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No. 57810-3-I

**COURT OF APPEALS
OF THE STATE OF WASHINGTON,
DIVISION ONE**

LITTLE MOUNTAIN ESTATES TENANTS
ASSOCIATION, et al., Appellants,

v.

LITTLE MOUNTAIN ESTATES MHC LLC, et al.,
Respondents.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SKAGIT COUNTY
#02-2-01295-0

OPENING BRIEF OF APPELLANTS

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INTRODUCTION

This appeal concerns the protection given tenants to assign their rental agreements under the Mobile Home/Manufactured Home Landlord Tenant Act, RCW Ch. 59.20. Appellants Little Mountain Estates Tenants Association, Jerry Jewett, Virginia Haldeman, Marie McCutchin, and Wes Walton (“the Tenants”) represent the tenants at the Little Mountain Estates mobile home community in Mount Vernon, Washington. Little Mountain Estates is an adults-only gated community, with 120 leased lots.

To persuade the tenants to move to Little Mountain Estates, Respondents Little Mountain Estates, LLC, Kevin and Kari Ware and their agents (“the Landlords”) “offered 25-year leases...to tenants who would move a new manufactured home into [Little Mountain Estates] or buy an existing model home from Lamplighter Homes (a dealer of manufactured homes).” (Findings of Fact ¶ 3; CP 3100; Appendix A).

Although the offering materials were in writing, tenants did not receive the written leases until *after* they moved in. The written leases contained two attachments not advertised or mentioned earlier: (1) the 25-year lease would convert to a one- or two-year lease if the tenant assigned it to a new owner, and (2) rent would

increase with the Consumer price index and "real estate taxes, water service, television cable, maintenance of common areas, costs of operating the community building, and improvements made to the park." (Findings of Fact ¶ 13; CP 3106; Appendix A).

After a series of summary judgment motions and a bench trial, Superior Court Judge Kenneth Cowser enforced the written lease, including the attachments, despite the difference between rental agreement at move-in and the subsequent written lease.

I don't find, as suggested, that this lease that was entered into at some time by each of the plaintiffs was an alteration of some prior agreement. I don't think this lease added changed or materially altered any of the terms of any prior agreement because there was none. Advertisements do not make an agreement. A representation two or three months before that your lease is assignable, an assumption by somebody that the lease is assignable. Trust that it is assignable or any of the other things I heard that lead people to believe it is assignable is not an agreement. The lease is the agreement, the signing of the lease is the important thing.

(1/17/06 VRP 95)* The trial court applied the doctrine of *caveat emptor* to the leases tenants signed after they built their homes and moved in. (1/17/06 VRP 87) ("there is a certain obligation on the

* Page numbers in the trial transcripts do not continue across volumes. Citations are therefore to the date of the transcript and page number.

part of tenants in our case to do something besides walking to the lion's den and hoping it all turns out right").

Because the trial court's decisions undermine the statutory protections in the Manufactured/Mobile Home Act, the Tenants now appeal.

I. ASSIGNMENTS OF ERROR

In eight summary judgment orders, the trial court erroneously upheld the written leases as valid. These include:

1. The trial court erred as a matter of law by granting the Landlords' revised partial motion for summary judgment on the Lease conversion clause. (6/14/05 Order; CP 379-80; CP 379-80; Appendix B).

2. The trial court erred as a matter of law by granting in part the Landlords' partial motion for summary judgment on rent adjustments. (8/19/05 Order on Summary Judgment; CP 1180-1183; Appendix C).

3. The trial court erred as a matter of law by granting in part the Landlords' motion for summary judgment of dismissal of Kevin and Kari Ware. (9/1/05 Order Granting Summary Judgment of Dismissal of Defendants Kevin and Kari Ware In Part; CP 1539-42; Appendix D).

4. The trial court erred as a matter of law by dismissing the Tenants' claims as documented in the court's December 28, 2005 Order. (12/28/05 Order; CP 2049-50; Appendix E).

5. The trial court erred as a matter of law by ruling that the Landlords' unacknowledged leases did not violate the Statute of Frauds. (1/9/06 Order re September 9, 2005 Motions; CP 2220-2224; Appendix F).

6. The trial court erred as a matter of law by granting the Landlord's motion for partial summary judgment as to Consumer Protection Act violation on the Security Gate Issue. (1/9/06 Order Granting Defendants' Motion for Partial Summary Judgment as to CPA Violation on the Security Gate Issue; CP 2225-2227; Appendix G).

7. The trial court erred as a matter of law by granting the Landlord's motion for partial summary judgment dated September 9, 2005 (dismissing retaliation claims) (1/9/06 Order Granting Defendants' Motion for Partial Summary Judgment Dated September 9, 2005; CP 2228-2229; Appendix H).

8. The trial court erred as a matter of law by granting the Landlord's motion in limine to exclude Tenants' expert witness testimony. (Order in Limine; CP 2230-2232; Appendix I).

On June 22, 2006, the trial court entered Findings of Fact and Conclusions of Law. The Tenants' assign error to the following Findings and Conclusions:

9. Findings of Fact ¶ 3 fails to distinguish between the terms of the parties' agreement at move-in and the material modifications contained in the later written lease. (Findings of Fact ¶ 3; CP 3100; Appendix A).

10. Findings of Fact ¶ 4 fails to distinguish between the terms of the parties' agreement at move-in and the material modifications contained in the later written lease. (Findings of Fact ¶ 4; CP 3100).

11. Findings of Fact ¶ 9 errs by assuming that the Tenants had the obligation under the Manufactured/Mobile Home Act to confirm what "their contractual and legal obligations would be under the lease" before move-in. (Findings of Fact ¶ 9; CP 3101).

12. Substantial evidence in the record does not support Findings of Fact ¶ 11. (Findings of Fact ¶ 11; CP 3101).

13. Substantial evidence in the record does not support Findings of Fact ¶ 13. (Findings of Fact ¶ 13; CP 3102).

14. Substantial evidence in the record does not support Findings of Fact ¶ 14. (Findings of Fact ¶ 14; CP 3102).

15. Substantial evidence in the record does not support Findings of Fact ¶ 15. (Findings of Fact ¶ 15; CP 3102).

16. Substantial evidence in the record does not support Findings of Fact ¶ 17. (Findings of Fact ¶ 17; CP 3102).

17. Substantial evidence in the record does not support Findings of Fact ¶ 18. (Findings of Fact ¶ 18; CP 3102).

18. Substantial evidence in the record does not support Findings of Fact ¶ 19. (Findings of Fact ¶ 19; CP 3102-3).

19. Substantial evidence in the record does not support Findings of Fact ¶ 22. (Findings of Fact ¶ 22; CP 3103).

20. Substantial evidence in the record does not support Findings of Fact ¶ 26, and the Finding is erroneous as a matter of law. (Findings of Fact ¶ 26; CP 3103).

21. Substantial evidence in the record does not support Findings of Fact ¶ 31. (Findings of Fact ¶ 31; CP 3104).

22. Substantial evidence in the record does not support Findings of Fact ¶ 35. (Findings of Fact ¶ 35; CP 3104).

23. Conclusions of Law ¶ 4 is an error of law. (Conclusions of Law ¶ 4; CP 3105).

24. Conclusions of Law ¶ 5 is an error of law. (Conclusions of Law ¶ 5; CP 3105).

25. Conclusions of Law ¶ 7 is an error of law.
(Conclusions of Law ¶ 7; CP 3105).

26. Conclusions of Law ¶ 8 is an error of law.
(Conclusions of Law ¶ 8; CP 3106).

27. Conclusions of Law ¶ 9 is an error of law.
(Conclusions of Law ¶ 9; CP 3106).

28. Conclusions of Law ¶ 11 is an error of law and not supported by substantial evidence. (Conclusions of Law ¶ 11; CP 3106).

29. Conclusions of Law ¶ 12 is an error of law.
(Conclusions of Law ¶ 12; CP 3106).

30. Conclusions of Law ¶ 14 is an error of law.
(Conclusions of Law ¶ 14; CP 3107).

31. Conclusions of Law ¶ 15 is an error of law.
(Conclusions of Law ¶ 15; CP 3108).

32. Conclusions of Law ¶ 17 is an error of law.
(Conclusions of Law ¶ 17; CP 3108).

33. Conclusions of Law ¶ 18 is an error of law.
(Conclusions of Law ¶ 18; CP 3108).

34. Conclusions of Law ¶ 19 is an error of law.
(Conclusions of Law ¶ 19; CP 3108).

35. Conclusions of Law ¶ 20 is an error of law.
(Conclusions of Law ¶ 20; CP 3108).

36. Conclusions of Law ¶ 21 is an error of law.
(Conclusions of Law ¶ 21; CP 3108).

37. Conclusions of Law ¶ 22 is an error of law.
(Conclusions of Law ¶ 22; CP 3109).

38. Conclusions of Law ¶ 23 is an error of law.
(Conclusions of Law ¶ 5; CP 3109).

39. Conclusions of Law ¶ 25 is an error of law.
(Conclusions of Law ¶ 25; CP 3109).

40. Conclusions of Law ¶ 26 is an error of law.
(Conclusions of Law ¶ 26; CP 3109).

41. Conclusions of Law ¶ 27 is an error of law.
(Conclusions of Law ¶ 27; CP 3109).

42. Conclusions of Law ¶ 28 is an error of law.
(Conclusions of Law ¶ 28; CP 3109).

43. Conclusions of Law ¶ 29 is an error of law.
(Conclusions of Law ¶ 29; CP 3110).

44. Conclusions of Law ¶ 30 is an error of law.
(Conclusions of Law ¶ 30; CP 3110).

45. Conclusions of Law ¶ 31 is an error of law.
(Conclusions of Law ¶ 31; CP 3110).

46. Conclusions of Law ¶ 32 is an error of law.
(Conclusions of Law ¶ 32; CP 3110).

47. Conclusions of Law ¶ 33 is an error of law.
(Conclusions of Law ¶ 5; CP 3110).

The trial court took the unusual step of attaching transcripts of oral rulings from January 17, 18, and 19, 2006 to its Findings and Conclusions. The Tenants assign error to the findings of fact and conclusions of law contained in these transcripts as objected to above.

On July 5, 2006, the trial court entered Findings of Fact, Conclusions of Law and Judgment Summaries, awarding Landlords \$402,519.89 in attorneys' fees and costs. The Tenants assign error to the Judgment Summaries, and Conclusions of Law ¶¶ 1-7. (Findings of Fact and Conclusions of Law and Judgment for Reasonable Attorneys Fees and Costs; CP 3293-3318; Appendix J).

Issues pertaining to these assignments of error include:

A. Washington courts will enforce an unwritten 25-year lease based on written offering materials if Tenants can show "(1)

delivery and assumption of actual and exclusive possession; (2) payment or tender of consideration; and (3) the making of permanent, substantial and valuable improvements, referable to the contract.” Berg v. Ting 125 Wn. 2d 544, 556, 886 P.2d 564 (1995). The trial court found that before the signing the Landlords’ written lease, the Tenants took possession of their lots, paid a down payment and rent, and “incurred significant expense to purchase their manufactured home, prepare their lot, and install their manufactured home at [Little Mountain Estates].” (Finding of Fact ¶ 12; CP 3102). Did Tenants have an enforceable 25-year rental agreement when they moved in?

B. The Manufactured/Mobile Home Act provides that all leases must be for a term of one year or more, and “that if the landlord allows the tenant to move a mobile home, manufactured home, or park model into a mobile home park without obtaining a written rental agreement for a term of one year or more,...the term of the tenancy shall be deemed to be for one year from the date of occupancy of the mobile home lot.” RCW 59.20.050(1). Here, the parties had an unwritten rental agreement for a 25-year term when they moved in. Does the Manufactured/Mobile Home Act require a

forfeiture of the 25-year term because the rental agreement was not in writing?

C. Under the Manufactured/Mobile Home Act, RCW 59.20.073, "any rental agreement shall be assignable by the tenant to any person to whom he or she sells or transfers title to the mobile home, manufactured home, or park model." At the time they moved in, did the Tenants have the right to assign their lease for the full remainder of the 25-year term?

D. In violation of RCW 59.20.050 and RCW 59.20.060(2)(d), the Landlords presented a written lease to Tenants after moving in that referenced a separate attachment converting all assigned leases from 25- to one- or two-year terms ("the conversion attachment"). (Attachment B to 25-year lease; CP 514-16; Appendix K). This attachment was not negotiated before signing, did not disclose a waiver of Tenants' rights, and for many Tenants, was not attached to the written lease they signed. Did the trial court err by nonetheless enforcing the conversion attachment?

E. When they moved in, the Tenants believed their rent would increase based on the Consumer Price Index. The Landlords' written lease had a second clause on the separate attachment that increased rent by a CPI formula and "real estate

taxes, water services, television cable, maintenance of common areas, cost of operating the community building and improvements made to the park.” (Attachment A to 25-year lease; CP 514-16; Appendix K). Did the trial court err by enforcing the rent adjustment attachment?

F. The Consumer Protection Act prohibits landlords from providing tenants with a written lease that violates the Manufactured/Mobile Home Act and “misleads or misrepresents something of material importance.” Holiday Resort Community Ass'n v. Echo Lake Associates, LLC, 134 Wn. App. 210, 226, 135 P.3d 499, (2006). The Landlords’ written lease in this case violates RCW 59.20.050, .060, and .073, and misrepresented the rental agreement established when the Tenants moved in. Did the trial court err by finding no violation of the Consumer Protection Act?

G. Under the Manufactured/Mobile Home Act, Consumer Protection Act, and the written leases, the prevailing party is entitled to an award of reasonable attorneys’ fees and costs. Are tenants entitled to reversal of the award of fees at trial and to an award of fees on appeal?

II. STATEMENT OF FACTS

Little Mountain Estates is an adults-only manufactured home park that caters to elderly residents. (1/12/06 VRP 57-58). The average age of the residents is 70. (1/10/06 VRP 69). Opened in the early 1990s, the Park had trouble attracting residents to move there. As Kevin Ware, a park owner, explained at trial,

At the time [of the first Gulf War] nobody knew where that was going, whether we were going to get nuked or what. And people get very hesitant to move or sell homes when that kind of feeling is present in the country.

So a lot of older people who needed to sell their homes to move into Little Mountain Estates would have trouble selling their home. And in addition to that, a lot of people were very – even older folks were hesitant to move. So that was one of the reasons, kind of what was going on in the nation at that time...

The second reason was we recall interest rates were not that favorable at the time.

The third reason was that historically, with the over-55 manufactured home parks a lot of older people had been really burned with the park being promoted as something that ultimately was going to look beautiful and the owner is going to stick to the rules all the way through regardless of how much it slows down absorption, and they have been burned. So people are very cynical.

(1/12/06 VRP 57-58).

A. The 25-Year Lease

To counteract lagging sales, the Park owners joined with Lamplighter Homes, a manufactured home producer, to offer 25-year leases for residents who would buy a Lamplighter home or install their own unit. (1/12/06 VRP 84). Leeta Rice, a Lamplighter employee who worked on site at Little Mountain Estates, described the switch to 25-year leases.

I would have been told by, actually, all three of the Wares at different times that the leases were 25-year leases governed – any rent increases would have been governed by the Consumer Price Index.

(1/12/06 VRP 125). Although Little Mountain Estates had blank 25-year leases that the Landlords would have Tenants sign, Ms. Rice did not give them to prospective customers.

Q. Ms. Rice, were blank 25-year leases a part of the Little Mountain Estates information that you gave to prospective buyers?

A. No.

* * * *

Q. Did the Wares ever give you folders with blank 25-year leases inside of them –

A. No.

Q. -- for you to distribute to prospective buyers?

A. No.

(1/12/06 VRP 124).

The Wares promoted the Park and the 25-year leases heavily, advertising on radio and in local magazines. (Trial Exhibit 168; 1/13/06 VRP 116). And this began attracting customers like Shirley Kristiansen, a 75-year-old resident of the Park.

Q. How did you first learn of Little Mountain Estates?

A. I heard an advertisement on KIXI radio, and when they had their open house – when they were going to have their open house.

(1/10/06 VRP 114). The Wares and Lamplighter also handed out brochures that offered 25-year leases tied to the CPI. They began selling homes and leasing lots to their target customers. Ultimately, some 80 residents received 25 year leases. (CP 376).

B. Tenants Received Leases After They Bought A Home, Invested Money In the Lot, and Moved In

To qualify for a 25-year lease, a customer had to put a deposit on a lot, buy a manufactured home, install it there, and landscape the lot according to the Landlord's "Mandatory Amenities Package." (Trial Exhibit 3; 1/9/06 VRP 31). Resident Jerry Jewitt described the significant investment tenants had to make before getting a 25-year lease.

Q. Did you have to set up your own mobile up?

A. I had to pay for it.

* * * *

Q. How much did your home cost?

A. \$78,529

Q. Okay. How much did the setup cost?

A. \$37,636.

Q. At the time that you entered into that [purchase and sales] agreement had you seen a lease –

A. No.

(1/10/06 VRP 158). Janice Harman, another Tenant, testified to spending \$106,000 to buy her home, satisfy the amenity package, and qualify for the 25-year lease. (1/9/06 VRP 28). The trial court confirmed that “each of the incurred significant expense to purchase their manufactured home, prepare their lot, and install their manufactured home at Little Mountain Estates.” (Findings of Fact ¶ 12; CP 3104)

Only after a Tenant moved in did the Landlord give them a 25-year lease to sign. The trial court found that the Landlord did not obtain a signed copy of the lease before the tenant moved in, violating the Manufactured/Mobile Home Act. (Conclusion of Law ¶ 3; CP 3107).

C. The Written Lease Did Not Match The Tenant's Understanding

After they moved in, the Tenants began signing leases. The standard form lease referred to two Attachments, A and B. (CP 514-16; Appendix K). Attachment A proposed a complicated formula for calculating rent adjustments. (CP 516). Attachment B limited a Tenants' ability to sell their homes by limiting any assignment of their leases to a one-year term.

This lease shall be assignable by tenant only to the person to whom Tenant sells or transfers title to the manufactured home on said lot subject to the following:

(c) Upon assignment by Tenant of Tenant's leasehold interest in the homesite, this rental agreement shall automatically convert to a one (1) year lease beginning on the effective date of the assignment. The new monthly rent shall be the rent charged by landlord following the most recent rent increase for the park preceding the effective date of the assignment.

(CP 516).

Most Tenants did not discover this provision until they, or their neighbors, attempted to sell their manufactured homes. As Virginia Haldeman testified,

Q. Can you tell me whether or not you were informed what type of lease you would receive at Little Mountain?

A. Yes. A 25-year lease. And I asked what would happen in the event of a sale before the 25 years was completed, and I was assured that the new owner would get the balance of that 25 years.

Q. Was that important to you?

A. Yes. It was very important to me.

Q. Tell us why.

A. Because that lease was tied to the Consumer Price Index for rent raises. And also because any time you buy a home you're concerned about resale value, and that would be a tremendous incentive for someone to purchase that home if they could have the remainder of that 25-year lease.

(1/13/06 VRP 122). Ms. Haldeman sold her unit, but only with a one-year term. She and 92 current and former Tenants sued the owners of Little Mountain Estates to receive the benefits of their bargain.

D. The Trial Court's Ruling

After extensive pretrial discovery and briefing, Superior Court Kenneth Cowsert presided over a ten-day bench trial. Judge Cowsert ruled for Little Mountain Estates, concluding that the lease attachments were valid and enforceable. Although he concluded that the Landlords violated the Manufactured/Mobile Home Act by not providing Tenants with a copy of the lease before they moved

in, Judge Cowser faulted the Tenants for not reading the leases before signing them.

Each of the 25-Year Residents were provided the opportunity to review the lease prior to signing it.

(Findings of Fact ¶ 14; CP 3102). The court awarded Landlords their fees and costs totaling \$402,519.89. (CP 3293-3318).

Because the trial court's ruling undermines the statutory requirements of the Manufactured/Mobile Home Landlord Tenant Act, Tenants now appeal.

ARGUMENT

III. STANDARD OF REVIEW

This Court reviews the trial court's findings of fact for substantial evidence in the record and conclusions of law *de novo*.

Estate of Jones, 152 Wn.2d 1, 8-9, 93 P.3d 147 (2004).

The Court reviews the trial court's construction of the Manufactured/Mobile Home Act *de novo*.

Statutory interpretation is a question of law, which this court reviews *de novo*. "The primary goal of statutory construction is to carry out legislative intent." Cockle v. Department of Labor & Indus., 142 Wn.2d 801, 807, 16 P.3d 583 (2001). Legislative intent is determined primarily from the statutory language, viewed "in the context of the overall legislative scheme." Collection Servs. v. McConnachie, 106 Wn. App. 738, 741, 24 P.3d 1112 (2001). Each statutory provision should be read together with others "to

achieve a harmonious and unified statutory scheme.”
State v. Chapman, 140 Wn.2d 436, 448, 998 P.2d
282, cert. denied, 531 U.S. 984, 121 S.Ct. 438, 148
L.Ed.2d 444, (2000).

Holiday Resort Community Ass'n v. Echo Lake Associates, LLC,
134 Wn. App. 210, 222, 135 P.3d 499, 505 (2006).

**IV. UNDER THE MANUFACTURED/MOBILE HOME ACT, THE TENANTS
HAD A 25-YEAR, ASSIGNABLE RENTAL AGREEMENT WHEN THEY
MOVED IN**

This case turns on the proper legal interpretation of the
Manufactured/Mobile Home Act. The Act addresses the unique
problems created by mobile home leases.

This chapter shall regulate and determine legal rights,
remedies, and obligations arising from any rental
agreement between a landlord and a tenant regarding
a mobile home lot and including specified amenities
within the mobile home park, mobile home park
cooperative, or mobile home park subdivision, where
the tenant has no ownership interest in the property or
in the association which owns the property, whose
uses are referred to as a part of the rent structure
paid by the tenant. *All such rental agreements shall
be unenforceable to the extent of any conflict with any
provision of this chapter.*

RCW 59.20.040 (emphasis added). The Legislature granted
special regulatory protection to mobile home tenants for two
reasons.

First, as compared to traditional private residences,
mobile homes are owned in disproportionately high
numbers by low income and elderly citizens. To the

extent these citizens have less power and fewer options available to them, they are viewed as warranting special protection. Second, mobile homes often represent a sizable investment on the part of the owner. Difficulties associated with a mobile home lot can at least cause the owner to incur the substantial expense and inconvenience of moving, and at the worst can lead to the loss of the mobile home resulting in severe economic hardship or homelessness.

Washington Real Property Deskbook § 15.3, pp. 15-19 (3rd Ed. 1997).

Three provisions of the Act are at issue here. First, under RCW 59.20.050, a Landlord must have tenants sign and possess a written lease *before* they move into the Park.

(1) No landlord may offer a mobile home lot for rent to anyone without offering a written rental agreement for a term of one year or more... No landlord shall allow a mobile home, manufactured home, or park model to be moved into a mobile home park in this state until a written rental agreement has been signed by and is in the possession of the parties: PROVIDED, That if the landlord allows the tenant to move a mobile home, manufactured home, or park model into a mobile home park without obtaining a written rental agreement for a term of one year or more, or a written waiver of the right to a one-year term or more, the term of the tenancy shall be deemed to be for one year from the date of occupancy of the mobile home lot.

RCW 59.20.050(1). The default remedy for a Landlord's violation of this provision is a "deemed" one-year tenancy. As discussed in

subsection below, this provision does not require the court to terminate an unwritten rental agreement for 25 years and substitute a one-year term in its place.

Second, under RCW 59.20.073, the rental agreement, including its term, is fully assignable. "Any rental agreement shall be assignable by the tenant to any person to whom he or she sells or transfers title to the mobile home, manufactured home, or park model." RCW 59.20.073(1).

Third, "any rental agreement executed between the landlord and tenant shall not contain any provision:...(d) By which the tenant agrees to waive or forego rights or remedies under this chapter." RCW 59.20.060(2)(d).

These three provisions invalidated the Landlords' attempt to convert 25-year rental agreements to one- or two-year agreements after assignment. When the Tenants moved into Little Mountain Estates, they had an enforceable, unwritten rental agreement for 25-years with no restrictions on assignment. Although Tenants made the mistake of "trusting" their Landlords and not reading the written leases closely, the Landlord's Conversion Clause violated the Manufactured/Mobile Home Act, and its enforcement was unconscionable. The trial court erred by finding no unwritten rental

agreement, upholding the legality of the Conversion Clause attachment, and requiring the Tenants to forfeit their 25-year leases when they assigned them to a buyer.

A. The Tenants Had An Unwritten 25-year Rental Agreement

The Legislature in the Manufactured/Mobile Home Act regulated all rental agreements between Landlord and Tenants, whether written or unwritten. RCW 59.20.040 (“This chapter shall regulate and determine legal rights, remedies, and obligations arising from *any* rental agreement between a landlord and a tenant”). The Legislature also placed the burden on Landlords to obtain written rental agreements from Tenants before they move in. “No landlord shall allow a mobile home, manufactured home, or park model to be moved into a mobile home park in this state until a written rental agreement has been signed by and is in the possession of the parties.” RCW 59.20.050(1).

The Landlords at Little Mountain Estates created unwritten 25-year rental agreements by offering 25-year leases for tenants who built or purchased a manufactured home at the Park. The Tenants accepted the offer by placing a down payment on a lot, purchasing a manufactured home, arranging for its installation at

the Park, and landscaping their lot according to the Landlords' requirements. Under Washington law, this created an enforceable contract implied at fact. Harberd v. City of Kettle Falls, 120 Wn. App. 498, 516, 84 P.3d 1241 (2004) ("an implied contract comes about when through a course of dealing and common understanding, the parties show a mutual intent to contract with each other").

This unwritten rental agreement was valid under the part performance exception to the Statute of Frauds.

Application of the doctrine requires consideration of three factors: (1) possession; (2) payment or tender of consideration; and (3) permanent, substantial, and valuable improvements.

Bartlett v. Betlach, 136 Wn. App. 8, 15, 146 P.3d 1235 (2006). As the trial court found after trial, "each of the 25-Year Residents incurred significant expense to purchase their manufactured home, prepare their lot, and install their manufactured home at [Little Mountain Estates]." (Finding of Fact ¶ 12; CP 3102).

Finally, under the Manufactured/Mobile Home Act, the Tenants could assign the full 25-year term to a subsequent purchaser. "An implied rental agreement existed, which was assignable." Gillette v. Zakarison, 68 Wn. App. 838, 842, 846 P.2d

574 (1993). The Act does not require a written rental agreement to be assignable, only a rental agreement. RCW 59.20.073(1) (“any rental agreement shall be assignable”).

The trial court erred when it concluded that no rental agreement existed before the Tenants signed the written lease. In Conclusion of Law ¶ 8, the trial court stated,

The 25-Year Residents’ reservation of a lot with the payment of a lot reservation fee and commencement of installing a newly purchased manufactured home on the lot with the cooperation of [Little Mountain Estates] or Lamplighter, together with lot improvements, including grading, landscaping, and sidewalks, or tenants’ purchase of model homes that were already installed with lot improvements and landscaping, did not constitute facts of an agreement to rent a lot.

(Conclusion of Law ¶ 8; CP 3107). The parties’ course of dealing, combined with the Tenants substantial investment in the lot, created an unwritten rental agreement for 25 years.

B. The Manufactured/Mobile Home Act Does Not Require Termination of the 25-Year Term

In his oral ruling, Judge Cowser suggested that the lack of a written rental agreement would require a one-year term, not a 25-year one. Reading from RCW 59.20.050, the judge stated,

[the] Landlord can’t allow a mobile home, or modular home to be moved into the park unless there’s a written rental agreement signed in the possession of

the tenant...But then it says: if the landlord does allow that moving in without a obtaining a written rental agreement for a term of one year or more, the term of the tenancy shall be deemed to be for one year. *So we're still back to they've got to offer a year's tenancy.* They can't let you move in unless they've got a written agreement from you, but if they do let you move in without the written agreement it's a one year tenancy.

(1/17/06 VRP 84). The trial court's legal interpretation of RCW 59.20.050 is incorrect for two reasons.

First, the default one-year term is a minimum, not a maximum term for an unwritten rental agreement. Throughout the Manufactured/Mobile Home Act, the Legislature referred to a one-year term as the statutory minimum, designed to replace month-to-month tenancies. See e.g., RCW 59.20.090 ("unless otherwise agreed rental agreements shall be for a term of one year"); RCW 59.20.050(1) (term of less than one year requires written waiver). Nowhere does the Act suggest that one year is the maximum allowable. When RCW 59.20.050 "deems" an implied rental agreement of one year, it assumes the parties have not agreed to a longer term.

Second, converting the 25-year rental agreements to one-year would reward the Landlords here for violating the statute. As this Court has ruled, "Legislative intent is determined primarily from

the statutory language, viewed in the context of the overall legislative scheme, and each statutory provision should be read together with others to achieve a harmonious and unified statutory scheme.” Holiday Resort Community Ass'n v. Echo Lake Associates, LLC 134 Wn. App. 210, 222, 135 P.3d 499 (2006). The landlord has the statutory responsibility to ensure a “written rental agreement has been signed by and is in the possession of the parties.” RCW 59.20.050(1).

A violation of this statutory responsibility does not excuse the Landlords from honoring their promise to lease lots for 25 years. The trial court’s decision to the contrary undercuts the protections given tenants under the Act.

V. THE TRIAL COURT ERRED BY ENFORCING THE CONVERSION CLAUSE AND RENT ADJUSTMENT ATTACHMENTS

In the written lease required of Tenants, the Landlords inserted an attachment with two previously undisclosed or discussed clauses. Attachment A contained a rent adjustment formula that included more than the CPI mentioned in the Park brochures and offering materials. Attachment B contained a conversion clause that turned a 25-year lease into a one- or two-year lease if the tenant assigned the lease to a purchaser.

The trial court enforced both attachments based on five premises: (1) the attachments did not materially differ from the parties' understanding at move-in; (2) the attachments were presented with the leases at signing; (3) the attachments are valid under the Manufactured/Mobile Home Act; (4) the attachments were not, with one exception, unconscionable, and (5) the Tenants cannot complain of a contract they freely signed. Examined closely, these conclusions are in error under the facts of this case and the meaning of the Act.

A. The Attachments Materially Modified the Contract

The trial court ruled that the written leases did not materially change what the Tenants believed they were getting. For example, the court found,

each of the 25-Year Residents voluntarily entered into the Lease on or about the date identified in their Lease, and intended that they would receive a 25-year guarantee that they would be able to reside in the mobile home park. Each of the 25-Year Residents received what was intended.

(Findings of Fact ¶ 15; CP 3103).

Substantial evidence does not support this Finding. As Jerry Jewett testified at trial,

Q. At the time that you purchased – at the time you reserved a lot in Little Mountain Estates

what was your understanding of the lease terms?

A. That it was a 25-year lease and assumable.

THE COURT: And what?

THE WITNESS: Assumable.

(1/10/06 VRP 162). Other witnesses confirmed this point. (Jane Harmon, 1/9/06 VRP 60) (“about 2000 when I found out that they were not allowing the purchaser of the 25-year leases to assume the full lease”); (Shirley Kristiansen, 1/10/06 VRP 134) (“I did not object to the lease until on the resales, when the new people that were coming in, the one-year leases”). These witnesses testified that the rent adjustment clause was also different from what was promised. (1/10/06 VRP 137, 161).

The Tenants protested to the Landlord, and ultimately filed this lawsuit because they did not receive what they believed they had purchased – a fully assignable 25-year lease tied to the CPI.

Next, under the Manufactured/Mobile Home Act, the conversion of a 25-year lease to a one-year lease at assignment is a material change. Under RCW 50.20.073, a rental agreement is assignable for the remainder of the term – that is the meaning of assignment. “An assignee of a contract steps into the shoes of the

assignor, and has all of the rights of the assignor.” Puget Sound Nat. Bank v. State Dept. of Revenue, 123 Wn.2d 284, 292, 868 P.2d 127 (1994). Absent the Conversion Clause in Attachment B, all purchasers of 25-year leases would get the remainder of the lease term.

Finally, Paul Ware, one of the Landlords, conceded that there is a substantial difference between a 25-year assignable lease, and one with a conversion clause to one-year.

Q. Is it a fact that at the time that you adopted the 25-year lease you regarded them as a loss leader?

A. They were definitely used to bring tenants in. We would rather have had a one-year lease.

(1/10/06 VRP 61). The Landlords’ written leases were not mirror images of the advertising and offering materials that drew Tenants to the Park. They contained material modifications – a Conversion Clause on assignment and a much more extensive, and expensive, rent adjustment.

B. The Missing Attachments Were Not Part of Lease the Tenants Signed

Because the Conversion Clause and Rent Adjustment Attachments significantly modified the rental agreement, Tenants had to agree to them before they became part of the contract.

Here, Tenants testified that the Landlords did not provide them with copies of the Attachments when they signed the written lease. For example, Virginia Haldeman described what she signed after moving into the Park.

Q. You have been asked previously at depositions whether or not Attachment A and B, marked as an exhibit, was attached to your lease at the time you signed it; is that correct?

A. Yes.

Q. What has been your answer?

A. No.

* * * *

Q. Ms. Haldeman, what is the basis for your answer that Attachment A and B was not attached to your lease at the time you signed it?

A. Number one, it was not attached. And, furthermore, it wasn't until I was at a board meeting, probably two years later, that I was even aware that there should have been an attachment to it. And at that time I asked for and was given a copy of the attachment.

(1/13/06 VRP 115). Other Tenants had similar experiences. See e.g., (1/10/06 VRP 160) (Jerry Jewett). Of the 35 current 25-year leases, three did not refer to Attachment B, the conversion clause. (CP 375).

Furthermore, paragraph 24 of the written lease requires identification of any attachments. Twenty seven leases have nothing written or identifying the attachments. (CP 376). Only six of the leases were identical comparing the Tenants' and the Landlords' copies. (CP 377).

The failure to present the complete lease to Tenants at the time of signing proves that Tenants did not agree to the modifications in the Attachments.

The acceptance of an offer is always required to be identical with the offer, or there is no meeting of the minds and no contract." Blue Mt. Constr. Co. v. Grant Cy. Sch. Dist. 150-204, 49 Wn.2d 685, 688, 306 P.2d 209 (1957); accord Rorvig v. Douglas, 123 Wn.2d 854, 858, 873 P.2d 492 (1994). Generally, a purported acceptance which changes the terms of the offer in any material respect operates only as a counteroffer, and does not consummate the contract.

Sea-Van Investments Associates v. Hamilton, 125 Wn.2d 120, 126, 881 P.2d 1035 (1994). The trial court did not reach this issue, relying instead on the Landlords making the lease available for inspection. As discussed below, the Manufactured/Mobile Home Act requires landlords to put the entire lease in the tenants' possession before they move in.

The trial court erred by finding the lease Attachments enforceable even though the Tenants did not see them until after they signed the lease.

C. The Manufactured/Mobile Home Act Invalidates the Conversion Clause

Early in the case, the trial court on summary judgment upheld the Landlords' conversion clause as valid under the Act.

Plaintiffs' claims that paragraph 6 of the "Little Mountain Estates 25 year lease agreement" and its "Exhibit B" violates the Mobile Home/Manufactured Landlord Tenant Act (RCW 59.20 et seq.) or the Consumer Protection Act (RCW 19.86 et seq.) are dismissed with prejudice.

(6/14/05 Order; CP 379). This was erroneous as a matter of law, and this error invalidated all further proceedings on the case.

No court has ruled on or upheld a conversion clause on assignment. Under RCW 59.20.073, tenants have a right to assign their rental agreements – an important statutory benefit given the history of landlords refusing to allow tenants to sell their homes and leases to a new resident. Under RCW 59.20.060(2)(d), a landlord may not require a tenant in a lease "to waive or forego rights or remedies under this chapter."

The Conversion Clause requires Tenants to forego their right to assign the remainder of their 25-year leases. Instead, they can

only assign a one- or two-year lease. Under the Manufactured/Mobile Home Act, this invalidates the Conversion Clause. "All such rental agreements shall be unenforceable to the extent of any conflict with any provision of this chapter." RCW 59.20.040. The trial court erred by not striking the Conversion Clause as an illegal forfeiture or waiver of assignment rights under the Act.

In addition, Washington courts review waiver clauses strictly. Waivers that appear in rental agreements are disclaimers of the landlord's obligations, and these disclaimers are disfavored under the law. Chauvlier v. Booth Creek Ski Holdings, Inc., 109 Wn. App. 334, 339-40, 35 P.3d 383 (2001) ("strictly construed...and are enforceable only if their language is sufficiently clear"). The clause does not require Tenants to separately sign, initial or acknowledge it, nor does it include the words "waiver" or "release". The clause does not in any way identify that the Tenant is giving up a significant benefit under the lease and the Act.

The Manufactured/Mobile Home Act protects Tenants from artfully worded rental agreements that require them to waive their statutory protections. Here, the Conversion Clause conflicts with

the assignment rights under RCW 59.20.073 and is therefore unenforceable.

D. The Conversion Clause Is Unconscionable

In Washington, we have recognized two categories of unconscionability, substantive and procedural. Substantive unconscionability involves those cases where a clause or term in the contract is alleged to be one-sided or overly harsh. 'Shocking to the conscience', 'monstrously harsh' and 'exceedingly calloused' are terms sometimes used to define substantive unconscionability.

Procedural unconscionability is the lack of a meaningful choice, considering all the circumstances surrounding the transaction including the manner in which the contract was entered, whether the party had a reasonable opportunity to understand the terms of the contract, and whether the important terms [were] hidden in a maze of fine print. We have cautioned that these three factors [should] not be applied mechanically without regard to whether in truth a meaningful choice existed.

Adler v. Fred Lind Manor 153 Wn.2d 331, 344-345, 103 P.3d 773 (2004).

Here, the Conversion Clause was procedurally unconscionable. By the time Tenants moved their homes and prepared their lots, they had no meaningful choice to reject Attachments A and B. As the trial court found,

The court finds that the bargaining position of the parties began to change in favor of [Little Mountain Estates] when the 25-Year Residents undertook to

purchase new homes and to arrange to have them set up on the lot that they had reserved without first confirming their contractual and legal obligations with the landlord.

The court finds that the bargaining positions of the parties shifted in favor of [Little Mountain Estates] after the 25-Year Residents changed their position by purchasing their homes and installing their homes at [Little Mountain Estates] without first confirming their contractual and legal obligations would be under the lease.

The court finds that at the time of lease signing the 25-Year Residents were in a difficult position to withdraw from the landlord-tenant relationship with [Little Mountain Estates].

(Findings of Fact ¶¶ 9-111; CP 3102).

The Tenants profound lack of bargaining power after they installed their homes, coupled with their reliance on the Landlords' assurances of a 25-year lease, makes the subsequent lease attachments procedurally unconscionable. At their stage of life, the Tenants had no meaningful alternative other than to sign the contract, which seemed to confirm what they thought they were getting.

The Attachments are also substantively unconscionable to the extent they conflict with the provisions of the Manufactured/Mobile Home Act. The trial court correctly found

one portion of Attachment A unconscionable on these grounds.
(Conclusions of Law ¶ 16; CP 3108).

E. The Manufactured/Mobile Home Act Requires A
Written Lease Before Move-In For Good Reason

At the core of the trial court's ruling was the Tenants' failure to read the written leases before signing them.

Each of the 25-Year Residents had the opportunity to request to review the Lease prior to incurring the expense to either place a new home in [Little Mountain Estates] or purchase an existing home at [Little Mountain Estates]. (One prospective tenant had casually reviewed a current tenant's lease during a social visit, and another had asked for the lease and been told she didn't need it).

(Findings of Fact ¶ 11; CP 3101). In effect, the Tenants failure to review the lease excused the Landlords' violation in not providing it.

This is incorrect for two reasons. First, the Manufactured/Mobile Home Act places the burden on landlords to ensure tenants possess a written rental agreement before moving in. "No landlord shall allow a mobile home, manufactured home, or park model to be moved into a mobile home park in this state until a written rental agreement has been signed by *and is in the possession of the parties.*" RCW 59.20.050. Why would possessing in advance be an equal requirement to signing in advance? The answer is to prevent what happened here. By not

ensuring that their Tenants had a copy of the lease in advance, to study, reread, and understand, the Landlords created the unfair situation of tenants signing after they have committed to living there. The trial court inappropriately shifted the burden of obtaining the lease from landlord to tenant.

Second, the Landlords' failure to comply with the statute deprived Tenants of a meaningful choice over whether to live at Little Mountain Estates. The trial court believed that the only remedy for the Landlord's violation of RCW 59.20.050 was to give tenants a one-year lease. That is not the case. Under RCW 59.20.040, the Legislature gave courts broad powers to invalidate contracts "to the extent of any conflict with any provision of this chapter." RCW 59.20.040. An appropriate remedy for the Landlords' violation here is to rule unenforceable the material changes in the written leases. It is only appropriate that the Landlord not benefit from depriving Tenants of a fully assignable lease, calculated according to the CPI.

VI. THE LANDLORDS VIOLATED THE CONSUMER PROTECTION ACT

Because the Landlords' written lease violates the Manufactured/Mobile Home Act, and their practice misleads or

misrepresents something of material importance, the Landlords violated the Consumer Protection Act.

The CPA does not define “unfair or deceptive act or practice.” Whether an alleged act is unfair or deceptive is a question of law. Implicit in the definition of “deceptive” under the CPA is the understanding that the practice misleads or misrepresents something of material importance.

While we conclude the language in the 1997 Rental Agreement contravenes the MHLTA and is an unfair act or practice under the CPA, whether the 1997 Rental Agreement has the capacity to deceive a substantial portion of the public is a question of fact.

Holiday Resort Community Ass'n v. Echo Lake Associates, LLC

134 Wn. App. 210, 226-227, 135 P.3d 499 (2006).

Remand for retrial is appropriate in this case. Since the trial court concluded the Landlords' lease did not violate the Act, it did not reach the remaining elements of the CPA claim. The question on remand is the same as that in Holiday Resort: did the written lease have the capacity to deceive a substantial portion of the public?

VII. THE TENANTS ARE ENTITLED TO FEES

Because the trial court erred on upholding the Landlords' lease, this Court should also vacate the trial court's award of reasonable attorneys' fees and costs. “What has been given or

paid under the compulsion of a judgment the court will restore when its judgment has been set aside and justice requires restitution.” Marriage of Mason 48 Wn. App. 688, 693, 740 P.2d 356 (1987). Furthermore, under RAP 12.8, the Court should instruct the trial court to order restitution of all money Tenants have paid Landlords or their attorneys under the trial court’s judgment.

Tenants also request fees on appeal under RAP 18.1. Under RCW 59.20.110, “in any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney’s fees and costs.” This allows fees on appeal as well. Gillette v. Zakarison 68 Wn. App. 838, 843, 846 P.2d 574 (1993) (“prevailing party under the Act...is entitled to reasonable attorney fees on appeal”).

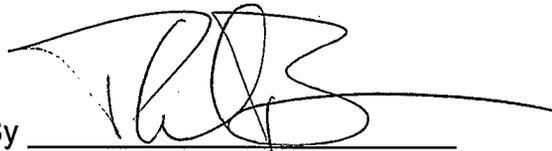
CONCLUSION

The Manufactured/Mobile Home Landlord Tenant Act substantially altered the rules of contract between a park owner and mobile home owner. Appellants Little Mountain Tenants’ Association and its members respectfully request this court to hold unenforceable the conversion clause and rent adjustment formula that is not appropriately part of their rental agreement. Appellants request the Court to vacate the trial court’s judgments, enter

judgment for Appellants on the Manufactured/Mobile Home Act claims, order retrial of the Consumer Protection Act claims, and award fees and costs at trial and on appeal.

DATED this 11th day of June, 2007.

BURI FUNSTON MUMFORD, PLLC



By _____
Philip J. Buri, WSBA #17637
1601 F. Street
Bellingham, WA 98225
360/752-1500

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on the date stated below, I mailed or caused delivery of the Opening Brief of Appellant to:

Walter Olsen, Jr.
Olsen Law Firm, PLLC
604 W. Meeker Street, Suite 101
Kent, WA 98032

DATED this 11TH day of June, 2007.



Heidi Main

FILED
COURT OF APPEALS DIV. #3
STATE OF WASHINGTON
2007 JUN 13 AM 10:04

No. 57810-3-I

**COURT OF APPEALS
OF THE STATE OF WASHINGTON,
DIVISION ONE**

LITTLE MOUNTAIN ESTATES TENANTS ASSOCIATION, et al.,
Appellants,

v.

LITTLE MOUNTAIN ESTATES MHC LLC, et al.,
Respondents.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SKAGIT COUNTY
#02-2-01295-0

APPENDICES TO THE OPENING BRIEF OF APPELLANTS

BURI FUNSTON MUMFORD, PLLC

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2007 JUN 13 11:10:04
COURT OF APPEALS
STATE OF WASHINGTON


APPENDIX A

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

LITTLE MOUNTAIN ESTATES
TENANTS ASSOCIATION, a
Washington non-profit corporation, as
assignee, JERRY JEWETT, VIRGINIA
HALDEMAN, MARIE McCUTCHIN,
and WES WALTON, on behalf of
themselves and classes of similarly
situated persons,

Plaintiffs,

v.

LITTLE MOUNTAIN ESTATES MHC,
LLC., a Washington limited liability
company; PEREGRINE HOLDINGS
LLC, a Washington limited liability
company; and KEVIN A. WARE and
KARI M. WARE, husband and wife,

Defendants.

v.

THIRD PARTY PLAINTIFFS AS
IDENTIFIED IN EXHIBITS A AND B,

Third Party Plaintiffs.

No. 02-2-01295-0

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Clerk's Action Required

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 2

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FILED

1 THIS MATTER having come on regularly for trial from January 6, 2006
2 to January 20, 2006, and the court, having bifurcated this action by Order dated
3 December 23, 2005, having considered the testimony and evidence, having
4 accepted the parties' stipulations regarding the facts of this case, and having
5 made various findings of fact and conclusions of law in its oral rulings dated
6 January 17, 2006, January 18, 2006, and January 20, 2006, each of which are
7 attached hereto, and incorporated herein, now makes the following written
8 findings and conclusions:

9 **FINDINGS OF FACT**

10 1. This action was filed on August 26, 2002.

11 2. Little Mountain Estates ("LME") is a high quality manufactured
12 home community which was constructed in the early 1990s, and is intended for
13 and operated as housing for older persons. LME rents individual lots to its
14 residents to place their manufactured home in which the resident lives.

15 3. From 1990 to 1997, the landlord offered 25-year leases (the
16 "Lease") to tenants who would move a new manufactured home into LME or buy
17 an existing model home from Lamplighter Homes (a dealer of manufactured
18 homes). The landlord and Lamplighter had an agreement which allowed
19 Lamplighter to install model homes in the park to sell to persons who agreed to
20 purchase the home from Lamplighter and rent the lot which the home occupied
21 from the landlord.

22 4. Prior to August 28, 1996, LME advertised the term of the Lease as
23 "25-years tied to the CPI" pursuant to the terms contained in the Lease. The lease
24 presented to the tenants included an un-advertised clause that converts the
25 balance of the 25-year term to a one or two year term upon sale of the home.

26
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 3

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1 5. The tenants purchased homes at prices between \$60 - \$80,000 for
2 the homes and incurred the additional expense to prepare the resident's lot for
3 placement of the mobile home.

4 6. Each Plaintiff and Third Party Plaintiff identified in Exhibit C who
5 signed a Lease ("25-Year Residents"), made the necessary arrangements to hold a
6 manufactured home lot at LME for a deposit, purchase an existing model home,
7 or purchase and move a new manufactured home to LME.

8 7. The court finds that initially there was an equality of bargaining
9 position between the landlord who wanted to lease lot spaces in LME and
10 prospective residents who could choose or not choose to move into LME.

11 8. The court finds that the bargaining position of the parties began to
12 change in favor of LME when the 25-Year Residents undertook to purchase new
13 homes and arrange to have them set up on the lot that they had reserved without
14 first confirming their contractual and legal obligations with the landlord.

15 9. The court finds that the bargaining position of the parties shifted in
16 favor of LME after the 25-Year Residents changed their position by purchasing
17 their homes and installing their homes at LME without first confirming their
18 contractual and legal obligations would be under the lease. *o e*

19 10. The court finds that at the time of lease signing the 25-Year
20 Residents were in a difficult position to withdraw from the landlord-tenant
21 relationship with LME.

22 11. Each of the 25-Year Residents had the opportunity to request to
23 review the Lease prior to incurring the expense to either place a new home in
24 LME, or purchase an existing home at LME. (One prospective tenant had
25 casually reviewed a current tenant's lease during a social visit, and another had
26 asked for the lease and been told she didn't need it).

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 4

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1
2 12. Each of the 25-Year Residents incurred significant expense to
3 purchase their manufactured home, prepare their lot, and install their
4 manufactured home at LME. Insofar as the 25-Year Residents did so without
5 reviewing or requesting the Lease, their bargaining position decreased.

6 13. Many of the 25-Year Residents either installed their manufactured
7 home at LME without reviewing or requesting the Lease, or moved into their
8 manufactured home at LME without reviewing or requesting the Lease, and then
9 the parties subsequently agreed to the terms contained in the written Lease.

10 14. Each of the 25-Year Residents were provided the opportunity to
11 review the Lease prior to signing it.

12 15. Each of the 25-Year Residents voluntarily entered into the Lease
13 on or about the date identified in their Lease, and intended that they would
14 receive a 25-year guarantee that they would be able to reside in this mobile home
15 park. Each of the 25-Year Residents received what was intended.

16 16. None of the 25-Year Residents objected to the Lease at the time
17 that they signed their lease, nor did they commence an action against defendants
18 until this action was filed on August 26, 2002.

19 17. The language contained in the Lease is straightforward and easy to
20 read. There is nothing hidden in a maze of fine print or that is written in a way
21 that is not understandable by a reasonable person.

22 18. Either at or after the time of signing their respective Lease, the 25-
23 Year Residents learned that in the event of an assignment, their Lease converted
24 to a one or two year term.

25 19. Each of the 25-Year Residents has paid rent as provided by their
26 Lease since it was signed, and the parties have performed their respective

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 5

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1 obligations contained in the Lease at all times after each Lease was signed.

2 20. The Lease provided that the 25-Year term would convert to a one
3 or two-year term upon the 25-Year Residents' sale of their home, and assignment
4 of the lease.

5 21. The Lease provided that a certain rent would be charged for the
6 first year of the Lease, and that periodic annual adjustments to the rent would be
7 made as provided by the Lease's "Attachment A".

8 22. "Attachment A" of the Lease provided for an annual adjustment to
9 rent based on any increase or decrease in the Consumer Price Index and any
10 increase or decrease of certain costs to operate and maintain LME.

11 23. The Consumer Price Index formula calculation of rent contained in
12 Attachment A of the Lease does not make sense.

13 24. The Consumer Price Index formula calculation of rent contained in
14 Attachment A of the Lease is ambiguous.

15 25. Both LME and the 25-Year Residents, either prior to or at the time
16 of signing the lease, understood that the rent would be tied to the CPI, in that they
17 expected the rent to go up the same as the Consumer Price Index went up.

18 26. The 25-Year Residents either knew or should have known that the
19 25-Year Lease contained provisions which converted the 25-Year term upon sale,
20 and provided for an annual adjustment to rent based on any increase or decrease
21 in the Consumer Price Index and an adjustment of certain costs to
22 operate/maintain LME.

23 27. When the 25-Year Residents learned that the lease contained the
24 conversion provision, they could have requested a return of their deposit and seek
25 a termination of any agreement they had with Little Mountain, although it would
26 have cost them substantial sums of money since they had already purchased and

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 6

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1 installed fully or partially their manufactured homes at LME.

2 28. The other choice the 25-Year Residents had was to demand what
3 they believed they were entitled to, or negotiate something else, or try to.

4 29. Another choice the 25-Year Residents had was to hire an attorney,
5 and sue LME because they did not believe they received what they thought they
6 should have.

7 31. Although the court does not endorse the conduct of either LME or
8 the 25-Year Residents, neither does the court find that either of the parties were at
9 fault with regard to the way in which the 25-year residents made arrangements to
10 hold a manufactured home lot at LME for a deposit, moved in, and then, or later,
11 signed their lease. ^d

12 32. The security gate at LME became inoperable and LME tried to fix
13 it.

14 33. Pursuant to "Attachment A" of the 25-Year Lease Agreement,
15 LME adjusted rents to collect a pro rata share ^{real} estate taxes, water service,
16 television cable, maintenance of common areas, ^{or} and costs of operating the
17 community building.

18 34. LME did not adjust rents to collect a pro rata share of ^{and}
19 improvements as allowed by "Attachment A" of the 25-Year Lease Agreement. ^{ANY}

20 35. LME correctly adjusted rent for each 25-Year Resident at all times
21 after each 25-Year Resident signed their 25-Year Lease Agreement.

22 36. Some of the 25-Year Residents sold their manufactured homes
23 prior to trial. Upon sale, these 25-Year Residents assigned their tenancies and
24 rental agreements to their purchasers as provided by the 25-Year Lease
25 Agreement.

26 From the foregoing Findings of Fact, the court makes the following:

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 7

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CONCLUSIONS OF LAW

1. LME and Lamplighter had an agreement where Lamplighter installed model homes in the park to sell to persons who agreed to first hold a manufactured home lot at LME for a deposit, and then later rent that lot from LME.

2. LME allowed manufactured homes and park models to be moved into the manufactured home park without written rental agreements signed by and in the possession of the parties.

3. LME, by allowing tenants to purchase models or to move their manufactured homes into the park without written rental agreements signed by and in the possession of the parties, violated RCW 59.20.050.

4. Because the parties failed to sign a rental agreement before the 25-Year Residents moved into their home at LME, the 25-Year Residents are deemed to have a one-year tenancy pursuant to RCW 59.20.050. The parties subsequently agreed to a 25-Year tenancy pursuant to the terms contained in the 25-Year Lease Agreement.

5. The 25-Year Residents are bound by the leases which they voluntarily signed even though LME violated RCW 59.20.050.

6. The 25-Year Lease Agreement presented to tenants by LME for signature included a provision which converted the 25-Year term of the Lease to a one or two-year term upon assignment of the Lease.

7. The provision contained in the 25-Year Lease Agreement which converted the 25-Year term of the Lease (to a one or two-year term upon assignment of the Lease) does not violate RCW 59.20.073, or any other provision of Chapter 59.20 RCW.

1
2 8. The 25-Year Residents' reservation of a lot with the payment of a
3 lot reservation fee and commencement of installing a newly purchased
4 manufactured home on the lot with the cooperation of LME or Lamp Lighter,
5 together with lot improvements, including grading, landscaping, and sidewalks,
6 or tenants' purchase of model homes that were already installed with lot
7 improvements and landscaping, did not constitute facts of an agreement to rent a
8 lot.

9 9. "Attachment A" of the Lease, which contains the conversion of the
10 balance of the 25-year lease upon assignment, is not a material alteration of any
11 prior agreement between LME and the 25-Year Residents because there was no
12 prior agreement, and the Lease is the only agreement.

13 10. The Consumer Price Index formula contained in "Attachment A"
14 of the 25-Year Lease is ambiguous.

15 11. The parties understood, and intended that the rent would be
16 adjusted by any increase or decrease in the Consumer Price Index (e.g. if the CPI
17 increased by 3% from one year to the next, the rent would likewise increase by
18 3%).

19 12. As provided below, the court strikes the last seven words of the
20 Consumer Price Index formula contained in Attachment A to reflect the parties'
21 understanding and intention, and consequent agreement, when they signed the
22 Lease:

23 "Rent Adjustment Formula"

24 The Consumer Price Index All Urban Consumers - Seattle -
25 Tacoma (1982-84 Base = 100) for the month nearest the first
26 month of the lease is the base for computing the annual rent
adjustment. If the Index published nearest the annual adjustment
date has changed over the BASE Index the new monthly rent shall
be set by multiplying the first months rent by a fraction the

FINDINGS OF FACT AND
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1 numerator of which is the new Consumer Price Index divided by
2 the BASE and the denominator is the BASE Index. This formula
3 will be repeated for the second and subsequent adjustments to the
4 rent level.

5 13. The remaining provisions of "Attachment A" to the Lease provides
6 as follows:

7 **ATTACHMENT "A"**

8 * * *

9 Additional adjustments may be made for:

- 10 . real estate taxes *
- 11 . water service *
- 12 . television cable *
- 13 . maintenance of common areas
- 14 . costs of operating the community building
- 15 . improvements made to the park

16 * (Note: Consistent with RCW 59.20.060(2)(c), these
17 adjustments may be either positive or negative.)

18 Increases in these costs may be passed on at the annual rental
19 adjustment date. If the landlord chooses to pass on the cost
20 increases, the tenant will be presented with this information 3
21 months in advance, consistent with RCW 59.20.090(2). The costs
22 will then be equally divided between the Little Mountain Estates
23 Tenants, prorated to each lot at 1/120.

24 All rent figures will be rounded to the nearest dollar.

25 14. The Consumer Price Index formula contained in "Attachment A"
26 of the Lease was not intended to cover increases in the other costs which are
specified in Attachment A, including real estate taxes, water service, television
cable, maintenance of common areas, costs of operating the community building,
and improvements made to the park.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

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2 15. Under RCW 59.20.060, the Lease can provide that the 25-Year
3 Residents will pay a prorated share of increases in the mobile home park's real
4 property taxes, utility assessments, and utility charges.

5 16. The Court concludes that "Attachment A" of the Lease is
6 substantively unconscionable insofar as it allows LME to adjust rent to recover
7 any improvements to the park.

8 17. Except as it provides for a rental adjustment for improvements to
9 the park, the Lease does not violate the ~~Mobile Home Landlord-Tenant Act,~~
10 Mobile Home Landlord Tenant Act, Chapter 59.20 RCW, or any other federal,
11 state or local statute, code, or ordinance, or common law or equitable doctrine.

12 18. Defendants are entitled to a declaratory judgment pursuant to
13 RCW 7.24 against the 25-Year Residents that the 25-Year Lease Agreement and
14 its Attachments do not violate the Mobile Home/Manufactured Home Landlord
15 Tenant Act (RCW 59.20 *et. seq.*) or the Consumer Protection Act (RCW 19.86 *et.*
16 *seq.*).

17 19. Except as it provides for a rental adjustment for improvements to
18 the park, the lease is not substantively or procedurally unconscionable.

19 20. LME's adjustments to rents to collect charges for repairs,
20 administrative expenses, wages, salaries, allowances, pre-printed legal forms,
21 marketing expenses, and telephone service represent the cost of operating the
22 community building in the manner it was operated at the commencement of each
23 Residents' tenancy.

24 21. LME charged for security gate repair, which was proper because it
25 represented the cost of maintaining the common areas in the manner it was
26 operated at the commencement of each 25-Year Residents' tenancy.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 11

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2 22. LME did not breach its obligation to provide a security gate even
3 though the gate was inoperable for periods of time.

4 23. Defendants are entitled to a declaratory judgment against the 25-
5 Year Residents that any remaining rental adjustment to rent paid by the 25-Year
6 Residents at any time prior to prior to January 20, 2006 was legal, valid and
7 enforceable.

8 25. Defendants are entitled to a declaratory judgment against the 25-
9 Year Residents that any assignment of any 25-Year Lease Agreement by the 25-
10 Year Residents at any time prior to January 20, 2006 was legal, valid, and
11 enforceable.

12 26. Defendants are entitled to a declaratory judgment against the 25-
13 Year Residents that defendants have not violated the Mobile Home/Manufactured
14 Home Landlord Tenant Act (RCW 59.20 *et. seq.*) or the Consumer Protection Act
15 (RCW 19.86 *et. seq.*), or any other law at any time prior to January 20, 2006.

16 27. Defendants are entitled to a declaratory judgment against the 25-
17 Year Residents that any rental agreement signed by the 25-Year Residents at any
18 time prior to January 20, 2006 was or is legal, valid and enforceable, except that
19 defendants may not adjust rent for any improvements made to the common areas
20 of Little Mountain Estates because the Court finds this would be an
21 unconscionable term of the 25-Year Lease Agreement. The Court concludes that
22 defendants did not adjust rent for any improvement made to the common area at
23 any time prior to January 20, 2006.

24 28. Defendants are entitled to a declaratory judgment against the 25-
25 Year Residents that defendants have not breached any rental agreement signed by
26 the 25-Year Residents.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
- 12

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1 29. Pursuant to Attachment A of the 25-Year Lease, defendants are
2 allowed to pass through certain increased costs (except improvement to the park)
3 to 25-Year Residents and have done so in a manner consistent with the language
4 of "Attachment A" and consistent with the intent of the parties.

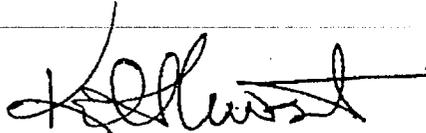
5 30. Pursuant to "Attachment A" of the 25-Year Lease, defendants are
6 allowed to pass through to the 25-Year Residents the cost of maintenance and
7 repair of common areas and the cost of operating the community building.
8 Defendants have passed on these costs to 25-Year Residents in a manner
9 consistent with "Attachment A" and consistent with the intent of the parties.

10 31. The 25-Year Residents have not provided sufficient evidence to
11 demonstrate that the defendants have breached any legal obligation to repair the
12 security gate. Further, had the Court found a breach, the 25-Year Residents have
13 failed to provide a sufficient basis for damages to be assessed.

14 32. The 25-Year Residents' remaining causes of actions 1 through 25
15 are dismissed with prejudice.

16 33. Defendants are the prevailing party.
17 DONE IN OPEN COURT

18 June 19, 2006



Honorable Kenneth Cowser

19
20 Presented by:

21 OLSEN LAW FIRM PLLC

22
23 BY

24 Walter H. Olsen, Jr. - WSBA #24462
25 B. Tony Branson - WSBA #30553
26 Attorneys for Defendants

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 13

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C. Thomas Moser - WSBA #7287
Attorney for Defendants Ware

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FINDINGS OF FACT AND
CONCLUSIONS OF LAW
- 14

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Approved as to Form; Copy Received:

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T. Reinhard Wolff - WSBA # 4146
Attorney for Plaintiffs

Thomas P. Sughrua - WSBA # 14117
Attorney for Plaintiffs

EXHIBIT A
 DEFENDANT LITTLE MOUNTAIN ESTATES MHC LLC ASSERTS CLAIMS
 AGAINST THE FOLLOWING THIRD PARTY PLAINTIFFS:

LAST NAME	FIRST NAME	LOT #
Abel	Gene & Marrylynn	28
Andersen	Ronald & Barbara	74
Archambault	Doris	7
Bailey	Joyce	93
Ballard	Nancy	14
Barton	John & Patricia	102
Berg	Donald & Donna	10
Bielinski	Jack & Leona	67
Bluemke	Chet & Janice	101
Bowman	Dorothy	19
Brown	Vern & Janet	47
Butner	Gordon & Marie	99
Cammeraat	John	49
Carlson	Pauline	106
Colwell	Harry & Hulder	83
Cross	Sterling & Dottie	97
Custer	Corky	34
Davis	Barbara	42
Dickerson	Harold & Ruth	98
Dykstra	Don & Lori	36
Epley	Doris	63

FINDINGS OF FACT AND
 CONCLUSIONS OF LAW

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Erdmann	Nancy	21
Esselbach	Clyde & Clara	95
Exelby	Eileen	81
Flanary	Cliff & Lois	15
Fleming	Bob & Jeanne	75
Gaston	Margaret	20
Grace	Joyce	94
Gregory	Beverly	56
Guertin	Geneva	68
Gullick	Rentz & Jean	119
Hademan	Arthur	57
Hall	Gerald & Nancy	59
Hamers	John M. and Laverne E. Barnett	118
Hammann	Jerry & Sharon	72
Harman	Jan	55
Hastin	E. Dale	92
Heidema	Tjaakje & Sophia Kellis	118
Helland	Ordeen	16
Hickman	Larry & Lynn	32
Holcomb	Dale & Lorraine	23
Hoskins	Gary & Eve	114
Jennings	Dorcie	24
Johnson	Charles	30
Johnson	Ralph & Nola	84
Karlson	Melvin & Shirley	116
Keillor	Janet	46
Kjos	Gordon & Linda	66
Kristiansen	Dick & Shirley	111
Landvatter	Doris	26

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
- 17

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1	LeBeau	Robert	2
2	Lindstrom	Wayne & Birgit	18
3	Lovelace	Art R. and Donna Campbell	74
4	Martin	Wayne & Lynn	89
5	McFadden	Janet	112
6	McMullen	Bob & Marilynn	29
7	Miller	David & Lydia	35
8	Nelson	Virgil	62
9	Northern	Louise	120
10	O'Bryan	Mary Willet and Margaret	54
11	O'Connell	Laurie	11
12	Olson	Marcelyene	60
13	Petersen	Jacqueline	33
14	Peterson	Maxine	109
15	Pettelle	Joe & Pat	51
16	Phillips	John & Karen	44
17	Pollock	Jess & Marge	107
18	Powell	Eva	64
19	Proffitt	Mary	27
20	Reinert	Betty	79
21	Robideau	Carroll & Loraine	65
22	Schafer	Gladys	76
23	Schneider	Donna	17
24	Schuppenauer	Harry & Pat	37
25	Scott	Harrison & Grace	115
26	Shapman-Artz	Linda	82
	Simmonds	Jeanne	25
	Smith	Robert & Donna	105
	Svensson	Karl & Herdis	103

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
- 18

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Swanland	Jean	52
Taylor	Gordon and Carolyn	117
Tellefson	Glen & Mary	48
Terwilliger	Richard & Barbara	43
Thompson	Kenneth & Pearl	53
Topham	Nancy	61
Traylor	Gordon & Carolyn	117
Turner	Margaret & Earl Myers	70
Tyree	Vi	96
Vaux	Helen	104
Walde	Elanor	13
Walley	Randy & Sandra	78
Willet	Mary	54
Williams	Joan	41
Wohlman	Marvin & Bonnie	85
Wolpert	Betty	40
Woodmansee	Jack & Peggy	58
Wright	Henry	31

THIRD PARTY PLAINTIFFS ADDED BY NOTICES OF APPEARANCE FROM
PLAINTIFFS' COUNSEL DATED DECEMBER 12 AND 13, 2005:

25-Year Tenants:

LAST NAME	FIRST NAME	LOT #
Bielinski	Jack and Leona	Prior Lot #67
Crane	Sheryl	Prior Lot #3
Dubisch	Roy	Prior Lot #20
Jennings	Dorcie and Barbara	24
Kilian	Evelyn	Prior Lot #96
Landvatter	Doris	26
Maddson	Stan	Prior Lot #3
May	Dorothea L.	Prior Lot #100
McKee	Jack and Gert	Prior Lot #80
Miller	David and Lydia	35
Randall	Frank c/o Dorothy	Prior Lot #66
Skeers	Richard and Mary	9
Tingley	Claud W.	Prior Lot #70
Wahl	Marilyn	Prior Lot #44
Wallace	Jim	8
Wiganosky	Roger	Prior Lot #23

One-Year Tenants:

LAST NAME	FIRST NAME	LOT #
Andersen	Dr. Ronald and Barbara	Prior Lot #74
Bieda	Robert and Sharon	Prior Lot #88
Conger	William and Shirley	Prior Lot #6
Davis	Jerry and Janet	114
Gullick	Jean	Prior Lot #119
Hamme	Everette and Joanne	54
Hickman	Larry and Lynn	32

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Holcomb	Lorraine and Dale	23
Niven	Stephen and Edna	Prior Lot #24
Rentz	Jr.	Prior Lot #119
Simmonds	Jean	25
Vaux	John and Helen	104
Williams	Joan	41
Wood	Reg and Becky	20

EXHIBIT B
 DEFENDANT PEREGRINE HOLDINGS LLC AND KEVIN AND KARI WARE
 ASSERT CLAIMS AGAINST THE FOLLOWING THIRD PARTY PLAINTIFFS:

LAST NAME	FIRST NAME	LOT #
Abel	Gene & Marrilynn	28
Andersen	Ronald & Barbara	74
Archambault	Doris	7
Bailey	Joyce	93
Ballard	Nancy	14
Barton	John & Patricia	102
Batchelder	Robert & Marjorie	4
Berg	Donald & Donna	10
Bielinski	Jack & Leona	67
Bluemke	Chet & Janice	101
Bowman	Dorothy	19
Brown	Vern & Janet	47
Butner	Gordon & Marie	99
Cammeraat	John	49
Carlson	Pauline	106
Coggins	Eileen	86
Colwell	Harry & Hulder	83
Conger	William & Shirley	6
Crane	Carol & Stan Madsen	3
Cross	Sterling & Dottie	97
Custer	Corky	34
Davis	Barbara	42
De Freese	Gary & Eleaine	50
Dickerson	Harold & Ruth	98
Dykstra	Don & Lori	36
Ebert	Lorraine	39
Epley	Doris	63

FINDINGS OF FACT AND
 CONCLUSIONS OF LAW
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Erdmann	Nancy	21
Esselbach	Clyde & Clara	95
Exelby	Eileen	81
Fisher	Gordon & Gladys	22
Flanary	Cliff & Lois	15
Fleming	Bob & Jeanne	75
Fridlund	Mary	45
Gaston	Margaret	20
Grace	Joyce	94
Gregory	Beverly	56
Guertin	Geneva	68
Gullick	Rentz & Jean	119
Hademan	Arthur	57
Hall	Gerald & Nancy	59
Hamers	John M. and Laverne E. Barnett	118
Hammann	Jerry & Sharon	72
Harman	Jan	55
Hastin	E. Dale	92
Heidema	Tjaakje & Sophia Kellis	118
Helland	Ordeen	16
Hickman	Larry & Lynn	32
Holcomb	Dale & Lorraine	23
Hoskins	Gary & Eve	114
Hults	David & Betty	5
Hundahl	Victor & Delores	87
Jennings	Dorcie	24
Johnson	Charles	30
Johnson	Ralph & Nola	84
Karlson	Melvin & Shirley	116

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Karnil	Melvin & Shirley	1
Keillor	Janet	46
Kjos	Gordon & Linda	66
Koth	Wilma	91
Kristiansen	Dick & Shirley	111
Landvatter	Doris	26
LeBeau	Robert	2
Lewis	Victor & Barbara	90
Lindstrom	Wayne & Birgit	18
Lovelace	Art R. and Donna Campbell	74
Martin	Wayne & Lynn	89
McFadden	Janet	112
McGlenn	Mary	88
McKee	Jack & Gertrude	80
McMullen	Bob & Marrilynn	29
Miller	David & Lydia	35
Minahan	Fred & Shirley	73
Nelson	Virgil	62
Northern	Louise	120
O'Bryan	Mary Willet and Margaret	54
O'Connell	Laurie	11
Olmos	Raul & Connie	12
Olson	Marcelyene	60
Petersen	Jacqueline	33
Peterson	Maxine	109
Pettelle	Joe & Pat	51
Phillips	John & Karen	44
Pollock	Jess & Marge	107
Powell	Eva	64

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
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Proffitt	Mary	27
Reinert	Betty	79
Robideau	Carroll & Loraine	65
Root	Merle & Beulah	69
Schafer	Gladys	76
Schneider	Donna	17
Schuppenauer	Harry & Pat	37
Scott	Harrison & Grace	115
Seaward	Marlene	77
Shapman-Artz	Linda	82
Simmonds	Jeanne	25
Skeers	Richard & Mary	9
Smith	Robert & Donna	105
Smith	Robert & Betty	100
Svensson	Karl & Herdis	103
Swanland	Jean	52
Taylor	Gordon and Carolyn	117
Tellefson	Glen & Mary	48
Terwilliger	Richard & Barbara	43
Thompson	Kenneth & Pearl	53
Tingley	Isabel & Paul Woche	108
Topham	Nancy	61
Traylor	Gordon & Carolyn	117
Turner	Margaret & Earl Myers	7
Tyree	Vi	96
Vaux	Helen	104
Walde	Elanor	13
Wallace	James	8
Walley	Randy & Sandra	78
Wellington	William & Judith	113

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Willet	Mary	54
Williams	Joan	41
Wohlman	Marvin & Bonnie	85
Wolpert	Betty	40
Woodmansee	Jack & Peggy	58
Wright	Henry	31

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
- 26

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THIRD PARTY PLAINTIFFS ADDED BY NOTICES OF APPEARANCE FROM
PLAINTIFFS' COUNSEL DATED DECEMBER 12 AND 13, 2005:

25-Year Tenants:

LAST NAME	FIRST NAME	LOT #
Bielinski	Jack and Leona	Prior Lot #67
Crane	Sheryl	Prior Lot #3
Dubisch	Roy	Prior Lot #20
Jennings	Dorcie and Barbara	24
Kilian	Evelyn	Prior Lot #96
Landvatter	Doris	26
Maddson	Stan	Prior Lot #3
May	Dorothea L.	Prior Lot #100
McKee	Jack and Gert	Prior Lot #80
Miller	David and Lydia	35
Randall	Frank c/o Dorothy	Prior Lot #66
Skeers	Richard and Mary	9
Tingley	Claud W.	Prior Lot #70
Wahl	Marilyn	Prior Lot #44
Wallace	Jim	8
Wiganosky	Roger	Prior Lot #23

One-Year Tenants:

LAST NAME	FIRST NAME	LOT #
Andersen	Dr. Ronald and Barbara	Prior Lot #74
Bieda	Robert and Sharon	Prior Lot #88
Conger	William and Shirley	Prior Lot #6
Davis	Jerry and Janet	114
Gullick	Jean	Prior Lot #119
Hamme	Everette and Joanne	54
Hickman	Larry and Lynn	32

1	Holcomb	Lorraine and Dale	23
2	Niven	Stephen and Edna	Prior Lot #24
3	Rentz	Jr.	Prior Lot #119
4	Simmonds	Jean	25
5	Vaux	John and Helen	104
6	Williams	Joan	41
6	Wood	Reg and Becky	20

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FINDINGS OF FACT AND
CONCLUSIONS OF LAW
- 28

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1
2 Little Mountain Estates

3 v. Peregrine Holdings

4 Case No. 02-2-01295-0

5 Honorable Cowser

6 January 17, 2006

7
8 * * * * *

9 THE COURT: Okay. Can everybody hear me now?

10 Okay. There are many issues to be resolved. I intend to
11 resolve some of those issues for you, certainly not all. As
12 for the last week, we have moments of levity where we got a
13 chuckle out of one thing or another that happened or was
14 said. But don't think for a moment that I don't understand
15 and the parties and attorneys understand how serious this is
16 for all of you. This is not a light matter. This is serious
17 business. So, while on occasion, we may get a grin, that
18 doesn't reflect anything about how we're approaching this.

19 I've been asked, first off, to address the
20 statute of limitations argument. And I think most of you
21 have been in court; so you have some idea what we're talking
22 about in terms of a statute of limitation. As a general
23 rule, depending on what the issue is, the law requires that
24 a lawsuit, based on an issue, whatever it is, be brought
25 within a certain amount of time. If the issue arises out of

1 a written document, enforcement of it, or an alleged
2 violation of it, which would be a breach, the law requires
3 that a suit be brought within 6 years of the date of the
4 breach, the date of discovery of the issue, or the date upon
5 which facts were ascertained that should have produced
6 discovery of the issue.

7 The law certainly is not a cookie cutter
8 operation. There's no one rule that always applies. For
9 instance, the issue of declaratory judgment where in your
10 lawsuit you're asked the court to make a certain decision,
11 doesn't really have a statute of limitations. As a matter
12 of fact, there is authority for just about anything you
13 would want to talk about in terms of a declaratory judgment.
14 There is the rule that the lawsuit asking for relief be
15 brought within a reasonable time, within a reasonable time
16 of something that happens. In this case it could be within
17 a reasonable time after you signed the leases. It could
18 mean within a reasonable time after you had an opportunity
19 to later read the leases. It could mean within a reasonable
20 time after you've been harmed by leases. ****
21 quite frankly
22 there's authority that says you shouldn't even be asking for
23 a declaratory judgment until you have been harmed by
24 enforcement of whatever you are seeking relief from.

25 I think those issues were not really brought up
here because I would believe, and I think I recall this in

1 one of our arguments, everybody here would like this issue
2 resolved. Landlords certainly don't need an ongoing series
3 of lawsuits, which under authority I'm aware of would be the
4 way the law expects things to happen. So we haven't, either
5 the parties or I, haven't approached this with a strict
6 adherence to the statute of limitations.

7 I have been invited to reconsider the decision I
8 made about allowing the claims for relief to relate back to
9 the initial filing date of the complaint. Now, I initially
10 said that I will allow the amendment to reflect back to the
11 date of the original complaint. I think I even did that
12 before there was a representative argument made on behalf of
13 the tenants whose claims have been signed.

14 As you heard me say before, I could be wrong on
15 this. Everybody could be wrong on something. Quite
16 frankly, if you ever go to a law library and see the
17 Reporters, which are the appellate reported cases and the
18 Supreme Court reported cases, oh, many of those cases
19 reflect where somebody was wrong, either an attorney, a
20 party, or, in many instances, a judge. So it is no great
21 shock, I would hope, that I can say I'm wrong about that. I
22 don't think I am, however, and I'm not going to reconsider
23 or change my mind about that. I think application of what I
24 understand to be the theory behind my decision does allow
25 the relation back of the third amended complaint to the date

1 of the filing complaint, and the change of representative
2 capacity, and we will proceed with that in mind.

3 Now, I would hope all of you know where we are
4 right here today. But in case you don't, I need to bring to
5 your attention some of the law that applies here. And the
6 law we're talking about is primarily entitled 59 of the
7 Revised Code of Washington, Revised Code of Washington.
8 It's called the Mobile Home Landlord Tenant Act. And I,
9 quite frankly, know of absolutely no one who is an expert in
10 this field, even the people who wrote it. Because it is
11 complex. Sometimes it's confusing. Sometimes it's
12 bordering inconsistency, but it is the law. What the law
13 starts off with saying, and in particular part here, RCW
14 59.20.050. It says: No landlord may offer a mobile home lot
15 for rent to anyone without offering a written rental
16 agreement for a term of one year or more. So that's where we
17 start.

18 A landlord cannot offer a rental to anyone unless
19 he offers a rental agreement for a term of one year or more.
20 Now, when I say sometimes inconsistent if you read on
21 further: Well, the landlord can if the tenant knows he has
22 a right to a one-year tenancy and agrees to not seek the
23 one-year tenancy. But in any event, it says first off:
24 Landlord has to offer a one-year tenancy.

25 That statute goes on to say: That no landlord

1 shall allow a mobile home, manufactured home, or a park
2 model to be moved into a mobile home park in this state
3 unless a written rental agreement has been signed by and is
4 in possession of the parties. That's the rule. Landlord
5 can't allow a mobile home, or modular home, or manufactured
6 home to be moved into the park unless there's a written
7 rental agreement signed in the possession of the tenant.
8 Actually it says parties, meaning both landlord and tenant.
9 But once again, it says: However, if the landlord does --
10 so it starts out by saying the landlord can't. But then it
11 says: If the landlord does allow that moving in without
12 obtaining a written rental agreement for a term of one year
13 or more or a written waiver of the right to a term of one
14 year or more, the term of tenancy shall be deemed to be for
15 one year. So we're still back to they've got to offer a
16 year's tenancy. They can't let you move in unless they've
17 got a written agreement from you, but if they do let you
18 move in without the written agreement it's a one-year
19 tenancy.

20 ****
21 59.20.073 Transfer of Rental Agreements. Any
22 rental agreement shall be assignable by the tenants to any
23 person to whom he or she sells or transfers title to the
24 mobile home, manufactured home or park home. So what does
25 that mean? Well, I don't know. Any rental agreement shall
be assignable. It doesn't answer the question that I think

1 all of you have. What's assignable? Assignable means you
2 give it to somebody else who buys you park model. But does
3 it say any rental agreement shall be assignable for the
4 balance of that agreement by the tenant to any person who he
5 sells his mobile home to? It doesn't say that. Because I
6 think as I talk about the next section, which is 090, you
7 will see that what I said the law is not a one size fits all
8 cookie cutter kind of model, it leaves some room for, well,
9 what I'd call wiggle room. It leaves some room for
10 individual situations.

11 5920 090 says unless otherwise agreed rental
12 agreements shall be for a term of one year. The two previous
13 statutes said they are for a year at the very least. They
14 are for a year at the very least; unless you get a waiver
15 from the tenant that says I don't want a year I want
16 something less, or in 090, unless otherwise agreed. It goes
17 on to say any rental agreement of whatever duration shall be
18 automatically reviewed for the term of the original rental
19 agreement unless a different specified term is agreeable.
20 Once again, giving the ability of the parties to agree to
21 something different.

22 In the 25-year lease, at the expiration of 25
23 years the statute says the rental agreement will be
24 automatically renewed for another 25 years. But then it
25 says: Unless parties agree differently. And that's real

1 important. Because the requirements here are always, it
2 seems to me, conditioned on unless the parties agree
3 differently. So in any event, that's the law that applies in
4 large part to the issue of mobile home landlord tenant
5 relations.

6 So what does that mean for us? Little Mountain
7 Estates was designed as an over 55 mobile home park,
8 designed to be, and quite frankly from the photographs I've
9 seen, an attractive community. It is unlike many of its
10 competitors. From my understanding of the evidence,
11 especially the picture of the colonial park across the way,
12 your community is a beautiful, beautiful community. It is
13 not like mobile home communities I've had occasion to live
14 in before, and it's not like the ones I see where you walk
15 up a flight of wooden stairs and you're in.

16 The park is quite frankly reflective of the pride
17 of ownership of its residents. It is not a park designed
18 for here today, perhaps gone tomorrow, kind of residents.
19 It is not a park designed to accommodate, quite frankly,
20 didn't accommodate the more easily transportable mobile**
21 homes.

22 I heard testimony from many residents, past
23 residents, like Ms. Halderman of the park, I heard people
24 describe how when they went into the park -- one gentleman
25 said they wanted to do -- I think it was a lady who said

1 they wanted to do it right away. They looked around, and
2 they wanted to put their deposit down right away. People
3 were impressed by the appearance, by the convenience, by the
4 desirability of the area of the park and the park itself.

5 I heard many people describe that their first
6 contact with the park was either drive through or a
7 brochure. And surprisingly, many people, based on nothing
8 else, decided to pay the deposit down on the lot to invest
9 thousands of dollars, not only of the purchase of a mobile
10 home, Lamp Lighter or somebody else, but thousands of
11 dollars in preparation of the lot they intended to move
12 their mobile home onto. Quite frankly, without knowing and
13 without really investigating, and for a surprising number of
14 people, not asking what they were getting into.

15 For instance, Ms. Halderman, the most educated of
16 the group, has a Ph.D. in consumer education. Now, I have to
17 tell you that if I was moving a several 100, 10 of thousands
18 of dollars of home into a mobile home park and I just spent
19 15, 20, \$25,000 repairing, and I, as she said she did, asked
20 for a copy of the lease that was going to be determining the
21 conditions upon which I got to put my home in the park and I
22 was told you don't need one, I would wonder what in the
23 world am I being told. Because, as you will see, eventually
24 there is a certain obligation on the part of the tenants in
25 our case to do something besides walking to the lion's den

1 and hoping it all turns out right. So if I was told, whether
2 I had a Ph.D. in consumer education or not, you don't need a
3 copy of the lease, I would say, oh, yes I do. I would be
4 all the more definite I did. Because I would wonder why with
5 this 25-year obligation someone would think I didn't need a
6 lease.

7 I heard from a bank trust officer who
8 characterized himself as a very trusting person that he
9 thought the lease was just boiler plate and that's why he
10 didn't read it. Now, "the devil is in the details". And
11 every word in a contract that anybody signs whether it's a
12 one paragraph contract or an *Alendorfer* lease, they are
13 written for a reason. They are written to be read. They are
14 written to be understood, not written to be ignored. I was
15 quite surprised that someone who is obligating himself to
16 25 years or thinks someone else is obligating themselves to
17 25 years would so cavalierly say well, I didn't really pay
18 any attention to it because I thought it was boiler plate.

19 I heard too many times that "I didn't ask to see
20 a copy of the lease; this is while I was spending thousands
21 of dollars getting my mobile home into the park that I
22 didn't read it; that I just signed it; that I wouldn't have
23 understood it had I read it". Or in some cases, "well, I
24 did read it, and I did understand it, and I really didn't
25 have any objection". Every one of the plaintiffs got to the

1 situation they are in by a similar, but not necessarily
2 precisely the same kind of road. But at end of the day all
3 the plaintiffs signed the lease.

4 And that's where, as counsel spoke in his
5 argument at 2:30, that it gets a little uncomfortable.
6 Because the signing of the lease is a very, very important
7 part of this lawsuit. And it is important for the following
8 reasons. I'm going to read to you the law that has been
9 provided to us. And surprisingly one of the cases that I am
10 required to follow, gives us some guidance here in terms of
11 the outcome, and it comes out of Skagit County. This is
12 Skagit State Bank, a Washington corporation v. parties named
13 Rasmussen, Flint, and Hayton. The important part is the
14 language that is used in the opinion. Because it enunciates
15 the very principal that we're talking about here. This is a
16 1987 case; it sites a 1973 case, and a 1919 case. It says:
17 "The relevant principles are summarized in National Bank v.
18 Equity Investors." This was the principal thought
19 enforcing the contract. "It is a general rule that a party
20 to a contract, which he has voluntarily signed, will not be
21 heard to declare that he did not read it or was ignorant of
22 its contents. One cannot, in the absence of fraud, deceit,
23 or coercion be heard to repudiate his own signature
24 voluntarily and knowingly fixed to an instrument whose
25 contents he was in law bound to understand."

1 in ascertaining facts of the matter. That's one thing that
2 really, really made me wonder is the plaintiffs here didn't
3 seem to take all that much interest in the fact that once
4 their mobile home was on a park and they had spent thousands
5 and thousands getting it there on the site propped, they
6 didn't seem to want to know what this 25-year lease really
7 said. I mean I'll just be quite Frank. It amazed me that
8 people were so willing to do that. And yet as today say
9 yeah, we signed the lease. We didn't know what it said. We
10 didn't know what it was going to say.

11 So that's a long way of saying the fact is that
12 maybe some of you were in my court just before Christmas
13 when I asked Mr. Wolfe if anybody had explained to the
14 plaintiffs that the general rule was you sign it; you're
15 stuck with it. That's my way of saying what the law says
16 and that is absent fraud, or deceit, or coercion in the
17 execution of a document. The law says you are bound by it.

18 So there's the next step. It appears that
19 because you all signed this, had the opportunity to review
20 it, or did read it in some cases that it could be that you
21 are stuck with the contents and the agreements in it.
22 Counsel has suggested that I find that part of this
23 agreement, the conversion language that we are all familiar
24 with, may be unenforceable because it is in the legal
25 parlance unconscionable. I'll tell you what that means

1 before we go there.

2 And upon that theory we have Zuver, Z-U-V-E-R, v.
3 Airtouch Communications. In that case there was, I think, a
4 fairly complete discussion of the theory of
5 unconscionability. That case starts off with the statement:
6 "It is black letter law contract that the parties to a
7 contract shall be bound by its terms. It goes on to allow
8 that there are certain exceptions or exemptions from the
9 terms of the contract if the contract or portions of it were
10 procedurally or substantively unconscionable". Naturally we
11 don't know what that means; so they tell you. "In
12 Washington we have recognized the case says two categories
13 of unconscionability substantive and procedural.
14 Substantive unconscionability involves those cases where a
15 clause or a term in a contract is alleged to be one sided or
16 overly harsh. Procedural unconscionability is the lack of
17 meaningful choice, considering all of circumstances
18 surrounding the transaction, including the manner in which
19 the contract was entered, whether each party had a
20 reasonable opportunity to understand the terms of the
21 contract and whether the important terms were hidden in a
22 maze of fine print".

23 As to the last area, this is not the Allendefer
24 contract. Quite frankly I read the contract. I think it is
25 reasonably straightforward. It is easy to read as opposed to

1 a 15-page or 30-page contract. The print is easily
2 readable. There is nothing I had to get my magnifying glass
3 out to read. I don't think there's anything here that was
4 hidden in a maze of fine print or that was written in a way
5 that was not understandable by a reasonable person. I don't
6 find the contract is overly one sided or harsh. I think
7 most people when they signed this contract were entering
8 into what they thought and what they quite frankly got was a
9 25-year guarantee that they would be able to reside in this
10 mobile home park.

11 I'm not telling everybody I would have signed
12 that; although, I may have, given my situation at the age of
13 most people who were involved in this. So I suppose you
14 could argue that it's one sided or harsh. But, quite
15 frankly, I don't think from a legal standpoint the contract
16 is that at all.

17 Is it procedurally unconscionable? Counsel
18 would have me believe that you didn't have a meaningful
19 choice. So I sat back and I thought okay, you spend
20 thousands of dollars to move my mobile home into this park.
21 You spend thousands of dollars preparing a site. You don't
22 have a lease. You're aware I'm supposed to get a 25-year
23 lease. Then you find out, and I'm not saying everybody did
24 find out, because too many people didn't read the contract,
25 didn't understand what they were signing, didn't pay

1 attention to it, didn't devote any time to it at all, but
2 found out at some time that there are 25-year lease would
3 convert to a one or two year lease if they sold.

4 But, quite frankly, what were your options when
5 you found out that the contract was a 25-year with
6 conversion? Well, one could have said the deal is off.
7 Now, that would have cost you some money probably. But for
8 those who signed the lease before the mobile home was
9 actually completed installed they could have said nuts to
10 this I don't like this. This is not what I'm going to get.
11 That's one choice. The other choice is to say look where is
12 my 25-year lease? I didn't agree with this. I'm not going
13 to sign this document, negotiate something else, or try to.
14 Maybe what you do is say I don't like this at all. I'm
15 going to hire an attorney, and we're going to sue you
16 because I don't think I got what I should. Those were all
17 choices I think that nobody took, but quite frankly they
18 were there. They were not all great choices. There probably
19 was no great solution in this situation, but there were
20 choice available to you. ****

21 As to the manner in which the contract was
22 entered, I can't put my official stamp of approval on
23 anybody's conduct here. I understand people in the mobile-
24 home were devoting two half days. I guess business wasn't
25 real good. They even told me that there were sometimes when

1 people moved their mobile home in and started living there
2 and they didn't know about it; so they didn't collecting the
3 rent. This operation seems like it probably was not as
4 tight as it could have been. But the tenants approach to
5 this wasn't as tight as it could have been. Because people
6 spent money and moved mobile homes in and took up residency
7 without knowing whether they were going to get was what they
8 thought they were going to get was what they got. So the
9 way the contract was entered into, I can't find anybody to
10 be really at fault here. It's just the way it happened.
11 That's one of the considerations I'm required to make in
12 terms of deciding whether any portion of this contract or
13 the entire contract is unconscionable. And my conclusion is
14 it is not either substantively nor procedurally.

15 What that means is I find that the lease is
16 enforceable and that the attachments inasmuch as right now
17 I'm required to decide are enforceable.

18 X I don't find, as suggested, that this lease that
19 was entered into at some time by each of the plaintiffs was
20 an alteration of some prior agreement. I don't think this
21 lease add changed or material altered any of the terms of
22 any prior agreement because there was none. Advertisements
23 do not make an agreement. A representation two or three
24 months before that your lease is assignable, an assumption
25 by somebody that the lease is assignable. Trust that is

1 assignable or any of the other things that I heard that lead
2 people to believe it is assignable is not an agreement.
3 The lease is the agreement, the signing of the lease is the
4 important thing.

5 ~~*~~ All that leads us to the following: The lease,
6 including the attachments is in the Court's view a valid,
7 binding, and enforceable contract between Little Mountain
8 Estates and each of the plaintiffs entered into voluntarily
9 by the plaintiffs. Consequently the motion to dismiss
10 plaintiffs complaint on either the grounds it violates the
11 mobile home landlord tenant act, violates the statute of
12 frauds, or is it invalid or conscionable contract is
13 granted. ~~*~~

14 Consequently any portion of the complaint, based
15 upon anything, any aspect or theory of the validity of the
16 lease is also dismissed.

17 Where I think that leaves us is still in trial. I
18 ~~*~~ will reserve the issue of dismissing the Wares. There may be
19 evidence that lends itself to whether or not there is any
20 basis for piercing the corporate veil.

21 I think it still leaves us with the issue of
22 whether or not a breach of contract regarding the security
23 gate. And I believe that while the lease is enforceable to
24 ~~*~~ the extent that certain costs can be passed through to the
25 tenants, I understand there is still an issue about what

1 those costs were and whether they are allowable under the
2 statute. Because I know there is in the landlord tenant act
3 some limitations on what costs in terms of maintenance of
4 permanent buildings or structures can be flowed through.
5 And lastly the question of the interpretation of the CPI
6 computation. I know that almost everybody who was asked
7 about it said we intended our rent to go up like inflation.
8 I also know I've decided that this contract is valid and
9 enforceable. (That means I need to give effect to each and
10 every aspect of it. I anticipate evidence in that regard to
11 tend itself to whether or not I should enforce language in
12 the lease, whether I should say that that language is not
13 enforceable because it makes no sense or whether I should
14 just throw my hands up in the air about that and say well,
15 you all agreed to a CPI conversion and let's go forward from
16 there. I am not to that point yet. I imagine taking that up
17 either later today or probably tomorrow.

18 Counsel, anything you wanted to discuss?

19 MR. WOLFE: Yes, Your Honor there was one
20 category of leases that were nonassignable. What is your
21 ruling on those?

22 THE COURT: Well, it seems to me the only one of
23 the plaintiffs I have here is Mr. Flannery's. And it says
24 it's not assignable. But then there was an attachment. I
25 think if I'm called upon to say what that means you have on

1 the one hand not assignability and on the other hand
2 assignability for one or two, I can't remember which it is.
3 If you want me to give you my opinion about that, I think
4 it's an assignable lease under the terms of the attachment.
5 I can't remember if it's more than two. But to me, to say if
6 you can't assign it and then you can if you sell it will be
7 is what the law considers to be one of those ambiguous
8 situations, which if I'm confronted with I must rule in
9 favor of the nondrafter, which would be Mr. Flannery. I
10 think Mr. Flannery was the only one.

11 MR. WOLFE: Except that there could be some
12 one-year tenants who can make a claim that if it's an
13 invalid assignment, if you understand what I'm saying.

14 THE COURT: No because if they bought -- well,
15 okay. Let me see. If they had a person who had a
16 nonassignable lease but sold and then assigned it for a
17 one or two year they were entitled to whatever --

18 MR. WOLFE: Remained.

19 THE COURT: -- remained on that one or two year.
20 So in some cases they probably got a year right off.

21 MR. WOLFE: Well, except that there will -- okay.
22 But the point is there were 6 leases we were introducing
23 this morning that fell into that category. They weren't
24 assignable period. And if that's invalid then they are
25 assignable. There is no conversion language in those.

1 THE COURT: I can't remember if they were named
2 plaintiffs or not, do you?

3 MR. OLSEN: Those were one year tenants they were
4 referring to.

5 THE COURT: Okay. It would be better if I had a
6 chance to look at those again. We can do that later.

7 THE COURT: Okay. Anything else plaintiffs?

8 MR. SUGHRUA: No.

9 THE COURT: Defendants, anything you want me to
10 explain?

11 MR. OLSEN: No, not in terms of your ruling. I
12 have questions about where we will go from here.

13 THE COURT: With my recitation of what I think is
14 still alive and well accurate as well as you all know?

15 MR. SUGHRUA: Yes, it is.

16 THE COURT: It's 4:00. Do you want to stop today
17 and have some time to think about where we go from here?

18 MR. MOSER: Yes.

19 MR. OLSEN: Yes.

20 THE COURT: We'll recess until 9:30 in the
21 morning, okay.

22
23 (Proceedings ending for the day in this matter).
24
25

1
2 Little Mountain v. Peregrine Holdings

3 Case No. 02-2-01295-0

4 January 18, 2006

5 Honorable Kenneth Cowsert

6
7 --oo0oo--

8 THE COURT: This is the defendant's motion to
9 dismiss, but I've obtained consent of the parties to make
10 decisions that may go beyond the issue of dismissal or not.
11 And because I'm going to do that I'm going to give you my
12 decision about the effectiveness of Attachment A. And my
13 decision about the adequacy of the plaintiff's case
14 regarding the security gate.

15 I think unless you've been in court a long time
16 most people have sort of an erroneous impression of what
17 judges do. I had an erroneous impression before I became a
18 lawyer. I thought judges were pretty much on their own. They
19 make decisions. They use their own judgment. They did what
20 they thought was right. And that's true in some parts and
21 other parts it's not. We, like everyone else, are bound by
22 the rules and we are bound by the law. And you see from
23 books that I have and if you go to the law library, books
24 that are there contain the laws like this mobile home
25 landlord tenant act, and there's books full of cases that

1 have made their way to court and been decided. One of the
2 best things I have in terms of resources are the previous
3 decisions of the Court. Because those help me analyze
4 questions I have before me, and they give me some insight
5 into what over the years other courts have thought is the
6 appropriate resolution to certain issues. That's called
7 precedent. Has an issue been decided by the court before on
8 the same or similar facts? What was the result? And I can
9 read these cases from when the state first became a state to
10 find out if there are some applications of the rules or
11 decisions of those cases.

12 And I find that in this cases there are some that
13 sort of give me the framework within which I have to decide
14 the issue before me. And the issue is how do I interpret
15 this contract? How do I decide what it really means and
16 how it affects the plaintiffs and defendants.

17 The first case I'll quote to you, because it
18 gives you the rule, is Shaurman, S-H-A-U-E-R-M-A-N, versus
19 Haeg, H-A-E-G, the case is reported in 68 Wn.2d -- and
20 that's basically the name of the volume -- at page 868. The
21 case came to Supreme Court in 1966. In terms of the rules
22 that case tells me that where the terms of a contract are
23 plain and unambiguous, and the definition of unambiguous
24 means contracts are where the terms are uncertain, or
25 incapable of being understood, or having more than one

1 reasonable interpretation. Where the terms of a contract are
2 plain and unambiguous, I don't have to go any farther. The
3 intention of the parties shall be ascertained from the
4 language employed from the contract. That case tells me word
5 of the contract should be given ordinary meaning unless
6 context or definition require otherwise. It tells me
7 mistakes in grammar, spelling, or punctuation should not be
8 permitted to alter, contravene, or vitiate the manifest
9 intention of the party, as gathered from the language
10 employed in the contract. And goes on to say but where the
11 language is ambiguous or susceptible of more than one
12 meaning, the courts, in this case me, should search out the
13 parties' intent by viewing the contract as a whole,
14 including the circumstances and other related transactions
15 surrounding the making of the contract and their conduct
16 under it. The main function of the Court is find out what
17 the parties intended and to give affect to their intentions.

18 In a case called Wick, W-I-C-K, versus Western
19 Union Life Insurance Company the case reported at 194 Wn.
20 page 129, a case from 1918, tells me a clumsy arrangement of
21 words, and in this case they say even coupled with a comma
22 fault, which I couldn't tell from the case a comma fault is,
23 shall not be allowed to contravene a reasonable
24 interpretation, according to the intention of the parties.

25 Smith v. Smith, reported at 56 Wn.2d, page 1 a

1 1960 case, gives me the direction that where one
2 construction would make a contract unreasonable and another
3 construction equally consistent with the language of the
4 contract would make it reasonable. The interpretation, which
5 makes it a reasonable and probably agreement should be
6 adopted.

7 And lastly, Boeing v. Firemen Fund Indemnity
8 reported at 44 Wn.2d, page 488 tells me where the terms of a
9 contract taken as a whole are plain and unambiguous the
10 meaning of the contract is to be deduced from it's language
11 alone. And it is unnecessary for a Court to resort to any
12 other aid to construction. Where the language of a contract
13 is ambiguous or susceptible of more than one meaning, once
14 again, it is the duty of the Court to search out the intent
15 of parties by viewing the contract as a whole and
16 considering all of the circumstances surrounding the
17 transaction, including the subject matter and the subsequent
18 acts of the party.

19 And even the case given to me by Mr. Sughrua this
20 morning in brief says basically what those cases say. But it
21 goes on to give me another rule. There is a rule that says
22 when a contract is ambiguous -- and that means capable of
23 two reasonable interpretations -- that of those two
24 reasonable interpretations I am to take the one and adopt
25 the one that is least favorable to the party who drafted the

1 agreement. And I think the idea behind that is if one party
2 comes up with a contract and the other party signs it, the
3 ones who created the document, that gave rise to the problem
4 that results in the two ways of interpreting the contract,
5 should be the one to suffer. But that rule, like all the
6 rules we've talked about in these last two weeks, is
7 qualified because the case Mr. Sughrua gave me also says:
8 An ambiguity in a contract is not resolved against the party
9 who drafted the contract if the parties evince a contrary
10 intent as determined by viewing, once again, the contract as
11 a whole, the subject matter, objective of the contract, all
12 of the circumstances surrounding the making of the contract,
13 the subsequent acts and conduct of the parties, and the
14 reasonableness of the parties' respective interpretation of
15 the contract. Those are the rules that I have to start out
16 with.

17 Now, let's apply those rules to what we have.
18 And the contract we're talking about is paragraph three,
19 which refers to Attachment A. Paragraph 3 in the contract
20 allows that when each of you moved into the mobile home park
21 your rent would be a certain amount for a year. And then it
22 allowed that after that year there would be periodic annual
23 adjustments to that rent according to Attachment A.

24 Now, we have already beat Attachment A too death.
25 And I think everyone here will agree that Mr. Toyer, Mr.

1 Olsen, Mr. Moser, Mr. Sughrua, Mr. Wolfe, and me all say
2 that if you read Attachment A literally it makes no sense.
3 So I can't rely on a plain reading of Attachment A and tell
4 you what it means. I have to figure out what you all meant
5 for it to mean. Now, I'm glad we finally found out that
6 Attachment A came from lamp lighter. Because when I was
7 reading the cases, these and others I came across a case way
8 back and it was a case where window glazers had agreed to a
9 contract that had been drafted by one of their attorneys
10 then later changed that contract on their own. And they had
11 really made a mess of it. And I was amused. The case
12 started with these words: Glazers should make windows and
13 attorneys should make contracts. But when glazers make
14 contracts, problems abound. And that's my opinion of this.
15 Lamplighter, I'm assuming, did
16 not have an attorney make this. Because, as attorneys, and
17 even for those of you who try to figure it out it is one of
18 those problems that abound. It makes no sense.

19 So what we've heard in this trial is either it
20 really means when it says "new monthly rent," new monthly
21 adjustments. Or it means the new monthly rent, like it
22 says, will be set by multiplying the first month by a
23 fraction. Now, I'll tell you this the first time I saw this
24 I tried to diagram, if you were there at that hearing, I
25 tried to diagram it out and I thought I did it right. Then

1 as we went on I had, I think it was Mr. Sughrua, draw it out
2 and then I looked at what he drew, and I looked at this and
3 what he drew was right. So this phrase that we are just
4 agonizing over either is a formula to set a new month's
5 rental adjustment, meaning the amount of adjustments or it's
6 a fraction that is described for setting the new monthly
7 rent. I have to decide do I change the language, or do I
8 delete some language? Because, as I asked Mr. Toyer, if we
9 say the new monthly rent refers to the new monthly rent
10 adjustment, as Mr. Sughrua, suggested, then this entire rest
11 of the sentence results in a small monthly increase that
12 then gets added to the prior rent. Or if I take out the last
13 phrase, which is, "and the denominator is the base index,"
14 which to me could be simply a repetition of the prior
15 portion of that phrase which says the fractions, the
16 numerator which is the new consumer index divided by the
17 base. But either way, you can take out a word and you can
18 change a word. But you need to do something here to make
19 this particular adjustment formula actually understandable.
20 There's two different ways. And that I think is the classic
21 definition of ambiguous.

22 Which of those two ways is the more reasonable
23 and which of those two ways actually reflects intent of the
24 parties? The problem I have is when the word "new monthly
25 rent" is there it seems to me that that's what is meant. And

1 if that's what it means, and I have to find some way to
2 interpret this formula to accommodate the new monthly rent,
3 and the only way, having heard the testimony, having heard
4 the expectations of the tenants when they moved into the
5 mobile home park that they knew, they understood that rent
6 would be, and I think Mr. Sughrua said "tied to the CPI".
7 I'm not sure if that's the exact phraseology. But if the
8 question is: Did they expect the rent to go up the same as
9 the Consumer Price Index went up; the answer is yes. The
10 more reasonable interpretation of Attachment A and the more
11 solidly based on what I understand to be the expectations
12 and intent of the parties is to rule that the language in
13 Adjustment A, Attachment A reflects the formula for setting
14 the new monthly rent by multiplying the first month's rent
15 by a fraction, the numerator of which is the new Consumer
16 Price Index and the denominator of which is old base. If
17 you recall, Mr. Toyer's -- I believe it was me who asked it,
18 I can't actually recall -- said if that were the formula
19 that was used that would be exactly the result that was
20 obtained by the landlord computation of your rental
21 adjustments.

22 And that's going to be my ruling. This Attachment
23 A is to be interpreted, consistent with the more reasonable
24 of the two of the two available interpretations and the one
25 that most closely reflects what the parties intended when

1 these contracts were entered into.

2 So as to Attachment A, it's a rent adjustment
3 formula -- and I'll be honest with you, before I was in a
4 residence when I rented my rent went up. I figured my rent
5 had been adjusted. I didn't think it was just a part of the
6 difference between the old and new was the adjustment. I
7 figured my rent had been adjusted.

8 Attachment A, as I have decided it needs to be
9 interpreted, makes the most sense for me.

10 Now, let's go on to the balance of Attachment A.
11 And order to do that I need to refer to RCW 59.60.060. Now,
12 this is probably a stronger rule than the case law. This is
13 another rule that says in printed part here what the rental
14 agreements can contain. A rental agreement can contain an
15 escalation clause for a pro rata share of any increase in
16 the mobile home park's real property taxes or utility
17 assessments or charges over the base taxes, or utilities
18 charges, or charges of the year in which the rental
19 agreement took affect. I'm going address, first of all, the
20 real estate taxes, which --

21 Mr. Sughrua, you're going to have to tell me your
22 client, Mr. Walton, did not say he had any issue with the
23 real estate tax closures; is that his position and your
24 position now?

25 MR. SUGHRUA: Yes, Your Honor.

1 THE COURT: Because, although, I'll tell you this
2 in looking over those documents there is in 2005 a reference
3 to 1996 \$12 tax increase. I think I said a long time before
4 when that was initiated that, I think, it was \$14,000 or
5 something should have been paid off by now. And Mr. Olsen
6 said well, that amount probably was. But each year we have
7 been carrying on that \$12 as a partial flow through of the
8 increase in real estate taxes. Based on Mr. Walton's
9 testimony, I'm going to assume that that seems to make sense
10 and you really don't have issue with the collection of real
11 estate taxes, which are, in part, addressed in the statute I
12 just read.

13 It also addresses utility charges. To me, you
14 start with a person moving in to a residence. And part of
15 the rent payment includes a certain dollar amount for TV,
16 cable, basic TV/cable. Now, I know TV cable. I have basic
17 TV cable. I know that periodically my basic TV cable goes
18 up. I know periodically I'm offered, I guess I call them,
19 improvements or expansions of the cable. I think that the
20 flow through of the expense of the basic -- the increase in
21 expense of the basic TV cable is allowable and should be
22 enforced under that portion of Attachment A. But I need to
23 explain that.

24 I do not look upon the mobile home park as, well,
25 it's a business. It is not a charity. So when you move into

1 the mobile home park and you decide you're going to pay this
2 much rent, and part of that is the cost of the TV. It is
3 only reasonable to expect that the cost of that service, if
4 it increases, as provided in Attachment A, should flow
5 through in a pro rata situation to the tenants, and that's
6 what Attachment A allows. The problem is I heard Mr. Sughrua
7 say well, they got more service. My ruling is prefaced
8 on a starting cost of basic TV/cable. And that is the basis
9 upon which the increases should be computed. If, in a
10 certain year, the landlord just decides okay for another \$10
11 per unit we can get these extra channels, that to me is
12 different than the increased cost of what you all started
13 with, which is basic/TV cable.

14 Mr. Olsen, am I making sense to you?

15 MR. OLSEN: Yes.

16 THE COURT: Mr. Sughrua.

17 MR. SUGHRUA: Yes.

18 THE COURT: I conclude that the increases in
19 television/cable service that are allowed under the rent
20 adjustment formula in Attachment A start with and have to
21 continue with the provision of the cable service that you
22 were provided when you started your rental your tenants.
23 Because I look at this contract as giving you something to
24 start with, and if it didn't go up in price fine. You still
25 have it. But if it did go up in price that increase in

1 price for that particular service and not doing any expanded
2 service or anything else is the basis upon which the
3 increase is based. And I think that's included in the
4 contract itself when it specifies basic TV cable and any
5 additions like HBO Showtime, whatever you can get become the
6 individual responsibility of the person who wanted those
7 increased services.

8 I do not subscribe to the idea that the cost of
9 basic television service, it probably did, increase year to
10 year is included in the CPA adjustment. I see those as two
11 different things. They are individually addressed. And I
12 think from a common sense standpoint that they are not to be
13 considered part of each other. They are different. There is
14 the Consumer Price Index formula, and then there are these
15 allowances under the same theory as the utilities flow
16 through, and the increased expense for real estate taxes.

17 We'll address the maintenance of common areas,
18 cost of operating the community building, and improvements
19 made to the park. I have spent many hours thinking about
20 this. And I have tried to figure out if it is exactly what
21 everybody intended. And in doing that I sometimes just
22 imagine. As to the improvements made to the park, I sat and
23 I thought, well, let's just say the landlord decided that
24 they wanted to install a million dollar water slide. I
25 don't know why water slide came to my mind, but that was the

1 first thing, that would, in my mind, be an improvement made
2 to the park. So let's say they wanted to do that and the
3 tenants said we don't have any use for a water slide. What
4 do we want to do that for? But the landlord went ahead and
5 did it. It seems to me that if that were to be allowed under
6 the contract that you all found yourself having to perform
7 under that that would really be unfair. That would be too
8 heavily weighted I think in favor of the landlord. Now, I
9 don't know if that's happened, but it could. And some of my
10 decision deals with what is and some of my decision deals
11 with what could be. And I've come to the conclusion, that
12 the inclusion of the obligation that you all have to pay a
13 pro rata share of improvements made to the park is just
14 entirely too one sided for me to be comfortable with. And
15 I'm going find that that particular aspect, if it ever comes
16 up, is an unconscionable part of the contract that I
17 wouldn't enforce.

18 I know in one of the line items here we have the
19 cost of the gate repair considered to be an improvement of
20 the park. One, I don't think it is. And two, if it really
21 is an improvement made to the park I'm not going to require
22 under this contract the tenants to have a pro rata
23 responsibility for that. But as to the maintenance of the
24 common areas and the cost of operating the community
25 building. I applied the same theory I had to the television

1 cable. When you all moved into the park there were certain
2 expenses that were provided for in your rent. I think any
3 increase in those expenses is just like television cable, a
4 reasonable interpretation of the contract requires you to
5 have a pro rata share of those expenses. But they are not
6 as wide open, I think, as some people would think. They are
7 expenses related to the maintenance of the common areas and
8 costs of operating the community building period. And that's
9 where, as I went through various documents provided to me, I
10 have either an answer in terms of whether I think those
11 expenses, are or are no expenses that fall within that
12 definition.

13 So in terms of the contract, I believe it's
14 enforceable and appropriate for the landlord to flow through
15 to the tenants their pro rata share of the real estate
16 taxes, water service, television cable, cost of maintenance
17 of common areas, and cost of operating the community
18 building. When I mention those items I am talking about the
19 difference in the cost between last year and the new year. I
20 don't expect when you moved in if they were spending \$10,000
21 a year for maintenance that you would have to pay that. You
22 only have to pay your pro rata share and any increase over
23 that basic fee that was in place when you moved in.

24 But I went through some of these exhibits. It's
25 pretty clear to me that administrative expense is business

1 expense. And the wages, salaries, allowances, preprinted
2 legal forms, telephone service, none of which the landlord
3 is obligated to provide you under the contract are not
4 expenses that he can flow through to you. They are not
5 expenses of maintenance of common areas nor the cost of
6 operating the community building. I think his marketing
7 retention expenses fall into that same category. They are
8 not costs that are compensable by you on a pro rata basis
9 under the terms of the contract.

10 Repair and maintenance expense. There may be
11 some legitimate maintenance expenses in those repair to me
12 is different than maintenance. And I'll get to that in just
13 a moment. The cost of tools to me is not a maintenance
14 expense. It is an expenditure. I think landscape
15 maintenance if it truly is maintenance, which means, and I
16 even looked this up because I think this is becoming a
17 fairly serious issue. Maintenance means the upkeep of the
18 property, the maintaining of the property, keeping or
19 holding it in a particular state or condition, is what the
20 expenses in Attachment A are directed toward. That to me is
21 different than purchases, or tools, or equipment other than
22 administrative expenses; or, in large part, for the repair
23 of the gate. Now, there's an item on here for what this
24 thing called Improvement to the Park, which was \$4,000 for
25 repair of the security gate. That to me is not a maintenance

1 expense. That to me is a repair expense and excluded from
2 Attachment A's allowance of additional adjustments, I'll
3 tell you how I came to that. I used to have a car that I
4 took in every 4,000 miles regularly because this was the
5 first new car I ever bought. And I took it in every 4,000
6 miles because I wanted to maintain that car. About 65,000
7 miles I took it in for it's usual 4,000 mile maintenance,
8 which was designed to keep it in its condition, and they
9 told me I needed \$1,100 in work done on it. Now, is that
10 \$1,100 a maintenance expense? No, it was a repair expense.
11 And that's the way I approach this. We have expenses for
12 maintaining the premises, and then we have expenses for
13 repairing the premises.

14 Another good example is you have to pay for your
15 pro rata share of maintenance of a common area. I think
16 painting a clubhouse once in a while is maintenance because
17 it designed to keep it in its way. So let's say during that
18 painting a wall falls down, just collapses. Somebody has to
19 rebuild a wall. Is the rebuilding of that wall and the
20 expense intended to that maintenance? No. It is a repair.
21 So if that were the situation, I could make a pretty, in my
22 mind, clear distinction between maintenance costs and repair
23 costs. Since I haven't gone through these item by item, I'm
24 probably going to end up having someone do that or I'll do
25 it myself. I'm going to make a distinction between the

1 costs I think are true maintenance or costs of operating the
2 community building versus repair or expenditures not
3 actually within the definition of maintenance.

4 Now, in large part that means Attachment A is
5 enforceable. It means that the adjustments that are
6 referenced in Attachment A are not adjustments included in
7 the Consumer Price Index computation but are, in fact, under
8 the law and under the contract additional expenses that can
9 be flowed through to the tenant on a pro rata basis.

10 Now, as to the gate. What I have before me is a
11 mobile home park that has a security gate that became
12 inoperable off and on for short periods of time, long
13 periods of time. The first question is is that security gate
14 part of the contract you all signed? And I made a parallel
15 between that and a person renting a house. A person rents a
16 house, moves in and the door falls off the hinges. So the
17 person calls up the landlord and says the door fell off the
18 hinges. The landlord says the door wasn't part of the
19 contract. I wouldn't buy into that. I think the premises
20 that you rented, the roads in that place, the security gate
21 was part of your contract. The real question is whether or
22 not that contract was breached.

23 It's clear that the gate became inoperable,
24 sometimes for long periods of time. It's also clear to me
25 from the evidence that I've received in which basically is

1 the letter or the memo to you from, I forget who the manager
2 was, detailing the problems that they were having getting
3 someone to repair the gate or after it was repaired keeping
4 it repaired. So first off, I'm not sure that the plaintiffs'
5 evidence rises to the dignity of establishing a true breach
6 of that contract. I also know that it is not black and white
7 in the real world. But there are times when a person simply
8 can't get something repaired, which it looks to me like is
9 the case here. Attempts were made, first of all, to contact
10 people. Secondly, when they did contact them they fixed it
11 temporary and couldn't fix it, or whatever. I think there
12 are facts here that would lend themselves to me finding that
13 the defendant is relieved of their obligation to provide
14 this gate because they did their best and couldn't.

15 And then lastly, even aside from that, what was
16 the gate worth? I had a marketing report that said in some
17 fashion that someone thinks the value of the gate is \$35 a
18 month. Then equally compelling evidence that's been received
19 by this Court a letter from this Peggy Smith, was it, Peggy
20 something, that says the cost of the gate is not included in
21 the rent. At the end of the day on that issue I cannot find
22 that the plaintiff has presented sufficient evidence to show
23 a breach of contract, that nor a breach is not excusable,
24 nor a sufficient basis for me to assess damages should I
25 find a breach on that behalf. That portion of the complaint

1 is hereby dismissed.

2 Now anything I need to address that I have not,
3 Mr. Wolfe, Mr. Sughrua?

4 MR. SUGHRUA: Nothing from the plaintiff.

5 THE COURT: Mr. Olsen?

6 MR. OLSEN: Not as part of your ruling. But in
7 terms of what that means I think I have some questions.

8 THE COURT: We'll get to that.

9 Mr. Moser?

10 MR. MOSER: Nothing.

11 THE COURT: Your question, what does it mean?

12 Well, it means I've decided the issue of the proper
13 computation of the Consumer Price Index. I have, in effect,
14 adopted the most reasonable one provided for the contract
15 and the new rent computation, new Consumer Price Index
16 overall multiplied times the old month's rent. I have
17 decided that the additional adjusts are not included in the
18 CPI adjustment. I disallowed any claimed improvements made
19 to the park because I don't think the tenants should be
20 obligated to provide for those sort of expenses. In fact, I
21 think they are entitled to have maintained for them what
22 they got from when they first moved in. I've made certain
23 references that I'm not sure I complete to what I believe
24 the claimed expenses are in terms of whether or not they
25 fall within the definition of maintenance of common areas or

1 costs of operating the community building. And I have
2 allowed that that is something I may need to further examine
3 on a line item by line item basis.

4 And, lastly, I agree with your position on
5 59.20.135 that these additional adjustments are not
6 prohibited by the statute in my mind. After a closer
7 reading, it says you can't place upon the tenants' version a
8 responsibility of buying supplies and doing the work. And in
9 this case I don't find that that has been the affect of
10 Attachment A.

11 So now what does that mean to you.

12 MR. OLSEN: The question I have with regard to
13 the allegations of the rental adjustment regarding the CPI I
14 would take that to mean those claims have been dismissed.

15 THE COURT: Well, that's the question because I
16 don't think I can just flat dismiss them because in order to
17 get to where I ended up I had to make certain factual
18 findings. Do you follow me?

19 MR. OLSEN: Yes.

20 THE COURT: That's why I asked you, I asked you
21 if I didn't dismiss, but I felt I had enough information and
22 evidence to make a ruling, a decision, if you would allow me
23 to do that.

24 MR. OLSEN: Yeah.

25 THE COURT: So I think it's strict adherence to

1 the rules, I denied your motion to dismiss but then decided
2 the case factually and legally based on the evidence at the
3 end of plaintiff's case. And I believe that that's the same
4 approach I took with the addition on adjustments increase in
5 costs. Because, quite frankly, at the end of the day on that
6 there were aspects of the claimed expenses that I found were
7 not in accordance with the contract. So I didn't dismiss
8 that. I denied your motion to dismiss and then went on and
9 decided the case based on the evidence I had. That's how I
10 look at it. And then on the gate issue I did the same thing;
11 that I didn't deny, I didn't dismiss it outright when I
12 decided based on the evidence I had.

13 MR. OLSEN: One question I would then have is
14 whether the defendants would have the opportunity to,
15 perhaps by later motion present evidence, of the lack of
16 damages that the plaintiffs have suffered. And by that I
17 could present testimony from our accountant which describes,
18 I believe, by offer of proof that describes the costs that
19 Little Mountain Estates incurred since its inception
20 compared to costs that they were allowed to capture by
21 virtue of the portions of Attachment A, which the Court has
22 now approved are higher than what the plaintiffs paid, if
23 you're following me.

24 THE COURT: Paid for what? Okay. As I
25 understand, your computation of the CPI is in my view the

1 correct one. They suffered no damage because that was
2 okay.

3 MR. OLSEN: The cost pass through is what I was
4 talking about.

5 THE COURT: The cost pass through I'm assuming
6 that you pass through the real estate taxes?

7 MR. OLSEN: Correct.

8 THE COURT: In the way you wanted to.

9 MR. OLSEN: Correct.

10 THE COURT: I'm assuming you passed through the
11 water service and the way the television cable was passed
12 through as long as the base starts with basic television
13 cable that is continued through the various increases.

14 Maintenance of common areas, costs of operating
15 community building, I thought I knew what you were
16 requesting. And I will decide if those requests are
17 appropriate. And if it turns out you requested and were
18 paid more under my understanding of what you were allowed to
19 collect for then that's going to be judgment in their favor.

20 MR. OLSEN: Right. And my question would be as
21 we had intended to do today present evidence from an
22 accountant that said whatever costs were passed through to
23 the plaintiff and let's presume they were legitimate for
24 purposes of my statement and approved by the Court's ruling
25 now, whatever they were, they should have been more. And

1 they weren't paid; so they weren't damaged.

2 THE COURT: So you say because you didn't charge
3 them as much as you could have but did charge them something
4 that I don't think you should have charged them, that a
5 wash; is that what you're saying?

6 MR. OLSEN: Right. That's what I'm saying.

7 THE COURT: You're going to have to convince me
8 that is part of your approach. Because much like your
9 accordane satisfaction argument if you assess them certain
10 money, that to me is where you're position is. Not we could
11 have assessed them more. If you assessed them this much, if
12 I find what you assessed was inappropriate, they are
13 entitled to a refund to that.

14 MR. OLSEN: Okay.

15 THE COURT: Unless you can show me something
16 different.

17 MR. OLSEN: I would like the right to reserve a
18 chance to talk about that and raise it at a later date.

19 THE COURT: Now, since I've done what I've done,
20 do you have any witnesses to call this afternoon?

21 MR. OLSEN: Mr. Moser, my esteemed colleague and
22 partner in crime of sorts, has suggested that the real
23 effect of the Court's ruling is to identify other areas that
24 both sides would need to look at closer and determine what
25 part of the line items are --

1 THE COURT: Well, I still need to go through line
2 by line. And because, quite frankly, I had only last night
3 to do this. And I went over the ones that in effect just
4 kind of jumped out at me. And it may be that some of these
5 items will need some explanation. Because landscape
6 maintenance if it's truly an expense associated with
7 maintaining the premises and the condition of the park is in
8 my mind different than some sort of new undertaking. Which,
9 if it's an improvement, I wouldn't be allowing to be
10 assessed.

11 MR. OLSEN: I understand. So what my suggestion
12 would be is to allow the parties to consider what was done
13 today, perhaps request a copy of the transcript, share it
14 with our clients and then that could provide a road map for
15 us to come back later and present what we need to do to wrap
16 it up.

17 THE COURT: That would be fine with me. So in
18 effect, that means no, we wouldn't be doing anything this
19 afternoon.

20 MR. OLSEN: No, we'll call it a day.

21 THE COURT: I don't know that we ever set a date
22 for the second phase of this trial, the cross claim.

23 MR. NEHRING: Not yet.

24 MR. MOSER: They gave us some dates for May and
25 June.

1 THE COURT: I brought my calendar for the rest of
2 the year, as a matter of fact. What are you going to do
3 this afternoon, here or gone?

4 MR. NEHRING: I'll be here.

5 MR. OLSEN: We can be here as long as necessary.

6 THE COURT: How about I do this, the ones that
7 are here I gave the dates that it looks like I'm going to be
8 available and you all can talk, talk with the Court. I
9 assume I'll be coming here for that. Would that be most
10 convenient? Then we'll just work altogether.

11 MR. OLSEN: Now, one thing, I guess, that's
12 raising in my mind is when you say cross claims are you
13 considering the interference claims that the Wares have
14 brought?

15 THE COURT: That's what I was talking about.

16 MR. OLSEN: Because, as you know, the defendants
17 have asserted collateral and similar requests for
18 declaratory relief, which I presume is also being resolved
19 by the Court's decision today.

20 THE COURT: I think so. So if it turns out that
21 after I'm done here doesn't include everything I need to
22 address here we can just decide how we are going to do that.
23 I'll be honest with you this has been a two week trial based
24 on a 35-page complaint, which generated, probably in each of
25 your offices, five times that amount of documentary

1 evidence. And they are not simple. There is no way I can
2 give you decisions covering each and every I that needs to
3 be dotted and every T that needs to be crossed. With that
4 we'll be in recess. And you can communicate with my law
5 clerk in Snohomish County about what we need do next.

6 MR. OLSEN: In terms of scheduling, I'll get in
7 touch with her.

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9 (Proceedings ending at this time in this matter).
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Little Mountain v. Peregrine Holdings
Case No. 02-2-01295-0
January 18, 2006
Honorable Kenneth Cowsert

* * * * *

THE COURT: Okay. The issue I'm addressing here were the parties in an equal bargaining position at time these transactions commenced? And I conclude that yes they were initially. Initially the landlords had property that they wanted to rent or lease, and they made that known to the general public. Respective tenants, including the plaintiffs had no obligation to take that offer. They weren't forced into it. They were simply given an opportunity. And some of them took that opportunity and some of them passed it by. I think that equality or balance in the bargaining position continued for some time. The tenants decided to reserve a lot. And at that time no one was forcing anybody to do anything, and there was certainly an ability to communicate directly and indirectly about that. So I think that as of that time the respective positions of the parties are still valid.

As I commented yesterday, it just astounded me that people entered into fairly expensive propositions

1 without understanding or undertaking to understand, in large
2 part, exactly what these propositions involve. So it's
3 pretty clear to me that after the purchase of the home and
4 required payment of set up that continued, their relative
5 positions regarding bargaining began to change. Tenants
6 became to be committed not absolutely, not irrevocably but
7 more committed than they were initially with the activity of
8 the mobile home move in and set up.

9 I think it's pretty clear that after or shortly
10 before the actual occupancy of the mobile home was ready
11 that the tenants would have been in a difficult position had
12 they wanted to withdraw. The problem is, as I stated
13 yesterday, that they didn't. Because it was only later
14 after they signed the leases and then sometime even later
15 after that that they began to discover what they considered
16 to be an impropriety. So would it have been difficult to
17 withdraw, yes. Nobody tried to withdraw, however. And they
18 simply continued on with the move in, the residents, and the
19 payment of rent and other fees.

20 I think by the time the lease was signed, and for
21 many that was after they had actually moved in, and for some
22 it was shortly before they moved in, that the balance was
23 not so much equal anymore but more in favor of the landlord.
24 Now, again, I can only emphasize I'm guessing that's the
25 situation. Because I have heard no testimony that there was

1 any attempt to renegotiate, or back out of, or have the
2 leases modified because, quite frankly, until 2002 nobody
3 took necessary steps in my view to try and have that
4 situation addressed. I know the tenants association had the
5 minutes reflecting that they had suggested negotiation. But
6 as far as the evidence in this case shows that negotiation
7 was never ever taken. Quite frankly, by that time the
8 landlord would have had little, if any, incentive to
9 renegotiate. But that doesn't mean it couldn't have
10 happened. There was one instance where the landlord had his
11 attention brought to the fact that the lease the tenant got
12 wasn't the 25-year one as was advertised and that matter was
13 reconciled.

14 But I think by the time of what's important here,
15 which is the signing of the leases, I can conclude that the
16 bargaining position of the two parties was not equal. But
17 that again is based on what I understand just from common
18 sense to be the situation. And that is because no one took
19 active steps to try to balance that inequality.

20 Now, bargaining position being not equal that
21 doesn't change my position from yesterday that the tenant
22 still had the ability to take some type of action. If they
23 couldn't have backed out of the deal because it was too
24 expensive and if they couldn't have renegotiated
25 successfully, they still could have sued. And that's the

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point I'm trying to make. There may have been an inequality of the bargaining position but there was not an absence of a bargaining position up to and including the filing of the lawsuit to address the grievances that the tenant or tenants felt they had.

Anything further about that?

MR. WOLFE: No.

THE COURT: Any other questions?

Okay. Now, call your next witness.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

LITTLE MOUNTAIN ESTATES
TENANTS ASSOCIATION, a
Washington Non-profit corporation, as
assignee, JERRY JEWETT, VIRGINIA
HALDEMAN, MARIE McCUTCHIN,
and WES WALTON, on behalf of
themselves and classes of similarly
situated persons,
Plaintiffs,

vs.

PEREGRINE HOLDINGS, LLC,
Defendant

and

LITTLE MOUNTAIN ESTATES MHC
LLC, a Limited Liability Company,
Substituted Defendant

and

and KEVIN A. WARE and KARI M,
WARE, husband and wife and the
marital community composed thereof,
Joined Defendants.

NO. 02-2-01295-0

AMENDED NOTICE OF APPEARANCE

TO: THE CLERK OF THE COURT;

TO: Peregrine Holdings, LLC Defendants;
AND TO: Walt Olsen, Attorney for Defendants

AMENDED NOTICE OF APPEARANCE - 1

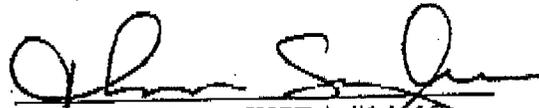
THE LAW FIRM OF
SUGHRUA & ASSOCIATES, INC.
A PROFESSIONAL SERVICE CORPORATION
1411 FOURTH AVENUE, SUITE 1420
SEATTLE, WA 98101
(206) 264-0100

COPY

1 TO: Kevin A. and Kari M. Ware, Defendants;
AND TO: Thomas Moser, Attorney for Defendants

2 PLEASE TAKE NOTICE that plaintiff Little Mountain Estates Tenant Association,
3 through the undersigned attorneys, hereby enters this Amended Notice of Appearance to
4 clarify the claimants and assignees, who are identified on the attached Exhibit A. This
5 appearance is without waiver of any defenses including, but not limited to, insufficient
6 service of process and lack of personal jurisdiction. All further papers and pleadings, except
7 process, in this cause may be served upon said plaintiff by delivering a copy thereof to the
8 undersigned attorney at the address below stated. Service upon another law firm office and
9 service without express direction to deliver to Thomas Sughrua will not be deemed valid.

10 DATED this 6th day of January 2006.

11
12 

13 Thomas Sughrua, WSBA #14117
14 TRG Wolff, WSBA #4146
15 1411 Fourth Avenue Building
16 Suite 1420
17 Seattle, WA 98101
18 (206) 264-0100 Tph
19 (206) 652-4811 Fax
20
21
22
23
24

EXHIBIT A
TO
AMENDED NOTICE OF APPEARANCE
[CURRENT AND FORMER TENANTS REPRESENTED BY
PLAINTIFF LITTLE MOUNTAIN TENANTS ASSOCIATION]

Current 25-Year Tenants Represented by Association

Joyce E.	Bailey	#93
John R. and Patricia	Barton	#102
Jack and Leona	Bielinski	#67
Sterling and Dottie	Cross	#97
Corky	Custer	#34
Barbara J.	Davis	#42
Donald and Lorraine	Dykstra	#36
Clara Roth and Clyde	Esselbach	#95
Bileen	Exelby	#81
Cliff and Lois	Flanary	#15
Joyce	Grace	#94
Beverly	Gregory	#56
Arthur W.	Hademan	#57
Gerald and Nancy	Hall	#59
Janice	Harman	#55
Ordean J.	Helland	#16
Jerry D. and Betty J.	Jewett	#38
Janet K.	Keillor	#46
Richard F. and Shirley M.	Kristiansen	#111
Doris	Landvatter	#26
Robert L. and Marnilynn	McMullen	#29
Marcyene	Olson	#60
Jacqueline	Peterson	#33
Maxine M.	Peterson	#109
Patricia K.	Pettelle	#51
Gladys	Schafer	#76
Donna	Schneider	#17
Karl A. and Herdis	Svensson	#103
Glenn R. and Mary A.	Tellefson	#48
W.P. and Lucille E.	Walton	#110
Peggy L. and Jack	Woodmansee	#58

Former 25-Year Tenants Represented by Association

Ray	Crawford c/o Rod Crawford	#85
Clyde	Esselbach	#91
Virginia	Haldeman	#19
Dorothea L.	May	#100
Georg and Ruby L.	Saling	#112
Claud W.	Tingley	#70
Margaret	Waddington c/o Cecil Betz	#65
Robert and Barbara	Wise	#14
Martha	Ellesbo c/o Linda Tellesbo	#104
Roy	Dubisch	#20
Evelyn	Kilian	#96
Dorothy	Randall	#66
Marilyn	Wahl	#44

Current One-Year Tenants Represented by Association

Gene and Marilyn	Abel	#28
Barbara and Ronald	Anderson	#74
Doris	Archambault	#7
Nancy	Ballard	#14
Don and Donna	Berg	#10
Robert and Sharon	Bieda	#88
Chet and Janice	Bluemke	#101
Dorothy	Bowman	#19
William and Shirley	Conger	#6
Jim (Harold) and Ruth	Dickerson	#98
Doris	Epley	#63
Geneva	Guertin	#68
Rentz	Gullick	#119
Tjaakje Heidma and Sophia	Kellis	#118
Charles	Johnson	#30
Nola and Ralph	Johnson	#84
Gordon and Linda	Kjos	#66
Wayne and Birgit	Lindstrom	#18
Wayne and Lynette	Martin	#89
Bill and Marie	McCutchin	#71
Janet	McFadden	#112
David and Lydia	Miller	#35
Virgil	Nelson	#62
Laurie	O'Connell	#11
Dick	Phillips	#44
Eva	Powell	#64

Mary Lee	Proffitt	#27
Betty	Reinert	#79
Harry and Pat	Schuppenhauer	#37
Harrison and Grace	Scott	#115
Jean	Simmonds	#25
Bob and Donna	Smith	#105
Jean	Swanland	#52
Dick and Barbara	Terwilliger	#43
Pearl and Ken	Thompson	#53
Nancy	Topham	#61
Gordon and Carolyn	Traylor	#117
John and Helen	Vaux	#104
Elanor	Walde	#13
Randy and Sandra	Walley	#78
Joan	Williams	#41
Marvin and Bonnie	Wohlman	#85
Betty	Wolpert	#40
Barbara	Brattain	#5
Edna and Stephen	Niven	#24

Former One-Year Tenants Represented by Association

John	Hamers	#118
Gary	Hoskins	#114
Henry	Wright	#31

Former 25-Year Tenants with Claims to be Determined After Trial of Current 25 Year Leases

Dorcie and Barbara	Jennings	#24
Arline	Stone	#106
James and Barbara	Fletcher	#41
Scott and Virginia	Richards	#11
Carolyn	Ayers	#4
Marguerite	Valenti	#35
Robert A.	Fritts	#53
Iven L.	Brook	#25

1 CERTIFICATE OF SERVICE

2 The undersigned certifies on this day he/she caused to be served in the manner noted
3 below, a copy of the document to which this certificate is attached, on the following counsel
4 of record and/or parties, in the manner indicated:

4 William H. Olson, Jr.
5 The Olson Law Firm
6 604 W. Meeker St., Suite 101
7 Kent, WA 98032

- 8 Via Mail
9 Via Facsimile
10 Via Messenger
11 Via Email: walt@olsenlawfirm.com

12 C. Thomas Moser
13 411 Main Street
14 Mount Vernon, WA 98273
15 Attorney for Defendants
16 Kevin and Kari Ware

- 17 Via Mail
18 Via Facsimile
19 Via Messenger
20 Via Email: tom@tomoser.com

21 I certify under the penalty of perjury under the laws of the State of Washington that
22 the foregoing is true and correct on this _____ day of _____, 2006.

23 _____
24 Emily Clark
Signed at Seattle, Washington

APPENDIX B

2005 JUN 14 PM 3:01

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF ~~SNOHOMISH~~ SKAGIT

LITTLE MOUNTAIN ESTATES)
TENANT ASSOCIATION ET AL)
PLAINTIFF / PETITIONER)

and)
LITTLE MOUNTAIN ESTATES MHC)
ET AL DEFENDANT / RESPONDENT LLL)

NO. 02-2-01295-0
ORDER

IT IS HEREBY ORDERED: *Having heard argument of counsel on
Defendants' Revised motion for Partial Summary
Judgment and upon reviewing the supporting and
opposing pleading and documents filed thereto,
Now therefore, the court grants the revised
motion for partial summary judgment AND
RULES AS FOLLOWS:*

DONE IN OPEN COURT this date: _____

Presented By: _____

JUDGE / COURT COMMISSIONER

Copy Received: _____

ORIGINAL

Case Name _____ Case No. _____

① PLAINTIFFS' CLAIMS THAT PARAGRAPH 6 OF THE "LITTLE MOUNTAIN ESTATES 25 YEAR LEASE AGREEMENT" AND ITS "EXHIBIT B" VIOLATE THE MOBILE HOME/ MANUFACTURED LANDLORD TENANT ACT (RCW 59.20 ET SEQ) OR THE CONSUMER PROTECTION ACT (RCW 19.86 ET SEQ.) ARE DISMISSED WITH PREJUDICE; AND

② PARAGRAPH 6 OF THE "LITTLE MOUNTAIN ESTATES 25 YEAR LEASE AGREEMENT" AND ITS "EXHIBIT B" ARE NOT PROHIBITED BY THE MOBILE HOME/ MANUFACTURED HOME LANDLORD TENANT ACT (RCW 59.20 ET. SEQ.).

^{KU} * ~~including~~ specifically, the causes stated in plaintiffs' causes under 5.1.2(A) and (C).

DONE IN OPEN COURT this date: June 10, 2005

Presented By:

Walter H. Oser
#24462

[Signature]
JUDGE / COURT COMMISSIONER

Copy Received:

[Signature]
attorney for plaintiffs
#14117

APPENDIX C

FILED
SKAGIT COUNTY CLERK
SKAGIT COUNTY, WA
2005 AUG 19 AM 11:11

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

34

LITTLE MOUNTAIN ESTATES
TENANTS ASSOCIATION, a
Washington non-profit corporation, as
assignee, JERRY JEWETT, VIRGINIA
HALDEMAN, MARIE McCUTCHIN,
and WES WALTON, on behalf of
themselves and classes of similarly
situated persons,

Plaintiffs,

v.

PEREGRINE HOLDINGS, LLC,

Defendant

and

LITTLE MOUNTAIN ESTATES MHC,
LLC, a Limited Liability Company,

Substituted Defendant

and

KEVIN A. WARE and KARI M. WARE,
husband and wife and the marital
community composed thereof;

Joined Defendants.

No. 02-2-01295-0

ORDER ON SUMMARY
JUDGMENT

Clerk's Action Required

THIS MATTER coming before the undersigned judge upon the Defendants'
Motion for Partial Summary Judgment, the court having reviewed the following:

ORDER ON SUMMARY JUDGMENT - 1

OLSEN LAW FIRM PLLC
604 W. Meeker Street, Suite 101
Kamiah, Washington 98922
PH: 253.813.8111
FAX: 253.813.8133

- 1 1. Defendants' Motion for Partial Summary Judgment Re Rent
- 2 Adjustment Language in Lease Agreements;
- 3 2. Defendants' Motion for Partial Summary Judgment Re Tenants'
- 4 Releases and Settlement Agreements;
- 5 3. Declaration of Kevin Ware in Support of Motion for Partial Summary
- 6 Judgment;
- 7 4. Declaration of Brian Fitterer dated June 17, 2005;
- 8 5. Plaintiffs' Opposition to Defendants' Summary Judgment Motion Re
- 9 Rent Adjustments;
- 10 5. Declaration of Thomas Sughrua in Support of Plaintiffs' Opposition
- 11 to Defendants' Summary Judgment Motion Re Rent Adjustments;
- 12 6. Declaration of Virginia Haldeman in Support of Plaintiffs' Opposition
- 13 to Defendants' Summary Judgment Motion Re Rent Adjustments;
- 14 7. Defendants' Motion for Partial Summary Judgment Re Tenants'
- 15 Releases and Settlement Agreements;
- 16 8. Plaintiffs' Opposition to Defendants' Summary Judgment Motion Re
- 17 Releases and Settlement Agreements;
- 18 9. Defendants' Reply Regarding its Motion for Partial Summary
- 19 Judgment re Enforcement of Releases and Settlement Agreements;
- 20 and Defendants' Anticipated Reply to Plaintiffs' Opposition to
- 21 Defendants' Motion for Permission to Contact Pro Se Third Party
- 22 Plaintiffs;
- 23 10. Defendants' Reply Re: Plaintiffs' Opposition to Defendants' Motions
- 24 for Partial Summary Judgment re Rental Adjustments;
- 25 11. Declaration of Kevin Ware dated July 7, 2005; and
- 26 12. Declaration of Kari Ware dated July 7, 2005.

ORDER ON SUMMARY JUDGMENT - 2

OLSEN LAW FIRM PLLC

604 W. Meeker Street, Suite 101
Knox, Washington 24032
PH: 253.813.8111
FAX: 253.813.8133

1 The court having heard the argument of counsel, now, therefore, it is hereby
2 ORDER, ADJUDGED and DECREED that defendants' Motions for Partial
3 Summary Judgment are GRANTED in part, RESERVED in part, and DENIED in
4 part; it is further

5 ORDER, ADJUDGED and DECREED that plaintiffs' claims that paragraphs
6 3 and 4 of the "Little Mountain Estates 25 Year Lease Agreement" and its "Exhibit
7 A" violate the Mobile Home/Manufactured Home Landlord Tenant Act (RCW 59.20
8 *et seq.*) or the Consumer Protection Act (RCW 19.86 *et seq.*) are DISMISSED with
9 prejudice (plaintiffs argued that their Complaint did not include these claims); it is
10 further

11 ORDERED, ADJUDGED and DECREED that paragraphs 3 and 4 of the
12 "Little Mountain Estates 25 Year Lease Agreement" and its "Exhibit A" are not
13 prohibited by the Mobile Home/Manufactured Home Landlord Tenant Act (RCW
14 59.20 *et seq.*) (plaintiffs argued that their Complaint did not include these claims);
15 it is further

16 ORDERED, ADJUDGED and DECREED that the "Little Mountain Estates
17 25 Year Lease Agreement" provides that "Increases in these costs may be passed on
18 at the annual rental adjustment date" as follows:

19 Monthly Rent Adjustment Based on Increased Costs =
20 (Current Year Costs - Prior Year Costs) divided by (120 tenants)
21 divided by (12 months in a year).

22 ORDERED, ADJUDGED and DECREED that defendants' motion for partial
23 summary judgment as it relates to the rental adjustments based on the Consumer
24 Price Index are DENIED; it is further

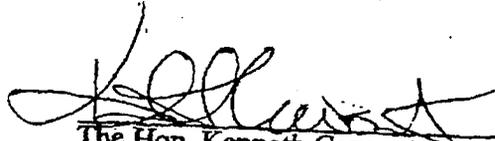
25 ~~ORDERED, ADJUDGED and DECREED that Defendants' Motion for~~
26 ~~Partial Summary Judgment Re Tenants' Releases and Settlement Agreements is~~

ORDER ON SUMMARY JUDGMENT - 3

OLSEN LAW FIRM PLLC
604 W. Meeker Street, Suite 101
Kearney, Washington 98022
PH: 253.813.8111
FAX: 253.813.8133

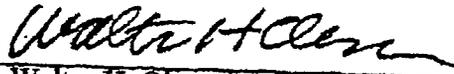
1 ~~RESERVED~~ until after the Court considers plaintiffs' motion for class certification
2 on September 8, 2005.

3 DONE IN OPEN COURT this 16 day of August, 2005.

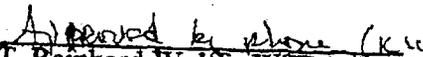
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6 
The Hon. Kenneth Cowser

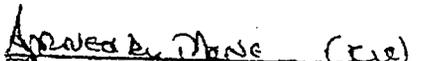
7 Presented by:

8 OLSEN LAW FIRM PLLC

9 By: 
10 Walter H. Olsen, Jr., WSBA #24462
11 Attorneys for Defendants

12 Form Approved; Copy Received:

13 
14 T. Reinhard Wolff - WSBA # 4146
Attorney for Plaintiffs

15
16 
17 Thomas Sughrue - WSBA # 14117
Attorney for Plaintiffs

18
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ORDER ON SUMMARY JUDGMENT - 4

OLSEN LAW FIRM PLLC
604 W. Meeker Street, Suite 101
Knox, Washington DC 20002
PH: 253.813.8111
FAX: 253.813.8133

APPENDIX D

The Hon. Kenneth Cowsert
SKAGIT COUNTY, WASH
FILED

SEP 1 2005

NANCY K. SCOTT, CO. CLERK
By: _____ Dept:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

7 LITTLE MOUNTAIN ESTATES
8 TENANTS ASSOCIATION, a
9 Washington non-profit corporation, as
10 assignee, JERRY JEWETT, VIRGINIA
11 HALDEMAN, MARIE McCUTCHIN,
12 and WES WALTON, on behalf of
13 themselves and classes of similarly
14 situated persons,

Plaintiffs,

v.

14 PEREGRINE HOLDINGS, LLC,

Defendant

and

17 LITTLE MOUNTAIN ESTATES MHC,
18 LLC, a Limited Liability Company,

Substituted Defendant

and

21 KEVIN A. WARE and KARI M.
22 WARE, husband and wife and the
23 marital community composed thereof;

Joined Defendants.

No. 02-2-01295-0

ORDER GRANTING
SUMMARY JUDGMENT OF
DISMISSAL OF DEFENDANTS
KEVIN AND KARI WARE IN
PART

Clerk's Action Required

25 THIS MATTER coming before the undersigned judge upon the Defendants'
26 Motion for Summary Judgment of Dismissal of Defendants Kevin and Kari Ware,

ORDER ON SUMMARY JUDGMENT - 1

OLSEN LAW FIRM PLLC

604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

1 the court having reviewed the following:

- 2 1. Defendants' Motion for Summary Judgment of Dismissal of
3 Defendants Ware;
- 4 2. Declaration of Kevin Ware in Support of Motion for Summary
5 Judgment of Dismissal;
- 6 3. Affidavit of Virginia C. Antipolo-Utt in Support of Motion for
7 Summary Judgment of Dismissal;
- 8 4. Plaintiffs' Opposition to Defendants Wares' Motion for Summary
9 Judgment of Dismissal;
- 10 5. Declaration of Thomas Sughrua in Support of Plaintiffs' Opposition
11 to Defendants Wares' Motion for Summary Judgment of Dismissal
- 12 6. Defendants' Reply to Plaintiffs' Opposition to Motion for Summary
13 Judgment of Dismissal of Defendants Ware;
- 14 7. Declaration of Kevin Ware dated July 7, 2005; and
- 15 8. Declaration of Kari Ware dated July 7, 2005.

16 The court having heard the argument of counsel, and having determined that
17 there are no genuine issues of material fact, now, therefore, it is hereby

18 ORDER, ADJUDGED and DECREED that Defendants' Motion for
19 Summary Judgment of Dismissal of Defendants Kevin and Kari Ware is GRANTED
20 in part and DENIED in part; it is further

21 ORDER, ADJUDGED and DECREED that each of plaintiffs' claims for
22 declaratory and injunctive relief against defendants Kevin Ware and Kari Ware are
23 DISMISSED with prejudice; it is further

24 ORDER, ADJUDGED and DECREED that plaintiffs' remaining claims
25 against defendants Kevin Ware and Kari Ware which accrued before September 28,
26 1996 are DISMISSED with prejudice because these claims are barred by a six-year

ORDER ON SUMMARY JUDGMENT - 2

OLSEN LAW FIRM PLLC

604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

1 statute of limitations; it is further

2 ORDER, ADJUDGED and DECREED that the remainder of Defendants'
3 Motion for Summary Judgment of Dismissal of Defendants Kevin and Kari Ware
4 is DENIED.

5 DONE IN OPEN COURT this 25 day of August, 2005.

6
7 
8 The Hon. Kenneth Cowsert

9 Presented by:

10 OLSEN LAW FIRM PLLC

11 By: Walter H. Olsen
12 Walter H. Olsen, Jr., WSBA #24462
13 Attorneys for Defendants

14 FORM APPROVED:

15
16 SEE ATTACHED EMAIL

17 THOMAS SUGRA
18 RON WOLFF
19

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21
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ORDER ON SUMMARY JUDGMENT - 3

OLSEN LAW FIRM PLLC

604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

Walter H. Olsen, Jr.

From: Thomas Sughrua [tsughrua@trialatty.net]
Sent: Friday, August 19, 2005 2:46 PM
To: 'Walter H. Olsen, Jr.'
Subject: RE: Little Mountain - Proposed Orders

Walt: The proposed orders are fine as transmitted on August 19, 2005. We hereby approve them for entry and you may sign our names as authorized by this e-mail.

Tom and Ron

—Original Message—

From: Walter H. Olsen, Jr. [mailto:walt@olsenlawfirm.com]
Sent: Friday, August 19, 2005 8:34 AM
To: 'Thomas Sughrua'; 'TRG Wolff'
Subject: FW: Little Mountain - Proposed Orders

Tom/Ron: Any objection to these orders?

Walter H. Olsen, Jr.
Olsen Law Firm PLLC
604 W. Meeker St., Suite 101
Kent, Washington 98032
Ph: (253) 813-8111
Fax: (253) 813-8133

The contents of this message and any attachments may be protected by attorney-client privilege, work product doctrine or other applicable protection. If you are not the intended recipient, or have received this message in error, please notify the sender and promptly delete this message. Thank you.

—Original Message—

From: Walter H. Olsen, Jr. [mailto:walt@olsenlawfirm.com]
Sent: Tuesday, August 16, 2005 9:53 AM
To: 'Thomas Sughrua'; 'TRG Wolff'
Cc: 'Tom Moser'
Subject: Little Mountain - Proposed Orders

Attached are defendants' proposed protective order and order regarding the dismissal of the Wares. Let me know if you have any objections.

Walter H. Olsen, Jr.
Olsen Law Firm PLLC
604 W. Meeker St., Suite 101
Kent, Washington 98032
Ph: (253) 813-8111
Fax: (253) 813-8133

APPENDIX E

2005 DEC 28 PM 12:17

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

Little Mountain Tenant Assn Inc.

PLAINTIFF / PETITIONER

and

Little Mountain Estate LLC LLC

DEFENDANT / RESPONDENT

et al.

NO. 02-2-01295-0

ORDER

IT IS HEREBY ORDERED: upon agreement and stipulation
of the parties based on the prior written and
oral court rulings that the following causes
will be tried by the court: 2nd Cause of action ("COA")
5.1.2 B and C; 3rd COA 5.1.3; 4th COA 5.1.4; 6th COA
5.2.3; 7th COA 5.2.4; 9th COA 5.3.2; 10th COA 5.3.3;
11th 5.4.1; 13th COA 5.4.3 A, B + C; 14th COA 5.4.4;
15th COA 5.4.8; 16th COA 5.5.1; 17th COA 5.5.2; 19th COA

DONE IN OPEN COURT this date: _____

Presented By:

JUDGE / COURT COMMISSIONER

Copy Received:

Page 1 of 2

5.5.4; 20th COA 5.5.5; 21st COA 5.6.1;
22nd COA 5.6.3; 23rd COA 5.6.4; and 24th
COA 5.7.

all other causes of action were previously
dismissed.

The parties stipulate to prepare and
file a revised Third Amended Complaint
setting forth the above surviving causes
of action for trial purposes.

DONE IN OPEN COURT this date: DEC 23, 2005

Presented By: Alvin D. Saylor, WSBA 14117

[Signature]
JUDGE / COURT COMMISSIONER

Copy Received: Walt Halser #244602

APPENDIX F

1 TO BE HEARD BY SNOHOMISH COUNTY SUPERIOR COURT JUDGE:

2 The Hon. Kenneth Cowser
3 Motion: Friday, October 7, 2005, 1:30 p.m.
4 Moving Party

5
6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7 IN AND FOR THE COUNTY OF SKAGIT

8 LITTLE MOUNTAIN ESTATES
9 TENANTS ASSOCIATION, a
10 Washington non-profit corporation, as
11 assignee, et. al,

12 Plaintiffs,

13 v.

14 LITTLE MOUNTAIN ESTATES MHC,
15 LLC., a Washington limited liability
16 company, et. al

17 Defendants.

No. 02-2-01295-0

ORDER RE SEPTEMBER 9,
2005 MOTIONS

18 THIS MATTER having come before the undersigned upon the parties'
19 below motions and pleadings:

20 A. The Parties' Motion for Summary Judgment that 25-Year Lease is
21 Void.

22 1. Defendants' Conditional Joinder in Plaintiffs' Motion for Summary
23 Judgment and Defendants' Motion for Declaration That the Parties' 25-year
24 Leases Are Void; and

25 Defendants' Motion for Summary Judgment That Plaintiffs Cannot
26 Invoke Any Equitable Doctrine; and

Defendants' Motion for Summary Judgment That the Mobile Home

ORDER RE SEPTEMBER 9, 2005
MOTIONS - 1

OLSEN LAW FIRM PLLC
604 W. Mocker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

ORIGINAL

1 Landlord-tenant Act Provides the Terms of Plaintiffs' Tenancies; and
2 Defendants' Motion For Summary Judgment That Neither Plaintiffs
3 Nor Defendants Are Subject to Liability Because The Parties' 25-year Leases Are
4 Void;

5 2. Plaintiffs' Motion for Summary Judgment Ruling that Defendants'
6 25-Year Leases are Void Under the Statute of Frauds and for Other Relief;

7 3. Declaration of Thomas Sughrua in Support of Plaintiffs' Motion for
8 Summary Judgment Ruling that Defendants' 25-Year Leases are Void Under the
9 Statute of Frauds and for Other Relief;

10 4. Amended Declaration of Jerry Jewitt;

11 5. Defendants' Response to Plaintiffs' Motion for Summary Judgment;
12 And Defendants' Cross-Motion for Summary Judgment That the MHLTA Does
13 Not Require That the 25-year Lease Be Notarized; or Defendants' Cross-Motion
14 For Summary Judgment That Plaintiffs Are Not Entitled to +Equitable Relief
15 Under The Part Performance Doctrine as a Matter of Law And The Terms of The
16 Parties' Resulting Implied Tenancy Are Therefore Defined by The MHLTA;

17 6. Declaration of Brian Fitterer in Support of Defendants' Response to
18 Plaintiffs' Motion For Partial Summary Judgment;

19 7. Declaration of Walter H. Olsen, Jr. Dated July 5, 2005;

20 8. Declaration of Kevin Ware in Support of Motion for Partial
21 Summary Judgment; and

22 9. Declaration of Kevin Ware dated July 7, 2005.

23 **B. Defendants' Motion for Summary Judgment of Dismissal of Class**
24 **Claims**

25 1. Defendants Motion for Summary Judgment of Dismissal of Class
26

ORDER RE SEPTEMBER 9, 2005
MOTIONS - 2

OLSEN LAW FIRM PLLC
604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

1 Claims

2 2. Plaintiffs' response is included in their below Motion for Class

3 Certification

4 **C. Plaintiffs' Motion for Class Certification**

5 1. Plaintiffs' Motion For Class Certification; and

6 2. Declaration of Thomas Sughrua in Support of Plaintiff Motion for
7 Class Certification

8 3. Declaration of T.R.G. Wolff in Support of Plaintiffs' Motion For
9 Class Certification;

10 4. Declaration of Virginia Haldeman in Support of Plaintiffs' Motion
11 For Class Certification;

12 5. Declaration of Wes Walton;

13 6. Declaration of Marie McCutchin;

14 7. Defendants' Response to Plaintiffs' Motion for Class Certification

15 8. Declaration of Walter H. Olsen, Jr. dated August 29, 2005; and

16 **D. Plaintiffs' Motion for Partial Summary Judgment on Liability
17 Regarding CPI Clause and Rental Adjustments by Landlord**

18 1. Plaintiffs' Motion for Partial Summary Judgment on Liability
19 Regarding CPI Clause and Rental Adjustments by Landlord, and Declaration of
20 TRG Wolff in Support;

21 2. Defendants' Response to Plaintiffs' Motion for Partial Summary
22 Judgment on Liability Regarding CPI Clause and Rental Adjustments by
23 Landlord;

24 3. Declaration of Walter H. Olsen, Jr. in Support of Defendants'
25 Response to Plaintiffs' Motion for Partial Summary Judgment on Liability

26

ORDER RE SEPTEMBER 9, 2005
MOTIONS - 3

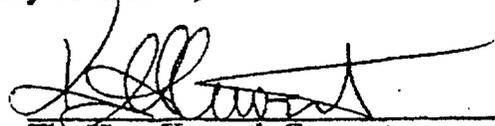
OLSEN LAW FIRM PLLC
604 W. Meeker Street, Suite 101
Kent, Washington 98032
TEL: 253.813.8111
FAX: 253.813.8133

1 Regarding CPI Clause and Rental Adjustments by Landlord;
2 4. Declaration of Shawn Hoban Dated August 29, 2005;
3 5. Declaration of Brian Fitterer Dated August 29, 2005;
4 6. Declaration of Kari Ware Dated August 29, 2005; and
5 7. Proposed Order Denying Plaintiffs' Motion for Partial Summary
6 Judgment on Liability Regarding CPI Clause and Rental Adjustments by
7 Landlord.

8
9 Based on the pleadings submitted by the parties, and the oral argument of
10 counsel, the Court orders as follows:

- 11 1. The Parties' Motion for Summary Judgment that 25-Year Lease is
12 Void is DENIED with prejudice.
- 13 2. Defendants' Motion for Summary Judgment of Dismissal of Class
14 Claims, and Plaintiffs' Motion for Class Certification is CONTINUED until
15 October 7, 2005.
- 16 3. Plaintiffs' Motion for Partial Summary Judgment on Liability
17 Regarding CPI Clause and Rental Adjustments by Landlord is DENIED without
18 prejudice.

19 DATED this 6th day of October, 2005.

20
21 
22 The Hon. Kenneth Cowsert

23 Presented by:
24 OLSEN LAW FIRM PLLC
25 
26 By _____
Walter H. Olsen, Jr. - WSBA #24462
Attorneys for Defendants

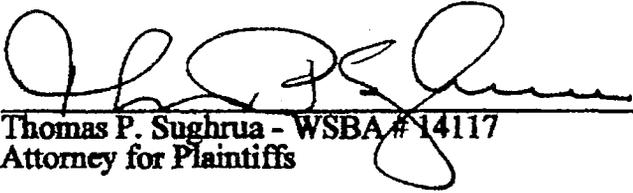
ORDER RE SEPTEMBER 9, 2005
MOTIONS - 4

OLSEN LAW FIRM PLLC
604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

1 Approved as to Form; Copy Received:

2 

3
4 T. Reinhard Wolff - WSBA # 4146
Attorney for Plaintiffs

5 

6
7 Thomas P. Sughrua - WSBA # 14117
Attorney for Plaintiffs

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ORDER RE SEPTEMBER 9, 2005
MOTIONS - 5

OLSEN LAW FIRM PLLC
604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

APPENDIX G

The Hon. Kenneth Cowsett

JAN - 9 2006

NANCY K. SCOTT, CO. CLERK

Jy:

Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

LITTLE MOUNTAIN ESTATES
TENANTS ASSOCIATION, a
Washington non-profit corporation, as
assignee, JERRY JEWETT, VIRGINIA
HALDEMAN, MARIE McCUTCHIN,
and WES WALTON, on behalf of
themselves and classes of similarly
situated persons,

Plaintiffs,

v.

LITTLE MOUNTAIN ESTATES MHC,
LLC., a Washington limited liability
company; PEREGRINE HOLDINGS
LLC, a Washington limited liability
company; and KEVIN A. WARE and
KARI M. WARE, husband and wife,

Defendants.

v.

THIRD PARTY PLAINTIFFS AS
IDENTIFIED IN EXHIBITS A AND B,

Third Party Plaintiffs.

No. 02-2-01295-0

ORDER GRANTING
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY
JUDGMENT AS TO
CPA VIOLATION
~~PROPOSED~~

ON THE SECURITY
GATE ISSUE, KU
AND DENYING

REMAINING ISSUES
RELIEF REQUESTED

*JA
WHD*

THIS MATTER having come on for hearing upon the motion of the
defendants, the defendants appearing by and through Walter H. Olsen, Jr., their
attorney of record, the plaintiff appearing by and through T. Reinhard G. Wolff
and Thomas Sughrua, their attorneys for record, the Court having reviewed:

ORDER GRANTING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT- 1

OLSEN LAW FIRM PLLC
604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

ORIGINAL

- 1. Defendants' Motion for Partial Summary Judgment;
- 2. Declaration of Walter H. Olsen, Jr. in Support of Defendants' Motion for Partial Summary Judgment;
- 3. Declaration of Kari Ware in Support of Defendants' Motion for Partial Summary Judgment; and
- 4. PLAINTIFFS RESPONSE
- 5. DEFENDANTS' REPLY
- 6. _____
- 7. _____
- 8. _____
- 9. _____

TPS

KU

7 and deeming itself fully advised in the premises, it is now, therefore,
 8 ORDERED, ADJUDGED and DECREED that defendants' motion for
 9 partial summary judgment is hereby GRANTED. It is further,
 10 IN PART,

KU

11 ~~ORDERED, ADJUDGED and DECREED that plaintiff's assigned claims~~
 12 ~~do not relate back to the original complaint. It is further,~~

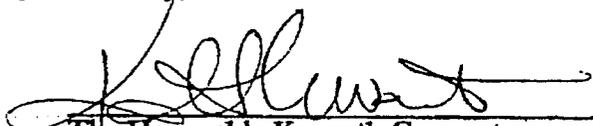
TPS

13 ~~ORDERED, ADJUDGED and DECREED that the Statute of Limitations~~
 14 ~~is not tolled for plaintiffs' assigned claims until plaintiffs file their Third~~
 15 ~~Amended Complaint. It is further,~~

KU

16 ORDERED, ADJUDGED and DECREED that plaintiffs' 11th, 12th, 13th,
 17 14th, 15th, and 21st, 22nd and 23rd causes of action are dismissed, *regarding*
 18 *WCPA violation on the security gate.*
 19 DATED this 6th day of January, 2006.

TPS


 The Honorable Kenneth Cowsert

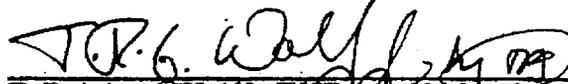
Presented by:
 OLSEN LAW FIRM PLLC

BY: Walter H Olsen
 Walter H. Olsen, Jr. - WSBA #24462
 B. Tony Branson - WSBA #30553
 Troy R. Nehring - WSBA #32565
 Attorneys for Plaintiffs

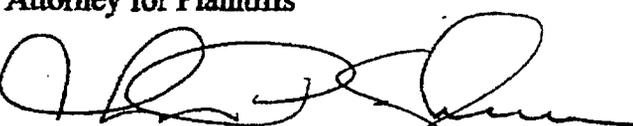
ORDER GRANTING DEFENDANTS'
 MOTION FOR PARTIAL SUMMARY
 JUDGMENT- 2

OLSEN LAW FIRM PLLC
 604 W. Meeker Street, Suite 101
 Kent, Washington 98032
 PH: 253.813.8111
 FAX: 253.813.8133

1 Approved as to Form; Copy Received:

2 

3 T. Reinhard Wolff - WSBA # 4146,
4 Attorney for Plaintiffs

5 

6 Thomas P. Sughrua - WSBA # 14117
7 Attorney for Plaintiffs

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ORDER GRANTING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT - 3

OLSEN LAW FIRM PLLC
604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

APPENDIX H

FILED

The Hon. Kenneth Cowser

JAN - 9 2006

NANCY K. SCOTT, CO. CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

LITTLE MOUNTAIN ESTATES
TENANTS ASSOCIATION, a
Washington non-profit corporation, as
assignee, JERRY JEWETT, VIRGINIA
HALDEMAN, MARIE McCUTCHIN,
and WES WALTON, on behalf of
themselves and classes of similarly
situated persons,

Plaintiffs,

v.

LITTLE MOUNTAIN ESTATES MHC,
LLC., a Washington limited liability
company; PEREGRINE HOLDINGS
LLC, a Washington limited liability
company; and KEVIN A. WARE and
KARI M. WARE, husband and wife,

Defendants.

No. 02-2-01295-0

ORDER GRANTING
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY
JUDGMENT DATED
SEPTEMBER 9, 2005

THIS MATTER having come on for hearing before the undersigned Judge
upon Defendants' Motion for Partial Summary Judgment Dated September 9,
2005, the court having reviewed:

1. Defendants' Motion for Partial Summary Judgment Dated September 9, 2005;
2. Declaration of Walter H. Olsen, Jr. Dated August 29, 2005;
3. Declaration of Kevin Ware Dated November 20, 2004
4. Plaintiffs' Response to Motion for Partial Summary Judgment Dated September 9, 2005;
5. Declaration of Marie McCutchin, and
6. Defendants' Reply to Plaintiffs' Response.

and deeming itself fully advised in the premises, it is now, therefore,

ORDER GRANTING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT RE STATUTE OF
LIMITATIONS - 1

OLSEN LAW FIRM PLLC

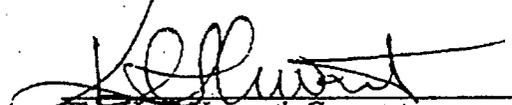
604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

ORIGINAL

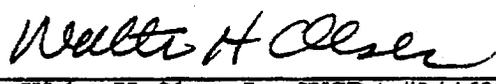
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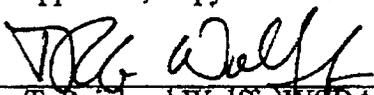
~~ORDERED, ADJUDGED and DECREED, that Defendants' Motion for~~
~~Partial Summary Judgment is hereby GRANTED in part; it is further,~~ *KU*
ORDERED, ADJUDGED, and DECREED, that plaintiffs' Retaliation
claims against defendants are dismissed with prejudice; it is further,
ORDERED, ADJUDGED and DECREED, that the remaining issues
raised in Defendants' Motion for Partial Summary Judgment are reserved.

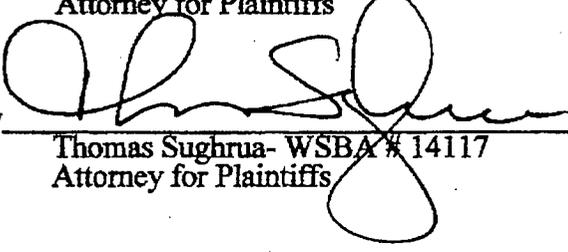
DATED this 5th day of October, 2005.


The Hon. Kenneth Cowsert

Presented by:
OLSEN LAW FIRM PLLC

By 
Walter H. Olsen, Jr. - WSBA #24462
B. Tony Branson - WSBA #30553
Troy R. Nehring - WSBA #32565
Attorneys for Defendants

Form Approved; Copy Received:
By 
T. Reinhard Wolff - WSBA # 4146
Attorney for Plaintiffs

By 
Thomas Sughrua - WSBA # 14117
Attorney for Plaintiffs

ORDER GRANTING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT RE STATUTE OF
LIMITATIONS - 2

OLSEN LAW FIRM PLLC
604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

APPENDIX I

TO BE HEARD BY SNOHOMISH COUNTY SUPERIOR COURT JUDGE:
SKAGIT COUNTY, WASH

FILED
The Hon. Kenneth Cowser

JAN - 9 2006

NANCY K. SCOTT, CO. CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON Deput
IN AND FOR THE COUNTY OF SKAGIT

LITTLE MOUNTAIN ESTATES
TENANTS ASSOCIATION, a
Washington non-profit corporation, as
assignee, JERRY JEWETT, VIRGINIA
HALDEMAN, MARIE McCUTCHIN,
and WES WALTON, on behalf of
themselves and classes of similarly
situated persons,

Plaintiffs,

v.

LITTLE MOUNTAIN ESTATES MHC,
LLC., a Washington limited liability
company; PEREGRINE HOLDINGS
LLC, a Washington limited liability
company; and KEVIN A. WARE and
KARI M. WARE, husband and wife,

Defendants.

No. 02-2-01295-0

ORDER IN LIMINE

THIS MATTER having come on for hearing before the undersigned Judge
upon Defendants' Motion in Limine, and the court having reviewed the pleadings
submitted by the parties, and deeming itself fully advised in the premises, it is
now, therefore,

ORDERED, ADJUDGED and DECREED, that Plaintiffs' expert
testimony as to ultimate issues is excluded, including any testimony or evidence
with regard to the legal construction of the 25-Year Lease; it is further,

~~ORDERED, ADJUDGED, and DECREED, that Plaintiffs' expert~~ K U

ORDER IN LIMINE - 1

ORIGINAL

OLSEN LAW FIRM PLLC

604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

1 testimony that the value of the Tenants' homes have decreased due to any action
2 or inaction by defendants is excluded; it is further,

3 ORDERED, ADJUDGED and DECREED, that Plaintiff's testimony and
4 evidence which contradicts the terms of the Lease Agreement is excluded; it is
5 further

6 ORDERED, ADJUDGED and DECREED, that Plaintiff's testimony and
7 evidence with regard to any oral agreements to provide a 25-Year Lease is
8 excluded; it is further

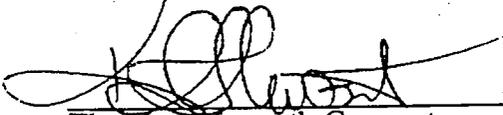
9 ORDERED, ADJUDGED and DECREED, that Plaintiff's testimony and
10 evidence with regard to any actions or inactions by the defendants which occurred
11 prior to the applicable Statute of Limitations is excluded; it is further KLC

12 ORDERED, ADJUDGED and DECREED, that Plaintiff's testimony and
13 evidence with regard to the term of plaintiffs' rental agreements when the tenant
14 signed a rental agreement after the tenant moved in is excluded; it is further

15 ORDERED, ADJUDGED and DECREED, that Plaintiff's testimony and
16 evidence with regard to any plaintiff who signed a Release with defendants is
17 excluded; it is further

18 ORDERED, ADJUDGED and DECREED, that Plaintiff's testimony and
19 evidence which was not disclosed to defendants is excluded.

20
21 DATED this 6th day of January, 2006.

22
23 
24 The Hon. Kenneth Cowsert

25
26
ORDER IN LIMINE - 2

OLSEN LAW FIRM PLLC
604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

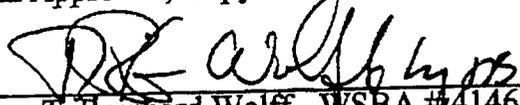
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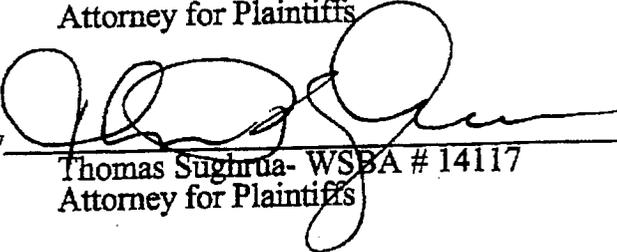
Presented by:

OLSEN LAW FIRM PLLC

By _____
Walter H. Olsen, Jr. - WSBA #24462
B. Tony Branson - WSBA #30553
Troy R. Nehring - WSBA #32565
Attorneys for Defendants

Form Approved; Copy Received:

By  _____
T. Reinhard Wolff - WSBA #4146
Attorney for Plaintiffs

By  _____
Thomas Sughrua - WSBA # 14117
Attorney for Plaintiffs

APPENDIX J

SIGNED BY COURT
ON 7/3/06

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

LITTLE MOUNTAIN ESTATES
TENANTS ASSOCIATION, a
Washington non-profit corporation, as
assignee, JERRY JEWETT, VIRGINIA
HALDEMAN, MARIE McCUTCHIN,
and WES WALTON, on behalf of
themselves and classes of similarly
situated persons,

Plaintiffs,

v.

LITTLE MOUNTAIN ESTATES MHC,
LLC., a Washington limited liability
company; PEREGRINE HOLDINGS
LLC, a Washington limited liability
company; and KEVIN A. WARE and
KARI M. WARE, husband and wife,

Defendants.

v.

THIRD PARTY PLAINTIFFS AS
IDENTIFIED IN EXHIBITS A AND B,

Third Party Plaintiffs.

No. 02-2-01295-0

FINDINGS OF FACT
AND CONCLUSIONS OF LAW
AND JUDGMENT FOR
REASONABLE ATTORNEYS
FEES AND COSTS

Clerk's Action Required

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 1

OLSEN LAW FIRM PLLC

604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

ORIGINAL

1 **JUDGMENT SUMMARY**

2 Judgment Creditor: LITTLE MOUNTAIN ESTATES MHC,
3 LLC., a Washington limited liability
4 company

5 Judgment Debtor: LITTLE MOUNTAIN ESTATES
6 TENANTS ASSOCIATION, a
7 Washington non-profit corporation, as
8 assignee, JERRY JEWETT and JANE
9 DOE JEWETT, husband and wife,
10 VIRGINIA HALDEMAN and JOHN
11 DOE HALDEMAN, husband and wife,
12 MARIE McCUTCHIN and JOHN DOE
13 McCUTCHIN, husband and wife, and
14 WES WALTON and JANE DOE
15 WALTON, husband and wife, and those
16 other persons and marital communities
17 identified in Plaintiffs' Amended Notice
18 of Appearance dated January 3, 2006 and
19 attached as Exhibit C.

20 Attorneys' Fees:

\$ 323,273.74

21 Costs:

\$ 26,732.49

KU

22 Attorneys for Judgment Creditors: Walter H. Olsen, Jr., WSBA #24462

23 Attorney for Judgment Debtors: T. Reinhard Wolff - WSBA # 4146
24 Thomas P. Sughrua - WSBA # 14117

25 Judgment Shall Bear Interest at 12% Per Annum

26
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

OLSEN LAW FIRM PLLC

604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

JUDGMENT SUMMARY

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Judgment Creditor: PEREGRINE HOLDINGS LLC, a Washington limited liability company; and KEVIN A. WARE and KARI M. WARE, husband and wife,

Judgment Debtor: LITTLE MOUNTAIN ESTATES TENANTS ASSOCIATION, a Washington non-profit corporation, as assignee, JERRY JEWETT and JANE DOE JEWETT, husband and wife, VIRGINIA HALDEMAN and JOHN DOE HALDEMAN, husband and wife, MARIE McCUTCHIN and JOHN DOE McCUTCHIN, husband and wife, and WES WALTON and JANE DOE WALTON, husband and wife, and those other persons and marital communities identified in Plaintiffs' Amended Notice of Appearance dated January 3, 2006 and attached as Exhibit C.

Attorneys' Fees: \$ 52,513.66 KLL

Costs: \$ 0

Attorneys for Judgment Creditors: Walter H. Olsen, Jr., WSBA #24462
C. Thomas Moser, WSBA #7287

Attorney for Judgment Debtors: T. Reinhard Wolff - WSBA # 4146
Thomas P. Sughrua - WSBA # 14117

Judgment Shall Bear Interest at 12% Per Annum

1 THIS MATTER having come on regularly for trial from January 6, 2006 to
2 January 20, 2006, and the court having bifurcated this action by Order dated
3 December 23, 2005, and having considered the testimony and evidence, and having
4 made various findings of fact and conclusions of law in its oral rulings dated January
5 17, 2006 and January 20, 2006, now makes the following written findings and
6 conclusions as it relates to the defendants' request for attorneys fees and costs.

7 **FINDINGS OF FACT**

8 1. Each Plaintiff and Third Party Plaintiff who signed a 25-Year Lease
9 Agreement with Defendants ("25-Year Residents") voluntarily entered into the 25-
10 Year Lease Agreement which contained the below provision:

11 **ATTORNEY'S FEES AND COSTS:** In the event an attorney shall be
12 employed or an action be commenced to enforce the provisions of this
13 Lease Agreement, the prevailing party shall be entitled to recover
reasonable attorney's fees and all costs and expenses in connection
with any such proceedings.

14 From the foregoing Findings of Fact, the court makes the following:

15 **CONCLUSIONS OF LAW**

- 16 1. Defendants are the prevailing party in this action and entitled to their
17 reasonable legal fees and costs pursuant to the terms of the 25-Year Residents' Lease
18 Agreement.
- 19 2. Defendants are the prevailing party in this lawsuit and entitled to their
20 reasonable legal fees and costs pursuant to RCW 59.20.110.
- 21 3. Defendants are entitled to statutory and contractual costs pursuant to
22 CR 68.
- 23 4. Defendants' counsel expended a reasonable number of hours which
24 were not duplicative or unnecessary in securing a successful result for plaintiffs.
- 25 5. Defendants presented adequate documentation that the hourly rates
26 of Defendant's counsel and paralegals were reasonable at the time they billed

1 Defendant.

2 6. Defendants presented adequate documentation that the services
3 performed by Defendant's counsel's paralegals were legal in nature, were supervised
4 by an attorney, were performed by a person who was qualified by virtue of
5 education, training and work experience to perform substantive legal work, were
6 reasonable, and the amount charged reflected reasonable community standards for
7 charges by that category of personnel.

8 7. The amount of \$ 402,519.89 ^{KU} for attorneys' fees and costs is
9 reasonable, based on the time and labor required, the skill required to perform the
10 legal services properly, the fee customarily charged in Skagit County for similar
11 legal services, the results obtained, the nature and length of the professional
12 relationship with the client, and the experience and ability of the lawyer performing
13 the services.

14 DONE IN OPEN COURT

July 3, 2006


Honorable Kenneth Cowser

18 Presented by:

19 OLSEN LAW FIRM PLLC

21 BY

Walter H. Olsen

Walter H. Olsen, Jr. - WSBA #24462
B. Tony Branson - WSBA #30553
Attorneys for Defendants

Walter Olsen for

C. Thomas Moser - WSBA #7287
Attorney for Defendants Ware

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 5

OLSEN LAW FIRM PLLC

604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

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Approved as to Form; Copy Received:

T. Reinhard Wolff - WSBA # 4146
Attorney for Plaintiffs

Thomas P. Sughrua - WSBA # 14117
Attorney for Plaintiffs

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 6

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FAX: 253.813.8133

1 EXHIBIT A
2 DEFENDANT LITTLE MOUNTAIN ESTATES MHC LLC ASSERTS CLAIMS
3 AGAINST THE FOLLOWING THIRD PARTY PLAINTIFFS:

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LAST NAME	FIRST NAME	LOT #
Abel	Gene & Marrilynn	28
Andersen	Ronald & Barbara	74
Archambault	Doris	7
Bailey	Joyce	93
Ballard	Nancy	14
Barton	John & Patricia	102
Berg	Donald & Donna	10
Bielinski	Jack & Leona	67
Bluemke	Chet & Janice	101
Bowman	Dorothy	19
Brown	Vern & Janet	47
Butner	Gordon & Marie	99
Cammeraat	John	49
Carlson	Pauline	106
Colwell	Harry & Hulder	83
Cross	Sterling & Dottie	97
Custer	Corky	34
Davis	Barbara	42
Dickerson	Harold & Ruth	98
Dykstra	Don & Lori	36
Epley	Doris	63

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FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 7

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1	Erdmann	Nancy	21
2	Esselbach	Clyde & Clara	95
3	Exelby	Eileen	81
4	Flanary	Cliff & Lois	15
5	Fleming	Bob & Jeanne	75
6	Gaston	Margaret	20
7	Grace	Joyce	94
8	Gregory	Beverly	56
8	Guertin	Geneva	68
9	Gullick	Rentz & Jean	119
10	Hademan	Arthur	57
11	Hall	Gerald & Nancy	59
12	Hamers	John M. and Laverne E. Barnett	118
13	Hammann	Jerry & Sharon	72
14	Harman	Jan	55
15	Hastin	E. Dale	92
16	Heidema	Tjaakje & Sophia Kellis	118
17	Helland	Ordeen	16
18	Hickman	Larry & Lynn	32
18	Holcomb	Dale & Lorraine	23
19	Hoskins	Gary & Eve	114
20	Jennings	Dorcie	24
21	Johnson	Charles	30
22	Johnson	Ralph & Nola	84
23	Karlson	Melvin & Shirley	116
24	Keillor	Janet	46
25	Kjos	Gordon & Linda	66
25	Kristiansen	Dick & Shirley	111
26	Landvatter	Doris	26

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

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1	LeBeau	Robert	2
2	Lindstrom	Wayne & Birgit	18
3	Lovelace	Art R. and Donna Campbell	74
4	Martin	Wayne & Lynn	89
5	McFadden	Janet	112
6	McMullen	Bob & Marilynn	29
7	Miller	David & Lydia	35
8	Nelson	Virgil	62
9	Northern	Louise	120
10	O'Bryan	Mary Willet and Margaret	54
11	O'Connell	Laurie	11
12	Olson	Marcelylene	60
13	Petersen	Jacqueline	33
14	Peterson	Maxine	109
15	Pettelle	Joe & Pat	51
16	Phillips	John & Karen	44
17	Pollock	Jess & Marge	107
18	Powell	Eva	64
19	Proffitt	Mary	27
20	Reinert	Betty	79
21	Robideau	Carroll & Loraine	65
22	Schafer	Gladys	76
23	Schneider	Donna	17
24	Schuppenauer	Harry & Pat	37
25	Scott	Harrison & Grace	115
26	Shapman-Artz	Linda	82
	Simmonds	Jeanne	25
	Smith	Robert & Donna	105
	Svensson	Karl & Herdis	103

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 9

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1	Swanland	Jean	52
2	Taylor	Gordon and Carolyn	117
3	Tellefson	Glen & Mary	48
4	Terwilliger	Richard & Barbara	43
5	Thompson	Kenneth & Pearl	53
6	Topham	Nancy	61
7	Traylor	Gordon & Carolyn	117
8	Turner	Margaret & Earl Myers	70
9	Tyree	Vi	96
10	Vaux	Helen	104
11	Walde	Elanor	13
12	Walley	Randy & Sandra	78
13	Willet	Mary	54
14	Williams	Joan	41
15	Wohlman	Marvin & Bonnie	85
16	Wolpert	Betty	40
17	Woodmansee	Jack & Peggy	58
18	Wright	Henry	31

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1 THIRD PARTY PLAINTIFFS ADDED BY NOTICES OF APPEARANCE FROM
 2 PLAINTIFFS' COUNSEL DATED DECEMBER 12 AND 13, 2005:

3 25-Year Tenants:

4	LAST NAME	FIRST NAME	LOT #
5	Bielinski	Jack and Leona	Prior Lot #67
6	Crane	Sheryl	Prior Lot #3
7	Dubisch	Roy	Prior Lot #20
8	Jennings	Dorcie and Barbara	24
9	Kilian	Evelyn	Prior Lot #96
10	Landvatter	Doris	26
11	Maddson	Stan	Prior Lot #3
12	May	Dorothea L.	Prior Lot #100
13	McKee	Jack and Gert	Prior Lot #80
14	Miller	David and Lydia	35
15	Randall	Frank c/o Dorothy	Prior Lot #66
16	Skeers	Richard and Mary	9
17	Tingley	Claud W.	Prior Lot #70
18	Wahl	Marilyn	Prior Lot #44
19	Wallace	Jim	8
20	Wiganosky	Roger	Prior Lot #23

21 One-Year Tenants:

22	LAST NAME	FIRST NAME	LOT #
23	Andersen	Dr. Ronald and Barbara	Prior Lot #74
24	Bieda	Robert and Sharon	Prior Lot #88
25	Conger	William and Shirley	Prior Lot #6
26	Davis	Jerry and Janet	114
	Gullick	Jean	Prior Lot #119
	Hamme	Everette and Joanne	54
	Hickman	Larry and Lynn	32

FINDINGS OF FACT AND
 CONCLUSIONS OF LAW

OLSEN LAW FIRM PLLC

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Holcomb	Lorraine and Dale	23
Niven	Stephen and Edna	Prior Lot #24
Rentz	Jr.	Prior Lot #119
Simmonds	Jean	25
Vaux	John and Helen	104
Williams	Joan	41
Wood	Reg and Becky	20

EXHIBIT B
DEFENDANT PEREGRINE HOLDINGS LLC AND KEVIN AND KARI WARE
ASSERT CLAIMS AGAINST THE FOLLOWING THIRD PARTY PLAINTIFFS:

LAST NAME	FIRST NAME	LOT #
Abel	Gene & Marrylynn	28
Andersen	Ronald & Barbara	74
Archambault	Doris	7
Bailey	Joyce	93
Ballard	Nancy	14
Barton	John & Patricia	102
Batchelder	Robert & Marjorie	4
Berg	Donald & Donna	10
Bielinski	Jack & Leona	67
Bluemke	Chet & Janice	101
Bowman	Dorothy	19
Brown	Vern & Janet	47
Butner	Gordon & Marie	99
Cammeraat	John	49
Carlson	Pauline	106
Coggins	Eileen	86
Colwell	Harry & Hulder	83
Conger	William & Shirley	6
Crane	Carol & Stan Madsen	3
Cross	Sterling & Dottie	97
Custer	Corky	34
Davis	Barbara	42
De Freese	Gary & Eleaine	50
Dickerson	Harold & Ruth	98
Dykstra	Don & Lori	36
Ebert	Lorraine	39

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
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FAX: 253. 813. 8133

1	Epley	Doris	63
2	Erdmann	Nancy	21
3	Esselbach	Clyde & Clara	95
4	Exelby	Eileen	81
5	Fisher	Gordon & Gladys	22
6	Flanary	Cliff & Lois	15
7	Fleming	Bob & Jeanne	75
8	Fridlund	Mary	45
9	Gaston	Margaret	20
10	Grace	Joyce	94
11	Gregory	Beverly	56
12	Guertin	Geneva	68
13	Gullick	Rentz & Jean	119
14	Hademan	Arthur	57
15	Hall	Gerald & Nancy	59
16	Hamers	John M. and Laverne E. Barnett	118
17	Hammann	Jerry & Sharon	72
18	Harman	Jan	55
19	Hastin	E. Dale	92
20	Heidema	Tjaakje & Sophia Kellis	118
21	Helland	Ordeen	16
22	Hickman	Larry & Lynn	32
23	Holcomb	Dale & Lorraine	23
24	Hoskins	Gary & Eve	114
25	Hults	David & Betty	5
26	Hundahl	Victor & Delores	87
	Jennings	Dorcie	24
	Johnson	Charles	30
	Johnson	Ralph & Nola	84

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 14

OLSEN LAW FIRM PLLC

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1	Karlson	Melvin & Shirley	116
2	Karmil	Melvin & Shirley	1
3	Keillor	Janet	46
4	Kjos	Gordon & Linda	66
5	Koth	Wilma	91
6	Kristiansen	Dick & Shirley	111
7	Landvatter	Doris	26
8	LeBeau	Robert	2
9	Lewis	Victor & Barbara	90
10	Lindstrom	Wayne & Birgit	18
11	Lovelace	Art R. and Donna Campbell	74
12	Martin	Wayne & Lynn	89
13	McFadden	Janet	112
14	McGlenn	Mary	88
15	McKee	Jack & Gertrude	80
16	McMullen	Bob & Marrison	29
17	Miller	David & Lydia	35
18	Minahan	Fred & Shirley	73
19	Nelson	Virgil	62
20	Northern	Louise	120
21	O'Bryan	Mary Willet and Margaret	54
22	O'Connell	Laurie	11
23	Olmos	Raul & Connie	12
24	Olson	Marcelylene	60
25	Petersen	Jacqueline	33
26	Peterson	Maxine	109
	Pettelle	Joe & Pat	51
	Phillips	John & Karen	44
	Pollock	Jess & Marge	107

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

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FAX: 253.813.8133

1	Powell	Eva	64
2	Proffitt	Mary	27
3	Reinert	Betty	79
4	Robideau	Carroll & Loraine	65
5	Root	Merle & Beulah	69
6	Schafer	Gladys	76
7	Schneider	Donna	17
8	Schuppenauer	Harry & Pat	37
9	Scott	Harrison & Grace	115
10	Seaward	Marlene	77
11	Shapman-Artz	Linda	82
12	Simmonds	Jeanne	25
13	Skeers	Richard & Mary	9
14	Smith	Robert & Donna	105
15	Smith	Robert & Betty	100
16	Svensson	Karl & Herdis	103
17	Swanland	Jean	52
18	Taylor	Gordon and Carolyn	117
19	Tellefson	Glen & Mary	48
20	Terwilliger	Richard & Barbara	43
21	Thompson	Kenneth & Pearl	53
22	Tingley	Isabel & Paul Woche	108
23	Topham	Nancy	61
24	Traylor	Gordon & Carolyn	117
25	Turner	Margaret & Earl Myers	70
26	Tyree	Vi	96
	Vaux	Helen	104
	Walde	Elanor	13
	Wallace	James	8

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
- 16

OLSEN LAW FIRM PLLC

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Walley	Randy & Sandra	78
Wellington	William & Judith	113
Willet	Mary	54
Williams	Joan	41
Wohlman	Marvin & Bonnie	85
Wolpert	Betty	40
Woodmansee	Jack & Peggy	58
Wright	Henry	31

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
- 17

OLSEN LAW FIRM PLLC
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Kent, Washington 98032
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1 THIRD PARTY PLAINTIFFS ADDED BY NOTICES OF APPEARANCE FROM
 2 PLAINTIFFS' COUNSEL DATED DECEMBER 12 AND 13, 2005:

3 25-Year Tenants:

4	LAST NAME	FIRST NAME	LOT #
5	Bielinski	Jack and Leona	Prior Lot #67
6	Crane	Sheryl	Prior Lot #3
7	Dubisch	Roy	Prior Lot #20
8	Jennings	Dorcie and Barbara	24
9	Kilian	Evelyn	Prior Lot #96
10	Landvatter	Doris	26
11	Maddson	Stan	Prior Lot #3
12	May	Dorothea L.	Prior Lot #100
13	McKee	Jack and Gert	Prior Lot #80
14	Miller	David and Lydia	35
15	Randall	Frank c/o Dorothy	Prior Lot #66
16	Skeers	Richard and Mary	9
17	Tingley	Claud W.	Prior Lot #70
18	Wahl	Marilyn	Prior Lot #44
19	Wallace	Jim	8
20	Wiganosky	Roger	Prior Lot #23

21 One-Year Tenants:

22	LAST NAME	FIRST NAME	LOT #
23	Andersen	Dr. Ronald and Barbara	Prior Lot #74
24	Bieda	Robert and Sharon	Prior Lot #88
25	Conger	William and Shirley	Prior Lot #6
26	Davis	Jerry and Janet	114
	Gullick	Jean	Prior Lot #119
	Hamme	Everette and Joanne	54
	Hickman	Larry and Lynn	32

FINDINGS OF FACT AND
 CONCLUSIONS OF LAW
 - 18

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Holcomb	Lorraine and Dale	23
Niven	Stephen and Edna	Prior Lot #24
Rentz	Jr.	Prior Lot #119
Simmonds	Jean	25
Vaux	John and Helen	104
Williams	Joan	41
Wood	Reg and Becky	20

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
- 19

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EXHIBIT C

PLAINTIFFS' AMENDED NOTICE OF APPEARANCE
ADATED JANUARY 6, 2006

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

- 20

OLSEN LAW FIRM PLLC

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

LITTLE MOUNTAIN ESTATES
TENANTS ASSOCIATION, a
Washington Non-profit corporation, as
assignee, JERRY JEWETT, VIRGINIA
HALDEMAN, MARIE McCUTCHIN,
and WES WALTON, on behalf of
themselves and classes of similarly
situated persons.
Plaintiffs,

vs.

PEREGRINE HOLDINGS, LLC,
Defendant

and

LITTLE MOUNTAIN ESTATES MHC
LLC, a Limited Liability Company,
Substituted Defendant

and

and KEVIN A. WARE and KARI M,
WARE, husband and wife and the
marital community composed thereof,
Joined Defendants.

NO. 02-2-01295-0

AMENDED NOTICE OF APPEARANCE

TO: THE CLERK OF THE COURT;

TO: Peregrine Holdings, LLC Defendants;
AND TO: Walt Olsen, Attorney for Defendants

AMENDED NOTICE OF APPEARANCE - 1

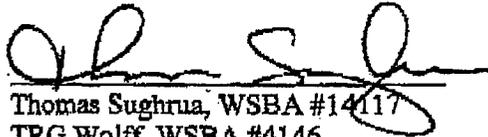
THE LAW FIRM OF
SUGHRUA & ASSOCIATES, INC.
A PROFESSIONAL SERVICE CORPORATION
1411 FOURTH AVENUE, SUITE 1420
SEATTLE, WA 98101
(206) 264-0100

COPY

1 TO: Kevin A. and Kari M. Ware, Defendants;
2 AND TO: Thomas Moser, Attorney for Defendants

3 PLEASE TAKE NOTICE that plaintiff Little Mountain Estates Tenant Association,
4 through the undersigned attorneys, hereby enters this Amended Notice of Appearance to
5 clarify the claimants and assignees, who are identified on the attached Exhibit A. This
6 appearance is without waiver of any defenses including, but not limited to, insufficient
7 service of process and lack of personal jurisdiction. All further papers and pleadings, except
8 process, in this cause may be served upon said plaintiff by delivering a copy thereof to the
9 undersigned attorney at the address below stated. Service upon another law firm office and
10 service without express direction to deliver to Thomas Sughrua will not be deemed valid.

11 DATED this 6th day of January 20 06.

12 

13 Thomas Sughrua, WSBA #14117
14 TRG Wolff, WSBA #4146
15 1411 Fourth Avenue Building
16 Suite 1420
17 Seattle, WA 98101
18 (206) 264-0100 Tph
19 (206) 652-4811 Fax

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AMENDED NOTICE OF APPEARANCE - 2

THE LAW FIRM OF
SUGHRUA & ASSOCIATES, INC.
A PROFESSIONAL SERVICE CORPORATION
1411 FOURTH AVENUE, SUITE 1420
SEATTLE, WA 98101
(206) 264-0100

EXHIBIT A
TO
AMENDED NOTICE OF APPEARANCE
[CURRENT AND FORMER TENANTS REPRESENTED BY
PLAINTIFF LITTLE MOUNTAIN TENANTS ASSOCIATION]

Current 25-Year Tenants Represented by Association

Joyce E.	Bailey	#93
John R. and Patricia	Barton	#102
Jack and Leona	Bielinski	#67
Sterling and Dottie	Cross	#97
Corky	Custer	#34
Barbara J.	Davis	#42
Donald and Lorraine	Dykstra	#36
Clara Roth and Clyde	Esselbach	#95
Eileen	Exelby	#81
Cliff and Lois	Flauay	#15
Joyce	Grace	#94
Beverly	Gregory	#56
Arthur W.	Hademan	#57
Gerald and Nancy	Hall	#89
Janice	Harman	#55
Ordean J.	Helland	#16
Jerry D. and Betty J.	Jewett	#38
Janet K.	Keillor	#46
Richard F. and Shirley M.	Kristiansen	#111
Doris	Landvatter	#26
Robert L. and Marrayn	McMullen	#29
Marcelylene	Olson	#60
Jacqueline	Peterson	#33
Maxine M.	Peterson	#109
Patricia K.	Pettelle	#51
Gladys	Schafer	#76
Donna	Schneider	#17
Karl A. and Herdis	Svensson	#103
Glenn R. and Mary A.	Tellefson	#48
W.P. and Lucille E.	Walton	#110
Peggy L. and Jack	Woodmansee	#58

Former 25-Year Tenants Represented by Association

Ray	Crawford c/o Rod Crawford	#85
Clyde	Esselbach	#91
Virginia	Haldeman	#19
Dorothea L.	May	#100
Georg and Ruby L.	Saling	#112
Claud W.	Tingley	#70
Margaret	Waddington c/o Cecil Betz	#65
Robert and Barbara	Wise	#14
Martha	Ellesbo c/o Linda Tellesbo	#104
Roy	Dubisch	#20
Evelyn	Kilian	#96
Dorothy	Randall	#66
Marilyn	Wahl	#44

Current One-Year Tenants Represented by Association

Gene and Marilyn	Abel	#28
Barbara and Ronald	Anderson	#74
Doris	Arohambault	#7
Nancy	Ballard	#14
Don and Donna	Berg	#10
Robert and Sharon	Bieda	#88
Chet and Janice	Bluemke	#101
Dorothy	Bowman	#19
William and Shirley	Conger	#6
Jim (Harold) and Ruth	Dickerson	#98
Doris	Epley	#63
Geneva	Guertin	#68
Rentz	Gullick	#119
Tjaakje Heidma and Sophia	Kellis	#118
Charles	Johnson	#30
Nola and Ralph	Johnson	#84
Gordon and Linda	Kjos	#66
Wayne and Birgit	Lindstrom	#18
Wayne and Lynette	Martin	#89
Bill and Marie	McCutchin	#71
Janet	McFadden	#112
David and Lydia	Miller	#35
Virgil	Nelson	#62
Laurie	O'Connell	#11
Dick	Phillips	#44
Eva	Powell	#64

Mary Lee	Proffitt	#27
Betty	Reinert	#79
Harry and Pat	Schuppenhauer	#37
Harrison and Grace	Scott	#115
Jean	Simmonds	#25
Bob and Donna	Smith	#105
Jean	Swanland	#52
Dick and Barbara	Terwilliger	#43
Pearl and Ken	Thompson	#53
Nancy	Topham	#61
Gordon and Carolyn	Traylor	#117
John and Helen	Vaux	#104
Elanor	Walde	#13
Randy and Sandra	Walley	#78
Joan	Williams	#41
Marvin and Bonnie	Wohlman	#85
Betty	Wolpert	#40
Barbara	Drattain	#5
Edna and Stephen	Niven	#24

Former One-Year Tenants Represented by Association

John	Hamers	#118
Gary	Hoskins	#114
Henry	Wright	#31

**Former 25-Year Tenants with Claims to be Determined After
Trial of Current 25 Year Leases**

Dorcic and Barbara	Jennings	#24
Arline	Stone	#106
James and Barbara	Fletcher	#41
Scott and Virginia	Richards	#11
Carolyn	Ayers	#4
Marguerite	Valenti	#35
Robert A.	Fritts	#53
Iven L.	Brook	#25

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CERTIFICATE OF SERVICE

The undersigned certifies on this day he/she caused to be served in the manner noted below, a copy of the document to which this certificate is attached, on the following counsel of record and/or parties, in the manner indicated:

William H. Olson, Jr.
The Olson Law Firm
604 W. Mecker St., Suite 101
Kenil, WA 98032

- Via Mail
- Via Facsimile
- Via Messenger
- Via Email: walt@olsenlawfirm.com

C. Thomas Moser
411 Main Street
Mount Vernon, WA 98273
Attorney for Defendants
Kevin and Kari Ware

- Via Mail
- Via Facsimile
- Via Messenger
- Via Email: tom@tomoser.com

I certify under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct on this _____ day of _____, 2006.

Emily Clark
Signed at Seattle, Washington

APPENDIX K

**25 YEAR
LEASE AGREEMENT**

#5 Ken Ware
8/5/09

This Lease Agreement is executed at Skagit County, WA on _____, 19____, between Little Mountain Estates (hereinafter "Landlord") and _____ (hereinafter "Tenant"), who agree as follows:

- 1. **DESCRIPTION OF PREMISES:** Landlord hereby leases to Tenant that certain space in the County of Skagit, State of Washington described as space number _____, Little Mountain Estates, Skagit County, Washington.
- 2. **TERM:** The term of this tenancy shall be twenty-five years commencing on _____, 19____, and continuing through _____, 19____.
- 3. **RENT:** Tenant shall pay to Landlord _____ per month as rent; through _____, 19____ and thereafter shall be subject to an annual adjustment formula per Attachment A; said rent shall be due and payable in advance on the first day of each calendar month, and Tenant shall pay the rent to Landlord, without deduction or offset, at the office of the Landlord's resident manager, or at such other places as Landlord may designate from time to time.

ALL PRORATED RENTS SHALL BE COMPUTED ON THE BASIS OF A THIRTY (30) DAY MONTH

If the rent is not paid by the FIFTH day of any calendar month, Tenant shall be required to pay to Landlord a service charge of \$25.00 plus \$2.00 per day, computed from the second day of the month to the day of payment, both inclusive. In addition to the foregoing, if any check tendered by Tenant for payment of rent is returned by the bank for any reason, should the landlord be required to issue a formal notice under RCW 59.20, the tenant shall be charged \$25.00.

- 4. **CHARGES FOR UTILITIES:** Basic cable television service and maintenance of the Clubhouse & Common Areas are included in the rent. Other services shall be the sole responsibility of the Tenant. (Note: Utilities and services not included in the rent and not billed by the Landlord will be billed to Tenant directly by the utility or service company involved.) Separate charges for R.V./camper storage (if any) will be billed to Tenant monthly by the Landlord.
- 5. **USE OF PREMISES:** The premises shall be used for residential purposes only; and the premises shall be occupied only by two individuals one of which must be at least 55 years of age whose name(s) are listed below:

Occupancy by other or additional persons is permitted only with the prior written consent of Landlord, who may grant or withhold such consent at Landlord's sole discretion.

- 6. **ASSIGNMENT; SUBLETTING:** This lease is assignable, providing that such assignment conforms with the limitations and language in Attachment "B". Subletting the manufactured home, the lot space, or any part thereof is not permitted.
- 7. **PETS:** No pets or animals of any kind shall be kept in or about the manufactured home park without the tenant first having signed the Pet Policy Rider.
- 8. **WASTE; QUIET CONDUCT:** Tenant shall not violate any County ordinance or State law in or about the premises, shall not commit or permit waste or nuisance in or about said premises, and shall not in any way annoy, molest, or interfere with other occupants of said premises or neighbors and shall not use in a wasteful, unreasonable, or hazardous manner any of the facilities, utilities, or services furnished by Landlord.
- 9. **LANDLORD'S RIGHT OF ENTRY:** Tenant shall permit Landlord and Landlord's servants, agents, and employees to enter into and upon the space rented to Tenant at all reasonable times for any reasonable purpose, including but not limited to the purpose of inspecting the premises, maintenance of utilities, protection of the manufactured home park and the purpose of posting notices of non-responsibility for alterations, additions, or repairs, without any rebate of rent and without any liability to Tenant for loss of quiet enjoyment.
- 10. **LIABILITY:** Tenant agrees that all of his personal property in the Park shall be at the risk of tenant. Tenant further agrees that Landlord shall not be liable for or on account of any loss or damage sustained by action of any third party, fire, theft, water, or the elements, or for loss of any property from any cause from said Manufactured Home Lot or any other part of the Park; nor shall Landlord be liable for any injury to Tenant, his family, guests, employees or any person entering the Park or the property of which the Park is a part, unless by negligence of Landlord, his agents, or representatives, in the operation or maintenance of the Park.
- 11. **ATTORNEY'S FEES AND COSTS:** In the event an attorney shall be employed or an action be commenced to enforce the provisions of this Lease Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and all costs and expenses in connection with any such proceedings.
- 12. **ACCEPTANCE AND SURRENDER OF PREMISES:** Tenant accepts the premises and all physical improvements in the common areas as is, and as being in good and sanitary condition and repair, and agrees at the termination of this Lease Agreement to peaceably surrender the premises to Landlord in a clean and satisfactory condition. Tenant has inspected the premises and the common areas (and all physical improvements therein) and accepts the same "as is", and acknowledges that the same are in good condition and repair, unless noted to the contrary in this Lease Agreement.
- 13. **RULES AND REGULATIONS:** Tenant acknowledges having read and received a copy of the Landlord-Tenant Act, Chapter 59.20 RCW and a copy of the current rules and regulations governing Tenant's conduct in the manufactured home park and on the space rented hereby; Tenant agrees to abide by and conform with each and all of the said rules and regulations, and all future rules, regulations, and notices duly adopted by Landlord hereafter. Tenant also agrees that any failure to comply with the rules and regulations by Tenant, Tenant's family, or Tenant's guests shall be a material breach of the terms of this tenancy, and Landlord may terminate Tenant's tenancy for such breach.

Note: Insofar as any provision of this Lease Agreement or the rules and regulations of the manufactured home park conflicts with any provision of RCW 59 applicable to manufactured home residency, the RCW 59 shall control.

- 14. **HOLDING OVER:** If Tenant, with Landlord's consent, remains in possession of the premises after expiration or termination of the term hereof, or after the date in any notice given by Landlord to Tenant terminating the tenancy, such possession by Tenant shall be deemed to be a month-to-month tenancy and shall be terminable as such by either party. All provisions of this Lease Agreement except those pertaining to term shall apply to such month-to-month tenancy.

and regulations of the manufactured home park shall not be deemed a waiver of any such provision or any subsequent breach of any such provision, and the acceptance of rent thereafter shall not be deemed a waiver of any preceding breach by Tenant of any provisions of this Lease Agreement or said rules and regulations regardless of Landlord's knowledge of such preceding breach at the time of accepting such rent. In the event any provision of this Lease Agreement or the rules and regulations shall be determined to be invalid or unenforceable, the remainder of the Lease Agreement and the rules and regulations shall continue in full force and effect.

16. **FORFEITURE:** Upon default by Tenant with respect to any provision hereof, or abandonment of the premises by Tenant, Landlord may, in addition to any other rights or remedies Landlord may have, re-enter the premises through process of law and, at Landlord's option, declare a forfeiture and terminate this Lease Agreement. Upon termination of the tenancy, Landlord shall have a lien on all personal property of Tenant situated in and about the premises to secure payment of all rent, utilities and service charges, and damages owed by Tenant.

17. **JOINT AND SEVERAL LIABILITY:** Each person executing this Lease Agreement as "Tenant" is jointly and severally liable herein and is required to perform in full all obligations imposed on Tenant in this Lease Agreement.

18. **REMOVAL SALE:** If Tenant shall sell the manufactured home located upon the premises to a third party during the term hereof, and the manufactured home is to remain located in the manufactured home park after the sale, Tenant must first obtain Landlord's approval of the purchaser prior to completion of the sale; to enable Landlord properly to give or withhold such approval. Tenant shall give sixty (60) days' written notice to Landlord of the contemplated sale prior to the close of sale and shall otherwise cooperate in obtaining and providing to Landlord such information and documentation from the purchaser as is reasonably required by Landlord. Landlord reserves the right to require that the purchaser as a prospective tenant comply with any rule or regulation of the manufactured home park limiting residence within the park to adults only.

19. **RESPONSIBILITY OF LANDLORD:** It is the responsibility of the Landlord to provide and maintain physical improvements of the common facilities of the manufactured home park in good working order and condition. The following described physical improvements will be provided to Tenant: recreation building, green belt and common areas. Landlord reserves the right to construct or add to physical improvements at his sole discretion.

20. **NOTICE OF CHANGES:** Landlord shall, after having provided all tenants with at least ten (10) days prior written notice of the matters to be discussed, meet and consult with the tenants, either individually or collectively, on the following matters regarding general park operations:

- a. Amendments to the park rules and regulations.
- b. The standards for maintenance of physical improvements in the park.
- c. The addition, alteration, or deletion of services, equipment, or physical improvements.

21. **NOTICES:** Any notice required by law or by the provisions of this Lease Agreement to be given by either party to the other may be served personally, or by any other form of service authorized by statute, or may be mailed by certified or registered mail, postage prepaid, addressed as follows:

To Tenant: _____

To Landlord: Little Mountain Estates
2810 E. Section Street
Mount Vernon, Washington 98273

or such other address as Landlord may designate by written notice to Tenant.

22. **TERMINATION OF TENANCY:** Grounds for the termination of the lease agreement shall be in accordance with the MOBILE HOME LANDLORD-TENANT ACT of the State of Washington Chapter 59.20.080.

23. **EMINENT DOMAIN:** In the event of taking of all or a portion of the park for any public use by right of eminent domain or by private sale in lieu thereof, so that the space rented to Tenant is not reasonably suited for the purposes for which rented or so that the park is not, in Landlord's opinion, suited for continued operation as a manufactured home park, this Lease Agreement shall terminate on the date that the possession of the park or portion thereof is taken. No award for any partial or entire taking shall be apportioned, and Tenant hereby assigns to Landlord and renounces any interest in or right to all or any portion or any award made or compensation paid to Landlord for the taking; provided, however, that Landlord shall have no interest in any award made to Tenant for the taking of personal property and fixtures belonging to Tenant, which Tenant would otherwise have been entitled to remove at the conclusion of the tenancy.

24. **SUPPLEMENTAL DOCUMENTS:** By this reference, Tenant's rental application and the following additional documents are incorporated herein by reference and made a part hereof as if set forth in full herein:

State of Washington Mobile Home Landlord-Tenant Act, Ch. 59.20
Park Rules and Regulations

Tenant acknowledges that a copy of each such document has been attached to this Lease Agreement and provided to Tenant.

25. **ENTIRE AGREEMENT:** Tenant agrees that this Lease Agreement contains the entire agreement between the parties relating to the rental of space within Landlord's manufactured home park. All prior negotiations or stipulations concerning this matter which preceded or accompanied the execution hereof, are conclusively deemed to have been superseded hereby. No servant, agent, or employee of Landlord has any authority to make any representations or enter into any agreements in any way inconsistent or in conflict with this Lease Agreement. This Lease Agreement may be altered, however, by written agreement of the parties or by operation of law.

26. **CAPTIONS:** The captions and paragraph headings in this Lease Agreement are for convenience only, are not to be considered a substantive part of the Lease Agreement, and are not intended in any way to limit or amplify any provision of this Lease Agreement.

LANDLORD:

TENANT:

By: _____
Authorized Signature

RENT ADJUSTMENT FORMULA

The Consumer Price Index All Urban Consumers - Seattle - Tacoma (1982-84 Base = 100) for the month nearest the first month of the lease is the base for computing the annual rent adjustment. If the index published nearest the annual adjustment date has changed over the BASE index the new monthly rent shall be set by multiplying the first month's rent by a fraction the numerator of which is the new Consumer Price Index divided by the BASE and the denominator is the BASE index. This formula will be repeated for the second and subsequent adjustments to the rent level.

If the index is changed, revised or discontinued, a new formula will be devised using data from the United States Bureau of Labor Statistics or another appropriate government agency.

Additional adjustments may be made for:

- real estate taxes *
- water service *
- television cable *
- maintenance of common areas
- cost of operating the community building
- improvements made to the park

* (Note: Consistent with RCW 59.20.060(2)(c), these adjustments may be either positive or negative.)

Increases in these costs may be passed on at the annual rental adjustment date. If the landlord chooses to pass on the cost increases, the tenant will be presented with this information 3 months in advance, consistent with RCW 59.20.060(2). The costs will then be equally divided between the Little Mountain Estates Tenants, prorated to each lot at 1/120.

All rent figures will be rounded to the nearest dollar.

ATTACHMENT "B"

This lease shall be assignable by tenant only to a person to whom Tenant sells or transfers title to the manufactured home on said lot subject to the following:

- a). All outstanding taxes, rents and/or fees owed by the tenant must be paid prior to such transfer.
- b). Subject to the approval of Landlord after fifteen (15) days written notice by Tenant of such intended assignment. Landlord shall approve or disapprove of the assignment of this lease on the same basis that Landlord approves or disapproves of any new tenant or manufactured home.
- c). Upon assignment by Tenant of Tenant's leasehold interest in the homesite, this rental agreement shall automatically convert to a one (1) year lease beginning on the effective date of the assignment. The new monthly rent shall be the rent charged by landlord following the most recent rent increase for the park preceding the effective date of the assignment.
- d). Assignment as defined in this paragraph shall apply to all voluntary transfers and involuntary transfers of Tenant, including a transfer between married tenants pursuant to a divorce decree, separation agreement, or similar document or order, or a transfer in a bankruptcy or other insolvency proceeding.
- e). Landlord shall assign its interest in this agreement to any third party who purchases the park.

ATTACHMENT "C"

Name and address of all parties with a secured interest in the home:
