

STATE OF COLORADO
OFFICE OF THE ATTORNEY GENERAL

ASSURANCE OF DISCONTINUANCE

IN THE MATTER OF: KINGSLEY MANAGEMENT CORP; KMC 56 LLC (FRONT RANGE); KIMBERLY HILLS, LLC; ARBORDALE ACRES, LLC; FRIENDLY VILLAGE OF THE ROCKIES, LLC; FRIENDLY VILLAGE OF AURORA, LLC; CASA ESTATES, LLC; AND LAMPLIGHTER VILLAGE, LLC.

I. INTRODUCTION

This Assurance of Discontinuance (“AOD” or “Agreement ”) is entered into between the State of Colorado, *ex rel.* Philip J. Weiser, Attorney General for the State of Colorado (“the State”), and Kingsley Management Corp; KMC56LLC (Front Range); Kimberly Hills, LLC; Arbordale Acres, LLC; Friendly Village of the Rockies, LLC; Friendly Village of Aurora, LLC; Casa Estates, LLC; and Lamplighter Village, LLC. (known as “communities”). (Collectively herein, “KM&MHC.”)

This Agreement is entered into pursuant to the Attorney General’s powers under Colo. Rev. Stat. §§6-1-110(2) (2019) and constitutes a complete settlement of all known and unknown allegations, claims, and causes of action which have been or could have been asserted by the Colorado Attorney General pursuant to the Consumer Protection Act against KM&MHC regarding the events and within the time period at issue herein, October 1, 2016, to the date of execution herein, as more fully set forth in Part VIII.

II. PARTIES

1. Philip J. Weiser is the duly elected Attorney General for the State of Colorado and has express jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act ("CCPA"), Colo. Rev. Stat. §§6-1-101 through 6-1-1121.

2. Kingsley Management Corp ("Kingsley Management" or "KM") is a Utah corporation with a principal office address of 4956 North 300 West, Suite 200, Provo, Utah 84604.

3. Kingsley Management oversees the management of seven manufactured home communities in Colorado. The seven communities ("MHC") are publicly known as Front Range, Kimberly Hills, Friendly Village of the Rockies, Friendly Village of Aurora, Arbordale Acres, Casa Estates, and Lamplighter Village.

4. Each of the seven manufactured home communities collect the rental income they generate.

5. Kingsley Management oversees the management of the seven manufactured home communities, including the hiring of community managers for each of the seven communities. Kingsley Management exercises supervision over the seven community managers.

6. Each of the seven manufactured home communities operated in Colorado by Kingsley Management has registered with the Colorado Secretary of State as "Limited Liability Corporations," or "LLCs". These communities are

organized as separate business entities, but are managed and operated under a management agreement with Kingsley Management.

7. The State and KM&MHC are hereinafter referred to as "the Parties."

III. DEFINITIONS

8. The term "Effective Date" shall mean the date upon which the authorized State representative, after signature by the authorized representatives of KM&MHC, signs this AOD.

9. Unless otherwise specified, all material and relevant definitions found in C.R.S. § 6-1-105(1) are incorporated herein by this reference, and any term defined in those sections shall have the same meaning when used in this AOD.

10. "Tenants" shall mean the current residents or former residents of the manufactured home communities who pay for rental of either ground space/lot (if owners of their own manufactured home) or ground space/lot and unit (if renting a manufactured home owned by another person or entity).

IV. STATEMENT OF ALLEGATIONS AND REMEDIATION

11. Tenants at KM&MHC communities either own their manufactured homes or rent their homes from KM&MHC or a third party. All tenants, whether they own their manufactured home or they rent a manufactured home from another person or entity, pay a monthly fee to KM&MHC for the rent of the land upon which their homes sit.

12. In the period of time in question, KM&MHC required most tenants to pay a security deposit prior to taking possession. This deposit is intended to cover damage beyond reasonable wear and tear caused by the tenant and to pay for any

lost rental income in the event the tenant moves before the end of the term of his/her lease. Security deposits shall be returned to tenants within 60 days of their departure if no lost income or compensable damage results to the landlord.

13. In the period of time in question, KM&MHC retained some security deposits in circumstances unauthorized by Colorado law, principally by relying upon a contractual clause specifying that the tenant provide thirty days' notice prior to vacating the property.

14. After the State issued subpoenas *duces tecum* to KM&MHC for information regarding these amounts, KM&MHC began its own internal audit and voluntarily began refunding security deposits to every identified former tenant. In total, KM&MHC has returned or will return \$125,892.33 in improperly withheld security deposits.

15. In the period in question, in accordance with lease provisions and Colorado law, KM&MHC passed the cost of certain of its legal fees and costs to its residents, such as eviction court costs. Some of those fees, predominantly at Front Range and Kimberly Hills, were unsupported, that is, charged for unauthorized, non-existent, or unverifiable legal services. Based on the same internal audit, KM&MHC voluntarily undertook refunds, and has returned or will return \$20,877.93 in unsupported attorneys' fees to identified current tenants and former tenants.

16. In the period in question, the total amount of refundable security deposits and attorneys' fees is \$146,770.26, of which, as of the date of this agreement, \$91,579.91 has been successfully refunded to tenants and former tenants by

KM&MHC. The remaining \$55,190.35 is maintained in trust by Kingsley Management and will either be refunded by Kingsley Management or transferred, if refund cannot be had, to the Treasurer of Colorado, pursuant to the provisions of the Revised Uniform Unclaimed Property Act, §38-13-101 et seq., C.R.S. (2019) (“RUUPA”).

V. LEGAL AUTHORITY

17. Under the CCPA, the Attorney General may prohibit the furtherance of any further violations of the Act through an injunction. In addition, the Attorney General may enter into an assurance of voluntary discontinuance, pursuant to C.R.S. § 6-1-110(2). The Attorney General may also require payment of any amount necessary to restore to any person any money that may have been acquired by means of any deceptive trade practice, pursuant to C.R.S. § 6-1-110(2). Under the CCPA, the Attorney General may recover costs of his investigation.

VI. CONSIDERATION

18. The Parties enter into this Assurance of Discontinuance for the purposes of compromise and resolution of disputed claims and to avoid further expenses of protracted litigation.

19. KM&MHC hereby acknowledges that it has returned, or will return, \$125,892.33 to the tenants and former tenants whose security deposits were improperly retained, as identified in KM&MHC’s Fourth Response to Subpoena *Duces Tecum*, Chart 17, dated July 20, 2020. (“Chart 17”). Any amount which KM&MHC is unable to refund in the period prescribed by the RUUPA shall be paid

over to the Treasurer of Colorado by Kingsley Management in the manner required by the RUUPA.

20. KM&MHC hereby acknowledges that it has returned, or will return, \$20,877.93 to the tenants and former tenants who were improperly charged for attorneys' fees, as identified in Chart 17. Any amount which KMC is unable to refund in the period prescribed by the RUUPA shall be paid over to the Treasurer of Colorado by Kingsley Management in the manner required by the RUUPA.

21. KM&MHC shall pay \$10,000.00 for the costs of investigation of the Colorado Attorney General. This amount shall be received by the Attorney General's Office within 45 days of the effective date herein.

22. KM&MHC shall make a contribution of \$3,500 to Habitat for Humanity of Metro Denver within 45 days of the effective date herein.

23. Written proof of all subsequent refunds of tenant security deposits or attorneys' fees as described herein, or transfer thereof to the Colorado Treasurer, shall be provided to the State by Kingsley Management when the balances have been reduced to zero, or funds transferred to the Colorado Treasurer, whichever occurs last, addressed to:

Consumer Protection Unit Administrative Assistant
Consumer Protection Unit
Colorado Department of Law
1300 Broadway, 7th Floor
Denver, Colorado 80203

VII. INJUNCTIVE TERMS

24. KM&MHC HEREBY AGREES TO:

- a. Cease retention of any security deposits based upon a tenant's failure to provide adequate notice of vacating the premises, unless actual damages beyond normal wear and tear, failure to pay rent, or other loss claims allowed by Colorado Law can be established.
- b. Remove any contractual clause from all lease agreements inconsistent with §38-12-212.3(2)(a),(b), C.R.S. (2020).
- c. Refrain from charging attorneys' fees in an eviction proceeding, unless the community prevails at the proceeding, or the attorneys' fees are agreed to and set forth, if settlement occurs, in the landlord-tenant written settlement agreement. A proceeding resulting in payment of unpaid rent or other authorized charges, whether by dismissal by settlement and agreement, judgment, or by judgment and settlement, will result in the community being deemed the "prevailing and successful party."
- d. Implement a feature into Kingsley Management's online payment system which allows tenants to preview bills at least four (4) days prior to month's end, enabling tenants to timely dispute (meaning within two (2) days of month's end) any non-standard charge imposed. This system will direct tenants to challenge any non-standard charge by e-mail to customerservice1@kmcmh.com. A

tenant's challenge will be reviewed and determined, by e-mail, promptly, by a Kingsley Management designee. If that determination is not made prior to the rent due date, the challenging tenant will be required to pay all rent and unchallenged non-standard charges on time. If the challenge is upheld, the tenant's account will be adjusted accordingly. If and when the challenge is denied, the tenant will pay the balance involved within three (3) business days of notification. Late fees will not be due for any non-standard charge denied unless unpaid after three (3) business days.

VIII. RELEASE

25. The State acknowledges by its execution hereof that this Assurance of Discontinuance constitutes a complete settlement and release of all claims under the CCPA on behalf of the State against KM&MHC with respect to all known and unknown claims, causes of action, damages, fines, costs, and penalties which were asserted or could have been asserted under the CCPA for the conduct described in this AOD, which arose prior to the Effective Date and relating to or based upon the acts or practices which are the subject of this AOD. The State agrees that it shall not proceed with or institute any civil action or proceeding under the CCPA against KMC for any described conduct or practice prior to the Effective Date.

26. Nothing herein precludes the State from enforcing the provisions of this AOD, or from pursuing any law enforcement action under the CCPA, with respect to

the acts or practices of KM&MHC not covered by this AOD or any acts or practices of Kingsley conducted after the Effective Date, unless otherwise precluded by law.

IX. ENFORCEMENT

27. The obligations set forth in this AOD are of a continuing legal nature, until and unless completed.

28. The Parties consent to venue and jurisdiction for any proceeding necessary to enforce the terms of this AOD within the District Court, City and County of Denver, Colorado.

29. A violation of any of the material terms of this AOD shall constitute a *prima facie* showing of a deceptive trade practice in violation of the CCPA, as provided under C.R.S. §6-1-110(2). Upon allegations of KM&MHC's material violation of any term of this AOD, the State shall be entitled to file a civil action under the CCPA and to seek an injunction or other appropriate order from such court to enforce the provisions of this AOD.

30. Pursuant to §6-1-110(2), this AOD shall be a matter of public record.

31. In addition to any remedies provided under the CCPA, the State shall be entitled to apply for and seek an order converting this AOD into a permanent injunction against KM&MHC upon a showing of material violation of the provisions of this AOD.

32. Nothing herein shall be interpreted to prevent the State from taking enforcement action to address conduct not covered by this AOD or occurring after the Effective Date that the State believes to be in violation of the law.

33. This AOD, consisting of [11] pages, cannot be modified, amended, or revised without the prior written consent of the parties.

34. This AOD may be signed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute the AOD. Facsimile and electronic copies of this AOD and the signatures hereto may be used with the same force and effect as an original.

STATE OF COLORADO:
PHILIP J. WEISER, ATTORNEY
GENERAL

By:



Jay B. Simonson, 24077*
First Assistant Attorney General

Signed and Effective Date: October 7, 2020

KINGSLEY MANAGEMENT
CORP; KMC56LLC (FRONT
RANGE); KIMBERLY HILLS,
LLC; ARBORDALE ACRES, LLC;
FRIENDLY VILLAGE OF THE
ROCKIES, LLC; FRIENDLY
VILLAGE OF AURORA, LLC;
CASA ESTATES LLC, AND
LAMPLIGHTER VILLAGE, LLC.

By: C. Mike Pugh
KMC President

(Title)

Date: 10/6/20

Approved as to Form:



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Date: 10/6/20