ATTACHMENT A
FINDINGS

County Code Chapter 11A governs Mobilehome Rent Control. Section 5 is the "Increases in maximum rent schedule" and sets forth the Arbitrator's authority to consider and decide disputes over rental increases. Under Section 11A-5(g), rent increases up to75% of the Consumer Price Index (CPI) are permitted automatically without arbitration. At issue here is Management's request for rental increases above the automatic adjustment.

Section 11A-5(h) provides the Arbitrator with discretion to allow for an above-CPI increase. Section 11A-5(f) sets forth non-exhaustive factors that the arbitrator may consider as evidence in deciding whether to allow these additional adjustments. Section 11A-5(i) provides for the structure and formula to calculate allowable above-CPI adjustments.

Finding for Appeal Item #1 "Management is not entitled to any increase over the minimum amount to achieve a fair rate of return."

In calculating any above-CPI increase, the arbitrator shall "grant one-half of the automatic increase to management as a just and reasonable return on investment. The arbitrator shall have no discretion to award additional amounts as a just and reasonable return on investment." The Arbitrator's role was to render a decision under the applicable ordinance and that ordinance *expressly* states that the arbitrator has no discretion to award any additional amount for a fair rate of return. The Arbitrator's decision to award $8.83 was calculated as required under Section 11A-5(i)(1) "based upon applying applicable consumer price index data to the ordinance formula set forth above." (Arbitrator's Decision at p. 6.)

The Board finds that the Arbitrator proceeded in the manner required by law and included findings of fact that are supported by substantial evidence in the record; therefore, the Arbitrator did not abuse his discretion, and the Board affirms the Arbitrator's decision on Appeal Item #1.

Finding for Appeal Item #2 "The $20,000 broker commission: non-allowable"

Section 11A-5(i)(3) authorizes the Arbitrator to "add an amount to cover operating costs, if any, in excess of the automatic increase [provided in (i)(2)]. The arbitrator shall have discretion to add such amounts as are justified by the evidence and otherwise permitted by this chapter." The Arbitrator awarded $8.84 under Section 11A-5(i)(2) (not subject to this appeal) as the minimum required by the Ordinance.

Section 11A-5(f) sets out that at the hearing, "the arbitrator shall consider all relevant factors to the extent evidence thereof is introduced by either party or produced by either party on request of the arbitrator." Subsection (f)(1) lists the types of evidence the Arbitrator "shall consider," not that awards based on the following information is required "Such relevant factors may include, but are not limited to, increases in management's ordinary and necessary maintenance and operating expenses, insurance and repairs; increases in property taxes and fees and expenses in connection with operating the park; capital 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."

Management requested additional rental increases above that amount to the $20,000 broker commission incurred during the purchase of the mobilehome park under Section 11A-5(i)(3). Management argued that the broker's commission was an "expenses incidental to the purchase of the park" under Section 11A-5(f)(1), and therefore, could be allowed as an operating expense under Section 11A-5(i)(3). The Arbitrator disagreed.

The ordinance is not ambiguous: purchase expenses are not a basis for rent increase. To the extent that any interpretation is necessary, the statutory interpretation of Section 11A-5(f)(1) is subject to the Board's independent review and is not governed by the substantial evidence standard. (*Besaro Mobile Home Park, LLC v. City of Fremont* (2012) 204 Cal.App.4th 345, 354.) The term "incidental" modifies and limits the scope of expenses arising out of the purchase of a park. For similar reasons stated by the Arbitrator, the Board finds that expenses that are deliberate and a core part of a real estate transaction are not incidental expenses.

The Arbitrator was not prohibited from considering the evidence related to the Broker's Commission, but disagreed with Management's arguments.
The Arbitrator found that the obligation to pay the broker's commission was incurred prior to purchase, that a broker's Commission was not incidental to the purchase because it "is a core and deliberate expense in a real estate transaction," and that "I find that, read as a whole, the ordinance only allows for passing through obligations incurred after the change in ownership (although my decision does not rely on that interpretation). To interpret the ordinance differently would be to allow a slew of other expenses to do with the purchase of a park."

The Board finds that the Arbitrator proceeded in the manner required by law, and did not abuse his discretion in reaching the conclusion that a broker's commission is not an "incidental" expense to the purchase of the park. The decision is also supported by substantial evidence in the record that; for example, broker's commissions are typically captured as part of the purchase costs and are not included as an operating expense. The Board affirms the Arbitrator's decision of Appeal Item # 2.