

Attachment X

Park Management's Arbitration Brief on Remand

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NOMAD VILLAGE MOBILE HOME PARK
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9 ARBITRATION PROCEEDINGS UNDER THE SANTA BARBARA COUNTY
10 MOBILEHOME RENT CONTROL ORDINANCE
11

12)
13)
14 IN RE NOMAD VILLAGE MOBILE HOME PARK) REMAND HEARING BRIEF
BY PARK MANAGEMENT
15)

16)
17)
18) Before
Stephen Biersmith, Arbitrator
19)

20) Date: February 16, 2016
21) Time: 9:00 A.M.
22) Location: Board of Supervisors
Hearing Room
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1 LAZY LANDING MHP, LLC, and WATERHOUSE MANAGEMENT CORP.,
2 (collectively referred to herein as “Park Management”) hereby submit their Remand Hearing
3 Brief herein.

4
5 **FACTUAL AND PROCEDURAL BACKGROUND**

6
7 Nomad Village Mobile Home Park (“Park”) is a 150-space mobile home park, located at
8 4326 Calle Real, Santa Barbara, CA, 93110, between El Sueño Road and San Marcos Pass. The
9 Park was first developed in the late 1950’s and was operated for many years by Nomad Village,
10 Inc., pursuant to a ground lease or series of ground leases, which expired on July 31, 2008, and
11 were not renewed. Commencing August 1, 2008, a new ground lessee, Lazy Landing MHP,
12 LLC (“Lazying Landing”), entered into a 34-year ground lease for the property on which the
13 Park is located, pursuant to arms-length negotiations with the ground lessor and fee owner of the
14 property, the Bell Trust, at which time Waterhouse Management Corp. (“Waterhouse
15 Management”), became the management company in charge of the operation of the Park. At the
16 Arbitration hearing, Park Management confirmed on the record that they, Lazy Landing and
17 Waterhouse Management were indeed “Management” of the Park pursuant to the terms of the
18 Ordinance (RT2 150:21-151:2).

19 The Park is located in the unincorporated area of Santa Barbara County, and therefore is
20 subject to the jurisdiction of Santa Barbara County, and is subject to the provisions of the Santa
21 Barbara County Mobilehome Rent Control Ordinance (“Ordinance”) and the Mobilehome Rent
22 Control Rules for Hearing (“Rules) adopted pursuant to the Ordinance, a copy of the Ordinance
23 and Rules are Arbitration Joint Exhibit 1.) The Park is one of four mobilehome parks located in
24 the area between El Sueño Road and San Marcos Pass on the west and east, respectively, and
25 Calle Real and Cathedral Oaks Road in the south and north respectively, and are located in the
26 second Supervisorial District. The Park is a rental park, in which the mobilehomes are all owned
27 by homeowners who rent their spaces in the Park from Park Management. The tenancies are
28 subject to the terms of the Ordinance. Some homeowners entered into settlement agreements

1 with Park Management and therefore are not subject to those Arbitration proceedings.

2
3 **Notice of Rent Increase**

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

17
18 **Homeowners Petition for Arbitration**

19 In April 2011, Park Management was notified that a Petition challenging the Park's rent
20 increase had been filed with Santa Barbara County. Petitioner filed a response. The terms of the
21 Ordinance and the Rules set forth a detailed process for the selection of an arbitrator to hear
22 challenges to rent increases, and for the noticing and conduct of the hearing. Pursuant to the
23 terms of the Ordinance and the Rules for Hearing, the County appointed an Arbitrator and
24 noticed an Arbitration Hearing.

25
26 **Arbitration Hearing**

27 The Arbitration Hearing was held on September 19 and 20, 2011. Prior to the hearing,
28 the Petitioner Homeowners and Park Management both submitted arbitration briefs. The

1 Homeowners were represented by San Jose Attorney Bruce Stanton, and called witnesses and
2 introduced Petitioner's exhibits, Exhibits 1-8. Witnesses called by the Homeowners were: Dr.
3 Kenneth Barr, and Dan Waltz. Respondent Park Management was represented by Santa Barbara
4 Attorney James Ballantine, and also called witnesses and introduced exhibits. (Respondent's
5 Exhibits A-T.) Witnesses called by Park Management were: Dr. Michael St. John, Ken
6 Waterhouse and Ruben Garcia. There were also exhibits received by Stipulation, Joint Exhibits
7 1 & 2.)

8 The arbitration hearing was transcribed by a court reporter who prepared a Reporter's
9 Transcript (referred to herein as RT1 for the September 19, 2011 hearing and RT2 for the
10 September 20, 2011 hearing).

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

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

23
24 **Appeal to Board of Supervisors**

25 Notwithstanding the Arbitrator's reservation of jurisdiction, in January 2012, Deborah
26 Hamrick, as homeowners' representative of the Homeowners of Nomad Village Mobile Home
27 Park, filed a Petition for Review of the Arbitration Award to Santa Barbara County Board of
28 Supervisors ("Board"). As a result of the homeowners' appeal, Park Management elected to

1 appeal a limited issue of the Award, solely the denial of a rent increase due to the doubling of the
2 costs of the ground lease.

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

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

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

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

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

22 The Board remanded the question of the portion of the rent increase based upon the
23 County's property tax increase of the Park, even though the Board admitted that the law clearly
24 provides for a rent increase based upon a property tax increase. In accordance with this action by
25 the Board, the Arbitrator conducted a remand hearing, on July 13, 2012, at which time Park
26 Management and the homeowners appeared through representatives, and thereafter, on August 6,
27 2012, issued an Opinion and Award on Remand ("Remand Award"). The Remand Award
28 upheld the full amount of permanent rent increase based upon the increased property taxes as set

1 forth in the Arbitration Award, the sole discretionary matter remanded to the Arbitrator. The
2 remaining aspect of the Remand Award was a ministerial calculation based upon the changes set
3 forth in the decision by the Board.

4
5 **Writ of Mandate Litigation**

6 On August 13, 2012, Park Management filed a Petition and Complaint for Writ of
7 Mandate and other relief, naming County of Santa Barbara and the Board as Respondents and
8 Debra Hamrick, as representative of the homeowners, as Real Party in Interest, on the grounds
9 that the Board's Order reversing the Arbitration Award was improper. The case was assigned to
10 the Honorable Superior Court Judge Thomas P. Anderle. The County filed its Administrative
11 Record of Proceedings. The homeowners actively participated in the Writ Action, hiring legal
12 counsel, Thomas Griffin. Resolution of the Writ Action was delayed by over a year while the
13 homeowners actively litigated the case, filing numerous motions, all of which were denied by the
14 Court, and engaging in unauthorized discovery (the Court ruled that the homeowners' were not
15 entitled to discovery since an administrative writ proceeding is determined solely on the
16 administrative record). The writ petition issues were extensively briefed for Judge Anderle.

17 On November 10, 2014, Judge Anderle entered his Order on Writ of Mandate ("Order"),
18 which attached a detailed 31-page decision ("Decision") by which Judge Anderle thoroughly
19 discussed the basis of the Order.

20 In the Order, Judge Anderle granted virtually all of the relief Park Management sought,
21 ordering that the Board **vacate** its order reversing the Arbitration Award as to Awards numbered
22 4, 5, 6, 7, 8, 11, and 12, and remanded for further findings Arbitration Awards numbered 4, 5, 6,
23 7, and 12 (these award numbers follow the numbering set forth in the Arbitration Award).

24 Thereafter, the homeowners, through Deborah Hamrick again as homeowner
25 representative, and again represented by Thomas Griffin, filed a separate writ proceeding,
26 naming the County as Respondent and Park Management as well as the land owners, the Bells,
27 as real parties in interest. In this writ proceeding, the homeowners claimed that Park
28 Management was not entitled to any rent increase or even to collect any rent at all since 2008.

1 The homeowners disqualified Judge Anderle, so the matter was assigned to Judge Colleen K.
2 Sterne. That action was resolved entirely against the homeowners on summary judgment, and
3 Judge Sterne entered Judgment against the homeowners on December 18, 2015.

4
5 **Board of Supervisors Remand Hearing**

6 On January 19, 2016, the Board held a remand hearing, as ordered by Judge Anderle. At
7 that time the Board voted to remand to the Arbitrator for further hearing to consider Awards
8 numbered 4, 5, 6, 7, 8, 11, and 12. Each is discussed herein.

9
10 **DISCUSSION OF AWARDS REMANDED TO ARBITRATOR**

11 **Award No. 4. Amortization Rate**

12 Award No. 4 is that “[a]ll granted temporary increases are to be amortized at 9% for
13 seven (7) years.”

14 The Ordinance provides for amortization over the useful life of a capital expense. (S.B.
15 County Code, ch. 11A, § 11A-6(b)(2).) The Ordinance otherwise provides no guidance as to
16 either the time span for amortization or the interest rate.

17 The Court affirmed the Arbitration Award as to the amortization: “The record shows that
18 there was substantial evidence to support the arbitrator’s decision of seven years and nine
19 percent. Petitioners presented this amortization schedule [Exhibit C] and Dr. St. John testified
20 that these numbers were the result of his professional judgment.” (Decision, p. 30.)

21 The Court further found that since certain other matters were being remanded back for
22 further proceedings and findings, that the “items subject to amortization may change as a result
23 of the further proceedings” so that Award No. 4 must be subject to potential reconsideration.
24 (*Id.*)

25 Accordingly, the amortization potentially could change, but need not be changed, under
26 the terms of the Court’s ruling. Since the Court has already affirmed the amortization as being
27 supported by substantial evidence, based upon Dr. St. John’s professional judgment, already in
28 the record, it appears unnecessary to expend further time and proceedings on this issue.

1 **Award # 5. Capital Items.**

2 Award No. 5 is that the “Homeowners are to pay the \$320,000. If any of these monies are
3 not spent on eligible items with six months from the date of this award, the residual amounts are
4 to be returned to the Homeowners.”

5 Park Management’s rent increase notice sought a rent increase for capital items in the
6 total amount of \$320,000, for the purpose of the rent increase notice. The \$320,000 figure was
7 based upon an escrow fund that Park Management had paid into that was specifically designated
8 for capital improvement expenditures for the Park, and which Park Management had committed
9 to pay for capital items relating to the Park. Park Management did not seek, and the Arbitration
10 Award did not grant, the rent increase because of the \$320,000 payment; the payment was
11 simply the basis of the amount requested.

12 The capital items in evidence at the Arbitration Hearing, were of two components, capital
13 items that had been incurred at the time of the Hearing, and those items that were prospective in
14 nature.

15 At the time of the Arbitration Hearing, Park Management had already incurred
16 \$62,145.55 in capital improvement expenses for the Park. These expenses are itemized in
17 Exhibit J, and the invoices for these expenses are set forth in Arbitration Exhibit K. Waterhouse
18 Management Vice President Ruben Garcia, who oversees the day-to-day operation and financial
19 management of the Park, testified that these expenses itemized in Exhibit J, backed up by the
20 invoices in Exhibit K, were all expenses actually incurred by Park Management for capital items
21 improving the Park, as set forth in the documents. (RT2 182:13-183:23; 188:18-189:14.)

22 Park Management also planned to incur significant capital expenditures for repaving the
23 roads and for work on the replacement of components of the common area electrical system.
24 Bids and proposals for both types of work were received into evidence. (Exhibit M.) Dr. St.
25 John testified that the road work and electrical system work proposed by Park Management is
26 properly treated as a capital expense under the Ordinance. (RT1 130:9-17.)

27 Waterhouse Management President Ken Waterhouse confirmed that the \$320,000 was for
28 funds that he caused to be paid into an escrow account, and that it was funds solely dedicated for

1 capital improvements for the Park. (Exhibit K; RT2 145:15-147:1.) He confirmed that these
2 funds would all in fact be spent on capital improvements to the Park. (RT2 166:7-22.) He
3 further confirmed that the amounts to be spent on capital improvements to the Park will certainly
4 exceed \$320,000. (RT2 179:1-13.) He pointed out that one of the challenges in determining the
5 exact scope of work to be done was Park Management's ongoing dialogue with the County and
6 their ever-shifting positions regarding work that they claimed needed to be done at the Park.
7 (RT2 166:11-22.) Regardless, he confirmed with certainty that work far in excess of \$320,000
8 had to, and would, be done at the Park: "We know the dollars will be spent." (*Id.*)

9 The Ordinance provides for capital improvements and capital expenses as follows:
10 "'Capital Improvement' is any addition or betterment made to a mobilehome park which consists
11 of more than mere repairs or replacement of existing facilities or improvements and which has a
12 useful life of five or more years." (S.B. County Code, ch. 11A, § 11A-2(a).) "'Capital expense'
13 is a repair or replacement of existing facilities or improvements which has an expected life of
14 more than one year." (*Id.*, § 11A-2(b).) "The cost of capital improvements incurred or proposed,
15 including reasonable financing costs, may be passed on to homeowners at the time of an annual
16 increase" (S.B. County Code, ch. 11A, §11A-6(a)(1).) "If management fails to begin
17 construction of a capital improvement within six months after approval of the cost of the capital
18 improvement, then management shall discontinue the increase for the capital improvement and
19 shall credit any amounts collected to each homeowner." (*Id.*, § 11A-6(a)(5).) Similar provisions
20 apply for capital expenses. (*Id.* § 11A-6(b).) Accordingly, the Ordinance permits the pass
21 through of the costs of capital improvements and expenses, whether those costs have already
22 been incurred or are merely proposed.

23 The homeowners conceded that the Ordinance allows Park Management to notice a rent
24 increase prospectively for expenses not yet incurred. Their expert, Dr. Baar, agreed:

25 Q. The ordinance -- I think, we can agree that
26 the ordinance does allow the park owner to recover
prospectively, right?

27 A. Yes.

28 Q. And then do the work within six months?

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A. Right.

Q. You've seen that part of the ordinance, correct?

A. Correct.

(RT1: 166:1-9.)

The Court found that the evidence of proposed prospective capital improvements and capital expenses was not sufficiently “definite and certain” and that the Arbitration Award contained no findings that any proposal was definite and certain so that the finding “to include collection of \$320,000 was not supported by substantial evidence.” (Decision, p. 26.) However, the Court did find that there was evidence of \$62,145.55 of specific items of costs incurred by Park Management for capital improvements and expenses (Exhibits J and K), but the Arbitration Award did not make specific findings allowing these expenses, and the Board improperly overturned this award and in doing so “the Board has not proceeded in the manner required by law.” (Decision, pp. 26-27.) The Court reversed the Board’s order disallowing Award No. 5 and remanded it for appropriate action and appropriate findings, and the Board has remanded the matter back to the Arbitrator.

At the remand Arbitration hearing, these findings can easily be made that the \$62,145.55 of specific items of costs incurred by Park Management for capital improvements and expenses (Exhibits J and K) are for capital items provided for under the Ordinance, based upon the evidence in the record, cited above. In addition, Park Management representatives will be available for any further evidence requested by the Arbitrator.

As to the prospective matters introduced at the Arbitration Hearing, those items have already been performed. Although the Homeowners’ precipitous appeal of the Arbitration Award a few weeks after its issuance prevented it from becoming final, Park Management elected to go forward with the work based upon the ruling, rather than delay for the Award to become final.

Both the common area electrical work and the roadwork have been performed. Park Management is prepared to proffer at the Remand Arbitration Hearing, documents, including

1 invoices, showing that the work that was performed and the amount of costs actually incurred by
2 Park Management, exceeding \$320,000. Park Management would propose that evidence be
3 taken at the Remand Arbitration on this narrow issue, as it would be in accordance with the
4 evidence originally presented at the Arbitration Hearing and in accordance with the terms of the
5 Arbitration Award.

6 It should be noted that the Arbitrator has the discretion to elect to hear new evidence at
7 the remand hearing. Nothing about the Court Order or the Rules would preclude the Arbitrator
8 from hearing additional evidence on this point. The law is clear that the Arbitrator can elect to
9 hear additional evidence. Where further administrative proceedings are warranted, they may
10 involve the admission of new evidence.” (*Voices of the Wetlands v. California State Water*
11 *Resources Control Bd. (Duke Energy Moss Landing, LLC)* (2007) 157 Cal.App.4th 1268, 1333-
12 1334, and cases cited therein, affirmed in *Voices of Wetlands v. State Water Resources Control*
13 *Bd.* (2011) 52 Cal.4th 499.) The Supreme Court made clear that when the trial court remands a
14 matter back to an administrative agency when the agency’s findings were insufficient to support
15 the agency’s decision, the agency is free to elect to admit new evidence to allow it to fill an
16 evidentiary gap:

17 No reason appears to construe section 1094.5 to preclude such new evidence when the
18 court, having found insufficient record support for the agency's decision, remands for
19 reconsideration of that matter. But once the court has reviewed the
20 administrative record, and has found it wanting, section 1094.5 does not preclude the
21 court from remanding for the agency's reconsideration in appropriate proceedings that
22 allow the agency to fill the evidentiary gap.

23 (*Id.*, 52 Cal.4th 499, 535.)

24 **Award # 6. Professional Fees.**

25 Award No. 6 is that the homeowners are to pay \$25,000 for professional fees associated
26 with the capital improvements.

27 The Arbitration Award states as follows:

28 “The professional fees spent on capital improvement item should not be treated as a one
shot expense, but rather amortized (Ex. K & Q). After considering the objections raised
by the Homeowners, a good portion of the line items submitted by the Park Owner do not

1 appear to be relevant to any capital improvements, therefore, a reduction of \$25,000 from
2 the original request is warranted. The remaining \$25,000 is to be charged to the
Homeowners.”

3 The Court found that the Ordinance clearly allowed Park Management to recover for
4 professional fees related to a capital item: “where professional fees may be correctly categorized
5 as a cost of either a capital improvement or capital expense, such fees may be passed on.”
6 (Decision, pp. 27-28.) The Court reversed the County Board of Supervisors’ Order reversing the
7 Arbitration Award No. 6, and remanded back to the Arbitrator for further findings as which
8 professional fees are awarded based upon being related to capital expenses.

9 Park Management sought to recover for \$50,973 in legal fees incurred in December, 2010
10 for legal matters related to the operation of the Park. This work is itemized in detail in the
11 statement in evidence as Exhibit Q, and the areas of work are summarized in single page exhibit
12 in Exhibit K. The billing statement was reviewed by Mr. Waterhouse and the fees were incurred
13 and paid by Park Management as a normal and legitimate operating expense. (RT2 145: 6-14.)

14 The Arbitration Award was a reasonable award as stated. The itemized statement
15 (Exhibit Q) clearly has entries supporting \$25,000 in legal time spent on issues related to the
16 capital items of the Park. If requested to do so by the Arbitrator, Park Management could
17 identify capital items that would easily justify the \$25,000 in matters relating to the capital items
18 by the Park for inclusion in further findings.

19 Because the matter was remanded back to the Arbitrator for further review and findings,
20 Park Management will clarify that it is entitled to recover **all** such professional fees incurred by
21 Park Management, **both** as fees related to capital expenses **and** as fees incurred as ordinary and
22 necessary operating expenses in operating the mobilehome park. The evidence in these
23 proceedings would support awarding the full \$50,973 sought by Park Management, not just for
24 legal fees related to capital expenses, but also for matters constituting ordinary and necessary
25 operating expenses, provided for in the Ordinance.

26 As noted by the Court, Park Management is entitled to recover its costs for legal services
27 in connection with **capital expenses and improvements** under section § Section 11A-6,
28 subdivisions (a)(1) and (b)(1) of the Ordinance. In addition, Park Management is also entitled to

1 recover its costs for legal services incurred in the operation of the Park as an **ordinary and**
2 **necessary operating expense** under section § 11A-5(f)(1) of the Ordinance, as found by the
3 Court in allowing Park Management to recover its professional fees incurred in these rent control
4 proceedings (see discussion under Award #11).

5 Although much of the work related to capital improvements and expenses, the work also
6 dealt with matters dealing with the operation of the Park generally, such as dealing with the
7 landowner, governmental agencies, and homeowners with respect to the Park operations, as may
8 be seen from a review of the detailed billing statement (Exhibit Q) and the one page summary of
9 work (included in Exhibit K).

10 Dr. St. John noted that Park Management was entitled to recover the full \$50,973 in legal
11 fees, either through a permanent rent increase by including it the MNOI analysis, or through a
12 temporary rent increase as proposed.

13 Q. With respect to professional
14 fees, such as legal fees and for professional
15 consultants, is it related to dealings with regulatory
16 agencies and the like, is that something that's
17 typically an expense that's included in an expense
18 calculation, either through MNOI or through another kind
19 of amortized pass-through?

20 A. In my experience it is.

21 (RT1 135:1-8.)

22 Dr. St. John further commented on the subject:

23 That's the judgment that
24 was made because a \$51,000 legal expense is not the kind
25 of expense that occurs every single year, so if it was
26 to be left in the budget, it would make a big difference
27 in the outcome.

28 If on the other hand you take it out here,
delete it completely from the MNOI, it means that the
rent increase from the MNOI is significantly lower than
it would otherwise be. But if that amount is
appropriately amortized and allowed over some number of
years at some rate of interest, then that is an
alternative way to account for these particular legal
fees and, in my judgment, it's a way that is more fair.

... ..

1It's not an element in the MNOI.
2 It is included elsewhere, because this was an amount
3 that truly was paid in connection with expenses and has
4 to be accounted for one way or another.

(RT1 95:3-15, 96:1-4.)

5 The proposition that the Arbitrator may properly consider legal fees incurred by Park
6 Management as an **ordinary and necessary operating expense** under section § 11A-5(f)(1) of
7 the Ordinance, as well as a capital item to the extent that the fees deal with **capital expenses and**
8 **improvements** under section § Section 11A-6, subdivisions (a)(1) and (b)(1) of the Ordinance, is
9 apparent under the terms of the Ordinance, the Court's Decision, and existing law. Indeed, the
10 Court and the Homeowners expressly acknowledged that Park Management was entitled to
11 recover its legal fees incurred as an operating expense for the purpose of these rent control
12 proceedings (see discussion regarding Award No. 11, below). In *Carson Harbor Village, Ltd. v.*
13 *City of Carson Mobilehome Park Rental Review Board* (1999) 70 Cal.App.4th 281, 294, cited by
14 the Court, the Court of Appeal noted that attorneys fees related to mobilehome park operations,
15 such as determining compliance with regulations affecting the Park and dealing with regulatory
16 agencies, as well as for such matters as evictions and responding to lawsuits by homeowners,
17 were properly recoverable through a rent increase. The Court of Appeal also found that these
18 fees could also be treated as a temporary rent increase. In the case before the Arbitrator, several
19 matters were proposed and upheld by the Court to be treated as amortized, temporary expenses,
20 and this treatment is discussed in a separate section herein, *infra*.

21
22 **Award # 7: Architecture and Engineering Fees**

23 Award No. 7 is that the homeowners are to pay \$40,000 for fees incurred by Park
24 Management in purchasing plans and drawings and permits from the prior operator, in order to
25 proceed with capital improvements of the Park.

26 The Court found as follows: "The same analysis [as with Award No. 6] applies to Award
27 No. 7 for architecture and engineering (A&E) fees. As with other professional fees, the
28 Ordinance provides for passing on such fees to the extent such fees are properly categorized as

1 “costs” of capital improvements and expenses.

2 The Arbitration Award states as follows:

3 “Waterhouse testified he purchased certain plans to facilitate evaluating and then moving
4 forward on certain capital improvements for the Park. Given the age on some of the supporting
5 documentation, some of this work appears stale. Although the Park Owner represented that the
6 County will work with them with such things as expired permits, some of this work may have
7 little or no value as of this date. A more reasonable amount to be charged would [be] \$40k.”

8 The components of the A&E fees are itemized in the spreadsheet in evidence, Exhibit J.
9 The invoices supporting these individual entries are in evidence in Exhibit L, and these invoices
10 summarize the work or other basis for the expense. These include costs for the preparation of
11 plans and drawings of the entire Park. They also include costs paid to the County for permits for
12 work at the Park.

13 Mr. Waterhouse testified that these items were purchased from the prior operator, and
14 included a number of plans and CAD drawings for the entire Park, and were and remained
15 valuable to Park Management as the current operator in moving forward with capital
16 improvements for the Park. (RT2 144:6-145:5.) He also testified that these items include, in
17 addition to the plans and drawings prepared by the Engineering Firm Penfield and Smith, fees
18 paid to the County of Santa Barbara Planning and Development for permits for work related to
19 various aspects of the Park. (166:23-167:3.) There was also discussion at the hearing between
20 the Arbitrator and Park Management that although these permits had expired, the County had
21 indicated that they will work with Park Management and extend the timelines for the permits so
22 that there was perceived value in the permits. (RT2 179:18-180:11; 181:8-17.)

23 The fact of the matter is that the County did in fact waive further permit fees for work
24 that was ultimately performed at the Park, and the invoices for the expenses actually incurred for
25 the work that Park Management proposes to submit do not include any additional permit fees.
26 Regardless, the Arbitrator’s findings with respect to this item were reasonable and well taken.
27 Plans and diagrams for the entire Park, particularly those which are computerized CAD
28 drawings, are obviously something of enduring value to the Park operator on an ongoing basis

1 far into the future for a variety of different purposes related to the improvements to and
2 operations of the Park. The \$40,000 awarded reflects compensation for a large portion of the
3 expense of the Plans and drawings. Limiting the award to compensation for the expense of these
4 drawings is a reasonable resolution.

5
6 **Award No. 8 Property Taxes**

7 Award No. 8 is that the “Homeowners are to pay \$130,531 for the supplemental tax
8 increase payments already paid by the Park Owner.”

9 The Court found that the “increases in property taxes” were properly considered by the
10 Arbitrator as a basis for a rent increase under the Ordinance, section 11A-5(f)(1), and that the
11 Board’s purported reading of the Ordinance to exclude supplemental property taxes was in
12 violation of the clear law on the subject. (Decision pp. 22-23.) The Court further found that the
13 Arbitrator properly weighed the evidence and followed Dr. St. John’s opinion that the
14 supplemental property taxes should properly be charged to the Homeowners in the form of a rent
15 increase. (*Id.*, pp. 23-24.) The Court upheld the Arbitration Award:

16 There is substantial evidence to support the arbitrator’s decision. Consequently, under the
17 standard of review to be used by the Board under the Hearing Rules, the arbitrator did not
18 abuse his discretion by making a determination supported by substantial evidence,
19 notwithstanding the Board’s view that it would have reached a different result reweighing
20 the evidence. Thus, the Board has not proceeded in the manner required by law by
reversing Award No. 8 on the basis of either an erroneous interpretation of the Ordinance
or a reweighing of the evidence not permitted by Hearing Rules, rule 23(a).”

21 (Decision, p. 24.)

22 On this basis, the Court ordered that the Board vacate its order reversing Arbitration
23 Award No. 8. The Court did **not** order the matter reconsidered for further findings or any other
24 action.

25 County Counsel presented the following Findings to the Board for adoption at the
26 Board’s remand hearing, which it prepared in adherence to the Court’s Order:

27 The Arbitrator included findings of fact and was supported by substantial evidence. The
28 Board of Supervisors determines that the Arbitrator did not abuse his discretion and
affirms Award 8.

1 Instead of following the Court’s Order and their own Counsel, the Board made the
2 following revised findings, improperly finding that the “Arbitrator abused his discretion,” despite
3 the fact that the Court found that the Arbitrator’s award was proper, and remanded the matter
4 back to the Arbitrator:

5 The Arbitrator did not make findings to bridge the analytic gap between the evidence
6 presented and the ultimate decision made by the Arbitrator. The Arbitrator did not
7 identify whether the supplemental tax increase was categorized as an increase in
8 operating costs, cost of a capital improvement, or capital expense so as to be passed
9 through to the homeowners; thus, the Board of Supervisors determines that the Arbitrator
abused his discretion. The Board of Supervisors remands this Award to the Arbitrator to
make findings of fact on which the Arbitrator’s decision is based that are supported by a
preponderance of the evidence.

10 The Board’s reference to “capital improvement, or capital expense” is non-sensical. The
11 increased property taxes are clearly an operating expense properly considered by the Arbitrator
12 as the basis for a rent increase under the express terms of the Ordinance, as already held by the
13 Court. To the extent that the Board’s reference to capital items meant to refer to the treatment of
14 the supplemental property taxes as an amortized temporary increase, similar to how a capital
15 item is treated, that treatment has been expressly found by the Court to be proper, and the
16 homeowners conceded that treatment was proper, as discussed herein in the section on temporary
17 increases, *infra*.

18 Clearly under the express terms of the Ordinance, increased property taxes are a basis for
19 a rent increase, as section 11A-5(f)(1) of the ordinance specifically provides that “increases in
20 property taxes” are the type of increased operating expense that the Arbitrator “shall consider” in
21 determining a rent increase.

22 The Homeowners’ own consultant conceded that property taxes are a proper basis for a
23 rent increase in any rent controlled jurisdiction, and did not dispute that a property tax increase is
24 properly a basis for a rent increase under the Ordinance. (See, e.g. RT1 221:5-8.)

25 There is no dispute that Park Management incurred the expense of the supplemental
26 property taxes. Dr. St. John testified that Park Management did incur some \$130,000 in property
27 tax increases that were not recovered by the permanent rent increase, and that the most
28

1 reasonable means by which to recover them was through the temporary increase, amortized as he
2 prepared it.

3 A. It was. And just to state it again for
4 clarity, this \$130,531 tax increase is the amount that
5 the park owner really did pay, I mean that's actual
6 out-of-pocket, \$130,000 and change without being
7 compensated at all, whereas under the system we're using
8 here, park owners deserve compensation for cost
9 increases.

10 Q. And actually, it's fair to say that that is --
11 even more specifically to say, that's the amount of
12 increase that the park owner is out-of-pocket. In fact,
13 the park owner is out-of-pocket more than that in the
14 total property taxes, that \$130,000 is just the increase
15 number for the period of time in question?

16 A. Yes. I mean, I would only say the rest of the
17 property tax amount was covered by the income, by the
18 space rents, but this amount is not covered by space
19 rents and should be.

20 (RT1 77:19-78:10.)

21 The Homeowners never disputed at the Arbitration hearing that these supplemental
22 property taxes could not be recovered through a temporary award, amortized for a limited period
23 of time. This methodology, undisputed by the Homeowners, was upheld by the Court.

24 The only objection by the Homeowners was as to the “regulatory lag” or the delay from
25 the time that the Park Management incurred the expense (which was long after the transfer date)
26 to the time that it was the subject of the rent increase. This “regulatory lag” objection was
27 dispelled by Dr. St. John. The Court found that the issue was properly decided by the Arbitrator.

28 The Court noted that the testimony of Dr. St. John supported the Arbitration Award:

“[T]he County isn’t quick, usually, in changing the tax rates, they wait a while
and then they eventually change the taxes and then they send our supplemental
tax bills. ... Then the question is, how long will it be before the park owner begins
being compensated for that tax increase? And the answer is, until May 2011. The
increases that were imposed, effective May 1, 2011, covered that amount, so from
then forward the park owner is whole, but for the period from August 2008 to
May 2011 the park owner was obligated to pay these amounts but the residents
were not obligated – before this proceeding, or otherwise, wouldn’t be obligated
to pay it. But in my view, these are amounts that residents, in the end, have to pay.
This is an increase, it’s a legitimate increase, it’s government imposed, it’s not

1 within the park owner’s discretion, it is an extra cost.”

2 St. John continued: “So I think [homeowners’ counsel] might tell us ... you
3 should have petitioned right away. Well, okay, but that would imply that we have
4 to petition kind of for every year, every single time an increase comes up we’re
5 going to have to petition, petition, petition, and these petition processes are quite
6 time consuming, if you don’t know. And so to my mind, it simply does not make
7 good sense to, in effect, command the park owners do an entire NOI fair return
8 petition every year. That doesn’t make good sense, and the way to not do that is to
9 allow park owners to do this kind of a fair return hearing periodically, when
10 appropriate, when it feels appropriate, and then to be compensated for – to be
11 compensated after the arbitrator has decided on the justification for the increases
12 in question, to be compensated for the past.”

9 (Decision, pp. 23-24.)

10 There is nothing properly before these remand proceedings that would give rise to any
11 basis for any change to Arbitration Award No. 8.

12
13 **Award # 11 Expert and Legal Fees Incurred In Rent Control Proceedings**

14 Award No. 11 is that the “Homeowners are to pay \$110,000 for legal fees associated with
15 the challenge to the rent increase.” The Arbitration Award states as follows: “After reviewing
16 the itemizations submitted by the Park Owner for expert and legal services expended in this
17 matter (Ex. R & S) and the Homeowners’ response, a reasonable amount to be paid by the
18 [latter] would be \$110,000.”

19 The Court found that these fees could properly be charged to the homeowners under the
20 terms of the Ordinance, and that the Arbitration Award properly awarded the fees as part of the
21 rent increase. The Court noted that the Homeowners conceded that these fees could properly be
22 the basis for a rent increase. The Court further found that the Arbitrator proceeded properly,
23 allowing Park Management to submit an itemized statement of fees, and the Homeowners to
24 respond, and making an award based upon these submissions. “This evidence constitutes
25 substantial evidence to support the factual determination. Thus, the arbitrator did not abuse his
26 discretion in making this award.” (Decision, p. 29.)

27 As noted by the Court, there was no disagreement that the Park Management is entitled to
28 recover its professional fees incurred in these proceedings, nor the treatment of it in amortizing

1 these costs over seven years. The Court quoted the following admission in this regard by Dr.
2 Baar:

3 “[Q.] Now, with respect to the anticipated professional fees relating to the rent
4 increase, as I understand your position there, you don’t necessarily quarrel with
5 the idea that the park owner is entitled to recover professional fees relating to the
6 rent increase?”

6 “A. That’s right.

7 “Q. Nor do you argue with the methodology employed here, which is to do it as a
8 temporary as opposed to the base for a permanent rent increase?”

8 “A. Right, that’s correct. [¶] ... [¶]

9 “Q. ... So, your sole quarrel is with the number?”

10 “A. That’s correct.”

11 (Decision, p.29.)

12 The Court concluded that “Baar’s testimony is substantial evidence that legal fees, if
13 reasonable in amount, are appropriately included as a basis for a rent increase as an ordinary and
14 necessary operating expense.”

15 The Court found that the Board of Supervisors acted improperly: “The Board did not
16 proceed in the manner required by law by reversing Award No. 11 on the grounds that these
17 legal fees were not to be considered by the arbitrator under the terms of the Ordinance.”
18 (Decision, pp. 29-31.) The Court ordered that the Board vacate its order reversing Arbitration
19 Award 11.

20 The Court did **not** order the matter to be remanded for further consideration by the
21 Arbitrator; indeed, it made clear that there was nothing further to consider. County Counsel
22 understood this fact. The findings that County Counsel prepared for the Board, which it
23 expressly stated at the Board’s remand hearing, were carefully drafted to be consistent with the
24 Court Ruling.

25 County Counsel presented the following Findings to the Board for adoption, which it
26 prepared in adherence to the Court’s order:

27 The Arbitrator included findings of fact and was supported by substantial
28 evidence. The Board of Supervisors determines that the Arbitrator did not abuse

1 his discretion and affirms Award 11.

2 Instead of following the Court's Order and their own Counsel, the Board made the
3 following revised findings, improperly finding that the "Arbitrator abused his discretion," despite
4 the fact that the Court found that the Arbitrator's Award was proper, and remanding the matter
5 back to the Arbitrator:

6 The Arbitrator did not make findings to bridge the analytic gap between the
7 evidence presented and the ultimate decision made by the Arbitrator. Findings for
8 this Award are especially important because legal fees are not expressly identified
9 in the Ordinance as an allowable operating expense. The Arbitrator did not make
10 findings regarding the final calculation of the legal fees awarded nor did the
11 Arbitrator identify whether the legal fees were categorized as an increase in
12 operating costs, cost of a capital improvement, or capital expense so as to be
13 passed through to the homeowners. Thus, the Board of Supervisors determines
14 that the Arbitrator abused his discretion. The Board of Supervisors remands this
15 Award to the Arbitrator to make findings of fact on which the Arbitrator's
16 decision is based that are supported by a preponderance of the evidence.

17 Pursuant to the Court's Order, Arbitration Award No. 11, awarding Park Management a
18 rent increase based upon \$110,000 in professional fees incurred through the date of the
19 application made by Park Management during the initial arbitration, is not at issue in this
20 Remand Arbitration proceeding. However, as discussed in the section below, the professional
21 fees incurred by Park Management since the initial Arbitration Hearing through these Remand
22 proceedings is properly before the Arbitrator.

23
24 **The Arbitrator Should Determine and Award Professional Fees Incurred Through Remand**

25 The Homeowners have expressly agreed that Park Management is entitled to recover its
26 fees and expenses incurred in the writ proceedings and through remand, and that these fees and
27 expenses should be determined by the Arbitrator upon remand.

28 The Homeowners' expert, Dr. Baar testified to this upon the homeowners' attorney's
questioning:

Q.My questions to you are, when an
administrative hearing decision such as this is appealed
to the courts, do the courts typically, if they find
something wrong with that decision, remand it back to
the administrative body for further or additional

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hearings?

A. Yes, that's the standard procedure.

Q. Do you have any knowledge as to whether or not, as part of that remand process, and **at that time of the remand, that the park owner would then be able to claim additional expenses as they're then being incurred?**

A. You can say that would be an additional clarification to make. In these cases, park owner claims expenses as to they've incurred as legal expenses for the application, and then **if it goes to court and gets remanded back, then a second, additional claim is made at that time.**

Q. **So on remand, the park owner is able to calculate the additional expenses that are now being incurred, because of the litigation, correct, the appeal?**

A. **Right.**

Q. And typically, the litigation in this case would be a writ of mandamus that would name the City [sic-County] as a party defendant, correct?

A. Yes.

Q. Because the hearing officer is employed [sic-appointed] by the City [sic-County] and --

A. Right.

Q. -- the residents are real parties in interest?

A. Right. See, the park owner, their expense to date was \$35,000. **If they end up going to court and prevailing in a writ of mandate action, they are not boxed in, they can come back again.**

(RT1 243:23-245:7, emphases added.)

Accordingly, Park Management respectfully submits that the Arbitrator should employ the same procedure that it employed at the initial arbitration proceeding. Following the Remand Hearing, Park Management can submit an application for professional fees supported by a detailed summary of professional fees incurred to date, the homeowners can have a reasonable

1 opportunity to respond, Park Management would have any opportunity to reply, and the matter
2 would then be submitted to the Arbitrator for determination of an appropriate award.

3
4 **Amortization of Professional Expenses**

5 To the degree that the homeowners are now objecting to the treatment of professional
6 fees (and the supplemental property taxes although they are not properly involved in these
7 remand proceedings) as an amortized temporary rent increase, similar to the treatment of a
8 capital expense, the homeowners ignore that this treatment has already been adjudicated to be
9 proper and that the homeowners have already conceded that this treatment is appropriate.

10 The homeowners repeatedly throughout the Arbitration Hearings conceded that the
11 treatment of professional fees as an amortized temporary expense, or as a "pass through," in the
12 same manner in which a capital item is treated, is the appropriate treatment for the professional
13 fees at issue in these proceedings.

14 The Homeowners' attorney expressly conceded:

15 And finally, the anticipated professional fees
16 relating to the rent increase itself of \$125,000, the
17 homeowners do not disagree that it is beneficial for the
18 homeowners to have any such fees passed through so that
19 they are paid once and then they drop off of the rent
statement. We don't disagree with those remarks that
counsel made, so we are not here to say that those
should become operating expenses.

20 (RT1 41:1-8.)

21 Dr. St. John explained that the treatment of large essentially one-time or non-recurring
22 expenses, including professional expenses, could be analogized as a capital expense, not because
23 they are capital expenses, but because they are large essentially one-time expenses:

24 They're not capital improvements, that's true,
25 but they are large expenses that shouldn't be treated
simply as an annual -- an annual cost item.

26 (RT1 84:15-17.)

27 Dr. St. John gave a detailed explanation of the basis for amortizing the expenses, and
28 treating them as a temporary expense, and why it is favorable for the homeowners:

1 Q. Essentially, you made a distinction between
2 either treating it as a normal operating expense,
3 treating these expenses as a normal operating expense
4 for the purposes of calculating a permanent rent
5 increase under MNOI or pulling it out and making it
6 something separate, essentially. Is that correct, a
7 fair distinction?

8 A. It is a fair distinction.

9 Q. And let me ask before we go on with the
10 analysis, in your professional opinion is it appropriate
11 to include in some manner for the purposes of rent
12 increase under a mobile home rent control ordinance,
13 expenses of this type that a park operator would
14 incur -- for example, legal and appraiser and other
15 professional fees relating to property tax litigation
16 and to rent increase hearings and litigation?

17 A. Yeah, I do, I think that it's appropriate.

18 Q. So to start off as a basis, you think the type
19 of expense we're talking about is an appropriate expense
20 to be included in some way in a rent control space rent
21 increase?

22 A. Oh, completely, I do think it is. And
23 parenthetically, if I can just say, if these amounts
24 were to be included in the MNOI and if the arbitrator
25 were to ask me or Dr. Baar to compute it that way, it
26 would come out less advantageous to the residents.
27 So --

28 Q. And the reason for that would be because if
you included it as a MNOI analysis, or a similar type of
operating income analysis for the purposes of a
permanent increase of rent, you'd essentially have an
extraordinary expense being deemed to being a normal
operating expense and it would essentially be forever,
become a permanent rent increase that would go on
forever for the residents and would be based on what
arguably would be a fiction -- that is, that this
extraordinary expense is really a regular recurring
expense?

A. Correct.

Q. So what you're saying is by treating it this
way as a temporary increase, it's more fair to the
homeowners?

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A. That's right.

(RT1 84:24-86:16.)

Dr. St. John went on to state:

Q. And in this case, however, the fees that we're talking about are not part of the permanent MNOI increase but they're a separate, temporary pass-through item the way they're being calculated here, correct?

A. Yes, in the way they're being calculated here. And the footnote I wanted to make a few minutes ago is to say all of these items that we're speaking about right now could either be handled through MNOI or in this manner, and we're suggesting that they be handled in this manner so they would be amortized to lessen the impact on the residents. If these large, chunky amounts were to be included in the MNOI either for this year or for another year, it would have quite an impact and might make the rent increase higher.

(RT2 22:2-15.)

Q. There was a fair amount of time spent regarding your treatment of the items 5 and 6 on the Exhibit C spreadsheet, the professional fees, and you talked about analogizing them to, essentially, capital improvements.

A. Yes.

Q. Is it the case that the only other way to treat them would be to consider them under the MNOI analysis?

A. Yes, as far as I know, the only other way would be to put them into the MNOI equation.

Q. And would it be the case, in that case, it would essentially result an inflated number for a present year and lead to a permanent rent increase that's essentially an inflated permanent rent increase, if you treated it that way?

A. It might very well. Some of these expenses span more than one year, so only a portion would be in any particular year, when you do MNOI you only include those years, so we'd have to see how it would come out.

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But this way, the beauty of doing it this way is we take all of the expenses in one category, no matter which year they appear in, we sum them, we then amortize them, and we then apply them.

Q. And is that pretty favorable for homeowners, making it temporary versus permanent?

A. I believe it is.

(RT2 116:17-117:18.)

Dr. Baar unequivocally agreed with Dr. St. John that the professional fees incurred in connection with the rent control proceedings are recoverable by Park Management, and are properly amortized as a temporary expense.

Q. So it's your experience that an application such as this may properly charge residents for the professional fees generated in connection with this application process, correct?

A. For the rent increase application, yes. Yes, That's -- if you have a cost in getting a fair return, that's a reasonable cost.

Q. And typically, it would be done, structurally speaking, the way this exhibit shows, which is rather than make it an operating cost and put it in the NOI formula and roll it into the base rent that never goes away, it's a separate line item pass-through, if you will, correct?

A. Yes. And typically it's amortized because it's not the kind of expense that occurs frequently.

Q. Okay. So you're in agreement with what Dr. St. John was saying about how doing it this way is better for the tenants?

A. Yes. Well, it's an amortized expense so it should end.

Q. So you're in agreement with him on that?

A. Yes.

(RT1 174:8-175:4.)

1 The Court in its Decision affirmed the treatment of these various items as temporary rent
2 increases. Notably, in *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental*
3 *Review Board* (1999) 70 Cal.App.4th 281, 293, cited by the Court, the Court of Appeal held that
4 although the ordinance in question did not specifically provide for allocation of an operating
5 expense over an extended period of time, the hearing officer (in that case a rent control board)
6 had sufficient flexibility to do so and amortizing it to treat it as a temporary rent increase. That
7 was also the Court’s ruling in this case in upholding the propriety of the temporary rent increases
8 in this case.

9

10 **Award # 12 Total Permanent and Temporary Increase**

11 The Court noted in its Decision: “the arbitrator’s final calculation is again subject to
12 recalculation after further proceedings mandated by this disposition.” (Decision, p. 30.)

13 The Board’s order states as follows: “Because the total rent increase is based upon the
14 final adjustment of Awards 5, 6, 7, 8, and 11 which may be adjusted upon remand, the Board of
15 Supervisors also remands Award 12 to the Arbitrator for reconsideration in light of the
16 reconsideration of Awards 5, 6, 7, 8 and 11.”

17 Just as the Arbitrator did in finalizing the Arbitration Award, after making rulings on the
18 matters at the Remand Arbitration, the Arbitrator should order that Dr. St. John submit an exhibit
19 containing the appropriate rent increase calculations consistent with the Arbitrator’s final award.

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1 CONCLUSION

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3 In accordance with the foregoing, Park Management respectfully requests that the
4 Arbitrator take the following action with respect to the following Awards:

5 4. Continue to employ the amortization calculations set forth in the Arbitration Award,
6 and order as follows:

7 All granted temporary increases are to be amortized at 9% for seven (7) years.

8 5. Order that the homeowners are to pay the \$62,145.55 for capital improvements and
9 expenses already in evidence, in Exhibits J and K.

10 In addition, receive limited vidence of the capital costs actually incurred by Park
11 Management as to relating to the roadways and Park electrical system, and award the amount
12 proven by the evidence.

13 6. Order that the homeowners are to pay \$50,973.00 for legal fees associated with capital
14 improvements and as ordinary and necessary operating expenses of the Park, pursuant to Exhibit
15 Q.

16 7. Order that the homeowners are to pay \$40,000 for the A&E fees associated with the
17 capital improvements, as partial reimbursement for the plans and drawings for the entire Park
18 purchased from the prior operator, pursuant to Exhibits J and L.

19 8. No action was directed by the Court. However, since the matter was remanded by the
20 Board, order as before that the Homeowners are to pay \$130,531 for the supplemental tax
21 increase payments already paid by Park Management.

22 11. No action was directed by the Court. However, since the matter was remanded by
23 the Board, find as before that the Homeowners are to pay \$110,000 for legal and professional
24 fees associated with the challenge to the rent increase through the initial arbitration hearing.


25 In addition, order a briefing schedule by which the Park Management shall submit an
26 application and billing statements for additional legal and professional fees incurred through the
27 remand proceedings, and the homeowners shall have an opportunity to respond, and Park
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Management an opportunity to reply, and make an award in accordance with the evidence submitted.

12. Direct Park Management to prepare final calculations, in the form similar to the prior calculations attached to the Arbitration Award, in accordance with the Arbitrator's rulings.

Dated: February 16, 2016



JAMES P. BALLANTINE
Attorney for Petitioners
LAZY LANDING, LLC;
WATERHOUSE MANAGEMENT, INC.

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 February 16, 2016, I served the foregoing document described as REMAND HEARING BRIEF OF PARK MANAGEMENT on the interested parties in this action by e-mailing a true and correct copy thereof as follows:

Stephen Biersmith, Arbitrator
e-mail: sbiersmith@aol.com

Thomas H. Griffin, Esq.
e-mail: tommilaw2003@yahoo.com

Jenna Richardson, Esq.
Deputy County Counsel
Office of County Counsel of Santa Barbara County
e-mail: jrichardson@co.santa-barbara.ca.us

Natalie Dimitrova
County of Santa Barbara
Real Property Division
e-mail: ndimitrova@countyofsb.org

I caused such document to be e-mailed to the addressees.

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

Executed on February 16, 2016, at Santa Barbara, California.