

**VOLUNTARY AGREEMENT REPORT**

**Date: May 21, 2014**  
**Name: Summerset Mobilehome Park**  
**Hearing Officer: Jeff Townsend**

The Park Owner filed a petition for a rent increase on December 19, 2013 and the following Residents submitted service reduction claims on February 13, 2014: spaces 1, 7, 17, 25, 31, 105, 121, 131, 136, 156, 162, 223, and 228.

The parties and their representatives have withdrawn their claims and petitions with prejudice and submitted the following documents resolving their dispute.

**Attachments:**

- Settlement Summary Sheet by Administrative Hearing Officer dated May 13, 2014
- Agreement for Settlement of Rent Petition and Service Reduction Claims Agreement date stamped May 19, 2014, under the Mobilehome Rent Program Regulations Sections 3.01.02 and 2.05.02

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**

The provisions of the California Code of Civil Procedure Section 1094.6 govern the time within which judicial review must be sought to review a decision under the Ordinance.

CITY OF SAN JOSE  
RENTAL RIGHTS AND REFERRALS PROGRAM

**Building Relationships in Rental Communities**

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7 **IN ADMINISTRATIVE PROCEEDINGS PURSUANT TO CHAPTER 17.22**  
8 **OF TITLE 17 OF THE SAN JOSE MUNICIPAL CODE REGARDING**  
9 **SUMMERSET MOBILE ESTATES**

10  
11  
12 In Re:

SETTLEMENT SUMMARY SHEET

13  
14 SUMMERSET MOBILE ESTATES

JEFFREY S. TOWNSEND,  
HEARING OFFICER

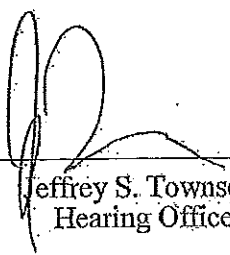
15  
16  
17 Summerset Gold LLC-I and Summerset Gold LLC-II (hereinafter: "Park Owner"), the  
18 owners of Summerset Mobile Estates, filed a Mobilehome Petition with the City of San Jose Rental  
19 Rights and Referrals Program on December 19, 2013, pursuant to the City of San Jose Mobilehome  
20 Rent Ordinance (San Jose Municipal Code Chapter 17.22 et. seq). The Park Owner filed a revised  
21 Petition on January 17, 2014 and a Pre-Hearing Conference was conducted on February 20, 2014 at  
22 San Jose City Hall. Hearings were scheduled to begin on April 16, 2014 but the parties choose to  
23 instead engage in settlement negotiations.  
24

25 As a result, the Park Owner and the residents of Summerset Mobile Estates (hereinafter:  
26 "Residents") agreed to settle of all issues attendant to the Petition. The terms and conditions of the  
27 agreement were presented to the Residents on April 23, 2014 at the Summerset Mobile Estates  
28

1 Clubhouse. Counting all written ballots and applicable proxy forms, the Residents voted  
2 unanimously to be bound to all the terms and conditions of the agreement. Pursuant to Section  
3 2.05.02 and Section 3.01.02 of the City of San Jose Mobilehome Rent Program Regulations, a  
4 written, voluntary agreement was drafted by the parties. That voluntary agreement entitled  
5 "Settlement of Rent Petition and Service Reduction Claims" is attached to this document.  
6

7 The Park Owner has agreed to dismiss their Mobilehome Petition *with prejudice*. Likewise,  
8 the Residents have agreed to dismiss any and all Service Reduction claims *with prejudice*.  
9

10  
11 Dated: May 13, 2014

  
Jeffrey S. Townsend  
Hearing Officer

**RECEIVED**  
 MAY 19 2014  
 San Jose Housing Dept.

IN ADMINISTRATIVE HEARINGS PURSUANT TO CHAPTER 17.22  
 OF THE SAN JOSE MUNICIPAL CODE

IN RE: ) AGREEMENT FOR SETTLEMENT  
 ) OF RENT PETITION AND  
 SUMMERSET MOBILE ESTATES' ) SERVICE REDUCTION CLAIMS  
 APRIL 1, 2014 SPECIAL RENT INCREASE )  
 \_\_\_\_\_ )

**1. Introduction and Purpose.**

This matter involves a dispute between the owners of Summerset Mobile Estates Mobilehome Park, as Petitioner, and the Tenants thereof, concerning the park owner's application for a discretionary rent increase along with certain service reduction claims filed by the tenants. At issue is whether a rent increase over and above the allowable three percent (3%) annual adjustment may lawfully be charged to the residents of Summerset Mobile Estates. The Park Owner and a Resident's Committee representing the interests of the Tenants have spent more than four months negotiating a resolution of the proposed rent increase described herein. The purpose of this Settlement Agreement is to resolve all issues between the parties concerning the amount and timing of a discretionary rent increase along with the service reduction claims without the necessity of further administrative or judicial proceedings. In consideration of the mutual covenants and agreements set forth herein, the parties, and each of them, hereby agree to the following terms and conditions.

**2. Factual and Procedural Summary.**

Summerset Mobile Estates Mobilehome Park (the "Park") is located in the City of San Jose. There are 111 rent paying spaces in the Park. Rent increases for all spaces in the Park are governed by the City of San Jose Mobilehome Rent Ordinance, Municipal Code Chapter 17.22 et. seq. and the City of San Jose Mobilehome Rent Program Regulations. (the "Ordinance"). The Park is owned and operated by Summerset Gold LLC I and Summerset Gold LLC II, and is doing business as Summerset Mobile Estates.

**3. Special Rent Adjustment.**

In December, 2013 the Park Owner filed a Petition with the City of San Jose seeking a discretionary (or "special") rent increase in the amount of \$185.33 over and above the three (3%) annual

adjustment which is allowed without hearing by the Ordinance. Pursuant to the Ordinance, such an adjustment requires approval following an administrative hearing. The Park owner mailed notice of this special rent adjustment to the Park residents, which contained an April 1, 2014 effective date. The hearing process was started before Jeff Townsend, Hearing Officer assigned by the City of San Jose Rental Rights and Referrals Program. The Park Owner is represented by David Spangenberg, Esq, and a total of 94 Tenants are represented by Bruce E. Stanton, Esq. The remaining Tenants have not appeared or designated any representative by proxy, such that Mr. Stanton is the sole designated representative for all Tenants who have submitted a proxy herein. When the parties appeared on April 16, 2014 and April 17, 2014 to formally begin the evidentiary hearing, they agreed to engage in mediation discussions and delayed taking testimony from witnesses. After 13 hours of mediation facilitated by the Hearing Officer, the parties agreed to present a settlement proposal to all residents of the park to resolve the dispute in full. On April 23, 2014, the settlement proposal was presented to the Tenants at the Park's clubhouse, along with a written Settlement Ballot. The Hearing Officer was present along with the representatives of the Parties. Following this meeting, a vote was taken pursuant to the distributed written Settlement Ballot, and 101 Tenant spaces, including all non-proxy spaces, agreed to the terms of the proposed settlement. The ballots are collectively attached hereto as Exhibit "A". The remaining ten (10) spaces for which no ballots were submitted are all represented by Mr. Stanton, to wit spaces 108, 123, 130, 137, 139, 151, 170, 216, 238 and 303, and based upon the authority granted to him via the proxy forms, those spaces shall be bound to the settlement pursuant to the signature hereon of their designated representative, Mr. Stanton. Now, therefore, the parties have agreed to resolve the pending Petition in full through this Settlement Agreement without further administrative or judicial proceedings.

#### **4. Terms.**

For the valuable consideration stated herein, the parties hereby stipulate to the following terms to settle the matter in full:

A. **Effective Date.** The Effective Date of this Settlement Agreement shall be April 1, 2014.

#### **B. Special Rent Adjustment Settlement.**

##### a. Phased-in Rent Increases During Next Three Years.

The Park Owner shall be allowed a one-time total discretionary rent increase in permanent "base" rent of \$72.00. Said amount shall be phased-in over three (3) years beginning April 1, 2014, such that the amount of \$24.00 is added to the base rent each year as follows:

<u>Increase Effective Date</u>	<u>Increase Amount</u>
April 1, 2014	\$24.00
April 1, 2015	\$24.00
April 1, 2016	\$24.00

b. Other Rent Increases.

Subject to the moratorium exception set forth in paragraph C below, other rent increases allowed by the Ordinance, including the annual adjustment allowed without hearing, will continue uninterrupted and may be noticed and collected by the Park Owner during the three (3) year period.

**C. Moratorium on Discretionary Rent Increases.** Subject to the exception stated below, Park Owner agrees to a three (3)-year moratorium from filing any new Petition for a discretionary rent increase through and including the "Current fiscal Year" ending October 31, 2016, and for any rent increase which would take effect on April 1, 2017. The first year upon which a rent Petition can be filed would thus be for the "Current Fiscal Year" ending October 31, 2017, with an effective date of April 1, 2018. The only exception to said moratorium would be in the event of an unplanned or unforeseen disaster or "Force Majeure" event which necessitates expenditures by the Park Owner to repair or replace park infrastructure or property. In the event of any dispute which arises between the parties concerning interpretation or implementation of this provision, Section N herein shall apply.

**D. Ground Lease Permanent Retirement.** The existing 1968 ground Lease for the real property where the Park is located shall be terminated, and shall be permanently removed from consideration as an expense in any future rent increase Petition for Summerset Mobilehome Park. Moreover, no ground lease of any type can be used by the Park Owner, or its successor or assigns, in any future year as an expense to justify a discretionary rent increase. The 1968 ground lease expense shall be removed from any future Petition calculation. As valuable consideration for the Lease retirement, it is agreed that the previous 2003 Summerset Settlement Agreement shall be amended to reflect a 1985 Base Year Net Operating Income (NOI) of \$309,656.00. It is further agreed that said adjusted 1985 NOI amount shall be applied for purposes of calculating any future rent increases in any administrative proceedings which are hereinafter initiated by the Park.

**E. Dismissal of Petition and Service Reduction Claims.** Park Owner hereby dismisses "with prejudice" its Petition filed herein. Tenants hereby dismiss "with prejudice" any and all Service Reduction claims filed herein, with the exception of those claims filed for space 25 by Raymond Wing and Angie Le, and for space 131 by Louise McCracken. Park Owner agrees to resolve said claims by repairing/modifying the concrete area in front of space 25 so as to alleviate standing water in front of the home, and to fix or repair the open wires where a street light was knocked down or removed at space 131.

**F. Rent Subsidy Program.** The Park Owner shall offer a Rent Subsidy Program which allows for a maximum subsidy of 10% of the existing rent for up to ten percent (10%) of the park spaces. Eligibility shall be limited to those Tenants who establish, based upon written proof consistent with the Section 8 housing program, that they cannot pay the rent increase amount for any year without hardship. The Rent Subsidy Program for this rent increase will be given only to Current Residents of Summerset Mobile Estates as of the effective date of this Settlement Agreement. The term "Current Resident" shall mean:

- a. a "Resident", as that term is defined in the California Mobilehome Residency Law (Civil Code 798), who lives in a mobilehome located on the related space in the Park, or
- b. a Current Resident's present or future spouse; or
- c. a Current Resident's family member provided such family member was residing in the Current Resident's mobilehome located on the related space on the effective date of this Settlement Agreement; or
- d. a person who is the trustor, beneficiary or trustee of a Trust which owns a mobilehome located on a related space, which Trust was created for the use or benefit of one or more of the persons described in subsections 4 F (a) (b) (c) or (d) above.

Except for the persons listed above, rent subsidy eligibility for this rent increase is non-transferrable.

**G. Attorneys Fees and Costs.** Each party shall bear its/their own fees and costs herein.

**H. Binding Nature of Settlement Agreement.** The foregoing Settlement Agreement, when signed by the Owner and Resident's committee members shall constitute the resolution of the rent increase dispute between them. Tenants agree to withdraw any pending Service Reduction Claims and/or cause to be withdrawn the signatures of Tenants from any pending Service Reduction Claims other than as noted above, in exchange for this Settlement Agreement. This Settlement Agreement is intended to act as a final and full determination of the issues and controversies raised by the Petition, the Notice of Special Rent Adjustment issued on December 19, 2013 and the Tenants' Service Reduction Claims.

**I. Release of Claims Under the Ordinance.** It is the intention of the parties in executing this Settlement Agreement that it shall be effective as a full and final accord and satisfaction and mutual general release of and from all matters described above. The forgoing terms shall bind the park Owner and Tenants regardless of the extent to which they actively participated or appeared in the hearings.

**J. Waiver of Section 1542.** It is further understood and agreed that all rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States are hereby expressly waived. Said section reads as follows:

**1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

**K. Entire Agreement.** This Settlement Agreement constitutes the entire Agreement between the parties, and shall not be modified except by written agreement signed by the parties.

**L. Separate Counsel.** This Agreement has been drafted jointly by the Parties and their respective counsel.

**M. Good Faith and Fair Dealing.** The Parties specifically acknowledge that the implied covenant of good faith and fair dealing applies to this Agreement.

**N. Resolution of Disputes.** The parties agree that any disputes concerning the interpretation or application of this Settlement Agreement shall be handled in the following fashion:

a. **Informal Discussions.** The parties will first attempt to resolve any disputes or confusion by discussing the issues informally.

b. **Representative Negotiations.** If the informal discussions are unsuccessful, the parties may request the assistance of their respective representatives, who will also attempt to resolve any disputes informally.

c. **Arbitration.** If parties and their representatives cannot resolve the dispute, the parties agree to submit the matter to judicial arbitration pursuant to California Code of Civil Procedure 1281-1281.96. The prevailing party in any such arbitration proceeding shall be entitled to recover its reasonable attorney's fees and costs.

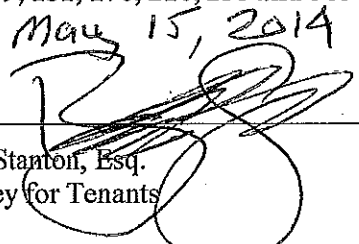


RECEIVED  
MAY 19 2014  
San Jose Housing Dept.

**O. Authority to Sign.** Each party signing this Agreement warrants and represents that they have the power and authority to enter into this Agreement on behalf of the party indicated. This Agreement may be signed in counterpart.

**P. Enforceability.** Due to the absence of an Award or Order herein from the assigned Hearing Officer as a result of the parties' voluntary resolution of the matters set forth herein, the parties specifically agree that this Agreement shall have the same force and effect as if an Award or Order had been entered herein, and that the terms hereof shall be binding upon the parties and their heirs, successors and assigns, shall be specifically enforceable by any party in the event of any breach of these terms or provisions, and shall have the same force and effect at Arbitration or in a court of law as if the same had been entered as an Award or Order by the assigned Hearing Officer.

**Approved as to Content and Form and Stipulated and Agreed on behalf of Spaces 108, 123, 130, 137, 139, 151, 170, 216, 238 and 303 as duly authorized Representative pursuant to Proxy forms.**

Dated: May 15, 2014  
  
\_\_\_\_\_  
Bruce Stanton, Esq.  
Attorney for Tenants

**Approved as to Content and Form:**

Dated: \_\_\_\_\_  
\_\_\_\_\_  
David Spangenberg, Esq.  
Attorney for Park Owner

**IT IS SO STIPULATED AND AGREED:**

Park Owner: Summerset Gold LLC I and Summerset Gold LLC II

Dated: \_\_\_\_\_  
By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

Tenants:  
Dated: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: Douglas Rasmusen, Summerset HOA Chairman  
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Sarah Harvey, Summerset HOA Treasurer

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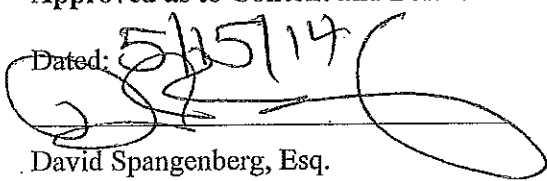
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Dated:

\_\_\_\_\_  
Bruce Stanton, Esq.  
Attorney for Tenants

**Approved as to Content and Form:**

Dated:

5/15/14  
  
\_\_\_\_\_  
David Spangenberg, Esq.  
Attorney for Park Owner

**IT IS SO STIPULATED AND AGREED:**

Park Owner: Summerset Gold LLC I and Summerset Gold LLC II

Dated:

By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

Tenants:

Dated:

By: \_\_\_\_\_  
Name: Douglas Rasmusen, Summerset HOA Chairman  
Dated:

By: \_\_\_\_\_  
Name: Sarah Harvey, Summerset HOA Treasurer

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**Approved as to Content and Form and Stipulated and Agreed on behalf of Spaces 108, 123, 130, 137, 139, 151, 170, 216, 238 and 303 as duly authorized Representative pursuant to Proxy forms.**

Dated:

\_\_\_\_\_  
Bruce Stanton, Esq.  
Attorney for Tenants

**Approved as to Content and Form:**

Dated:

\_\_\_\_\_  
David Spangenberg, Esq.  
Attorney for Park Owner

**IT IS SO STIPULATED AND AGREED:**

Park Owner: Summerset Gold LLC I and Summerset Gold LLC II

Dated: MAY 16, 2014

By: [Signature]  
Name/Title: PATRICK F. MOCKLER, MANAGING PARTNER

Tenants:

Dated:

By: \_\_\_\_\_  
Name: Douglas Rasmusen, Summerset HOA Chairman

Dated:

By: \_\_\_\_\_  
Name: Sarah Harvey, Summerset HOA Treasurer

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Approved as to Content and Form and Stipulated and Agreed on behalf of Spaces 108, 123, 130, 137, 139, 151, 170, 216, 238 and 303 as duly authorized Representative pursuant to Proxy forms.

Dated:

\_\_\_\_\_  
Bruce Stanton, Esq.  
Attorney for Tenants

**Approved as to Content and Form:**

Dated:

\_\_\_\_\_  
David Spangenberg, Esq.  
Attorney for Park Owner

**IT IS SO STIPULATED AND AGREED:**

Park Owner: Summerset Gold LLC I and Summerset Gold LLC II

Dated:

By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

Tenants:

Dated: 05/15/2014  
By: Douglas C. Rasmussen  
Name: Douglas Rasmussen, Summerset HOA Chairman

Dated: May 15, 2014  
By: Sarah Harvey  
Name: Sarah Harvey, Summerset HOA Treasurer

1 Jeffrey S. Townsend (SBN 201061)  
2 Law Offices of Jeffrey S. Townsend  
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7 **IN ADMINISTRATIVE PROCEEDINGS PURSUANT TO CHAPTER 17.22**  
8 **OF TITLE 17 OF THE SAN JOSE MUNICIPAL CODE REGARDING**  
9 **SUMMERSET MOBILE ESTATES**

10  
11  
12 In Re:

ORDER

13  
14 SUMMERSET MOBILE ESTATES

JEFFREY S. TOWNSEND,  
HEARING OFFICER

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16  
17 A hearing was held on May 2, 2014 at the San Jose City Hall as part of the hearing process  
18 related to the Mobilehome Petition filed on December 19, 2013 by Summerset Gold LLC-I and  
19 Summerset Gold LLC-II (hereinafter: "Park Owner"), the owners of Summerset Mobile Estates.  
20 David Spangenberg appeared as counsel for the Park Owner and Patrick Mockler of Rutherford  
21 Investments appeared for the Park Owner.

22  
23 Bruce Stanton appeared as counsel for some of the residents (hereinafter: "Residents") of  
24 Summerset Mobile Estates. Representing the Residents was Douglas Rasmussen, chairman of the  
25 Summerset Homeowners Association and Sara Harvey, treasurer of the Summerset Homeowners  
26 Association. None of the pro per residents appeared.  
27  
28

1 After much time spent negotiating a possible settlement, the parties were able to reach an  
2 agreement in a mediation conducted on April 17, 2014. The proposed settlement was presented to  
3 all the residents of Summerset Mobile Estates in a two hour meeting at the Summerset Mobile  
4 Estates clubhouse on April 23, 2014. Representatives from each side presented their opinions on  
5 the proposed settlement and written ballots were distributed to all in attendance. Mr. Rasmussen  
6 served as the moderator for this meeting. Additionally, ballots were delivered to each mobilehome  
7 space in the park.  
8

9 As of May 2, 2014, the results of the vote were 93 votes in favor of the settlement while  
10 there were not any votes cast opposing the settlement. The 93 residents that voted included both  
11 individuals who were represented by Mr. Stanton (via a proxy) and those that were not represented  
12 by Mr. Stanton.  
13

14 Not including the managers unit, there are 111 mobilehome spaces in Summerset Mobile  
15 Estates. Of the remaining 18 spaces that did not cast a ballot, 10 of the mobilehome spaces are  
16 represented by Mr. Stanton. The official City of San Jose Proxy Form that authorizes an individual  
17 to act on their behalf states the following: "This representative will be authorized to bind the party  
18 to any stipulation, decision or other action taking at the Hearing." After questioning from the  
19 Hearing Officer, Mr. Stanton stated that he would be agreeing to the settlement on behalf of these  
20 ten residents.  
21

22 The Hearing Officer queried the parties in attendance regarding their knowledge and  
23 understanding of the terms and conditions of the settlement and whether they were in agreement  
24 with said terms and conditions. All answered in the affirmative. All representatives stated that  
25 they intended to be bound by the terms and conditions of the settlement. The Hearing Officer also  
26 directed questions to the audience, asking if there was anyone who objected to the settlement. No  
27 one raised any objections whatsoever.  
28

1 Thus, 103 of the 111 mobilehome residents can and will be bound by the terms and  
2 conditions of the settlement. The remaining eight residents include individuals who did not cast a  
3 vote and are not represented by Mr. Stanton. There was some concern regarding whether some  
4 residents failed to cast a ballot due to language on the ballot that stated failure to submit a ballot  
5 would equate to accepting the terms of the settlement.  
6

7 As a result, Mr. Rasmussen agreed to personally contact these eight residents to see if they  
8 would be interested in submitting a ballot. To be included in the settlement, a resident could  
9 either: submit a written ballot with a 'yes' vote, submit a signed proxy designating Mr. Stanton as  
10 their representative or sign the final draft of the settlement agreement. Since the next hearing was  
11 officially scheduled for May 23, 2014, the deadline for submitting any of the documents mentioned  
12 above was set for May 23, 2014.  
13

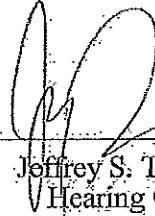
14 As of May 7, 2014, all eight residents had agreed to be included in the settlement by either  
15 submitting a signed ballot or submitting a proxy form with Mr. Stanton as their designated  
16 representative. Thus, the terms and conditions of the settlement will be binding on every resident  
17 of Summerset Mobile Estate as well as the Park Owner.  
18

19 Since there is no longer a need for additional hearings, the hearing dates that were  
20 originally scheduled will be taken off-calendar which include hearings set for May 23, 2014 and  
21 May 28, 2014. It should be noted that two hearing dates included on the document dated April 29,  
22 2014 and entitled Notice of Hearing Cancellation and New Hearing Dates are incorrect and should  
23 be disregarded. This includes hearings listed for May 16, 2014 and May 29, 2014.  
24

25 At the May 2, 2014 hearing, Mr. Spangenberg agreed to draft a brief regarding the issue of  
26 which residents could be bound by the settlement agreement and the ramifications thereof for  
27 additional hearing dates. Since there will not be any additional hearings, this is a moot issue and  
28 Mr. Spangenberg is relieved of his obligation to submit such a brief.

**IT IS SO ORDERED.**

Dated: May 14, 2014



Jeffrey S. Townsend  
Hearing Officer

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