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ARBITRATION PROCEEDINGS UNDER THE SANTA BARBARA COUNTY  
MOBILEHOME RENT CONTROL ORDINANCE

	)	
	)	
IN RE NOMAD VILLAGE MOBILE HOME PARK	)	NOMAD VILLAGE
	)	MOBILEHOME PARK
	)	MANAGEMENT'S
	)	ARBITRATION HEARING BRIEF
	)	
	)	
	)	Before the Hon. Judge Long,
	)	Arbitrator
	)	
	)	
	)	
	)	
	)	
	)	DATE: November 18, 2016
	)	TIME: 9:00 A.M.
	)	

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1 PARK MANAGEMENT OF NOMAD VILLAGE MOBILE HOME PARK ("Park  
2 Management") hereby submits its Arbitration Hearing Brief. The Arbitration to be held in this  
3 matter is as a result of the Petition for Arbitration filed by the Homeowners' Representative on  
4 behalf of the homeowners of Nomad Village Mobile Home Park collectively ("homeowners")  
5 challenging the Notice of Rent Increase issued by Park Management on March 31, 2016, in the  
6 within matter.

7  
8 I

9 INTRODUCTION

10  
11 This is an arbitration hearing demanded by the tenants of a rent-controlled mobilehome  
12 park objecting to paying any of the valid space rent increase lawfully noticed by Park  
13 Management on March 31, 2016, to be effective on July 1, 2016.

14  
15 II

16 FACTUAL BACKGROUND

17 The homeowners of Nomad Village Mobile Home Park in or around May, 2016 filed a  
18 petition for arbitration regarding a rent increase effective July 1, 2016, pursuant to a notice of  
19 rent increase issued by Park Management in March, 2016, resulting from capital expenses and  
20 increased operating costs of the Park, including from legal fees resulting from a campaign of  
21 litigation unsuccessfully pursued by the homeowners against Park Management, claiming that  
22 Park Management was not entitled to change the homeowners' rent. Park Management filed an  
23 Objection and Response to Petition ("Response"), disputing the Petition and attaching extensive  
24 exhibits. Pursuant to the terms of the Santa Barbara County Mobilehome Rent Control  
25 Ordinance ("Ordinance") and the Mobilehome Rent Control Rules for Hearing ("Rules") an  
26 arbitration hearing has been set to review the homeowners' petition for arbitration.

27 Nomad Village Mobile Home Park ("Park") is a 150-space mobile home park, located at  
28 4326 Calle Real, Santa Barbara, CA, 93110, between El Sueño Road and San Marcos Pass. The

1 Park was first developed in the late 1950's and was operated for many years by Nomad Village,  
2 Inc., pursuant to a ground lease or series of ground leases, which expired on July 31, 2008, and  
3 were not renewed. Commencing August 1, 2008, a new ground lessee, Lazy Landing MHP,  
4 LLC ("Lazy Landing"), entered into a 34-year ground lease for the property on which the Park is  
5 located, pursuant to arms-length negotiations with the ground lessor and fee owner of the  
6 property, the Bell Trust, at which time Waterhouse Management Corp. ("Waterhouse  
7 Management"), became the management company in charge of the operation of the Park. Lazy  
8 Landing MHP, LLC, as Park owner and Waterhouse Management, as Park operator, are  
9 "Management" of the Park pursuant to the terms of the Ordinance.

10 The Park is located in the unincorporated area of Santa Barbara County, and therefore is  
11 subject to the jurisdiction of Santa Barbara County ("County"), and is subject to the provisions of  
12 the Ordinance and the Rules for Hearing adopted pursuant to the Ordinance. The Park is a rental  
13 park, in which the mobilehomes are all owned by homeowners who rent their spaces in the Park  
14 from Park Management. The tenancies are subject to the terms of the Ordinance.

15 There has not been any space rent increase in Nomad Village Mobile Home Park since  
16 May of 2014, which was an increase of 75% of CPI, ranging from \$2.55 to \$3.55 per space. All  
17 space rent increases since 2011 were also minor increases of 75% of CPI, amounting to a few  
18 dollars per space.

#### 19 20 **Notice of Rent Increase**

21 On March 31, 2016, Park Management delivered to all homeowners in the Park two  
22 separate notices with respect to rent ("Rent Increase Notice"), issued pursuant to the terms of the  
23 Ordinance, the Rules and the California Mobilehome Residency Law ("MRL"), California Civil  
24 Code section 798 et seq., as follows:

25 1. A Notice of Increase in Monthly Rent Effective July 1, 2016, dated March 31,  
26 2016, to all homeowners of Nomad Village Mobile Home Park. The same Notice was sent to all  
27 homeowners of the Park. This Notice stated that the homeowner's Base Rent would be increased  
28 by 75% of CPI. The Notice stated that in addition to the Base-Rent increase, the homeowners'

1 Space Rent is also being increased in accordance with the terms of the Ordinance by the amount  
2 of \$108.61 per space, per month; of this amount, \$79.30 will be temporary, for periods of 7 and  
3 15 years, as specified in the Spreadsheet included as part of the Notice. This increase was in  
4 accordance with the terms of the Ordinance for recoupment of expenses incurred by Park  
5 Management for increased operating expenses by Park Management successfully defending  
6 against administrative and legal proceedings by the Park homeowners, as well as for capital  
7 expenses being incurred by the Park. The Notice stated that it was being issued pursuant to the  
8 Ordinance. Homeowners of the Park were also provided with a Spreadsheet, entitled Nomad  
9 Village - Space Rent Increase – Effective July 1, 2016, (“Spreadsheet”) setting forth in detail the  
10 amounts of the space rent and the charges on which they were based, as well as a document  
11 entitled Rent Increase Detail explaining each of the line items of the Spreadsheet. The  
12 Spreadsheet and the calculations therein were prepared by Dr. Michael St. John, an economist  
13 and expert at preparing rent increase calculations and analyses for rent controlled properties,  
14 including mobilehome parks. A copy of this Notice package is attached to Park Management’s  
15 Response as **Exhibit B**.

16 2. A Notice of Amount of Space Rent Commencing July 1, 2016, constituting a  
17 ninety-day Notice of Rent Increase in the Base Rent to each of the Spaces in the Park, dated  
18 March 31, 2016; the increases were in the amount of 75% of the CPI of the existing Base Rent  
19 for each of the Spaces, plus the permanent and temporary rent increases as outlined in the Notice  
20 of Increase in Monthly Rent, with the rent increase effective May 1, 2011. The amount of Base  
21 Rent, obviously, differs from space to space; but for each given space, Base Rent was increased  
22 by 75% of CPI, for the period. An example of such a Notice is attached to Park Management’s  
23 Response as **Exhibit B**.

24 ///

25 ///

26 ///

1 **Meet and Confer**

2 As set forth in the Rent Increase Notice, Park Management provided all of the  
3 homeowners with an informational meeting with Park Management about the rent increase on  
4 April 19, 2016, at 6:00 P.M. at the Park recreation room. The Park Management set a Meet and  
5 Confer for that same evening, at 7:30 P.M. at the Park recreation room, for designated  
6 representatives of Park Management and of the homeowners to attend, pursuant to the terms of  
7 the Ordinance. Documentary information upon which the Rent Increase is based was made  
8 available to the homeowners at the Nomad Park Office commencing by April 9, 2016, as set  
9 forth in the Rent Increase Notice.

10 At the Meet and Confer session, Park Management at its expense provided each of the  
11 Homeowner representatives with a set of voluminous documentary material in support of the rent  
12 increase Notices; this material had also been available, and has remained available, to all Park  
13 residents, including the Homeowner representatives, for inspection and review in the Park office.

14 The Homeowner representatives were provided with Profit and Loss statements of  
15 income and expenses for the Park for a period of six years (i.e. 2010-2016 Q1). A copy of the  
16 Profit and Loss statements for 2010-2016 Q1 is attached to the Response as **Exhibit C**.

17 The Homeowner representatives were also provided with an MNOI analysis prepared by  
18 economist Dr. Michael St. John, an expert at preparing MNOI analyses, showing that the Park's  
19 increase operating expenses required a permanent rent increase in the amount of \$29.31. A copy  
20 of the Nomad Village MNOI Analysis 2010-2015 is attached to the Response as **Exhibit D**.

21 Homeowner representatives were also provided with a copy of a spreadsheet summary  
22 and supporting invoices and plans relating to the capital items that were the subject of the Rent  
23 Increase Notice. A copy of the spreadsheet summary itemizing the Capital Items and their costs  
24 on which the Rent Increase Notice is based is attached to the Response as **Exhibit E**.

25 In addition, the Homeowner representatives were also provided with various other  
26 documents supporting the Rent Increase Notice.

27  
28

1 At the Meet and Confer, one of the homeowners' representatives objected to the CPI  
2 index by which the CPI increase had been calculated; the difference in rent was a few cents, and  
3 Park Management agreed to the index proposed by the homeowners' representative.

4 Park Management told the homeowner representatives that Park Management would be  
5 willing to resolve the rent increase through a settlement, by accepting an increase of a reasonable  
6 lesser amount; Park Management also reiterated its proposal, that it had made on February 19,  
7 2016, that the parties attend a mediation to try to resolve the rent increase. The homeowner  
8 representatives stated that they were not prepared to engage in any settlement discussion at that  
9 time. Several weeks later the homeowner representative finally communicated the outline of a  
10 partial and conditional offer. Due to the partial and conditional nature of the offer, and the fact  
11 that it appeared to be based upon misunderstandings of the applicable facts and law, Park  
12 Management again reiterated its suggestion that the parties attend a mediation. The homeowners  
13 never agreed to any mediation and never responded any further.

#### 14 15 **Homeowners' Petition for Arbitration**

16 In May 2016, Park Management was notified that a Petition challenging the Park's Rent  
17 Increase had been filed with Santa Barbara County. Pursuant to the terms of the Ordinance and  
18 the Rules, Park Management filed its Response to the Petition. The terms of the Ordinance and  
19 the Rules set forth a process for the selection of an arbitrator to hear challenges to rent increases,  
20 and for the noticing and conduct of the hearing.

### 21 22 **III**

#### 23 **SUMMARY OF RENT INCREASE**

24 The Rent Increase is outlined in detail in the Spreadsheet, which itemizes in detail the  
25 amounts of each of the elements of the space rent increase and the Park expenses on which they  
26 are based and the Rent Increase Detail explaining each of the line items of the Spreadsheet.  
27 (Exhibit A to Response.) Each of the components of the rent increase is authorized and provided  
28 for under the terms of the Ordinance.

1 The rent increase has two components, a permanent rent increase and a temporary rent  
2 increase that is of a specified duration. The permanent and temporary rent increases, and each of  
3 their subcomponents, are discussed below, with their numbering corresponding to the numbering  
4 set forth on the Spreadsheet.

5  
6 **Permanent Increases:**

7 Permanent rent increases will be permanently added to the Base Rent for each Space, and will  
8 not end. They are to compensate Park Management for increased ongoing operation costs, and  
9 do not include the costs to Park Management recovered through temporary rent increases.

10 **1. CPI Increase:**

11 This is for the CPI increase as provided for under the Ordinance as an automatic permanent  
12 increase in Base Rent, and is calculated pursuant to the formula set forth in the Ordinance at 75%  
13 of CPI. As noted, Park Management agreed to use a different CPI index requested at the April  
14 19, 2016 Meet and Confer session by one of the homeowners' representatives (which only makes  
15 a difference of a few cents in rent). The amount of rent increase is calculated as a percentage of  
16 the existing Base Rent for each Space, and therefore varies since the rent for the various spaces  
17 in the Park vary. Under the terms of the Ordinance, the rent increase based upon the 75% of the  
18 CPI increase is not subject to challenge by the homeowners.

19  
20 **2. MNOI (Maintenance of Net Operating Income) Increase:**

21 Park Management is entitled under the terms of the Ordinance to a rent increase to recover  
22 increased costs of operating the Park. Dr. St. John determined that Park Management is entitled  
23 to a \$28.04 space rent increase pursuant to an Maintenance of Net Operating Income (MNOI)  
24 Analysis to recover increased costs of operating the Park, calculated pursuant to the formula  
25 stated in the Ordinance. An MNOI analysis compares current financial information with base  
26 year financial information. The underlying principle is that a park owner should be able to  
27 maintain in the current year the inflation-adjusted value of the net operating income generated in  
28

1 the base year. The MNOI analysis was provided to the homeowners and will be presented and  
2 discussed by Dr. St. John at the Arbitration Hearing.

3  
4 **Temporary Increases:**

5 Temporary rent increases will last a specified duration (7 or 15 years) and then will end, and no  
6 longer be billed to the resident, and are to compensate Park Management for specific expenses,  
7 which amounts are amortized (spread out) over specified periods (7 or 15 years) at a nine percent  
8 (9%) interest rate, which was the interest rate approved by the Arbitrator and the Court in the last  
9 rent proceeding involving this Park. The 7-year period was also approved by the Arbitrator and  
10 the Court in the last rent proceeding, and is applied to the professional fees. The 15-year period  
11 was the period acknowledged by the homeowners' expert in the last rent proceeding as  
12 reasonable for road repaving and electrical work, and is applied to those items.

13 The temporary rent increases are defined by their temporary nature. Temporary rent increases are  
14 typically utilized in the context of mobilehome park rent control proceedings in order for park  
15 owners to recover extra-ordinary, non-recurring, expenses, such as capital improvements to a  
16 park or other one-time expenses.

17 In this case, the temporary rent increase is of two components, first to compensate Park  
18 Management for capital expenditures for projects benefiting the Park common areas; second, to  
19 compensate Park Management for extraordinary professional fees and costs for legal and  
20 administrative proceedings initiated and pursued by the homeowners through their representative  
21 against Park Management, by which the homeowners sought to prevent Park Management from  
22 charging any space rent whatsoever.

23  
24 **3. The Capital Improvements:**

25 The temporary rent increase for capital items, totaling \$23.01 is to allow Park Management to  
26 recover \$333,790 in costs that have been actually incurred by Park Management for the  
27 following completed projects benefitting the Park:  
28

1 Common Area Roadway improvements: Park Management had all of the Park common area  
2 roadways and parking areas completely repaved and restriped at a cost of \$274,629, for a rent  
3 increase of \$18.93.

4 Common Area Electrical system: Park Management installed new electrical transformers  
5 powering the common area recreational and laundry buildings at a cost of \$7,698, and  
6 installation of a new service extension at a cost of \$47,663, for a total cost of \$59,161, for a rent  
7 increase of \$4.08 for this component.

8  
9 **4. Professional Fees.**

10 The professional fees were incurred by Park Management for the following:

11 A. Defending against the appeals by the homeowners through Deborah Hamrick as  
12 homeowners' representative of the initial December 20, 2011, Arbitration Award, including the  
13 Court proceeding in which the homeowners were actively represented by legal counsel who  
14 made numerous unsuccessful motions and significantly protracted the proceedings. Ultimately  
15 the Court agreed with Park Management on the majority of the items and threw out the Board of  
16 Supervisors Order reversing the rent increases approved by the Arbitrator. The fees also include  
17 the costs incurred by Park Management in successfully defending against the lawsuit by the  
18 homeowners brought and actively litigated against Park Management by the homeowners'  
19 representative and their attorney, claiming that that Park Management was not entitled to charge  
20 any rent at the Park, based upon the legally and factually false claim that Park Management  
21 never obtained a valid Permit to Operate the Park. Both Park Management and the County  
22 pointed out that the homeowners claims were patently incorrect, yet the homeowner  
23 representative and her attorney nevertheless persisted in vigorously pursuing this misguided  
24 litigation through extensive discovery and law and motion proceedings. The Superior Court  
25 ruled that the case had no merit and issued summary judgment against the homeowners and in  
26 favor of Park Management and the County. Park Management is seeking a rent increase based  
27 upon \$400,000 in fees incurred through February 19, 2016, as set forth in an itemized summary  
28

1 of account detailing the professional fees and costs incurred, which has been provided to the  
2 homeowners and will be presented at the Arbitration Hearing.

3 B. Legal and consultant fees relating to the current rent increase proceeding. The amount on  
4 which this component of the rent increase is based is \$110,000 and is the amount awarded by the  
5 Arbitrator and upheld by the Court for the costs incurred by Park Management through the prior  
6 Arbitration hearing in 2011. The homeowners were advised that to whatever extent that these  
7 fees and costs of \$110,000 are not completely incurred by Park Management, then Park  
8 Management will promptly reduce the rent by all such amounts.

9 There is no question that Park Management is entitled to recover the amount of its professional  
10 fees incurred in legal and administrative rent proceedings in order to obtain a rent increase under  
11 rent control. Further, there is no question that these fees and costs may be determined and  
12 awarded by the Arbitrator through an arbitration proceeding such as this one, and the award must  
13 include the fees and costs of the proceeding. The homeowners' own expert witness  
14 acknowledged these facts in the prior rent proceeding involving this Park.

15 It is also the case that the MRL provides that any rent increase must be preceded by a 90-day  
16 notice, and the Ordinance provides that the amount of rent awarded in an Arbitration such as this  
17 one may not exceed the amount of rent sought in the rent increase notice given by park  
18 management. Accordingly, in order for Park Management to recover the fees and costs incurred  
19 in this proceeding, its notice of rent increase must include a factor for the estimated costs of the  
20 proceedings. That is why the Notice of Rent Increase that is the subject of the instant proceeding  
21 included an estimated cost for any rent proceedings. It was reasonable for Park Management to  
22 base this estimate on the amount awarded in the prior rent proceeding for this Park, which  
23 occurred five years ago.

24 Typically, these amounts of fees and costs incurred in the arbitration proceedings are determined  
25 by the Arbitrator through a post Arbitration hearing motion procedure, similar to law and motion  
26 proceedings to set an amount of attorneys fees to a prevailing party after a judgment is entered in  
27 a court proceeding.

28

1 The legal basis for the rent increase to compensate Park Management for professional fees  
2 incurred for administrative and legal proceedings, and a summary of the administrative and legal  
3 proceedings in which Park Management was forced to incur these fees in order to defend against  
4 the homeowners' claims and establish its right to receive rent, is set forth in section IV.D. herein,  
5 *infra*.

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IV

LEGAL ANALYSIS

A.

**THE EXPRESS TERMS OF THE ORDINANCE MANDATE THAT THE PETITION  
FOR HEARING MUST BE DENIED IF IT IS NOT IN FACT SUPPORTED BY A  
HOMEOWNER MAJORITY**

Section 11A-5 of the Ordinance is entitled "Increases in Maximum Rent Schedule," and deals with permissible rent increases and the operation of arbitration hearings regarding rent increases.

Sub-section (d) of Section 11A-5 specifies that the arbitrator must deny a hearing upon finding, inter-alia, that the petition was not supported by a homeowner majority, or that the noticed rent increase is not in excess of seventy-five percent of CPI, and provides as follows, emphases added:

- (d) The arbitrator **shall** deny a hearing on a noticed increase:
- (1) Where management has not waived its right to object and proves by a preponderance of evidence that:
  - (A) The homeowners' petition for hearing was not supported by a homeowner majority or was untimely filed. For purposes of this determination, management may require the testimony of the clerk but may not require the production of homeowner's petitions or copies thereof, except that said petitions may be examined by the arbitrator; or
  - (B) The noticed increase is not in excess of seventy-five percent of CPI.

As to subsection (A), it is unknown whether the Petition in fact is supported by a homeowner majority. The Ordinance and the Rules under the Ordinance make clear that the Park may not be provided with any of the signatures on which the Petition is allegedly based, and is not allowed to even see copies of the Petition with any of the purported signatures. There is no evidence that the Clerk of the Mobilehome Rent Control Ordinance made any effort to independently verify the authenticity of any of the signatures on the Petition, whether or not any of the signatures were actually verified, or whether the Clerk simply engaged in a counting exercise as to the number of signatures. Nor is there any evidence that the Clerk ascertained that

1 only one signature per space counted toward the necessary minimum. Moreover, the purported  
2 Petition is unintelligible. It is impossible to determine what the Petition claims is being objected  
3 to, in what manner the rent increase is alleged to be impermissible, or what relief is being  
4 demanded.

5 As to subsection (B), the Petition should be denied to the extent of the rent increase that  
6 is for 75% of CPI.

7  
8 **B.**

9 **THE ORDINANCE PROVIDES FOR RENT INCREASES FOR INCREASED**  
10 **PARK OPERATING COSTS**  
11

12 The Ordinance provides for rent increases for increased Park operating costs. As set  
13 forth in the Rent Increase Notice, including the Nomad Village Space Rent Increase Spreadsheet,  
14 part of the rent increase component is for recoupment of expenses incurred by Park Management  
15 for increased operating expenses by Park Management. The Spreadsheet sets forth, in detail, the  
16 amounts of these increases, and how the rent increase was calculated based upon these increased  
17 operating costs, and the Rent Increase Detail document provides further explanation.

18 Section 11A-5 of the Ordinance, deals with Increases in the Maximum Rent Schedule,  
19 and section 11-A(f) provides in pertinent part as follows:

20 (f) [T]he arbitrator **shall consider all relevant factors** to the extent  
21 evidence thereof is introduced by either party or produced by either party  
on request of the arbitrator.

22 (1) Such relevant factors may include, **but are not limited to,**  
23 **increases in management's ordinary and necessary maintenance and**  
24 **operating expenses**, insurance and repairs; increases in property taxes and  
25 **fees and expenses in connection with operating the park**; capital  
26 improvements; capital expenses; increases in services, furnishings, living  
space, equipment or other amenities; and expenses incidental to the  
purchase of the park except that evidence as to the amounts of principal  
and interest on loans and depreciation shall not be considered.

27 Accordingly, the rent increase based upon increased operating costs is properly the bases  
28 for the rent increase, in addition to the capital expenses, discussed below.

1 The increased operating costs of the Park support a permanent increase of \$29.31, as set  
2 forth in the MNOI analysis prepared by Dr. St. John. (See Exhibit D to Response.)

3 In addition, Park Management incurred massive professional fees and expenses in  
4 successfully defending against litigation proceedings initiated and pursued by the Park  
5 homeowners through Debra Hamrick, their representative. They also include the amount of the  
6 retainer charged to Park Management for proceedings in connection with the present rent  
7 increase, in the amount previously awarded by the Arbitrator to compensate Park Management  
8 for its costs in a prior arbitration proceeding brought by the homeowners. These costs, totaling  
9 over \$500,000 as of the date of the Rent Increase Notice are treated as a temporary rent increase  
10 instead of as the basis for a permanent rent increase. The costs and the calculations upon which  
11 the rent increase is based is further set forth in the Spreadsheet and the Rent Increase Detail. (See  
12 Exhibit A to Response.)

13  
14 **C.**

15 **THE CHARGES FOR CAPITAL EXPENSES AND CAPITAL IMPROVEMENTS MAY**  
16 **BE PASSED THROUGH TO THE HOMEOWNERS**  
17

18 As set forth in the Rent Increase Notice and the Nomad Village Space Rent Increase  
19 Spreadsheet (Exhibit A to the Response), part of the temporary rent increase component is for  
20 costs actually incurred by Park Management for capital expenses and improvements actually  
21 made to the Park.

22 These capital item costs are to compensate Park Management for costs of the following  
23 completed projects benefitting the Park: Common Area Roadway expense for having all of the  
24 Park common area roadways and parking areas completely repaved and restriped; and Common  
25 Area Electrical improvements for installing new electrical transformers powering the common  
26 area recreational and laundry buildings, and installed a new service extension. These capital  
27 items total \$333,790. The amounts incurred by Park Management are amortized over a 15-year  
28 period, which the homeowners have acknowledged as reasonable, at a nine percent (9%) interest

1 rate, the interest rate approved by the Arbitrator and the Court in the last Rent proceeding. The  
2 calculations of the rent increase for the capital items is set forth in the Spreadsheet and explained  
3 in the Rent Increase Detail. (See **Exhibit A to Response**.) The capital items are listed in the  
4 Post-2011 Capital Expenses for Nomad Mobilehome Park (see **Exhibit E to Response**) and the  
5 plans, and invoices and cancelled checks supporting the rent increase were also provided to the  
6 homeowners and homeowner representatives and will be presented at the Arbitration Hearing.

7 The Ordinance expressly provides that the costs of capital improvements and capital  
8 expenses may properly be passed on to homeowners in the form of a rent increase, including for  
9 work to be performed in the future.

10 Section 11A-2 of the Ordinance defines Capital Improvements and Capital Expenses as  
11 follows:

12 (a) "Capital improvement" is any addition or betterment made to a  
13 mobilehome park which consists of more than mere repairs or replacement  
14 of existing facilities or improvements and which has a useful life of five or  
15 more years.

16 (b) "Capital expense" is a repair or replacement of existing facilities or  
17 improvements which has an expected life of more than one year.

18 Subsection (a) of Section 11A-6 of the Ordinance, which deals with Capital  
19 Improvements, provides as follows:

20 (a) Capital Improvements

21 (1) The cost of capital improvements incurred or proposed, including  
22 reasonable financing costs, may be passed on to homeowners at the time  
23 of an annual increase:

24 ... ..

25 (3) Notwithstanding any other provision to the contrary, the cost of  
26 capital improvements required by a change in governmental law or  
27 regulation may be **automatically passed on to homeowners** at the time of  
28 an annual increase. Any hearing on such costs shall be **solely** for the  
purpose of determining whether management's plan for compliance or for  
recoupment of costs is unreasonable if so alleged by homeowners.

Subsection (b) of Section 11A-6 of the Ordinance, is entitled "Capital Expenses," and has  
these same provisions for Capital Improvements.

(b) Capital Expenses.

(1) The cost of capital expenses incurred or proposed, including  
reasonable financing costs, may be passed on to homeowners at the time  
of an annual increase.

1 Accordingly, the Ordinance makes clear that the Park Management must be compensated  
2 for its costs of these capital items, including financing costs, through the present rent increase.  
3

4 **D.**

5 **PARK MANAGEMENT IS ENTITLED TO RECOVER ITS PROFESSIONAL FEES**  
6 **AND COSTS INCURRED IN ADMINISTRATIVE AND LEGAL PROCEEDINGS**  
7 **THROUGH A RENT INCREASE**  
8

9 The rent increase obtained by Park Management should also include an increase  
10 sufficient to compensate Park Management for all of the professional fees and administrative  
11 costs incurred in all of the legal and administrative rent proceedings, to which Park Management  
12 have been subjected. These professional fees, including legal and consulting fees, and  
13 administrative costs, are properly operating costs of the Park, and are appropriately considered in  
14 determining the Park's net operating income for the purposes of determining an appropriate rent  
15 increase; these expenses may properly be treated as the basis for a temporary rent increase.

16 This result is indicated by governing law, including the California Supreme Court's  
17 decision in *Galland v. Clovis*. (*Galland v. City of Clovis* (2001) 24 Cal.4<sup>th</sup> 1003.) In that case,  
18 which involved substantial legal and administrative proceedings, in court and in a city  
19 administrative hearing proceeding, by a park owner seeking a rent increase pursuant to the City  
20 of Clovis' mobilehome rent control ordinance, the Supreme Court noted:

21 ... the substantial legal and administrative costs attributable to the rent review  
22 process, ... should be properly included as expenses when calculating the  
23 proper rent readjustment. Under the fair ROI method used in practice by  
24 Clovis, it may not arbitrarily exclude the reasonable expenses of seeking  
legitimate rent increases.

25 ... ..

26 Clovis cannot in this case arbitrarily exclude the administrative expenses it has  
imposed on the Gallands in calculating whether they are receiving a fair ROI.

27 (*Galland v. City of Clovis, supra*, 24 Cal.4<sup>th</sup> 1003, 1027-1028, 1040.)

28 In considering the amount of fees and costs which Park Management is entitled to

1 recover through a rent increase, the Supreme Court appreciated the fact that rent control  
2 proceedings involve complexity: "... the determination of allowable increases under a rent  
3 control regime is a complicated calculation that often requires the production and analysis of  
4 extensive financial data ..., ... and is, as we have recognized, often hopelessly complex."  
5 (*Galland v. City of Clovis*, supra, 24 Cal.4<sup>th</sup> 1003, 1038, quoting *Kavanau v. Santa Monica Rent*  
6 *Control Bd.* (1997) 16 Cal.4<sup>th</sup> 761, 778.)

7 In *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Board*  
8 (1999) 70 Cal.App.4<sup>th</sup> 281, 294, the Court of Appeal noted that attorneys fees related to  
9 mobilehome park operations, including for determining compliance with regulations affecting  
10 the park and dealing with regulatory agencies, were properly recoverable through a rent increase.  
11 The Court of Appeal also found that these fees could also properly be treated as a temporary rent  
12 increase, finding that although the ordinance in question did not specifically provide for the  
13 allocation of an operating expense over an extended period of time, the hearing officer (in that  
14 case a rent control board) had sufficient flexibility to do so and allocating it under multiple years.

15 The professional fees and costs incurred by Park Management in these lengthy  
16 administrative and legal proceedings to which Park Management was subjected by the Park  
17 homeowners in order to establish its right to charge and receive rent are set forth in detail in the  
18 billing summary of its legal counsel, a copy of which was provided to the homeowners'  
19 representatives at the Meet and Confer and will be presented at the Arbitration Hearing. Park  
20 Management provided a copy of the lengthy docket(s) of the legal proceedings to the  
21 homeowners' representatives at the meet and confer, which docket will be presented at the  
22 Arbitration Hearing. In addition, copies of select relevant Court orders and other documents  
23 from the Court records, as well as documents from the prior Arbitration proceeding and appeal,  
24 which are in the possession of both Park Management and the homeowners, will be presented at  
25 the Arbitration Hearing. Rule 14 of the Rules provides that the Arbitrator may take "official  
26 notice" of "any fact which may be judicially noticed by the courts of this state." Accordingly,  
27 the Court and Arbitration records are properly the subject of official notice in these Arbitration  
28 proceedings.

1 In order to provide background about these administrative and legal proceedings, the  
2 professional fees and costs incurred by the Park Management are the subject of the instant rent  
3 increase, they are summarized below  
4

5 **Summary of Administrative and Legal Rent Proceedings 2011 - 2016**  
6

7 **2011 Notice of Rent Increase**

8 On January 26, 2011, the Park delivered to all homeowners in the Park notices of rent  
9 increases to be effective on May 1, 2011, (Hearing Exhibit A) issued pursuant to the terms of the  
10 Ordinance and the California Mobilehome Residency Law ("MRL"). The notice covered the  
11 standard CPI increase allowed under the Ordinance, which varied slightly by space, plus a  
12 proposed \$161 per space increase, comprising of a permanent increase of \$58.16 per space and  
13 proposed temporary increase of \$102.84 per space. The Residents were given a detailed  
14 breakdown of the rent increase (Hearing Exhibit C). The prior space rent increase at the Park  
15 was made by Nomad Village, Inc., and was effective May 1, 2008. There had not been any  
16 space rent increases in the Park at all since Park Management had taken over management in  
17 2008. Expenses, on the other hand, had increased significantly, including due to the County  
18 tripling the Park's property taxes. There were capital projects planned and some \$320,000 had  
19 been paid by Park Management into a reserve account to accomplish capital improvements, and  
20 the Park Management had incurred other capital or one-time expenses.  
21

22 **Homeowners' Petition for Arbitration**

23 In April 2011, Park Management was notified that a Petition challenging the Park's rent  
24 increase had been filed with Santa Barbara County. Park Management filed a response.  
25 Pursuant to the terms of the Ordinance and the Rules for Hearing, the County appointed Stephen  
26 Biersmith, Esq., as Arbitrator and noticed an Arbitration Hearing.

27 ///

28 ///

1     **2011 Arbitration Hearing**

2             The Arbitration Hearing was held on September 19 and 20, 2011, presided over by Mr.  
3     Biersmith, Esq., as Arbitrator. Prior to the hearing, the Petitioner homeowners and Park  
4     Management both submitted arbitration briefs. The homeowners were represented by San Jose  
5     Attorney Bruce Stanton, and called witnesses and introduced Petitioner's exhibits, Exhibits 1-8.  
6     Witnesses called by the homeowners were: Dr. Kenneth Barr, and Dan Waltz. Respondent Park  
7     Management was represented by Santa Barbara Attorney James Ballantine, and also called  
8     witnesses and introduced exhibits, Respondent's Exhibits A-T. Witnesses called by Park  
9     Management were: Dr. Michael St. John, Ken Waterhouse and Ruben Garcia. There were also  
10    exhibits received by Stipulation, Joint Exhibits 1 & 2.

11            The Arbitration Hearing was transcribed by a court reporter who prepared a Reporter's  
12    Transcript (referred to herein as RT1 for the September 19, 2011 hearing and RT2 for the  
13    September 20, 2011 hearing).

14            At the conclusion of the Arbitration hearing, the parties stipulated to a briefing schedule,  
15    including submission of billing statements in support of Park Management's claim for  
16    reimbursement of professional fees (RT2 206:20 – 207:25) and submitted a series of post-  
17    hearing briefs, and pursuant to the Stipulation, Park Management submitted exhibits  
18    documenting its professional fees incurred (Exhibits Q, R & S). Following the post-hearing  
19    briefing, the Arbitrator prepared a draft award on November 22, 2011, and then Park  
20    Management submitted revised rent calculations pursuant to the Arbitrator's directions, which  
21    were incorporated into the final Opinion and Award which was issued by the Arbitrator on  
22    December 20, 2011 ("Arbitration Award").

23            The Arbitration Award found that Park Management was entitled to a space rent increase  
24    under the terms of the Ordinance, finding: The Permanent increase is to be \$25.59 and the  
25    Temporary Increase \$67.09, for a total increase of \$92.68, as supported by Respondent's Exhibit  
26    T. The Arbitrator expressly maintained jurisdiction until March 1, 2012, to oversee the  
27    effectuation of the Award.

28            The Arbitration Award included an award of \$110,000 to compensate Park Management

1 for its professional fees and costs incurred in the Arbitration proceedings through October 19,  
2 2011, the date of Park Management's submission of its billings as part of the post Arbitration  
3 Hearing briefing.

#### 4 5 Appeal to Board of Supervisors I

6 Notwithstanding the Arbitrator's reservation of jurisdiction, in January 2012, the  
7 homeowners, through Deborah Hamrick, as homeowners' representative of the homeowners of  
8 the Park, filed a Petition for Review of the Arbitration Award to the Board.

9 The Board held a hearing on the appeal on May 15, 2012.

10 Despite the fact that the Rules clearly provide that the Board's determination must be  
11 upon the "**record alone**," the Board considered matters far outside the record of proceeding.  
12 Despite the fact that the standard for the Board's review of the Arbitrator's decision is to be  
13 "prejudicial abuse of discretion," which is defined as "where the Arbitrator has failed to proceed  
14 in the manner required by law, the decision is not supported by findings, or the findings are not  
15 supported by substantial evidence," (Rule 23) the Board proceeded in a manner in which it  
16 substituted its own political judgment based upon its ex-parte communications with  
17 homeowners, rather than simply reviewing the record of proceedings.

18 It has since been revealed that prior to the hearing, members of the Board received  
19 improper ex-parte communications in opposition to the rent increase awarded by the Arbitrator,  
20 including the Second District Supervisor prior to the hearing having met with the Debra  
21 Hamrick, the homeowner representative, as well as other homeowners.

22 These ex-parte communications were later held by the Santa Barbara Superior Court to  
23 have been "improper" and "inappropriate" and in violation of governing law.

24 At the Board hearing, the Second District Supervisor, in front of her many constituents  
25 present, made a motion, which the Board approved, to reverse every single rent increase granted  
26 by the Arbitrator, and to remand the Arbitrator's approval of the rent increase based on the  
27 property tax increase back to the Arbitrator for reconsideration, and for recalculation.

28

1 The Board remanded the question of the portion of the rent increase based upon the  
2 County's property tax increase of the Park, even though the Board admitted that the law clearly  
3 provides for a rent increase based upon a property tax increase.  
4

#### 5 **Property Tax Remand Arbitration Hearing**

6 In accordance with this action by the Board, the Arbitrator conducted a remand hearing  
7 on the property tax issue, on July 13, 2012, at which time Park Management and the  
8 homeowners appeared through representatives, and thereafter, on August 6, 2012, issued an  
9 Opinion and Award on Remand ("Property Tax Remand Award"). The Property Tax Remand  
10 Award upheld the full amount of permanent rent increase based upon the increased property  
11 taxes as set forth in the Arbitration Award, the sole discretionary matter remanded to the  
12 Arbitrator. The remaining aspect of the Property Tax Remand Award was a ministerial  
13 calculation based upon the changes set forth in the decision by the Board.  
14

#### 15 **Writ of Mandate Litigation**

16 On August 13, 2012, Park Management filed a Petition and Complaint for Writ of  
17 Mandate and other relief, an administrative writ of mandate proceeding following an  
18 administrative hearing process ("referred to herein as the "Nomad Writ Proceeding"). The  
19 Nomad Writ Petition named the County of Santa Barbara and the Board as Respondents and  
20 homeowners' representative Debra Hamrick, as Real Party in Interest, on the grounds that the  
21 Board's Order reversing the Arbitration Award was improper. The case was assigned to the  
22 Honorable Superior Court Judge Thomas P. Anderle. The County filed its Administrative  
23 Record of Proceedings. The homeowners actively participated in the Nomad Writ Proceeding,  
24 hiring legal counsel, Thomas Griffin. Resolution of the Nomad Writ Proceeding was delayed by  
25 well over a year while the homeowners actively litigated the case, filing numerous motions, all  
26 of which were denied by the Court, and engaging in unauthorized discovery (the Court ruled that  
27 the homeowners' were not entitled to discovery since an administrative writ proceeding is  
28 determined solely on the administrative record). The primary claims asserted by the

1 homeowners throughout these proceedings were their baseless claims that Park Management was  
2 not entitled to charge any rent based upon the homeowners' false claim that Park Management  
3 never obtained from the County a Permit to Operate the Park, a claim which the County  
4 repeatedly pointed out was simply false. Ultimately, the Court granted Park Management's Writ  
5 Petition and ordered that the Board vacate its order reversing the Arbitration Award.

6 Due to the conduct by the homeowners, the Writ proceedings were protracted.

7 In January, 2013, all parties to the Nomad Writ Proceeding entered into a stipulation to  
8 bifurcate the writ of mandate from the rest of the action, and stay all further proceedings on the  
9 remainder of the action until the writ proceedings were concluded. (Stipulation, filed on or about  
10 January 30, 2013.) On February 1, 2013, the Court entered an Order on the Stipulation of the  
11 parties bifurcating the issues presented by the Nomad Petition. The order provides that the  
12 petition for writ of mandate and request for declaratory relief would be heard first and that all  
13 matters relating to the non-writ causes of action "including responsive pleadings and discovery"  
14 should be stayed until the court's final ruling on the writ causes of action.

15 On February 19, 2013, at a Case Management Conference in the matter, the Court set the  
16 initial trial date for the determination of Park Management's Writ of Mandate on July 30, 2013.

17 On or about March 27, 2013, the County Respondents lodged their Administrative  
18 Record with the Court.

19 On or about April 26, 2013, the County Respondents filed their Answer to the Nomad  
20 Petition.

21 On April 29, 2013, the homeowners, through homeowners representative Debra Hamrick,  
22 as Real Party in Interest in the Nomad Writ Proceeding, filed a demurrer and motion to dismiss  
23 the Nomad Petition; neither had any legal or factual bases. The gravamen of the motion to  
24 dismiss was the homeowners' claim that Park Management did not have a permit to operate  
25 Nomad Village Mobile Home Park, the same claim on which the homeowners' subsequent  
26 Petition for Writ of Mandate was also based (see discussion on the homeowners' Writ Petition,  
27 below). Park Management opposed the motion, pointing out that it was procedurally improper  
28 and lacking proper evidentiary support, and also that it was factually false in that Lazy Landing,

1 LLC and Waterhouse Management Corporation had, on August 14, 2008, upon becoming the  
2 operators of Nomad Village Mobile Home Park, properly reported that fact to the County and  
3 properly applied for and received permits to operate from the County.

4 At the hearing held on May 28, 2013, the Court denied the homeowners' motion to  
5 dismiss and overruled its demurrer.

6 At the hearing on May 28, 2013, at which the Court denied the homeowners' Motion to  
7 Dismiss and Demurrer, counsel for the parties agreed to a new date for the trial on the  
8 Administrative Writ of Mandate and on a briefing schedule in this matter, after the parties had  
9 met and conferred off the record. In accordance with the dates set forth by counsel, the Court  
10 continued the trial date to October 30, 2013. The schedule was also set forth in the Notice of  
11 Briefing Schedule that was filed in that matter on June 6, 2013. The briefing schedule was  
12 premised upon the homeowners' filing their answer by June 7, 2013, as set forth in the Notice of  
13 Briefing Schedule. Instead of filing an Answer by June 7, 2013, the homeowners filed a Writ of  
14 Mandate proceeding in the Court of Appeal, challenging the Superior Court's rulings overruling  
15 its demurrer and denying its motion to dismiss; The writ was summarily denied within two court  
16 days, yet the homeowners still waited to file an answer.

17 Finally, the homeowners filed an answer to the Petition on June 13, 2013.

18 Thereafter, on June 27, 2013, the homeowners filed a motion to compel responses to  
19 discovery; the discovery at issue related entirely to the homeowners' claims regarding the Permit  
20 to Operate Nomad Village Mobile Home Park. At the hearing on the motion on July 23, 2013,  
21 the Court denied the motion, noting that the motion was untimely; the court also denied the  
22 motion on the merits, even had the motion been timely brought.

23 On or about August 7, 2013, the homeowners filed a motion to augment the  
24 Administrative Record to include alleged documents never presented or proffered in any of the  
25 arbitration proceedings. The alleged documents again related to the homeowners' claims  
26 regarding the Permit to Operate Nomad Village Mobile Home Park. The motion to augment was  
27 opposed by the County Respondents and by the Nomad Petitioners.

28 At the hearing held on September 18, 2013, the Superior Court denied the homeowners'

1 motion to augment the Administrative Record, and declined to remand the matter to the  
2 arbitrator. The written order was entered October 9, 2013. The Court also took the pending trial  
3 date off calendar, and left it the parties to reset the matter.

4         Thereafter, counsel for Park Management and the County Respondents agreed on several  
5 potential trial dates and briefing schedules, but counsel for the homeowners failed to agree. On  
6 December 13, 2013, the County Respondents filed a Request to Set Case Management  
7 Conference. Park Management agreed with the setting of a Case Management Conference so  
8 that a trial date and briefing schedule on their Petition for Writ of Mandate could be set. At the  
9 Case Management Conference on January 14, 2014, the Court set a new trial date for April 29,  
10 2014, and set a briefing schedule.

11         On February 6, 2014, in accordance with the briefing schedule ordered by the Court, Park  
12 Management filed their Petitioner's Opening Brief on Writ of Mandate.

13         On February 20, 2014, the homeowners filed a document in the Nomad Writ proceeding  
14 entitled "Complaint for First Cause of Action for Declaratory Relief," etc. In this purported  
15 "Complaint" the homeowners repeated their frivolous claims that Park Management did not have  
16 a Permit to Operate Nomad Village Mobile Home Park and claimed that as a result, it was never  
17 entitled to collect any rent. That purported "complaint" named the County and the Nomad  
18 Petitioners as Defendants. It also purported to name as Defendants entirely new parties to the  
19 action, Robert M. Bell and Randy J. Bell (incorrectly), alleging they were "doing business as the  
20 "Bell Estate", a non-existent entity.

21         On March 10, 2014, in accordance with the briefing schedule ordered by the Court, the  
22 County Respondents filed their Opposition to Petition for Writ of Administrative Mandamus.

23         Also on March 10, 2014, the homeowners filed their "Brief in Opposition to Petitioner's  
24 (sic) Opening Trail (sic) Brief on Writ of Mandate." In this Brief, the homeowners reiterated at  
25 length the misguided claims that Park Management was never entitled to collect rent, based upon  
26 their false claim, again reiterated at length, that Park Management did not have a Permit to  
27 Operate Nomad Village Mobile Home Park.

28         Park Management and the County Respondents filed motions to strike the homeowners'

1 “Complaint” (the County Respondents also filed a demurrer). The homeowners filed oppositions  
2 to all of them.

3 On the afternoon of April 21, 2014, the **day before** the hearing on Park Management’s  
4 and the County Respondents’ motions and demurrer, and **after** the Superior Court issued its  
5 Tentative Ruling **granting** both motions to strike, the homeowners purported to file and serve an  
6 “Amended Complaint.” At the April 22 hearing on the Motions to Strike, the homeowners’  
7 counsel argued against the Court’s Tentative Ruling, but did not disclose the existence of the  
8 newly filed “Amended Complaint,” although acknowledged its existence when questioned by the  
9 Court, and then claimed that the “Amended Complaint” rendered the Court’s ruling on the  
10 Motions to Strike “moot”. (Inexplicably, the purported “Amended Complaint” was virtually  
11 identical to the “Complaint” and repeated the false claims that Park Management did not have a  
12 Permit to Operate the Park.)

13 The Court ordered the homeowners’ Complaint stricken. Despite the fact that the Court’s  
14 ruling granting the Motions to Strike on the grounds that the homeowners’ “Complaint” was  
15 untimely clearly barred the “Amended Complaint,” (which could not possibly be timely if the  
16 earlier-filed “Complaint” was untimely) the homeowners persisted with the “Amended  
17 Complaint.” The County Respondents and Park Management moved to Strike Hamrick’s  
18 Amended Complaint.” At the hearing held on June 27, 2014, the Court granted the Motion to  
19 Strike and ordered that the homeowners’ purported “Amended Complaint” filed in that action be  
20 stricken and further ordered that the homeowners’ representative shall not file any further  
21 complaints or cross-complaints without first obtaining leave of Court to do so.

22 The writ petition issues were extensively briefed for Judge Anderle. On November 10,  
23 2014, Judge Anderle entered his Order on Writ of Mandate (“Order”), which attached a detailed  
24 31-page decision (“Decision”) by which Judge Anderle thoroughly discussed the basis of the  
25 Order.

26 In the Order, Judge Anderle granted virtually all of the relief Park Management sought,  
27 and ordered that the Respondent County vacate its order overturning the Arbitrator’s award  
28 granting Nomad’s rent increase, on the grounds that Nomad was entitled to various rent increases

1 awarded by the Arbitrator, ordering that the Board **vacate** its order reversing the Arbitration  
2 Award as to Awards numbered 4, 5, 6, 7, 8, 11, and 12, and remanded for further findings  
3 Arbitration Awards numbered 4, 5, 6, 7, and 12 (these award numbers follow the numbering set  
4 forth in the Arbitration Award).

5  
6 **Homeowners' Writ Proceeding**

7 On or about September 12, 2014, the homeowners, through Deborah Hamrick again as  
8 homeowner representative, and again represented by Thomas Griffin, filed a new separate writ  
9 proceeding, naming the County as Respondent and Park Management as well as the Park land  
10 owners, the Bells, as real parties in interest. In this writ proceeding, the homeowners again  
11 claimed that Park Management was not entitled to any rent increase or even to collect any rent at  
12 all since 2008, on the same false basis as before—their incorrect assertion that the County did  
13 not issue Nomad Park Management a Permit to Operate the Park. The homeowners did not file  
14 any Notice of Related Case referencing the Nomad Writ Proceeding. Moreover, the  
15 homeowners immediately filed a peremptory challenge to Judge Anderle under Code of Civil  
16 Procedure section 170.6 in an apparent effort to evade his prior orders, so the matter was  
17 assigned to Judge Colleen K. Sterne. The homeowners attempted to obtain all of the writ relief  
18 sought in their action by ex-parte relief without even serving the real parties in interest. The  
19 homeowners “ex party (sic) application” was denied. At the ex parte hearing, the Court pointed  
20 out that the homeowners’ Petition was baseless and had various deficiencies. Nevertheless,  
21 Hamrick persisted in serving her Petition and insisting that the County Respondents and Nomad  
22 Real Parties In Interest respond to it. Under the terms of the Ground Lease for the Park, Park  
23 Management was obligated to indemnify the Bells, as ground lessor, against claims involving the  
24 operation of the Park. Accordingly, Park Managements’ response and defense against the  
25 homeowners’ claims was on behalf of the Bells, who were named by the homeowner as Real  
26 Parties in Interest.

27 Thereafter, extensive discovery and law and motion proceedings ensued in the Hamrick  
28 Writ Proceeding. Throughout these proceedings, the homeowners persisted in insisting that Park

1 Management was not entitled to any rent increase, or indeed to collect any rent at Nomad  
2 Village, based upon the factually and legally false and misguided claim that the County never  
3 issued Park Management any valid PTO. The County and Park Management repeatedly pointed  
4 out to the homeowners and their counsel that their claims were factually and legally incorrect.

5 Park Management and the County brought motions for summary judgment, which the  
6 homeowners vigorously, but unsuccessfully, opposed. The homeowners' writ proceeding was  
7 resolved entirely against the homeowners on summary judgment, and Judge Sterne granted Park  
8 Management's and the County's Motions for Summary Judgment.

9 In the summary judgment proceedings, all of the following facts were established to be  
10 true and undisputed:

11 On August 1, 2008, Waterhouse Management commenced acting as property manager  
12 and operator of Nomad Village on behalf of Lazy Landing as owner of the Nomad Village  
13 mobilehome park business pursuant to the terms of the Ground Lease.

14 On August 14, 2008, Waterhouse Management completed and forwarded by mail to the  
15 County a completed HCD Form 500 Application for Permit to Operate showing a Transfer of  
16 Owner and Operator (the "Waterhouse Management Application for PTO").

17 The Waterhouse Management Application for PTO accurately listed Lazy Landing,  
18 MHP, LLC, as the new "Owner" of Nomad Village, since it was the ground lessee in possession  
19 of the entire Nomad Village Mobile Home Park Property, in charge of operating the Nomad  
20 Village Mobile Home business pursuant to the Ground Lease Agreement. Title 25 of the  
21 California Code of Regulations govern the licensing and operation of mobilehome parks in  
22 California. Sections 1006.5 through 1014 of Title 25 relate to Permits to Operate mobilehome  
23 parks in California. Section § 1002(o)(4) of Title 25 specifically defines Owner as follows: "(4)  
24 Owner. The person or entity that legally owns or possesses an item, property, or business  
25 through title, lease, registration or other legal document."

26 The Waterhouse Management Application for PTO accurately listed Waterhouse  
27  
28

1 Management, as the new Property Manager for Nomad Village, since it was the property  
2 manager and operator of Nomad Village engaged by Lazy Landing.

3 Waterhouse Management, as operator and property manager of Nomad Village, did  
4 everything requested of it by the County, and provided everything to the County requested from  
5 it by the County, to notify the County of the transfer by which Lazy Landing became the new  
6 owner and Waterhouse Management became the new property manager and operator of Nomad  
7 Village.  
8

9 Each year from 2008 to the present, the County has sent an invoice to Waterhouse  
10 Management requesting payment of annual fees for a Permit to Operate Nomad Village  
11 Mobilehome Park. Each of these annual invoices were received and promptly paid.

12 The County issued Annual Permits to Operate Nomad Village Mobile Home Park to  
13 Waterhouse Management, as operator of Nomad Village, from 2008 to the present.

14 On those bases, the Homeowners' Petition was found to be unmeritorious and summary  
15 judgment was entered against the homeowners by Judge Sterne on December 18, 2015.  
16  
17

### 18 **Board of Supervisors Remand Hearing I**

19 On January 19, 2016, the Board held a remand hearing, as ordered by Judge Anderle  
20 (albeit well over a year after Judge Anderle had ordered the Board to conduct a rehearing and  
21 vacate its prior order overturning the Arbitrator's Award). At the Board's remand hearing, the  
22 Board voted to remand to the Arbitrator for further hearing to consider Awards numbered 4, 5, 6,  
23 7, 8, 11, and 12. The remand of Awards numbered 8 and 11 was contrary to the Court order and  
24 contrary to the Board's own legal counsel's direction, since the Board was simply ordered to set  
25 aside its order vacating those awards so that the Arbitrator's Award was reinstated.

26 ///

27 ///

28

1       **Remand Arbitration Hearing**

2               On February 19, 2016, the Arbitrator, Steven Biersmith, Esq., held a Remand Arbitration  
3       Hearing, at which Park Management and the homeowners appeared through counsel and through  
4       representatives of both Park Management and the homeowners. The Arbitrator did not take any  
5       new evidence at the Remand Arbitration Hearing, and determined to render a decision based  
6       upon the existing evidentiary record of proceedings. The Remand Arbitration Hearing was  
7       transcribed by a Court reporter. On March 5, 2016, the Arbitrator issued his Opinion and Award  
8       (Revised on Remand), awarding Park Management space rent increase of \$65.03 per month,  
9       consisting of a permanent space rent increase of \$25.59 and temporary increase of \$39.44, as  
10      itemized therein.

11  
12       **Homeowners' Appeal to Board of Supervisors II**

13              The homeowners again appealed to the Board. Park Management filed a Response to the  
14      Appeal, pointing out that the appeal was without basis and should be denied. (See Park Owner's  
15      Response, incorporated herein by reference.) County staff prepared a Board letter  
16      recommending that the Board find that the Remand Award did not contain sufficient findings  
17      and should be remanded to the Arbitrator to make further findings in support of the Award.  
18      Ironically, the Board Letter itself was conclusionary in nature, and failed to make sufficient  
19      findings in support of its conclusion. On July 19, 2016, the Board held a hearing on the  
20      homeowners' appeal. Debra Hamrick, as homeowners' representative, addressed the Board and  
21      demanded that the Board vacate the Remand Award and assign the matter to a new arbitrator.  
22      Other homeowners addressed the Board demanding that the Board vacate elements of the initial  
23      arbitration award that had already been upheld by the Superior Court. Park Management's  
24      representative addressed the Board, pointing out that the Remand Award was proper and  
25      consistent with the Court's order and should be upheld, but if the Board were to remand the  
26      matter for further findings, the Rules, as well as common sense and judicial economy, clearly  
27      would dictate that the matter must be remanded to the Arbitrator who actually heard and received  
28      the evidence on which the award was based.

1           Ultimately the Board voted to remand the Remand Award to the Arbitrator for further  
2 findings in support of the Award. A Remand Arbitration Hearing followed.

3  
4           **Further Remand Arbitration Hearing**

5           On August 10, 2016, pursuant to the Board's Order remanding the matter to the  
6 Arbitrator for further findings, the Arbitrator, Steven Biersmith, Esq., held another Remand  
7 Arbitration Hearing, at which Park Management and the homeowners appeared through their  
8 representative. The Arbitrator did not to take any new evidence at the Remand Arbitration  
9 Hearing, and determined to render a decision based upon the existing evidentiary record of  
10 proceedings. The Arbitrator received pre-Arbitration hearing and post-Arbitration hearing briefs  
11 from both of the parties. The Remand Arbitration Hearing was transcribed by a Court reporter.  
12 On August 28, 2016, the Arbitrator issued his Remand Award, awarding the same rent increase  
13 set forth in his March 5, 2016 Remand Award, awarding Park Management a space rent increase  
14 of \$65.03 per month, consisting of a permanent space rent increase of \$25.59 and temporary  
15 increase of \$39.44, as itemized in the Remand Award, and containing additional findings of fact  
16 and making specific findings in support of each of the awards.

17  
18           **Homeowners' Appeal to Board of Supervisors III**


19           In September, 2016, the Homeowners appealed the Arbitrator's August 28, 2016 Remand  
20 Award to the Board of Supervisors. Rule 23 requires that the Board make its determination based  
21 upon the arbitration "record alone" and may not consider evidence outside of the record.  
22 However, the homeowners' Petition again improperly violates Rule 23, as it is not based solely  
23 on the record of proceedings. Moreover, the homeowners' Petition is not based on any  
24 legitimate grounds for review, but is an improper attempt by homeowners to reargue their case  
25 (based largely on spurious claims not on the Record), and get the Board to improperly substitute  
26 their own judgment for that of the Arbitrator, and make a different finding not based on the  
27 record, but on the homeowners' unsupported and false claims of alleged matters that do not  
28

1 appear in the Record. Park Management filed its Response to the homeowners' Petition. The  
2 matter is set for hearing before the Board in December, 2016.

3  
4 **CONCLUSION**

5  
6 For the foregoing reasons, the Rent Increase Notice issued by Park Management of  
7 Nomad Village Mobilehome Park was in accordance with the terms of the Ordinance, and the  
8 Petition should be denied and Park Management's Rent Increase Notice upheld.

9  
10 Dated: November 14, 2016

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12   
13 JAMES P. BALLANTINE  
14 Attorney for Park Management  
15 LAZY LANDING MHP, LLC;  
16 WATERHOUSE MANAGEMENT, INC.  
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## DECLARATION OF SERVICE BY E-MAIL

I, LISA M. PAIK, declare:

I am, and was at the time of the service hereinafter mentioned, over the age of 18 years and not a party to the within action. My business address is 329 East Anapamu Street, Santa Barbara, California 93101, and I am a resident of Santa Barbara County, California.

On November 14, 2016, I served the foregoing document described as NOMAD VILLAGE MOBILEHOME PARK MANAGEMENT'S ARBITRATION HEARING BRIEF on the interested parties in this action by e-mailing as follows:

Judge David W. Long  
Creative Dispute Resolution  
3155 Old Conejo Road — Box 7  
Thousand Oaks, CA 91320  
e-mail: SL@Cdrmediation.com

Debra Hamrick  
Nomad Village Homeowners Representative  
813 E. Mason Street  
Santa Barbara, California 93103  
e-mail: Ianmipres@gmail.com

Natalie Dimitrova  
County of Santa Barbara  
Real Property Division  
Courthouse East Wing, Second Floor  
1105 Santa Barbara Street  
Santa Barbara, CA 93101  
e-mail: ndimitrova@countyofsb.org

I caused such document to be e-mailed to the above e-mail addresses.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 14, 2016, at Santa Barbara, California.

  
\_\_\_\_\_

**PROOF OF SERVICE BY OVERNIGHT DELIVERY**

State of California                    )  
  )  
County of Santa Barbara            )

I, LISA M PAIK, declare:

I am a resident of the State of California and am employed in the County of Santa Barbara. I am, and was at the time of the service hereinafter mentioned, over the age of 18 years and not a party to the within action. My business address is 329 East Anapamu Street, Santa Barbara, CA 93101.

On November 14, 2016, I served: NOMAD VILLAGE MOBILEHOME PARK MANAGEMENT'S ARBITRATION HEARING BRIEF on the interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Judge David W. Long  
Creative Dispute Resolution  
3155 Old Conejo Road — Box 7  
Thousand Oaks, CA 91320

I caused such document to be mailed in a sealed envelope, for overnight delivery, with fees fully prepaid. I am readily familiar with the firm's business practices with respect to the collection and the processing of correspondence, pleadings, and other notices for mailing by overnight delivery. In accordance with that practice, it would be timely deposited with the overnight carrier on that same day with fees thereon fully prepaid at Santa Barbara, California in the ordinary course of business.

  X   (State)           I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 14, 2016, in Santa Barbara, California

\_\_\_\_\_

## DECLARATION OF SERVICE BY U.S. MAIL

I, LISA M. PAIK, declare:

I am, and was at the time of the service hereinafter mentioned, over the age of 18 years and not a party to the within action. My business address is 329 East Anapamu Street, Santa Barbara, California 93101, and I am a resident of Santa Barbara County, California.

On November 14, 2016, I served the foregoing document described as NOMAD VILLAGE MOBILEHOME PARK MANAGEMENT'S ARBITRATION HEARING BRIEF on the interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Debra Hamrick  
Nomad Village Homeowners Representative  
813 E. Mason Street  
Santa Barbara, California 93103

I caused such document to be mailed in a sealed envelope, by first-class mail, postage fully prepaid. I am readily familiar with the firm's business practices with respect to the collection and the processing of correspondence, pleadings, and other notices for mailing with the United States Postal Service. In accordance with that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Santa Barbara, California in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 14, 2016, at Santa Barbara, California.

  
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