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February 3, 2004

Anna Roppo, Esq.  
Higgs, Fletcher & Mack  
401 West "A" Street, Suite 2600  
San Diego, CA 92101

Re: *De Anza Cove HOA, Inc. v. City of San Diego*  
San Diego Superior Court, Case No. GIC 821191

## CONFIDENTIAL SETTLEMENT COMMUNICATION

Dear Ms. Roppo:

You have requested that the Homeowners Association submit a written settlement proposal and stated that the City will not agree to mediation until it has received such a proposal in advance. We have crafted this proposal rather generally with the understanding that it will become easier to provide additional details once we learn the City's perspective and the potential hurdles. At a minimum, this letter illustrates the direction the HOA would consider going. (These issues are totally separate from those related to park operations for which we have requested a meeting with representatives from the City and Hawkeye Management.)

While the legal issues seem straight forward to us, the potential solutions appear more complicated, presuming that the City insists on removing the residents from De Anza Cove. Affordable housing is extremely scarce, the majority of the residents have limited financial resources, and many, many mobilehomes will not survive transport and will have to be destroyed, forcing residents to start from scratch in a horrible housing market.

For these reasons, we strongly believe that any viable solution will include the following:

- The development of a new mobilehome park or alternative housing, possibly on City-owned land if this would help the City defer its acquisition and development costs;
- A reasonable extension of time for residents to remain at De Anza Cove while a new park is under development;

- Relocation assistance to cover, among other things, moving expenses for personal property and rent increases;
- Compensation for the loss in value of each mobilehome; and
- A cash alternative for those homeowners who elect not to relocate to the new park or housing development.

We have assembled a team of people who specialize in developing new mobilehome parks and we can certainly prepare a proposal that lays out more detailed costs, zoning issues, and a timeline for the planning process. We do not want to spend our time mounting a detailed proposal, however, if the City is not open to this type of a solution. If we can agree on the overall structure of a settlement like this, then perhaps mediation could be used to fine tune the monetary components.

It should be noted that it is highly unlikely that the HOA would accept any proposal that did not include the preparation of a comprehensive Tenant Impact Report at the outset. As this is a bedrock element of any transition plan, it should be commissioned by the City now.

While it will cost the City more under our proposal than the "benefits" recently offered under the City's "transition plan," developing a new mobilehome park or other housing is more than likely the City's absolute least expensive means of providing adequate replacement housing for so many residents. To put this in context, consider the City's exposure if the Court concludes that the City's transition plan constitutes a park closure or change in use:

- Compensatory Damages: In 1993, the City estimated the cost of replacement housing in the open market at over \$63 million. That figure, in today's dollars and in the current real estate market, is more than double;
- Statutory Penalties: every violation of the Mobilehome Residency Law ("MRL") carries a potential \$2,000 fine per incident under Civil Code § 798.86. With over 500 homes, that amounts to \$1 million per violation. Plaintiff has alleged no less than a dozen MRL violations in the First Amended Complaint, carrying the specter of at least \$12 million in statutory fines. (The list of MRL violations grows daily as the City and Hawkeye continue to announce arbitrary rule changes without notice or opportunity for public comment (Civ. Code § 798.25), refuse repeated requests by the HOA for a meeting to discuss park management issues (Civ. Code § 798.53), and commit retaliatory acts like reducing the availability of the common areas, shutting down the heat for the pool, and precluding residents from permanently placing chairs and tables in the Bay Club and Pavillion where they routinely gather for bingo, HOA meetings, and Sunday mass (Civ. Code § 1942.5).) These statutory penalties will continue to accrue with each new and repeated violation; and

- Attorney's Fees: these are awarded as a matter of law to the prevailing party and will be substantial under Civil Code § 798.85.

In the aggregate, the City could be facing a judgment of over \$140 million if the MRL applies. This figure is particularly ominous given the Court's ruling that **plaintiff has already "established a reasonable probability of success on the merits."** Moreover, this estimate does not even include damages recoverable under plaintiff's other claims for relief.

In providing this summary of potential damages, our purpose is not to threaten the City, but to insure that the City is provided a realistic assessment of its risk. As you recall, at oral argument, the Court questioned the City's contentions that the De Anza Cove Mobilehome Park is not a mobilehome park, that the City's threatened evictions did not constitute a park closure, and that a resident could be forced to waive rights that are deemed unwaivable under the MRL. Clearly, the Court was not persuaded by these assertions which form the backbone of the City's defense. Moreover, the only authority cited by the City—*Stevens v. Perry* (1982) 134 Cal.App.3d 748—did not even involve the MRL or the Mello Act, much less any of the amendments to these laws passed in the 20 years since *Stevens* was decided.

By contrast, the one published decision that interprets Government Code section 65863.7—*Keh v. Walters* (1997) 55 Cal.App.4<sup>th</sup> 1522—requires the City to prepare a Tenant Impact Report, provide it to all residents, hold public hearings on the findings, and initiate mitigation measures. In *Keh*, the court held that eviction proceedings were *improper* even though certain leases within the park were set to expire. *Id.* The *Keh* court focused, as did the Legislature when it enacted these *pro-resident* laws, on the consequence of park closure rather than on the reason. In other words, it did not matter why the park may have undergone a change in use or suffered a closure; this statute was triggered, instead, by the mere fact *that a change had been proposed*. The *Keh* court concluded that "the Legislature has acted to protect mobilehome dwellers, not just from arbitrary and capricious conversions but also from the harsh effects of displacement resulting from legitimate conversions." *Keh*, 55 Cal.App.4<sup>th</sup> at 1534 (emphasis added). Thus, even if the City's transition plan were legitimate, which is debatable, it would still require compliance with Government Code section 65863.7.

Certainly, a Tenant Impact Report and a new park or housing complex can be developed for considerably less than what the City will be required to pay if the HOA succeeds on the merits. Furthermore, creating additional housing opportunities would advance the goals of the City's Housing Commission, particularly in light of the State of Emergency declared by the City Council only a few months ago, and made worse by the devastating fires of 2003.

If the City is amenable to the solution outlined herein, please advise and we will work with you to take the next step to supplement the proposal with more detail. We would need to have, for example, a list of publicly-owned sites that the City would be willing to develop into a new mobilehome park or other alternative housing. Of course, if the City has comparable settlement alternatives that it would like us to consider, please let us know.

Ms. Anna Roppo, Esq.  
Higgs, Fletcher & Mack  
February 3, 2004  
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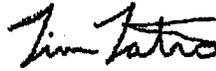
CONFIDENTIAL SETTLEMENT COMMUNICATION

In addition, several weeks ago we suggested some potential mediators from the Court's mediation panel—Douglas Glass, John Seitman, or Monty McIntyre—and requested that the City choose one or suggest others. To date, we have not heard back from you on this. Please identify the mediator that the City would be comfortable with so that we can determine everyone's availability in the coming months and satisfy the Court that the parties are attempting to resolve this matter in good faith.

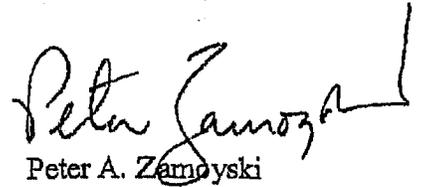
We look forward to hearing from you.

Sincerely,

TATRO & ZAMOYSKI, LLP



Timothy J. Tatro



Peter A. Zamoycki

TJT:cbm

Cc: Ernest Abbit, President  
De Anza Cove Homeowners Assn.