869.31	\$ -	\$ 25.32	3.00%	\$ 869.31
150		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
151		\$ 521.70	\$ 15.65	\$ 537.35	\$ -	\$ 15.65	3.00%	\$ 537.35
152		\$ 477.85	\$ 14.34	\$ 492.19	\$ -	\$ 14.34	3.00%	\$ 492.19
153		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
154		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
155		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
156		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
157		\$ 579.12	\$ 17.37	\$ 596.49	\$ -	\$ 17.37	3.00%	\$ 596.49
158		\$ 692.77	\$ 20.78	\$ 713.55	\$ -	\$ 20.78	3.00%	\$ 713.55
159		\$ 677.99	\$ 20.34	\$ 698.33	\$ -	\$ 20.34	3.00%	\$ 698.33
160		\$ 780.25	\$ 23.41	\$ 803.66	\$ -	\$ 23.41	3.00%	\$ 803.66
161		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
162		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
163		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
164		\$ 809.09	\$ 24.27	\$ 833.36	\$ -	\$ 24.27	3.00%	\$ 833.36
165		\$ 647.37	\$ 19.42	\$ 666.79	\$ -	\$ 19.42	3.00%	\$ 666.79
166		\$ 547.48	\$ 16.42	\$ 563.90	\$ -	\$ 16.42	3.00%	\$ 563.90
167		\$ 598.36	\$ 17.95	\$ 616.31	\$ -	\$ 17.95	3.00%	\$ 616.31
168		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
169		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
170		\$ 1,030.00	\$ 30.90	\$ 1,060.90	\$ -	\$ 30.90	3.00%	\$ 1,060.90
171		\$ 540.69	\$ 16.22	\$ 556.91	\$ -	\$ 16.22	3.00%	\$ 556.91

EXHIBIT 1: Colonial Mobile Manor
Rent Increase June 1, 2013

SPACE	TENANT NAME	CURRENT RENT	3% INCREASE	RENT AFTER 3% INCREASE	MNOI INCREASE	TOTAL INCREASE	TOTAL% INCREASE	NEW RENT STARTING JUNE 01 2013
172		\$ 954.81	\$ 28.64	\$ 983.45	\$ -	\$ 28.64	3.00%	\$ 983.45
173		\$ 833.93	\$ 25.02	\$ 858.95	\$ -	\$ 25.02	3.00%	\$ 858.95
174		\$ 748.14	\$ 22.44	\$ 770.58	\$ -	\$ 22.44	3.00%	\$ 770.58
175		\$ 564.42	\$ 16.93	\$ 581.35	\$ -	\$ 16.93	3.00%	\$ 581.35
176		\$ 572.35	\$ 17.17	\$ 589.52	\$ -	\$ 17.17	3.00%	\$ 589.52
177		\$ 763.85	\$ 22.92	\$ 786.77	\$ -	\$ 22.92	3.00%	\$ 786.77
178		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
179		\$ 724.71	\$ 21.74	\$ 746.45	\$ -	\$ 21.74	3.00%	\$ 746.45
180		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
181		\$ 612.59	\$ 18.38	\$ 630.97	\$ -	\$ 18.38	3.00%	\$ 630.97
182		\$ 687.88	\$ 20.64	\$ 708.52	\$ -	\$ 20.64	3.00%	\$ 708.52
183		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
184	II	\$ 598.36	\$ 17.95	\$ 616.31	\$ -	\$ 17.95	3.00%	\$ 616.31
185		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
186		\$ 598.36	\$ 17.95	\$ 616.31	\$ -	\$ 17.95	3.00%	\$ 616.31
187		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
188		\$ 534.82	\$ 16.04	\$ 550.86	\$ -	\$ 16.04	3.00%	\$ 550.86
189		\$ 593.12	\$ 17.79	\$ 610.91	\$ -	\$ 17.79	3.00%	\$ 610.91
190		\$ 572.34	\$ 17.17	\$ 589.51	\$ -	\$ 17.17	3.00%	\$ 589.51
191		\$ 615.39	\$ 18.46	\$ 633.85	\$ -	\$ 18.46	3.00%	\$ 633.85
192		\$ 740.25	\$ 22.21	\$ 762.46	\$ -	\$ 22.21	3.00%	\$ 762.46
193		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
194		\$ 826.36	\$ 24.79	\$ 851.15	\$ -	\$ 24.79	3.00%	\$ 851.15
195		\$ 555.26	\$ 16.66	\$ 571.92	\$ -	\$ 16.66	3.00%	\$ 571.92
196		\$ 815.28	\$ 24.46	\$ 839.74	\$ -	\$ 24.46	3.00%	\$ 839.74
197		\$ 548.68	\$ 16.46	\$ 565.14	\$ -	\$ 16.46	3.00%	\$ 565.14
198		\$ 521.12	\$ 15.63	\$ 536.75	\$ -	\$ 15.63	3.00%	\$ 536.75
199		\$ 572.31	\$ 17.17	\$ 589.48	\$ -	\$ 17.17	3.00%	\$ 589.48
200		\$ 616.27	\$ 18.49	\$ 634.76	\$ -	\$ 18.49	3.00%	\$ 634.76
A		\$ 618.00	\$ 18.54	\$ 636.54	\$ -	\$ 18.54	3.00%	\$ 636.54
B		\$ 522.24	\$ 15.67	\$ 537.91	\$ -	\$ 15.67	3.00%	\$ 537.91
C		\$ 522.24	\$ 15.67	\$ 537.91	\$ -	\$ 15.67	3.00%	\$ 537.91
D			\$ -	\$ -	\$ -	\$ -		\$ -
E		\$ 560.78	\$ 16.82	\$ 577.60	\$ -	\$ 16.82	3.00%	\$ 577.60
F		\$ 592.25	\$ 17.77	\$ 610.02	\$ -	\$ 17.77	3.00%	\$ 610.02
G		\$ 580.00	\$ 17.40	\$ 597.40	\$ -	\$ 17.40	3.00%	\$ 597.40

Notes:

Rent Increase for Mobilehome Spaces: 3%, Plus Special Rent Increase of \$85.01
No Mobilehome Space Rent to Exceed \$875 Per Month

Rent Increase for Park Owned Mobilehomes: 3%, Plus Special Rent Increase of \$25.00

Rent Increase for RV Spaces: 3%, No Special Rent Increase