

RESOLUTION NO. 2013-014

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK FOR APPROVAL OF A SETTLEMENT AGREEMENT AND MUTUAL RELEASE WITH CARITAS CORPORATION

WHEREAS, on January 20, 2009, the City of Rohnert Park Mobile Home Parks Rent Appeals Board ("Board") received Valley Village Tenant Petition 2009-01 ("Petition"); and

WHEREAS, Caritas Corporation, the owner of Valley Village Mobile Home Park, appealed the original examiner's draft decision regarding the Petition to the Board;

WHEREAS, the Board vacated the Original Examiner's draft and revised decisions and scheduled a new hearing to be conducted before another hearing examiner; and

WHEREAS, the Board adopted the new Hearing Examiner's decision regarding the Petition ("Decision");

WHEREAS, Caritas appealed the Decision, which the Board subsequently rejected; and

WHEREAS, the Board's Rules and Regulations Section 7.15(F) provide that the appellant shall pay actual cost for staff time, additional Hearing Examiner time, or other actual expenses relative to the appeal ("Appeal Fees");

WHEREAS, Caritas objects to the potential collection of Appeal Fees;

WHEREAS, Caritas offered to waive its right to seek judicial review of the Board's action on the Petition in exchange for the City's waiver of the Appeal Fees; and

WHEREAS, the Parties now desire to settle and resolve all disputes regarding the City's action on the Petition and the collection of Appeal Fees;

WHEREAS, on February 7, 2013 the Mobile Home Parks Rent Appeals Board authorized the waiver of the Appeal Fees by Resolution, which shall become effective upon the City Council's approval of a settlement agreement and mutual release.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Rohnert Park does hereby resolve, determine, find and order as follows:

SECTION 1. Approval of Agreement. The Settlement Agreement and Mutual Release with Caritas Corporation, attached hereto as Exhibit A and incorporated herein by reference, providing for the mutual release from liability and waiver of claims is hereby approved.

SECTION 2. Authorization. The City Manager is hereby authorized to execute the Agreement in substantially similar form to the attached Exhibit A, subject to minor modification by the City Manager or City Attorney.

SECTION 3. Severability. If any action, subsection, sentence, clause or phrase of this Resolution or the Agreement adopted by this Resolution shall be held invalid or unconstitutional by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this Resolution or Agreement adopted by this Resolution that can be given effect without the invalid provisions.

DULY AND REGULARLY ADOPTED this 12th day of February, 2013.



CITY OF ROHNERT PARK

Pam Stafford
Pam Stafford Mayor

ATTEST:

JoAnne Buergler
JoAnne Buergler City Clerk

Exhibits:

Exhibit A – Settlement Agreement and Mutual Release

AHANOTU: AYE BELFORTE: AYE MACKENZIE: AYE CALLINAN: AYE STAFFORD: AYE
AYES: (5) NOES: (0) ABSENT: (0) ABSTAIN: (0)

EXHIBIT “A”

**SETTLEMENT AGREEMENT AND
MUTUAL RELEASE**

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This SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“**Agreement**”) is entered into as of February __, 2013 by and between the City of Rohnert Park, City Council of the City of Rohnert Park (“**Council**”) and Mobile Home Parks Rent Appeals Board (“**Board**”) (collectively referred to as the “**City**”) and Caritas Affordable Housing, Inc., a California non-profit corporation (“**Caritas**”), with reference to the following:

RECITALS

A. On January 20, 2009, the Board received Valley Village Tenant Petition 2009-01 (the “**Petition**”);

B. The Petition alleged a “discontinuance or substantial reduction in housing service(s) without a corresponding decrease in rent” as the basis for complaint;

C. On February 19, 2009, the Board accepted the Petition and appointed a Hearing Examiner (the “**Original Examiner**”) to hear the Petition, per Board Rules and Regulations Section 7.02;

D. Following a hearing on the Petition and the issuance of a draft decision, Caritas, the owner of Valley Village Mobile Home Park (the “**Park**”), appealed the Original Examiner’s draft decision to the Board and, after the Original Examiner issued a revised decision at the direction of the Board, Caritas filed an objection to the revised decision, seeking a stay of the decision pending eviction proceedings;

E. At its meeting on November 5, 2009, the Board continued its review of Caritas’s appeal pending the above-referenced eviction proceedings;

F. The matter remained pending before the Board until April 2011, when the subject tenant and his guardians vacated the Park pursuant to an agreement negotiated by Caritas in conjunction with the above-referenced eviction proceedings;

G. On January 5, 2012, the Board: (1) adopted Resolution 2012-01 vacating the Original Examiner’s draft and revised decisions due to inadequate findings under Board Rules and Regulations Section 6.02 to support the rent reductions awarded; and (2) scheduled a new hearing to be conducted before another Hearing Examiner (the “**New Examiner**”); and

H. The New Examiner provided notice and held public hearings on August 1, 2012, and August 7, 2012, to consider the evidence presented by tenants in support of the Petition and Caritas in opposition thereto;

I. On October 4, 2012, the Board adopted Resolution No. 2012-05 approving the New Examiner’s decision on the Petition (the “**Decision**”);

J. On October 22, 2012, the Board received from Caritas an appeal of the Decision;

K. On November 15, 2012, the Board adopted Resolution No. 2012-09 rejecting Caritas's appeal of the Decision;

L. The Board's Rules and Regulations Section 7.15(F) provide that the appellant shall pay actual cost for staff time, additional Hearing Examiner time, or other actual expenses relative to the appeal (the "**Appeal Fees**").

M. The Parties now desire to settle and resolve all disputes regarding the City's action(s) on the Petition and Caritas's liability for the Appeal Fees.

N. It is agreed that no Party is assuming liability by entering into this Agreement.

NOW THEREFORE, in consideration of the above Recitals, which are an essential part of the Parties' Agreement and are therefore incorporated by reference into the Agreement set forth below, and for other good and valuable consideration, the receipt and adequacy of which is acknowledged, it is hereby agreed as follows:

AGREEMENT

1. City of Rohnert Park's Obligations

1.1 Adoption of Agreement. Prior to February 15, 2013, the City through its City Council agrees to expeditiously consider in good faith the adoption of this Agreement by resolution ("**Council Resolution**"). The Council Resolution shall become effective immediately upon the adoption of the Board Resolution, as defined below.

1.2 Waiver of Appeal Fees. Prior to February 15, 2013, the City through the Mobile Home Parks Rent Appeals Board agrees to expeditiously consider in good faith the adoption of a resolution waiving the collection of the Appeal Fees associated with Caritas' appeals of the Petition ("**Board Resolution**"). The Board Resolution shall become effective immediately upon the adoption of the Council Resolution.

1.3 Effectiveness of City's Actions. Both the Council Resolution and the Board Resolution shall be adopted prior to either of them becoming effective. The "**Date of Agreement**" shall be the latter of the date of adoption of the Council Resolution or the Board Resolution.

2. Caritas' Obligations

2.1 Adoption of Agreement. Prior to the adoption of the Council Resolution or Board Resolution, Caritas shall execute this Agreement.

2.2 No Challenges, Appeals or Lawsuits. If both the Council Resolution and the Board Resolution become effective prior to February 15, 2013, then Caritas agrees that it will not object to, challenge, appeal, or file a lawsuit or any other claim against the City, the City Council, the Board, or any other subsidiary body or individual representative of the City or Board regarding this Agreement, the Council Resolution, the Board Resolution, or any other action whatsoever taken by the City in relation to the Petition. Caritas further agrees that it shall

not encourage, aide, abet or cooperate in any way with any objection, appeal, or challenge, by any third party, to this Agreement, the Council Resolution, the Board Resolution, or any other action whatsoever taken by the City in relation to the Petition.

2.3 Caritas's Attorneys' Fees. Caritas shall bear its own costs and attorneys' fees for all actions taken in relation to the Petition and this Agreement.

3. Termination of Agreement

3.1 Termination by Caritas. Caritas may terminate this Agreement if either the Council Resolution or the Board Resolution does not become effective prior to February 15, 2013.

3.2 Termination by City. The City may terminate this Agreement if Caritas breaches any of its obligations under Section 2.

4. Mutual General Release

4.1 Caritas's Release. Except as provided in this Agreement, Caritas, on its own behalf and on behalf of its current and former attorneys, representatives, assigns and successors-in-interest, hereby releases, acquits, compromises, settles, satisfies, and forever discharges the City, the City Council, the Mobile Home Park Rent Appeals Board, and their current and former officials, members, partners, officers, employees, agents, attorneys, representatives, assigns, and successors-in-interest from any and all claims, causes of action, actions, damages, losses, demands, accounts, reckonings, rights, debts, liabilities, obligations, disputes, controversies, payments, costs and attorneys' fees, of every kind and character, known or unknown, existing or contingent, latent or patent, which Caritas now has, ever had, or may have in the future on account of or arising directly or indirectly out of, based on, relating to, or connected in any way with this Agreement, the Council Resolution, the Board Resolution, or any other action whatsoever taken by the City in relation to the Petition.

4.2 City Release. Except as provided in this Agreement, City, on its own behalf and on behalf of its current and former officials, officers, employees, agents, attorneys, representatives, assigns and successors-in-interest, hereby releases, acquits, compromises, settles, satisfies, and forever discharges Caritas and its attorneys, representatives, assigns, and successors-in-interest from any and all claims, causes of action, actions, damages, losses, demands, accounts, reckonings, rights, debts, liabilities, obligations, disputes, controversies, payments, costs and attorneys' fees, of every kind and character, known or unknown, existing or contingent, latent or patent, which City now has, ever had, or may have in the future on account of or arising directly or indirectly out of, based on, relating to, or connected in any way with this Agreement, the Council Resolution, Board Resolution or any other action whatsoever taken by the City in relation to the Petition, including, but not limited to, any claim that Caritas is liable, or must reimburse the City, for any Appeal Fees, of any kind whatsoever, incurred, directly or indirectly, in conjunction with the Petition and/or Caritas's appeals of any action(s) taken in conjunction therewith.

4.3 The mutual General Release provided for herein shall become effective and legally binding immediately upon the Date of Agreement.

5. Civil Code Release

The Parties acknowledge that they are familiar with the provisions of California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties acknowledge that they may have sustained damages, losses, costs or expenses that are presently unknown and unsuspected. Nevertheless, the Parties acknowledge that this Agreement has been negotiated and agreed upon in light of this situation, and hereby expressly waive any and all rights which they have under California Civil Code Section 1542 or any other statute or common law principle of similar effect.

6. General Provisions

6.1 Further Assurances. The Parties will execute all further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the intent and provisions of this Agreement.

6.2 Captions. Captions are included herein for ease of reference only. The captions are not intended to affect the meaning of the contents or scope of this Agreement.

6.3 California Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Should any part of this Agreement be found to be invalid, the validity of any remaining parts or provisions shall not be affected thereby.

6.4 Attorneys' Fees. In any action or proceeding arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs. The Parties may agree to engage in mediation of any dispute in advance of litigation, but no pre-litigation mediation shall be required and this provision shall not prevent any party from seeking injunctive relief.

6.5 No Admission. Nothing in this Agreement shall be deemed as an admission or denial as to the validity of any claims or defenses.

6.6 Written Waiver. A waiver of any Party's right to enforce any provision of this Agreement shall not be effective unless such a waiver is made expressly in writing. An express waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement.

6.7 Survival of Obligations. None of the releases contained in this Agreement is intended to release any Party from any obligation or understanding to be performed pursuant to this Agreement, all of which obligations and understandings shall survive the execution hereof.

6.8 Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third persons to any party to this Agreement, nor shall any provision give any third person any right of subordination or action over or against any party to this Agreement.

6.9 Notices. Any notice required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to be given when served personally, or on the third day after mailing if mailed by United States mail, postage prepaid, addressed to the address for each Party set forth below:

Caritas:

Caritas Affordable Housing, Inc.
c/o Robert R. Redwitz
5520 Trabuco Road
Irvine, CA 92620
randy@redwitz.com

With a copy to:

Bryan D. Coryell
Abbey, Weitzenberg, Warren & Emery
P.O. Box 1566
Santa Rosa, 95402-1566
bcoryell@abbeylaw.com

City of Rohnert Park:

Gabriel Gonzalez
City Manager
City of Rohnert Park
130 Avram Ave.
Rohnert Park, CA
ggonzalez@rpcity.org

With a copy to:

Michelle Marchetta Kenyon
City Attorney
Burke, Williams & Sorensen
1901 Harrison Street, 9th Floor
Oakland, CA 94612
MKenyon@bwsllaw.com

6.10 Legal Representation. The Parties affirm that they have been represented by counsel of their own choosing regarding the preparation and negotiation of this Agreement and the matters and claims set forth herein, and that each of them has read this Agreement and is fully aware of its contents and its legal effect. Neither Party is relying on any statement of the other Party outside the terms set forth in this Agreement as an inducement to enter into this Agreement.

6.11 Joint Preparation. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party. No presumptions or rules of interpretation based upon the identity of the party preparing or drafting the Agreement, or any part thereof, shall be applicable or invoked.

6.12 Warranty of Authority. Each Party represents and warrants that it has the right, power and authority to execute this Agreement. Each Party further represents and warrants that it has the exclusive right to prosecute and compromise the claims released by this Agreement and that it has neither made nor suffered to be made any sale, assignment, transfer, conveyance, pledge, hypothecation, or encumbrance of any kind whatsoever of any right, claim, demand, obligation, cost, expense, sanction, grievance, action, cause of action, controversy, debt, damage, arbitration, liability, duty, penalty, attorney fee, charge, suit, punitive damage, injury, loss, agreement, contract, promise, or lien released, canceled, rescinded or discharged hereby, and that it is the sole and absolute legal and equitable owner thereof, free and clear of any interest of any other person or entity. Each Party represents and warrants that it has given any and all notices, and obtained any and all consents, powers and authorities, necessary to permit it, and the persons executing this Agreement for it, to enter into this Settlement Agreement.

6.13 Binding on Assignees. This Agreement shall be binding on and inure to the benefit of the heirs, administrators, representatives, executors, successors, transferees, assigns, and/or business entities owned in whole or part by each of the Parties to the Agreement.

6.14 Entire Agreement. The Parties agree that this Agreement sets forth the final entire agreement between them and relating to the subject matter and that this document merges and supersedes all prior discussions, agreements, understandings, representations, and all other communications between them relating to the subject matter of this Agreement.

6.15 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original. This Agreement shall be binding upon the receipt of facsimile signatures.

6.16 No Modification. The terms and provisions of this Agreement may not be altered, amended, modified or otherwise changed except in writing duly executed by an authorized representative of each of the Parties.

6.17 Severability. If any one or more of the terms, provisions, sections, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, sections, promises, covenants and conditions of

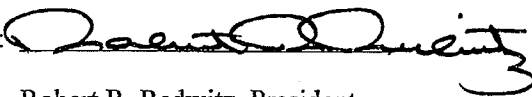
this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF this Agreement is executed and agreed to by the following, as of the last date set forth below.

It is so agreed.

**CARITAS AFFORDABLE HOUSING,
INC. a CALIFORNIA NON-PROFIT
CORPORATION**

CITY OF ROHNERT PARK

By: 
Robert R. Redwitz, President

By: _____

Name: _____
Mayor of City Council

Date: February 1, 2013

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

ABBEY, WEITZENBERG,
WARREN & EMERY

By: _____
Bryan D. Coryell, Attorneys for Caritas
Affordable Housing, Inc.

City Attorney
City of Rohnert Park

Date: _____

Date: _____