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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 POST ARBITRATION HEARING BRIEF Before the Hon. Judge Long, Arbitrator HEARING DATES: November 18, 2016 February 10, 2017 TIME: 9:00 A.M.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

Respondent PARK MANAGEMENT OF NOMAD VILLAGE MOBILE HOME PARK ("Park Management") hereby submits its post Arbitration Hearing Brief in response to the Homeowners' Post Hearing Opening Brief ("Brief").

BACKGROUND

The Arbitration proceedings held in this matter were as a result of the Petition for Arbitration filed by the Homeowners' Representative on behalf of the homeowners of Nomad Village Mobile Home Park collectively ("Petitioner's" or "homeowners") objecting to paying any of the valid space rent increase lawfully noticed by Park Management through its Notice of Rent Increase issued on March 31, 2016, to be effective on July 1, 2016. The Arbitration proceedings have been held pursuant to the terms of the Santa Barbara County Mobilehome Rent Control Ordinance, Santa Barbara County Code sections Chapter 11A-1 through 11A-15 ("Ordinance") and the Mobilehome Rent Control Rules for Hearing ("Rules"). The Ordinance and Rules are in evidence as Exhibit 12.

Park Management set forth in detail the factual background, summary of the elements of the rent increase, and the legal basis for the rent increase in its Arbitration Hearing Brief submitted in this case on November 15, 2016, prior to the initial arbitration hearing; this discussion included a comprehensive summary of the protracted administrative and legal proceedings initiated by the homeowners by which the homeowners caused Park Management to incur substantial legal and professional fees and expenses. This background will not be repeated here, but is incorporated by this reference.

Pursuant to the terms of the Ordinance and Rules, an Arbitrator, the Honorable David W. Long, (Judge of the Superior Court, Ret.), was duly appointed, and an Arbitration Hearing duly held. The Arbitration Hearing was initially set for July 1, 2016, but was continued at the request of the homeowners, and consent of Park Management. The Arbitration Hearing was held on November 18, 2016, and February 10, 2017, presided over by Judge Long, as Arbitrator. At the Arbitration Hearing, the Petitioner homeowners introduced Exhibits A – M, of which all but

exhibits D & M were received.[1] Respondent Park Management called witnesses and introduced exhibits, Respondent's Exhibits Nos. 1-55, all of which were received in evidence. Witnesses called by Park Management were: Dr. Michael St. John, and Ken Waterhouse. Both witnesses were cross-examined at length and Mr. Waterhouse was further examined at length after being recalled by the homeowners. The Arbitration Hearing was transcribed by a court reporter who prepared a Reporter's Transcript (referred to herein as RT1 for the November 18, 2016 hearing and RT2 for the February 10, 2017 hearing).

At the conclusion of the Arbitration Hearing, the parties stipulated to a post-hearing briefing schedule, including Park Management's submission of billing statements in support of its claim for reimbursement of professional fees (RT2 224-227), which briefing schedule was revised by the parties by stipulation, approved by order of Judge Long on March 1, 2017. As the party having the burden of proof, petitioners have been given the opportunity to present both opening and reply post-hearing briefs. (RT2 224:14-19.) Since Petitioners will have an opportunity in their reply brief to respond to Park Management's application for professional fees, submitted herewith, Park Management is given an opportunity to reply to Petitioners' response on the issue.

[1] The record contains some ambiguity as to Petitioners' Exhibit D. Park Management objected to Exhibit D when it was considered along with Exhibit C, and the objection was sustained. Exhibit C was received but Exhibit D was not received in evidence (RT2 218:15-23.) Exhibits A and B had already been received at the first hearing, but not Exhibits C and D (RT1 72:17-19.) Thereafter when the rest of the Petitioners' Exhibits were considered, as to those Exhibits, Park Management objected to only Exhibit M, which was not received (RT2 221:22.) The rest of them were; however the rest would not have included Exhibit D, which the Arbitrator had already ruled would not be received. (RT2 218:15-23.)

The record may contain further inaccuracy as to the excluded Exhibit D. Following the February 10, 2017 Arbitration Hearing, the homeowner representative apparently forwarded by e-mail to the Clerk of the Ordinance Petitioners' Exhibits A through D, and **switched** Exhibit D with Exhibit C, and added to Exhibit C. As clearly stated on the record by the Arbitrator, Petitioners' Exhibit C was "A Comparison of Return on Investment" and Petitioners Exhibit D was "Nomad Village Return on Capital Net Operating Income." (RT2 215:21-216:1.) The homeowners' post hearing submission incorrectly has these two documents reversed; it also has the excluded Exhibit D "Nomad Village Return on Capital Net Operating Income" added as a page to Exhibit C along with another document, a bill from the Park to Tony Allen (showing a past due balance of $2,879.42). Petitioners appear to base part of their argument in their Brief on the alleged information contained on the excluded "Nomad Village Return." Park Management will be submitting corrected Exhibits C and D to the Clerk of the Ordinance.

I

PETITIONERS HAVE FAILED TO ESTABLISH THAT PARK MANAGEMENT IS NOT ENTITLED TO RECEIVE THE RENT INCREASE AS NOTICED

The rent increase to the homeowners was properly noticed by Park Management. (Exhibits 1 - 3.) The rent increase notice included a permanent increase in the base rent of $29.31 per month, and a temporary increase in the amount of $79.30 per month, for a total of $108.61 per month. For convenient reference, a copy of the spreadsheet summary of the rent increase, Exhibit 2, is attached hereto. At the arbitration hearing, Park Management presented evidence to support each component of this rent increase. The homeowners failed to present evidence sufficient to challenge the noticed rent increase, and did not present any evidence establishing that the rent increase should properly be any other number.

As noted by the Arbitrator, as the Petitioners in this matter, the homeowners have the burden of proof of establishing the invalidity of the rent increase. (RT2 224:14-19.) Petitioners have failed to meet this burden.

Notably, Petitioners have failed to introduce any expert testimony or evidence to challenge or contradict the expert testimony and evidence presented by Dr. St. John on areas that, as discussed herein, require expert testimony as a matter of law. Petitioners' Brief is virtually devoid of references to the evidentiary record in this case (i.e., the exhibits in evidence and the reporter's transcript). Accordingly, all of Petitioners' arguments and claims unsupported by the record should be disregarded.

In addition, Petitioners have included in their Brief various purported opinions and claims as to the Park's alleged rate of return and their speculation as to what they claim the Park's fair rate of return is or should be. Such purported opinions and claims by Petitioners cannot be considered. Determination of a fair rate of return is necessarily based upon expert opinion, so that substantial evidence will not support a rent conclusion if it is not sufficiently supported by expert testimony and evidence. (*Whispering Pines Mobile Home Park, Ltd. v. City of Scotts Valley* (1986) 180 Cal.App.3d 152, 160.) A hearing board or officer may not derive a fair return

calculation based upon calculations unsupported by expert testimony and evidence. (*Concord Communities v. City of Concord* (2001) 91 Cal.App.4th 1407, 1416; *H.N. & Frances C. Berger Foundation v. City of Escondido* (2005) 127 Cal.App.4th 1, 11.)

The uncontradicted expert opinion presented in this case is Dr. St. John's analysis that the noticed rent increase is necessary to provide Park Management with a fair return.

II

PETITIONERS HAVE NOT DISPUTED THE CPI INCREASE ACTUALLY BILLED BY PARK MANAGEMENT

Although Petitioners' Petition appeared to challenge the CPI increase noticed by Park Management, at the meet and confer, one of the homeowners' representatives objected to the CPI index by which the CPI increase had been calculated; the difference in rent was a few cents, and Park Management agreed to the index proposed by the homeowners' representative (75% of a CPI of 2.3 not 2.4), and that revised amount was the amount actually billed to the homeowners, as confirmed by Mr. Waterhouse at the Arbitration Hearing. (RT1 83:12-15.) Petitioners do not appear to dispute the CPI increase in their Brief, and apparently this issue is resolved for the purposes of the Arbitration Hearing.

III

PETITIONERS HAVE FAILED TO ESTABLISH THAT PARK MANAGEMENT IS NOT ENTITLED TO THE MNOI RENT INCREASE AS NOTICED TO RECOVER ITS COSTS INCURRED FOR INCREASED OPERATING EXPENSES

The rent notice included a permanent rent increase of $29.31 Park Management increased costs of operating the Park, calculated by Dr. St. John pursuant to the formula stated in the Ordinance. Dr. St. John testified at the hearing at length about performing a Maintenance of Net Operating Income (MNOI) Analysis generally, and specifically under the terms of the

Ordinance. Dr. St. John testified that the Ordinance provided for a modified or analogous version of an MNOI analysis. (RT2 16:17-21 (emphases added):

> MNOI … is one of the
> most common methods of adjudicating rent increases used
> in California. I believe it probably is the most
> standard method in California, and Santa Barbara County
> has what I would call a variant. Santa Barbara County
> uses what I would call an expense pass-through method,
> meaning that **the ordinance says that park owners should be able to pass through to park residents <u>all</u> expense increases**

Dr. St. John presented an MNOI-style analysis based upon the Park's 2015 profit and loss statements (Exhibit 5), which statements were given to the homeowners at the time of the rent notice. In response to questions by the homeowners and the Arbitrator, Dr. St. John refined and updated his 2015 analysis at the second day of hearing, and presented the analysis, Exhibit, and explained it in detail. (RT2 11-48.) The heart of the analysis, Table 1 of Exhibit 45, is applying steps one, two and three under the ordinance, constituting what Dr. St. John referred to as the "expense pass through method" (RT2 41-42) to derive a justified permanent rent increase pursuant to this analysis of $36.55 (RT2 47) in addition to the temporary rent increase for the capital items and professional fees (RT2 48) discussed infra. Dr. St. John also presented analyses based upon the Park's 2016 profit and loss (Exhibits 46-49), which he noted supported an even higher permanent rent increase of $43.35 or $208.91 if the professional fees paid in 2016 are not amortized. (Ex. 46, 47; RT2 50-70.) For convenient reference, a copy of Table 1 of Exhibit 45 is attached hereto. Regardless, Park Management only seeks a rent increase of $29.31, as originally noticed, which is well supported by all of the evidence presented at the Arbitration Hearing.

Petitioners claim that this 2016 evidence should be entirely disregarded because it (obviously) was not provided to them at the meet and confer around the time of the rent increase as part of the information on which the rent increase was based. Petitioners misconstrue the Rules as acting as an evidence preclusion provision; the Rules do not provide that the parties cannot present evidence at the hearing that was not presented (or even in existence) at the time of

the rent notice. Moreover, it was Petitioners who asked that this arbitration hearing be continued from when it was first scheduled in July, 2016. Since that time more information has become available to assist in the evaluation of the appropriate amount of the rent increase, all of which should be considered (i.e., the exhibits and Dr. St. John's testimony), particularly since it was received into in evidence in these proceedings without objection.

Petitioners also appear to object in their Brief to Dr. St. John's use of 2010 as the base year for his analysis. However, Dr. St. John already testified that he used an appropriate base year, and Petitioners have provided no admissible evidence or opinion to the contrary.

IV

PETITIONERS HAVE FAILED TO ESTABLISH THAT PARK MANAGEMENT IS NOT ENTITLED TO THE TEMPORARY RENT INCREASE AS NOTICED TO RECOVER ITS COSTS INCURRED FOR THE INSTALLATION OF NEW COMMON AREA ELECTRICAL INFRASTRUCTURE

The Rent Notice provides for a temporary rent increase of $4.08 to compensate Park Management for expenses incurred for the common area electrical infrastructure, specifically the installation of two transformers powering the common area recreation and tenant laundry buildings, and a new service line extension. Mr. Waterhouse discussed the common area electrical work that was performed to benefit the Park (RT1 90-99) and the plans and invoices documenting the work and its costs are in evidence as part of Exhibit 6.

Petitioners do not dispute that Park Management performed this work for the benefit of the Park infrastructure, nor do Petitioners dispute that Park Management actually incurred these expenses, nor do Petitioners dispute that these expenses actually incurred by Park Management were reasonable. Nevertheless, Petitioners claim that Park Management should not recover a penny of these expenses actually and reasonably incurred by it for the benefit of the common area of the Park in which they are tenants.

Although their claims in this regard are not entirely clear, and are replete with hyperbole,

it appears that Petitioners' misguided claims are based upon two equally misguided contentions, neither of which, as explained below have any merit. Petitioners have failed to meet their burden of proving that Park Management is not entitled to this rent increase to recover the costs that it undisputably incurred to benefit and upgrade the Park's common area electric infrastructure.

A. Petitioners' Claims Regarding Alleged Notices of Violation and Penalty, Ignores the Evidence That They Have All Been Withdrawn

Petitioners appear to claim that the Park is charging rents disallowed by Civil Code section 798.35.5, claiming that the Park is charging rents based upon an alleged penalty issued to it for alleged building code violations. That claim is factually and legally unmeritorious. In fact, Petitioners have failed to prove that there were any building code violations in the Park (or even identify any such codes allegedly violated), have failed to prove that there were any Health and Safety Code violations in the Park (or even identify any such codes allegedly violated), and have failed to prove that Park Management ever incurred any penalty for any such violations on which any rent increase is based.

Petitioners' claim is factually false; there was never any penalty ultimately assessed against or paid by the Park. Moreover, any claims by the County that the Park was in violation of any law, code or ordinance are incorrect, the County conceded as such and permanently withdrew all notices of alleged violation. (RT2 89-93, 204-205; Exhibit 52.) Therefore, Civil Code section 798.35.5 does not, and could not, apply.

Civil Code section 798.35.5 merely provides that the Park may not charge any fee or rent increase that "reflects the cost to the management of any fine, forfeiture, penalty, money damages, or fee assessed or awarded by a court of law or any enforcement agency against the management for a violation of" the Mobilehome Residency Law or the Mobilehome Parks Act. Petitioners have not established, and cannot establish, that the Park has charged any fee or rent increase that reflects the cost to Park Management of any such cost; nor can Petitioners establish that Park Management has incurred any such cost. Petitioners do not establish or provide any evidence that there is any rent being charged that reflects such a cost. To the contrary, the Park has not incurred any such cost, let alone charged any rent increase based upon such a cost.

Petitioners appear to attempt to claim that Santa Barbara County cited the Park for some sort of violation, however, Petitioners never provided any admissible evidence to prove such a claim, and ignore the fact that the Park never paid any penalty or fine or other such sum based upon any finding of any violation of the Mobilehome Residency Law or the Mobilehome Parks Act. Although Petitioners appear to claim that the Park was purportedly cited by the County nearly 15 years ago, Petitioners ignore the fact that the County's claims were without basis and withdrawn with no fines or penalties ever paid by the Park. Mr. Waterhouse testified that Park Management had discussions with the County, educated the County, and the County agreed that there were no violations, and agreed that there would be no fines or penalties assessed against the Park. (RT2 204-205.) Dr. St. John confirmed that the rent increase amounts that he calculated were not based in any way on any fine or penalty to the Park and in fact he was not aware of any. (RT2 89-93.) Petitioners also ignore the documentation in evidence that shows that the County withdrew all of its notices as to the Park and did not charge any penalties.

In evidence as Exhibit 52 is the April 30, 2014 letter from the Santa Barbara County Building Official confirming that "the Building and Safety Division of the Santa Barbara County Planning and Development Department hereby permanently forever withdraws all outstanding notices of violation and notices of determinations and vacates all outstanding fines." Petitioners ignore this evidence as well as the County documents in evidence, Exhibit 53, that further confirm that no penalty was ever paid by the Park to the County. Exhibit 50, Agreement 1.F. and Exhibit 51, Agreement 1.C, provide that any penalty "will be waived."

B. Any Charges Incurred By The Park With Respect to The Park Electrical System All Relate To Common Area Expenses That Are Expressly Authorized By Law To Form The Basis Of A Rent Increase

Petitioners also appear to claim that the Park may not charge any rent whatsoever related to any charges for any electrical infrastructure improvements to the Park, although Petitioners do not provide any evidence in support of any such claims.

Petitioners ignore the fact that the expenses incurred by the Park with respect to electrical work all related to Park common area systems (see Exhibit 6), which is specifically allowed

under CPUC rules to form the basis of a rent increase (see Exhibits 54 and 55). Petitioners ignore the fact that all electrical work was for the Common Area Electrical system of the Park: Park Management installed two new electrical transformers powering common area buildings, one new transformer powering the common area recreational building and the other new transformer powering the common area laundry service building, at a cost of $22,432 for the transformer and $25,231, for the other, for a total cost of $47,663 for the two transformers; Park Management also installed a new underground service line extension for entirely new 100 amp electrical service and pedestal for Space 92, at a cost of $7,698; the total cost paid to the electrical contractor was $55,361; in addition, the Park incurred electrical engineering costs to JMPE Electrical Engineering for the design and plan of $3,800; the total project cost was $59,161. The plans prepared by JMPE Electrical Engineering showing the plans for the work performed, are in evidence as Exhibit 6, pages V-10 to V-12. The final invoices from Taft Electric Co. for the work performed are in evidence as Exhibit 6, pages V-17 to V-18.

These costs involving a mobilehome park electrical system are specifically permitted by the CPUC to be the subject of a pass through rent increase, which allows Park Management to recover all expenses related to Park common area and for new service line extensions for new service as well as for the installation of new pedestals.

The Commission Decision 04-04-043, dated April 22, 2004, (Exhibit 55) specifically addressed the fact that mobilehome parks legitimately incur a variety of costs relating to their electrical systems above and beyond the costs incurred by a electrical utility, and specifically found that **these costs incurred by mobilehome parks could properly be recovered through rent increases**. The Decision stated that it "identifies categories of costs that are either not incurred by the utility when it directly serves MHP tenants, or are not reflected in utility rates for direct service, but are incurred by sub-metered MHP owners, **and may be separately charged to tenants if not otherwise prohibited.**" (Exhibit 55, page 2, emphasis added.)

Attachment A to the Decision (*Id.*) identifies charges related to electrical systems that may be separately charged to mobilehome park tenants and specifically provides, with emphases added, as follows:

Costs not covered by the discount - Categories of costs related to electric utility service that are either not incurred by the utility when it directly serves MHP tenants or are not reflected in utility rates for direct service, but are incurred by the owners or operators of master-metered MHPs. This may include Applicant (MHP owner) responsibility service equipment required by utilities to provide service to the MHP(Electric Rule 16) and equipment to hook-up the mobile home to the MHP's electric service. The following are the categories of electric costs for which the owners of master-metered MHPs are not compensated through the electric sub-metering discount provided pursuant to a utility tariff....

... ...

◊ **Costs related to common area.**

◊ **Purchase and capital-related installation**, repair and maintenance costs for: pedestals, meter sockets, circuit breakers, service panels, and support pads.

◊ **Trenching** (excavation) for
(1) underground service reinforcements, as defined by Rule 16.F.li and
(2) expansion of sub-metered distribution and services
under Rules 15.B.l.a and 16.D.1.a(2).

◊ **Conduits** for (1) service reinforcements, as defined by Rule 16.F.1; and (2) expansion of sub-metered distribution and services under Rule 15.B.1.a and 16.D.1.a(3).2 (Capital related costs for initial installation only, not maintenance and repair, which are already covered by the discount).

◊ **Substructures and protective structures** for (1) service reinforcements as defined by Rule 16.F.1; and (2) expansion of sub-metered distribution and services under Rule 15.B.1.a and 16.D.l.a.

◊ **Capital investment related costs** for the cost components listed in this Section 4 if not otherwise directly recovered by the MHP owner, such as:

- o depreciation
- o return on investment
- o taxes related to capital investment (including property taxes).

◊ **Operations and maintenance expenses** for the interconnection between the meter set and each sub-metered dwelling unit (mobile home), including associated taxes.

(**Exhibit 55** is the CPUC Decision 04-04-043.)

Accordingly, the electrical work to the common area infrastructure is expressly allowed to be charged to the tenants.

Petitioners appear in their Brief to request, without providing any legal authority, that this Arbitrator refrain from proceeding, because they have filed yet another legal proceeding against Park Management, to wit, a complaint with the CPUC; from the complaint presented by

Petitioners, it appears that homeowner representative Lindse Davis filed a complaint with the CPUC on October 7, 2016, and then it was sent to Park Management on February 6, 2017, a few days before the continued Arbitration Hearing in this case. (Exhibit G, pages 2,3.)

Petitioners' appeal for delay is improper. Not only does the CPUC **not** have jurisdiction over Petitioners' claim (which claim does not involve the CPUC or the regulation of utilities), but the claim is **already** the subject of the Petitioners' pending petition for rent arbitration proceedings under the Santa Barbara County Ordinance, pending long before the homeowners' representative filed her complaint with the CPUC. This is "forum shopping" at its worse. Moreover, Petitioners' attempt to further delay and protract these proceedings runs afoul of the dictates of the California Supreme Court: rent control proceedings cannot be made unreasonably protracted or expensive or else they constitute an unconstitutional taking of the park owner's property. The California Supreme Court in *Galland v. Clovis* (2001) 24 Cal.4th 1003, 1027-1028, has made it clear that municipal administrative mobilehome rent control proceedings that subject Park Management to undue delay and expense are confiscatory and violate Park Management's constitutional rights.[2]

V

PETITIONERS HAVE FAILED TO ESTABLISH THAT PARK MANAGEMENT IS NOT ENTITLED TO THE TEMPORARY RENT INCREASE AS NOTICED TO RECOVER ITS COSTS INCURRED FOR COMMON AREA STREET REPAIRS

The Rent Notice provides for a temporary rent increase of $18.93 to compensate Park

[2] It is troublesome in the extreme the Petitioners are launching yet another frivolous legal proceeding against Park Management, through which the self-represented homeowners will incur no fees, and will force Park Management (which as business entities cannot, and in order to upheld their fiduciary duties to their members and shareholders, should not, appear in pro per) to incur significant time and expense. Just as with the homeowners' last failed lawsuit against Park Management, which was adjudicated to be unmeritorious, the homeowners claim lack any factual or legal basis. Inflicting such additional massive expense on Park Management is further troubling in light of the Petitioners' conduct of aggressively litigating to preclude Park Management from any a rent increase to compensate Park Management for any of the legal fees that the homeowners have caused Park Management to incur, despite the fact that the homeowners' expert had already conceded that Park Manament is in fact legally entitled to recover such legal fees and costs (see the discussion in section VI, *infra*.

Management for expenses incurred for the common area street repairs. Mr. Waterhouse discussed the common area street repairs that was performed to benefit the Park (RT1 87-90) and the invoices documenting the work and its costs are in evidence as part of Exhibit 6, pages V-2 to V-8.

Petitioners do not dispute that Park Management performed this work for the benefit of the Park infrastructure, nor do Petitioners dispute that Park Management actually incurred these street repair expenses, nor do Petitioners dispute that these expenses actually incurred by Park Management were reasonable. Nevertheless, Petitioners claim that Park Management should not recover a penny of these expenses actually and reasonably incurred by it for the benefit of the common area streets of the Park in which they are tenants. Petitioners have failed to meet their burden of proving that Park Management is not entitled to this rent increase to recover the costs that it undisputably incurred to improve the Park's common area streets.

Although their claims in this regard are not entirely clear, it appears that Petitioners claim that the street repairs must have been incurred in the year prior to the rent increase. Petitioners misconstrue the Ordinance. Section 11A-6(b)(1) states: "(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."

Section 11A-5(i)(4) and (5) require the Arbitrator to award a rent increase based upon capital expenses, Dr. St. John testified that it is a "distinction without a difference" as to whether the capital expenses were placed under either subsection, and testified that in his expert opinion that Park Management must recover all of the capital expenses that have yet been reimbursed at the time of the rent increase (RT2 140:1-141:19):

> What's clear is that these capital expenses,
> these amortizable expenses have not yet been reimbursed,
> and I believe the meaning, the fundamental meaning of
> this paragraph is if they haven't been reimbursed, they
> should be.
> … … …
> A. ….I think the fundamental purpose of this
> ordinance is to protect residents against unreasonable
> space rent increases while at the same time allowing

park owners a fair return on investment, and fair return on investment as interpreted in this, as I understand this ordinance, means passthrough of all increased 1operating expenses and all capital expenses.

This expert testimony is uncontradicted.

Petitioners also ignore the fact that under the circumstances leading up to this rent increase. The (then prospective) street repair costs were initially to be part of the rent increase that was the subject of the 2011 proceedings, and in fact were allowed by the Arbitrator in 2011. However, while the homeowners protracted the proceedings, Park Management elected to go forward with the street repairs. Upon remand in his March 5, 2016 Remand Award, the Arbitrator did not award the costs for the street repairs in his remand award because the repairs had not been made in 2011 (Exhibit 20); therefore, Park Management did not actually incur the expense for the street repair until the March 5, 2016 Remand Award, so the expenses were actually incurred in the year of the March 31, 2016 Rent Notice.

VI

PETITIONERS HAVE FAILED TO ESTABLISH THAT PARK MANAGEMENT IS NOT ENTITLED TO THE TEMPORARY RENT INCREASE AS NOTICED TO RECOVER ITS COSTS INCURRED FOR PROFESSIONAL FEES INCURRED BY PARK MANAGEMENT AS A RESULT OF THE ADMINISTRATIVE AND LEGAL PROCEEDINGS INITIATED BY PETITIONERS

The Rent Notice provides for a temporary rent increase of $44.15 and $12.14 to compensate Park Management for expenses incurred for the professional fees and costs in two areas: $400,000 incurred in defending against the homeowners prior administrative appeals and litigation in rent proceedings through February, 2016, and $110,000 related to these rent review arbitration proceedings.

Petitioners do not dispute that Park Management was forced to incur these fees as a result of the homeowners' multiple Petitions for Arbitration, multiple petitions for review to the Board

of Supervisors appealing the arbitrator's awards or as a result of the homeowners' lawsuit against Park Management in which the homeowners claimed that Park Management was not entitled to collect rent at the Park due to allegedly not having a permit to operate, which lawsuit was adjudicated to be unmeritorious. Petitioners do not dispute that Park Management actually incurred these expenses, nor do Petitioners dispute that these expenses actually incurred by Park Management were reasonable. Nevertheless, Petitioners claim that Park Management should not recover a penny of these expenses actually and reasonably incurred by it directly as a result of the litigiousness of the homeowners. Petitioners further ignore the fact that if Park Management cannot recover the legal and professional fees that the Petitioners have caused Park Management to incur, Park Management will never recover these expenses. Such a result would be an unconstitutional taking of Park Management's property. Moreover, such a result is directly contrary to the law and to the homeowners' own judicial admissions. Petitioners have failed to meet their burden of proof in challenging that Park Management is entitled to this rent increase.

There is significant evidence in record confirming that these professional fees have been incurred and that they were directly as a result of the homeowners' challenges to Park Management's rights to receive and collect rents from the tenants of the Park. Park Management's Arbitration Hearing Brief, pages 17 et seq., submitted prior to the commencement of the Arbitration Hearing, set forth a detailed summary of the administrative and legal rent review proceedings from 2011 to 2016 that provide a background of the proceedings that necessitated Park Management to incur these fees. Exhibits 10 and 11 are the docket of the two legal proceedings in which Park Management incurred fees defending its right to receive rent from the Park. Exhibits 15 to 43 are select documents from those cases to give the Arbitrator background as to the proceedings and the legal work performed by Park Management therein. Park Management's opening statement provided an introduction to some of these documents and some overview of the proceedings. (RT1 36-50.)

Exhibit 7 is a detailed billing summary of Park Management's legal counsel through the February, 2016 remand hearing ordered by the Court. Park Management is also submitting, as Exhibits 56 and 57, the professional fees incurred in these rent proceedings. Mr. Waterhouse

testified that these professional fees were reasonably and necessarily incurred by Park Management in order for Park Management to defend its interests in response to these legal and administrative proceedings launched by the homeowners. (RT1 102-120.) He also discussed the fact that as an experienced park operator he secures a permit to operate, so that the homeowners' litigation claiming that Park Management was no entitled to collect rent allegedly due to not having a permit to operate was groundless (RT1 115-18), as found by the Court in granting summary judgment in favor of Park Management and against the homeowners (Exhibits 41-43). Also demonstrating sheer groundless of the homeowners' lawsuit, Park Management's application for a Permit to Operate and permits to operate from 2009-2016 are in evidence (Exhibits 13 and 14.) Some of the legal fees incurred relate to Park Management's dealings with regulatory authorities, on regulations governing the Park, including and in addition to rent matters. Dr. St. John pointed out that these expenses are all typical parts of operating a business within such a highly regulated industry, and such costs are properly recovered through a rent increase. (RT2 47:1-10; 96:16-97:17.)

Notably, Dr. St. John also testified as an expert that if Park Management were not able to recover the costs of professional fees through the form of a rent increase, it would never be able to recover these costs, which would deny Park Management of a fair return. (RT2 159:11-160:1.) This expert opinion is uncontradicted.

Park Management's entitlement to recover through a rent increase its professional fees incurred in administrative and legal proceedings related to the rent review process is clearly set forth in the California Supreme Court's decision in *Galland v. Clovis*. (*Galland v. City of Clovis* (2001) 24 Cal.4th 1003):

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

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

The Supreme Court acknowledged that these fees and costs may be substantial due to the fact that rent control proceedings involve complexity: "... the determination of allowable increases under a rent control regime is a complicated calculation that often requires the production and analysis of extensive financial data ...," ... ... and is, as we have recognized, " 'often hopelessly complex.' " (*Galland v. City of Clovis*, supra, 24 Cal.4th 1003, 1038, quoting *Kavanau v. Santa Monica Rent Control Bd.* (1997) 16 Cal.4th 761, 778.)

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

Finally, Petitioners' ongoing arguments that the Arbitration Act under the California Code of Civil Procedure somehow applies to preclude Park Management from recovering its fees ignores the fact that a different body of law, governing mobilehome rent control such as under *Galland*, applies here, and that the instant Arbitration proceedings are brought by the Petitioners pursuant to the Ordinance, and not the Arbitration Act, as already discussed at the Arbitration Hearing. (RT2 175-176.)

A. Petitioners Have Already Conceded the Park Management is Entitled to Recover Professional Fees Incurred in All Rent-Related Administrative and Legal Proceedings

The Petitioner homeowners have already conceded through the prior 2011 arbitration proceedings, that the Park Management is entitled to recover its professional fees incurred all administrative and legal proceedings related to Park Management's rent increases and the homeowners' proceedings challenging the rent sought by Park Management. The homeowners' own expert witness at the 2011 arbitration hearing, Dr. Kenneth Baar conceded that Park

Management was entitled to recover its costs for professional fees incurred in the administrative rent review proceedings, including any subsequent legal writ proceedings, and further conceded that the treatment of it in amortizing these costs over seven years. Dr. St. John and Mr. Waterhouse were both present at the 2011 hearing and witnessed Dr. Baars' admissions in this regard on behalf of the homeowners. (RT1 106-108; RT2 158-159.

As testified to by Dr. Baar at the 2011 hearing:

> "[Q.] Now, with respect to the anticipated professional fees relating to the rent increase, as I understand your position there, you don't necessarily quarrel with the idea that the park owner is entitled to recover professional fees relating to the rent increase?
>
> "A. That's right.
>
> "Q. Nor do you argue with the methodology employed here, which is to do it as a temporary as opposed to the base for a permanent rent increase?
>
> "A. Right, that's correct. [¶] ... [¶]

(Exhibit 16, 2011 RT1 235:19-236:2.)

The Petitioner homeowners have expressly agreed that Park Management is entitled to recover its fees and expenses incurred in the writ proceedings and through remand.

The homeowners' expert, Dr. Baar testified to this:

> 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 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, ... **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.**

(Exhibit 6, 2011 RT1 243:23-245:7, emphases added.)

B. Petitioners Have Already Conceded That It Is Appropriate to Amortize Professional Expenses as a Temporary Rent Increase

Dr. St. John testified that it was appropriate to amortize the professional fees incurred by Park Management as a temporary rent increase, and that if the fees were not treated as a temporary rent increase, then they would properly form the basis of an MNOI permanent rent increase. (See RT2 20-25.) He pointed out that if the professional fees were left out of the MNOI analysis and not treated as a temporary rent increase, the park owner would not receive any recovery of these expenses, which would be directly contrary to the Ordinance and the legal principles governing fair return proceedings. (RT2 24-25.) Legal fees incurred by Park Management "have to be handled one way or the other." (RT2 64:12-65:21.)

The Petitioners have not presented any evidence or expert opinion whatsoever to contradict Dr. St. John, or to establish in any way that amortization of Park Management's

professional fees as a temporary rent increase is not appropriate in this case. Moreover, in now purporting to object to the treatment of professional fees as an amortized temporary rent increase, similar to the treatment of a capital expense, the homeowners ignore that this treatment has already been adjudicated to be proper and that the homeowners have already conceded that this treatment is appropriate.

The homeowners repeatedly throughout the 2011 Arbitration Hearing conceded that the treatment of professional fees are properly treated as an amortized temporary expense, or as a "pass through," in the same manner in which a capital item is treated.

The homeowners' attorney expressly conceded:

> And finally, the anticipated professional fees relating to the rent increase itself of $125,000, the **homeowners do not disagree that it is beneficial for the homeowners to have any such fees passed through** so that 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.

(Exhibit 16, 2011 RT1 41:1-8, emphasis added.)

Dr. St. John explained that the treatment of large essentially one-time or non-recurring expenses, including professional expenses, could be analogized as a capital expense, not because they are capital expenses, but because they are large infrequent expenses. (*Id.*, 2011 RT1 84:15-17.) Dr. St. John gave a detailed explanation of the basis for amortizing the expenses, and treating them as a temporary expense, and why it is favorable for the homeowners. (Exhibit 16, 2011 RT1 84:24-86:16; RT2 22:2-15; 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.

(Exhibit 16, 2011 RT1 174:8-175:4.)

Similarly, at the instant Arbitration Hearing, Dr. St. John testified that if the legal fees paid by Park Management in one year alone, 2016, were not amortized, and instead treated as a basis for a permanent rent increase, it would justify a permanent rent increase of $208.81. (Ex. 47, RT2 67.)

VII

PETITIONERS HAVE FAILED TO ESTABLISH THAT PARK MANAGEMENT IS NOT ENTITLED TO THE AMORTIZATION AS NOTICED FOR THE TEMPORARY RENT INCREASE

The Rent Notice specifies that the temporary increases are to be amortized over a 15-year period for the street repairs and improvements to the common area electrical infrastructure, and 7-year period for the professional fees, at an interest rate of nine percent (9%). Petitioners do not

appear to object to the amortization period, but appear to object to any paying any interest whatsoever, regardless of how long Park Management must wait to recover its expenses incurred. Although Petitioners concede that Section 11A-6(a)(1) and (b)(1) of the Ordinance provides that park management may recover "reasonable financing costs," that this does not include "interest." Petitioners mince words. Call it a financing cost, call it interest, Park Management is clearly entitled under the Ordinance to reasonable compensation for having to way many years to recover its expenses incurred for the Park.

Dr. St. John testified that the amounts set forth in the rent increase notice (9% interest over the 7 and 15 year amortization periods) are based upon his professional judgment. (RT2 73-76.) He specifically noted that the 9% interest was appropriate in his professional opinion, that the "the 9% is in the middle of the range" of "reasonableness." (RT2 74:5-75:13.)

Petitioners by contrast presented no evidence to sustain their burden of proof that that amortization periods and interest rate was improper.

There is no dispute in these proceedings that there is inflation and the CPI increases on an annual basis. Accordingly receiving a dollar back over 7 or 15 years is necessarily less valuable than receiving the dollar back now. Forcing Park Management to wait five years in which to recover the fees and costs that it has incurred without interest would therefore deprives Park Management of any return on its investment in these professional fees and is therefore "confiscatory," as testified to by Dr. St. John (RT1 165-166.)

VIII

THE PARK MANAGEMENT'S RENT INCREASE NUMBERS SHOULD BE FULLY ACCEPTED AND ALLOWED AS THE ONLY NUMBERS PRESENTED IN THESE PROCEEDINGS

As noted herein, the homeowners have not prepared any number that they claim would be an appropriate number for a rent increase. In contrast, Park Management has prepared a detailed analysis outlining all of the elements of its rent increase, supported by a large volume of

undisputed evidence. In the face of utterly no valid competing number, and the homeowners' failure to meet their burden of proof challenging the validity of any aspect of the rent increase, Park Management's rent increase should be accepted as noticed.

CONCLUSION

For the foregoing reasons, Petitioners have failed to meet their burden of proving that the Rent Increase Notice issued by Park Management of Nomad Village Mobile Home Park was not in accordance with the terms of the Ordinance, and the governing law. Accordingly, the Petition should be denied and Park Management's Rent Increase Notice upheld, in each of the amounts detailed in Exhibit 2.

Dated: April 5, 2017

JAMES P. BALLANTINE
Attorney for Park Management
LAZY LANDING MHP, LLC;
WATERHOUSE MANAGEMENT CORP.

EXHIBIT "2"

NOMAD VILLAGE - Space Rent Increases - Effective July 1, 2016

PERMANENT INCREASES:

1	CPI increases	*variable*
2	MNOI Increase	$29.31

TEMPORARY INCREASES:

Amortization:	cost:	rate:	years:	PER MONTH	PER SPACE
3 Capital Improvements & Expenses:					
Common Area Street paving	$274,629.00	0.09	15	$2,839.18	$18.93
Common Area Electrical Work	$59,161.00	0.09	15	$611.62	$4.08
4 Professional Fees					
Defense of Homeowner Appeal & Lawsuit	$400,000.00	0.09	7	$6,623.02	$44.15
2016 Space Rent Increase Proceedings	$110,000.00	0.09	7	$1,821.33	$12.14
[Note: Subject to reduction to the extent not actually incurred-see Rent Increase Detail]					

SUMMARY:

PERMANENT INCREASES	
CPI Increase	*variable*
MNOI Increase	$29.31
Total Permanent Increase	*variable*
TEMPORARY INCREASES	
15-year Increases (July 1, 2016 to May 31, 2031)	$23.01
7-year increases (July 1, 2016 to May 31, 2023)	$56.30
Total Temporary Increases	$79.30
TOTAL INCREASES	
CPI Increase	*variable*
Other Increases	$108.61

See Rent Increase Detail Sheet For Explanation of Each of the Items of Rent Increase

Print Date: 3/30/16

EXHIBIT "45"

TABLE I
[2010-2015]

	A	B	C	D	E	F	G	H	I	J
1	**NOMAD VILLAGE - FAIR RETURN ANALYSIS**									
2										
3						**BOOKS OF RECORD**			**MNOI ANALYSIS**	
4						**2010**	**2015**		**2010**	**2015**
132										
133										
134	**Rent Increase Following Method Set Out In Ordinance Section 11A-5:**									
135										
136	**1**	**CPI Base and Comparison Years**							**218.435**	**236.646**
137		**CPI increase from base to comparison year**								**8.3%**
138		**75% CPI increase**								**6.3%**
139		**Base Year Rental Income**							**564,327.90**	
140		**CPI-justified space rent increase**							**35,286.16**	**19.73**
141		**One-half CPI-justified increase = fair return on investment**							**17,643.08**	**9.87**
142										
143	**2**	**One-half CPI-justified increase against cost increases**							**17,643.08**	**9.87**
144										
145	**3**	**Base Year Operating Costs**							**440,418.01**	
146		**Comparison Year Operating Costs**							**523,418.49**	
147		**Increase in Operating Costs**							**83,000.48**	
148		**Excess over #2**							**65,357.40**	
149		**Allocate per space per month:**								**36.55**
150										
151	**4**	**New Capital Expenses (see chart)**								
152			**Capital Expenses**							
153				**Street Paving**			**274,629.00**		**0.09**	**18.93**
154				**Electric Work**			**59,161.00**		**0.09**	**4.08**
155			**Other Amortized Amounts**							
156				**Appeal & Lawsuit**			**400,000.00**		**0.09**	**44.15**
157				**2016 Case (estimate)**			**110,000.00**		**0.09**	**12.14**
158										
159	**5**	**Old Capital Expenses**								**n.a.**
160										
161	**6**	**New Capital Improvements**								**n.a.**
162										
163	**7**	**Justified Rent Increases:**								
164			**Permanent**							**36.55**
165			**7-year amortized**							**56.29**
166			**15-year amortized**							**23.01**
167				**total increase:**						**115.85**
168										
169										
170										

EXHIBIT 45

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 April 5, 2017, I served the foregoing document described as NOMAD VILLAGE MOBILEHOME PARK MANAGEMENT'S POST 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: judgelong@cdrmediation.com
e-mail: SL@cdrmediation.com

Lindse Davis
Nomad Village Homeowners Representative
4280 Calle Real, Space 133
Santa Barbara, California 93103
e-mail: LindseD@aol.cm
Ph. 967-6857

Don Grady
County of Santa Barbara
Real Property Division
Courthouse East Wing, Second Floor
1105 Santa Barbara Street
Santa Barbara, CA 93101
e-mail: dgrady@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 April 5, 2017, at Santa Barbara, California.

Lisa M Paik