



**City of Sonoma  
Mobilehome Park Rental Review Board**

**SPECIAL MEETING  
Thursday May 5, 2016  
3:00 p.m.**

Boardmembers  
Bill Dardon, Chair  
Nancy Parmelee  
Mark Bramfitt  
Bill D'Allaird

**Community Meeting Room, 177 First Street West, Sonoma CA**

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**AGENDA**

Be Courteous - **TURN OFF** your cell phones and pagers while the meeting is in session.

**OPENING**

**CALL TO ORDER  
ROLL CALL  
PUBLIC TESTIMONY REGARDING CLOSED SESSION ITEMS ONLY**

**CLOSED SESSION**

**CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION**, Pursuant to Cal. Gov't Code sec. 54956.9(d)(1). Name of case: DMV, LLC v. City of Sonoma.

**CLOSED SESSION ANNOUNCEMENT**

**REGULAR CALENDAR**

*(Matters requiring discussion and/or action by the Board)*

**Consider and take action to approve the Resolution Adopting Substitute Final Decision and Findings Granting Application for Temporary Rent Increase to reimburse owner of Moon Valley Mobile Home Park ("Park") for costs incurred in repaving Del Rio Paseo and settling litigation brought by the Park's owners against the City and the Mobilehome Rental Review Board for the latter's decision memorialized in Resolution No. 01-2015, adopted on February 2, 2015.**

Staff Recommendation: Approve resolution.

**ADJOURNMENT**

I do hereby certify that a copy of the foregoing agenda was posted on the City Hall bulletin board on April 28, 2016  
Gay Johann, Assistant City Manager/City Clerk

***Copies of all staff reports and documents subject to disclosure that relate to any item of business referred to on the agenda are normally available for public inspection the Wednesday before each regularly scheduled meeting at City Hall, located at No. 1 The Plaza, Sonoma CA. Any documents subject to disclosure that are provided to all, or a majority of all, of the members of the Board regarding any item on this agenda after the agenda has been distributed will be made available for inspection at the City Clerk's office, No. 1 The Plaza, Sonoma CA during regular business hours.***

***In accordance with the Americans With Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk (707) 933-2216. Notification 48-hours before the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.***

## **STAFF REPORT**

**TO:** William Dardon, Chairperson and Rental Review Board

**CC:** Gay Johann, Assistant City Manager and City Clerk

**FROM:** Jeffrey A. Walter, City Attorney

**DATE:** April 27, 2016

**SUBJECT:** *DMV, LLC, et al. v. City of Sonoma, et al.*

### **BOARD**

**MEETING:** May 5, 2016

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### **REQUEST**

Approve Resolution Adopting Substitute Final Decision and Findings Granting Application for Temporary Rent Increase.

### **BACKGROUND**

In August 2014, the owners of the Moon Valley Mobilehome Park ("Park") applied for a \$2.68 per month per space rent increase to pay for the anticipated cost of repaving one of the Park's internal streets named Del Rio Paseo. The Park owner sought to impose such a rent increase for 20 years, the expected life of the repaving work. At that time, the Park owner had obtained a bid from a paving contractor to perform the work for an amount totaling \$116,693.00.

In November 2014, the City's Mobilehome Rental Review Board ("Board") denied the \$2.68 per month per space increase and in February 2015, approved its findings in support of the denial decision. The Board's Resolution denying said increase is attached as **Attachment A**.

On April 28, 2015, the Park owner filed a lawsuit with the Sonoma County Superior Court challenging the Board's decision and requesting an order from the court commanding the Board to approve the \$2.68 per month per space increase.

### **SETTLEMENT DISCUSSIONS**

The City Manager and City Attorney have been engaged in settlement discussions both with the Park's owner and its lawyer, and also with representatives of the Park residents and, specifically, Bonnie Joy Kaslan and the Park's HOA Board of Directors. The City Manager and the City Attorney first met with the residents' representatives to obtain from the residents' representatives a range of monthly rental increases that the residents' representatives would be willing to

recommend to the residents. Other concessions were discussed and with that information, the City Manager and City Attorney conferred with the Park's owner and its counsel.

As a result of discussions with the Park's owner and counsel, a proposed Settlement Agreement was developed, a copy of which is attached hereto as part of **Attachment B**.

The pertinent provisions of the Settlement Agreement are:

1. A rental increase of \$2.06 per month per space will need to be approved by the Board. This rental increase would last for 30 years, rather than the 20 originally applied for. In effect, this means that most if not all of the Park's current residents would not likely end up paying the full amount of the rent increase memorialized in the attached Settlement Agreement.
2. The Park's owner agreed to establish a formal process whereby individual residents could apply to the Park owner for a waiver of the \$2.06 per month per space increase based on hardship. The provisions setting forth that procedure are found at section 4 in the attached Settlement Agreement. Neither the City nor the Board would have any review authority over decisions made by the Park owner regarding its granting or denying of hardship waivers.
3. After the filing of its lawsuit, the Park owners proceeded to perform the repaving work, even though the Park owner had not received approval from the City for increasing rents to pay for the work. As it turns out, the cost to the Park to perform the repaving work for Del Rio Paseo cost \$3,940 more than the estimate submitted to the City in August 2014. As part of the settlement, the Park owner agreed to waive this excess cost and not seek a rent increase to reimburse the Park owner for this additional cost.
4. The Park owner is applying to PG&E for a grant to pay for upgrading gas and electric utilities serving the Park residents and other Park facilities. If this grant is awarded to the Park, it is likely that some of the work recently performed in repaving Del Rio Paseo will be ripped up and redone. The Settlement Agreement prevents the Park owner from seeking a rent increase for the costs it incurs in redoing this paving work. See, section 5 of the Settlement Agreement.

#### **PARK RESIDENTS' INPUT**

Bonnie Joy Kaslan and her colleagues have discussed the terms and conditions of the Settlement Agreement with residents at Moon Valley Mobilehome Park and have informed the City Manager that they believe a majority of the residents would support it.

#### **RECOMMENDED ACTION**

By motion, approve the attached Resolution which adopts a Substitute Final Decision and Findings Granting Application for Temporary Rent Increase. This decision will operate to rescind and supersede the Board's February 2015 decision denying a Temporary Rent Increase application submitted by the Moon Valley Mobilehome Park's owners.

## **ATTACHMENTS**

**Attachment A:** Rental Review Board's Resolution No. 01-2015 adopting Decision and Findings Denying Application for Temporary Rent Increase.

**Attachment B:** Rental Review Board's Resolution No. 01-2016 Adopting Substitute Final Decision and Findings Granting Application for Temporary Rent Increase (this Resolution Adopts and Approves the Settlement Agreement).

CITY OF SONOMA  
MOBILEHOME PARK RENTAL REVIEW BOARD

RESOLUTION NO. 01-2015

A RESOLUTION OF THE CITY OF SONOMA MOBILEHOME PARK RENTAL  
REVIEW BOARD ADOPTING DECISION AND FINDINGS DENYING  
APPLICATION FOR TEMPORARY RENT INCREASE

WHEREAS, the Moon Valley Mobile Home Park applied for a temporary rent increase for a necessary capital improvement; and

WHEREAS, the City Mobilehome Park Rental Review Board ("Board") held a hearing on November 12, 2014, to hear evidence and argument in favor of and in opposition to said application, and at the close of said hearing denied said application; and

WHEREAS, the Board directed City staff to develop a written decision and findings in support of its decision, and said written decision and findings have been developed and been submitted to the Board for its consideration and adoption.

NOW, THEREFORE, THE SONOMA MOBILEHOME PARK RENTAL REVIEW BOARD resolves:

1. That the Decision and Findings Denying Application for Temporary Rent Increase attached hereto as Exhibit A is hereby approved and adopted as the decision of the SONOMA MOBILEHOME PARK RENTAL REVIEW BOARD pertaining to Moon Valley Mobile Home Park's August 14, 2014 (amended by letter dated November 4, 2014) application for a temporary rent increase.

The foregoing Resolution was duly adopted this 12<sup>th</sup> day of February 2015, by the following roll call vote:

AYES: Keegan, Dardon  
NOES: D'Allaird  
ABSENT: Parmelee, Bramfitt

  
\_\_\_\_\_  
William Dardon, Chairperson

ATTEST:

  
\_\_\_\_\_  
Gay Johann  
Assistant City Manager /City Clerk

ATTACHMENT A

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MOBILE HOME PARK RENTAL REVIEW BOARD  
FOR THE CITY OF SONOMA

In re the Matter of

MOON VALLEY MOBILE HOME PARK'S  
APPLICATION FOR A TEMPORARY  
RENT INCREASE FOR NECESSARY  
CAPITAL IMPROVEMENT

**DECISION AND FINDINGS DENYING  
APPLICATION FOR TEMPORARY  
RENT INCREASE**

This matter came before the City of Sonoma Mobilehome Park Rental Review Board ("Review Board" or "Board") as a result of Terra Vista Management, Inc.'s application for a temporary rental increase for necessary capital improvement dated August 14, 2014, and later amended by Terra Vista Management, Inc.'s letter dated November 4, 2014 (collectively referred to as the "Rent Increase Application"). Terra Vista Management, Inc. ("Management Company") is the manager of the Moon Valley Mobile Home Park ("Park") located in the City of Sonoma. In its amended application, the Management Company sought approval of a \$2.68 per-month per rent control home site for 20 years to pay for the milling and removal of approximately 34,550 square feet of existing asphalt to a depth of approximately 4 to 5 inches and then applying to the same area new paving fabric and 2.5 to 3 inches (depth) of new asphalt. This work essentially entailed the removal and replacing much of the asphalt in Del Rio Paseo Street located within the Park.

1 Evidence, both oral and written, having been received by the Board, counsel for the Park  
2 and the Park's residents' representative having given argument and rested their respective cases  
3 and submitted the matter to the Board for final decision, the Board hereby finds, determines and  
4 orders that for the following reasons and, based on the following facts, the Rent Increase  
5 Application of the Management Company for said temporary rental increase is denied.

6 **DECISION AND FINDINGS**

7 Under the City of Sonoma's Municipal Code, Section 9.80.065, prior to making a  
8 necessary capital improvement, a park owner is entitled to seek approval of a temporary rental  
9 increase to reimburse the park owner for the costs of the capital improvement by submitting a  
10 written application therefor with the City Clerk. The Management Company requested a rent  
11 increase pursuant to Section 9.80.065 by filing its Rent Increase Application with the City Clerk.  
12 The Clerk provided notice of the application to all affected tenants in the Park. Pursuant to the  
13 Municipal Code, the Clerk's notice described a proposed capital improvement, the amortization  
14 schedule, including interest for the capital improvement, and the resulting temporary rental  
15 increase proposed. In the event that 50% plus 1 of the affected tenants receiving notice of the  
16 temporary rental increase protest the application in writing to the Clerk in a timely fashion, a  
17 hearing must be scheduled before the Board where all affected tenants may respond to the  
18 proposed increase based on the identified capital improvement. In the present case, such a  
19 protest was submitted to and received by the Clerk and the requisite hearing was scheduled and  
20 held before the Board. At the hearing, it was the "responsibility of the protestors to provide  
21 reasonable, quantifiable evidence as to why the temporary rental increase should not be approved  
22 or conditionally approved . . ." *Id.*

23 Under Section 9.80.020(B)(1), a "necessary capital improvement" is defined as a "capital  
24 improvement required to maintain the common facilities and areas of the park in a decent, safe  
25 and sanitary condition or maintain the existing level of park amenities and services." In order for  
26 a temporary rent increase to be approved to pay for such a necessary capital improvement, the  
27 Board must be able to make, based upon substantial evidence in the record, the following  
28 findings:

- 1           1.     the capital improvement is warranted;
- 2           2.     the amortization period is consistent with the amortization schedule adopted by
- 3 the Council;
- 4           3.     the interest to be charged is comparable to the interest that would be charged on a
- 5 commercially available loan; and
- 6           4.     the rental increase has been fairly and evenly distributed to all affected tenants.
- 7 Sonoma Municipal Code, Section 9.80.065(C).

8           At the hearing before the Board on the Rent Increase Application, there was no serious  
9 dispute as to whether or not the Park's evidence satisfied criteria 2 through 4 described above.  
10 The nub of the dispute centered on whether or not the proposed repaving of Del Rio Paseo Street  
11 was necessary and warranted at the present time. This question, then, turned on whether or not  
12 the proposed repaving of Del Rio Paseo Street was required to maintain the street in a "decent,  
13 safe and sanitary condition" as is required under the definition of "necessary capital  
14 improvement" found in the City's Municipal Code.

15           The Park called two witnesses to prove that the repaving of the street was necessary  
16 within the meaning of the City's Municipal Code. The first witness was Richard Newman, who  
17 is the Chief Financial Officer of the Management Company. The second witness was Dennis  
18 Rundle who is a salesman for the J. B. Bostick Company, the company that submitted the bid for  
19 the removing and repaving of Del Rio Paseo Street. It was this bid (in the total amount of  
20 \$116,693) which formed the basis for the Park's Rent Increase Application.

21           Of the two, only Mr. Newman testified that the project was necessary to assure that the  
22 road was safe and that it drained properly. Mr. Newman testified that during the life of the  
23 street, the Park has had to install several overlays on top of the road in order to seal cracks and  
24 prevent further deterioration of the surface of the road. Over time, these overlays have increased  
25 the height of the street such that where it butts up against the curb, the amount of concrete curb  
26 reveal has diminished to 0 to 1 inch. In some places, then, the existing road surface is at the  
27 same level or 1 inch lower than the adjacent curb.

28           Mr. Newman testified that this presents a tripping hazard because in those places where

1 the curb is only 1 inch above the roadway surface, pedestrians are less aware of the change in  
2 grade between the curb and street and are more likely to trip at these locations. Thus, by  
3 removing 3.5 to 5 inches of the existing roadway surface and then repaving it with between 2.5  
4 to 3 inches of new asphalt, the grade differential between the top of the curb and the top of the  
5 street will be increased to 2 to 3 inches. In short, Mr. Newman testified that the net effect of the  
6 proposed removal and replacement project will increase the curb "reveal" of somewhere between  
7 2 and 3 inches, and he opined that a 2 to 3 inch curb reveal presented less of a tripping hazard  
8 than a 0 to 1 inch curb reveal. However, there was no evidence indicating that Mr. Newman is  
9 qualified to render such expert opinion testimony. There was no evidence that any person had  
10 actually tripped over the curb in its current condition. Nor was there evidence that over the  
11 intervening years during which the street has been increasing in height (thus reducing the curb  
12 reveal) there were any pedestrian accidents caused by the diminishing reveal or that the number  
13 of tripping accidents had increased as a result of the decrease in curb reveal.

14 Mr. Newman also testified that by increasing the grade differential between the top of the  
15 curb and the top of the street to 2 to 3 inches, rain water would be less likely to escape over the  
16 edge of the roadway on to the curb and thereafter on to adjoining properties leased and/or owned  
17 by the residents. By increasing the curb height along this street, it was Mr. Newman's view that  
18 the rain water would be properly channeled and/or diverted to the appropriate drain inlets, thus  
19 protecting the adjacent properties from flooding and water damage. Mr. Newman put it this way:  
20 "And then the sanitation issue is . . . the road is higher than many of the home sites. And  
21 because of improper drainage, no guidance from the curbs, for instance, and not enough slope to  
22 counter that problem, the water could go down into the homes, many of the homes that exist  
23 alongside the street. And they are beneath road level. So it's to be expected that the water  
24 would get into those homes with a heavy rainfall."

25 Again, Mr. Newman is not qualified to testify as to whether or not a 2 to 3-inch curb  
26 reveal as opposed to a 1-inch curb reveal along this particular road would have any significant  
27 or measurable impact on the amount of rain water that might escape the road and flow into  
28 neighboring properties. Furthermore, no empirical evidence or data, studies or reports prepared  
by qualified experts were submitted to support Mr. Newman's testimony or his concerns. The

1 most that he could say about there actually being such a safety concern was in response to his  
2 counsel's question:

3 Question: "And have tenants expressed concern over this short curb?"

4 Answer: "In speaking to the general manager this morning, yeah, he did indicate. Terry  
5 has been here less than six months and he has had people concerned about that."

6 This testimony is hearsay and does not provide the requisite level of detailed information  
7 and factual predicates upon which this Board could find that reducing the height of the road is  
8 necessary to prevent or materially mitigate flooding or water inundation that might occur in the  
9 event of a heavy rainfall.

10 Tellingly, over the last four years, the Park has undertaken and completed four separate  
11 pavement removal and replacement projects essentially identical to that proposed here.<sup>1</sup> And as  
12 to each of those other four paving removal and replacement projects, the Park did not seek a  
13 temporary rental increase to reimburse the Park for the costs incurred in such work. Mr.  
14 Newman testified that he did not apply for rent increases for these projects because he did not  
15 think they would have been granted. That type of speculation cannot provide the basis for any  
16 finding that this Board must make in order to favorably act upon the instant rent increase request.  
17 In fact, the Park's decision not to pursue rent increases on at least three separate occasions for  
18 previous work that is the same as the work for which it now seeks such an increase is an implicit  
19 concession by the Park that these types of pavement removal and replacement projects are not  
20 even considered by the Park and its Management Company to be a necessary capital  
21 improvement (but rather a repair and maintenance project) warranting a temporary rental  
22 increase under Sonoma Municipal Code, Section 9.80.065.

23 Mr. Earl Broderick testified on behalf of the tenants. He is a co-owner of the John  
24 Benward Company which is a general engineering contracting firm located in Sonoma,  
25 California. He has been a partner of that company for 25 years and he runs the company. He  
26 testified that by cleaning the road, sealing cracks, repairing several areas and applying a single  
27 seal coat to the Del Rio Paseo Street for a cost of approximately \$45,000.00, the life of the road

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<sup>1</sup> The asphalt of two cul de sacs was milled out and replaced two years ago. Three years ago, a different cul de sac's asphalt was milled out and replaced. And four years ago, the Park milled out and replaced the asphalt of a fourth cul de sac.

1 would likely be extended another 3 to 5 years depending on the traffic load. And that during this  
2 period, the street would not fail such that it would require, at the end of this period, the complete  
3 removal of the entire roadway with the reapplication of a new pavement section. Mr.

4 Broderick's testimony was unrebutted.

5 The wisdom of the Management Company to incur \$116,693.00 to mill out (remove) the  
6 existing asphalt to a depth of approximately 4 to 5 inches and then install new asphalt to a depth  
7 of 2.5 to 3 inches is called into further question by virtue of the fact that Mr. Newman testified  
8 that after completing this project, the Park might trench into the new roadway to repair and/or  
9 replace faulty electrical conduit and facilities. He testified that if the Park did not undertake such  
10 work, it might be possible, under a new program announced by PG&E, to have PG&E perform  
11 the trenching and electrical replacement work. But the Board finds that by trenching into a brand  
12 new street, the Park will accelerate its ultimate deterioration and need for replacement in the  
13 future. Mr. Broderick was asked whether or not he would complete the removal and replacement  
14 of the asphalt in the road prior to PG&E effecting its trenching and electrical conduit work. He  
15 responded, "Absolutely not."

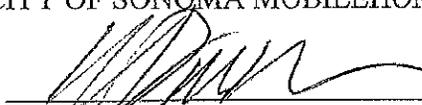
#### 16 CONCLUSION

17 The evidence is clear that at some point, the asphalt of Del Rio Paseo Street will need to  
18 be removed (milled out) and replaced with new asphalt. However, at the present time, the Park  
19 did not present credible evidence to the Board establishing that such a costly removal and  
20 replacement project is necessary in order to assure safety or prevent water from flowing onto  
21 properties adjacent to the street.

22 For the foregoing reasons, therefore, Terra Vista Management, Inc.'s application for a  
23 temporary rental increase to pay for the proposed capital improvement is denied.

24 The time within which judicial review of this decision must be sought is governed by  
25 California Code of Civil Procedure § 1094.6.

26  
27 CITY OF SONOMA MOBILEHOME PARK RENTAL REVIEW BOARD

28 By:   
William Dardon, Chairperson

Dated: 2-13-15

DECISION AND FINDINGS DENYING APPLICATION FOR TEMPORARY RENT INCREASE

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By: Donna Keegan  
Donna Keegan

Dated: 2-17-14

I DISSENT:

By: Bill D'Allaird  
Bill D'Allaird

Dated: 2-18-15

**PROOF OF SERVICE BY U.S. MAIL**  
(CCP §1013(a),(e),(f), 2015.5; CRC 2008 et.seq.)

I the undersigned declare: I am a citizen of the United States and a resident of the County of Sonoma. I am over the age of eighteen years and not a party to the within cause; my business address is City of Sonoma, 1 The Plaza, Sonoma, California 95476.

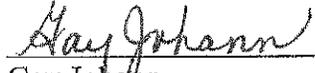
On the date last below written, I served the attached:

MOBILEHOME PARK RENTAL REVIEW BOARD FOR THE CITY OF SONOMA  
DECISION AND FINDINGS DENYING APPLICATION FOR TEMPORARY RENT  
INCREASE In re the Matter of MOON VALLEY MOBILE HOME PARK'S  
APPLICATION FOR A TEMPORARY RENT INCREASE FOR NECESSARY  
CAPITAL IMPROVEMENT on the below named by causing it to be placed in a United  
States mail box with First Class postage fees pre-paid thereon, addressed as follows:

Richard Newman, CFO  
Terra Vista Management, Inc.  
2211 Pacific Beach Drive  
San Diego CA 92109

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

Executed this 23<sup>rd</sup> day of February 2015 at Sonoma, CA.

  
\_\_\_\_\_  
Gay Johann  
Assistant City Manager/City Clerk

RESOLUTION NO. 01-2016

A RESOLUTION OF THE CITY OF SONOMA MOBILEHOME PARK RENTAL REVIEW BOARD ADOPTING SUBSTITUTE FINAL DECISION AND FINDINGS GRANTING APPLICATION FOR TEMPORARY RENT INCREASE

WHEREAS, in 2014, the Moon Valley Mobile Home Park (“**Park**”) applied (“**Application**”) for a temporary, twenty-year rent increase for a necessary capital improvement in the amount of \$2.68 per month per mobilehome space;

WHEREAS, the City Mobilehome Park Rental Review Board (“**Board**”) held a hearing on November 12, 2014, to hear evidence and argument in favor of and in opposition to said application, and at the close of said hearing denied said application; and

WHEREAS, in February 2015 this Board issued its written decision and findings in support of its November 12, 2014, decision (“**Final Decision**”).

WHEREAS, on April 28, 2015, the owners of the Park filed a Petition for Writ of Administrative Mandamus with the Sonoma County Superior Court, bearing Case No. SCV-257056 (“**Case**” or “**Petition**”) seeking issuance of a writ vacating the Board’s decision and ordering the City of Sonoma and Board to grant the owners the rent increase they sought, namely \$2.68 per month for 20 years for each mobilehome space governed by the City’s Rent Control Ordinance (“**Ordinance**”).

WHEREAS, the Park has represented that it has now completed the work which is the subject of the Petition (the “**Subject Work**”). Park represents, and has provided copies of an invoice and a cancelled check to the Board indicating that JB Bostick Company charged the Park and the Park paid to JB Bostick Company \$120,633 for the latter’s performance of the Subject Work. The amount Petitioners paid for the Subject Work is \$3,940 more than the amount specified in their October 13, 2014, proposal upon which the Application was based.

WHEREAS, the parties to said Case have negotiated a Settlement Agreement and Substitute Final Decision (“**Agreement**” or “**Substitute Final Decision**”), a true and correct copy of which is attached as Exhibit A and incorporated by this reference.

WHEREAS, representatives of the homeowners renting spaces controlled by the Ordinance have carefully reviewed the Agreement and its implications and have no objection to the rent increase provided for in the Agreement or the Substitute Final Decision as an appropriate and fair resolution of the dispute that forms the basis of the Petition.

WHEREAS, the Board has conducted a noticed and public hearing to take testimony from the affected homeowners renting spaces in the Park about the Agreement. The Board has carefully considered all such testimony, the Application, the Petition, and all facts occurring subsequent to the Application including the completion of the Subject

Work, and based thereon finds that the Agreement is in the best interests of all parties involved and that the Park is entitled to the rent increase set forth in the Agreement (\$2.06 per identified site for thirty years) under the Ordinance and any other rent control ordinance or regulation in effect now or in the future.

NOW, THEREFORE, THE SONOMA MOBILEHOME PARK RENTAL REVIEW BOARD resolves:

1. That the Board's Decision and Findings Denying Application for Temporary Rent Increase dated February, 2015 and adopted by Board Resolution No. 01-2015 are hereby rescinded and in their place this Resolution No. 01-2016 is adopted by the Board.
2. Under the Ordinance and any other rent control ordinance or regulation in effect now or in the future, the Park is entitled to the rent increase set forth in the Agreement (\$2.06 per identified site for thirty years) . The Substitute Final Decision attached hereto is hereby approved and shall become the final decision of this Board pertinent to the Application described above and described in said Substitute Final Decision.
3. The time within which judicial review of this decision must be sought is governed by California Code of Civil Procedure § 1094.6.

The foregoing Resolution was duly adopted this 5<sup>th</sup> day of May, 2016, by the following roll call vote:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
William Dardon, Chairperson

ATTEST:

\_\_\_\_\_  
Gay Johann, CMC  
City Clerk

## SETTLEMENT AGREEMENT AND SUBSTITUTE FINAL DECISION

THIS SETTLEMENT AGREEMENT AND SUBSTITUTE FINAL DECISION (“**Agreement**” or “**Settlement Agreement**”) is entered into by and between DMV, LLC, a California limited liability company, and Terra Vista Management, Inc., a California corporation (collectively “**DMV**” and/or “**Petitioners**”), on the one hand, and the City of Sonoma and the City of Sonoma Mobilehome Park Rental Review Board (collectively the “**City**” and/or “**Respondents**”), on the other hand. Any of the foregoing may hereinafter be referred to as a “**Party**” or together as the “**Parties.**”

### Recitals

A. WHEREAS, in 1992, the City of Sonoma adopted an ordinance controlling the rents charged by the owners of mobilehome parks located within the City’s limits. Under that Rent Control Ordinance (“**Ordinance**”), a mobilehome park owner is entitled to apply for rent increases to pay for necessary capital improvements that the park owner proposes to construct or install. Such an application must be submitted to Respondent, City of Sonoma Mobilehome Rental Review Board (“**Review Board**”) in accordance with the terms of the Ordinance.

B. WHEREAS, Petitioners own and operate the Moon Valley Mobilehome Park (“**Park**”) located in the City of Sonoma. In August 2014, Petitioners applied to the City for a temporary rent increase for what Petitioners asserted was a “necessary capital improvement,” namely, the removal and replacement of 34,550 square feet of asphalt in one of the Park’s internal streets called Del Rio Paseo (“**Subject Work**”). Attached to Petitioners’ amended application (“**Application**”) for said rent increase was an October 13, 2014, proposal to perform the Subject Work for an amount totaling \$116,693. Based on this amount, Petitioners sought to increase the monthly rents of the affected residents. In calculating the requested rent increase, Petitioner used a twenty year amortization period as required by Resolution 57-1998 and the useful life tables of the Internal Revenue Service which are used to set depreciation schedules, and an interest rate of 3.25%, which was the prime interest rate as reported by the *Wall Street Journal* as required by Resolution 57-1998. With interest, the monthly rent increase requested by Petitioners was \$2.68 per mobilehome space. In November 2014, Respondent, Review

Board, denied the application and in February 2015 issued its written decision and findings in support thereof (“**Final Decision**”).

C. WHEREAS, on April 28, 2015, Petitioners filed a Petition for Writ of Administrative Mandamus with the Sonoma County Superior Court, bearing Case No. SCV-257056 (“**Case**” or “**Petition**”) seeking issuance of a writ vacating the Review Board’s decision and ordering Respondents to grant Petitioners the rent increase they sought, namely \$2.68 per month for 20 years for each mobilehome space governed by the Ordinance.

D. WHEREAS, Petitioners represent that they now have completed the Subject Work which is the subject of the Petition. Petitioners represent, and have provided copies of an invoice and a cancelled check to Respondents indicating that JB Bostick Company charged Petitioners and Petitioners paid to JB Bostick Company \$120,633 for the latter’s performance of the Subject Work. The amount Petitioners paid for the Subject Work is \$3,940 more (“**Excess Cost**”) than the amount specified in their October 13, 2014, proposal upon which the Application was based. Additionally, as explained below, Petitioners have agreed, in order to settle the Case, to amortize the requested rent increase over 30 years instead of 20 years. In view of these new facts, which were not available at the time of the Final Decision, Respondents find that Petitioners are entitled to a temporary rental increase, in the amount identified below, in accordance with Section 9.80.065 of the Ordinance and any other rent control ordinance or regulation in effect now or in the future.

E. WHEREAS, the Parties to the Petition desire to settle their differences without incurring the costs necessary to litigate the Petition further.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DMV and the City agree as follows:

**Agreement**

1. The above Recitals are true and correct and are incorporated herein by this reference.

2. Upon the approval of this Agreement by both the Sonoma City Council and the Respondent Review Board, Respondent Review Board shall adopt a formal

resolution in which it substitutes the terms of this Agreement as its “**Substitute Final Decision**” concerning Petitioners’ Application, which said Substitute Final Decision shall replace and supersede the Review Board’s Final Decision referred to above and constitute the final decision and findings on the Application. A form for said resolution is attached to this Agreement as Exhibit A, incorporated herein by reference.

3. Upon and after (i) the giving of notice as is required under law and (ii) Petitioners’ dismissal of the Petition pursuant to Section 9, below, DMV shall be entitled to a rent increase in the amount of \$2.06 per month for a period of thirty (30) years for all mobilehome spaces currently subject to the Ordinance (such spaces as shown on Exhibit B, incorporated herein by reference). DMV shall notify the City, in writing, as to the effective date of said increase. Such rent increase shall be itemized separately on any rental statement or billing provided to the spaces in Exhibit B and shall terminate upon the conclusion of said thirty year period. DMV shall provide a copy of this Agreement and its exhibits to any successor in interest to the Park.

4. Petitioners agree to consider hardship cases for the waiver of the monthly increase in mobilehome space rent described in Section 3, above, as to those current tenants (but not their successors or assigns, except where the successor or assign is a spouse) who (together with any other registered occupants of their mobilehomes), as of the Effective Date of this Agreement, cannot afford the increase. Whether or not a current tenant together with other registered occupants (collectively referred to as a “**Resident Household**”) can afford to pay said increase shall be determined by Petitioners, in the exercise of their sole and absolute discretion; provided, however, that said discretion must be exercised in good faith.

A. In determining whether or not a given Resident Household can afford said increase, Petitioners shall consider various factors including, without limitation:

- 1) the amount, nature and source of any and all income available to or received by the Resident Household.
- 2) whether or not the Resident Household is receiving a fixed income and, if so, from what source and how much.
- 3) the amount, nature and reasonableness of the expenses the Resident Household is incurring.

- 4) the amount, value and nature of any assets in which any member of the Resident Household has an interest.
- 5) the amount, value and nature of any gifts or expected inheritances received within the previous 12 months or likely to be received by the Resident Household within the following 12 month period.
- 6) whether, within the previous 12 months, any member of the Resident Household has diverted any assets or income to which he or she is otherwise entitled.

B. Petitioners will request from any Resident Household seeking the waiver set forth in this Section 4 a completed owner's concession application and documentation evidencing the financial condition of the Resident Household upon which Petitioners are entitled to rely in exercising their discretion concerning the requested waiver, including, without limitation, the Resident Household's bank and brokerage account statements, social security award letters, income tax returns, and any other verifying documents deemed necessary by Petitioners. For the avoidance of doubt, if a Resident Household declines or otherwise does not provide the requested documentation to the Petitioners, Petitioners shall have the right to deny the waiver request.

C. In the event a waiver is granted to a Resident Household and subsequently the Resident Household's financial position improves, Petitioners, in their sole and absolute discretion, may thereafter terminate the waiver for such Resident Household by providing 30 days written notice to the tenant. Additionally, in the event a waiver is granted to a Resident Household and subsequently there is a change in tenancy (other than an assignment or transfer to a spouse) or sale of the mobilehome at the affected site, the waiver shall immediately terminate.

D. The Respondents shall have no right or authority to review, challenge, change or over-turn any decision made by Petitioners under this Section 4.

5. Petitioners represent that they have applied to the three year (2015-2017) pilot mobilehome park utility upgrade program with Pacific Gas & Electric ("PG&E") for upgrading of the gas and electric utilities ("PG&E's Upgrade Work") serving the Park's residents and other Park facilities, and PG&E's Upgrade Work may affect Del Rio Paseo.

A. Petitioners and Respondents agree (for purposes of this Agreement only) that pursuant to Resolution 57-1998, which requires capital improvements not identified in the Resolution's schedule to be amortized "in accordance with the useful life tables of the Internal Revenue Service which are used to set depreciation schedules," the useful life of Del Rio Paseo is 20 years commencing July 2015, when Petitioners represent the Subject Work was completed, and ending June 2035 ("**Remaining Useful Life**").

B. Petitioners agree that they waive the right to seek and shall not seek any rent increase to the extent that it is based upon costs incurred, during the Remaining Useful Life, in repairing and/or replacing any portion of Del Rio Paseo cut into and/or removed as a result of PG&E's Upgrade Work

C. This Section 5 shall become effective only at the time and in the event the rent increase set forth in Section 3 above becomes effective as to the Park's residents renting the spaces described in Exhibit B referenced in Section 3.

6. This Agreement shall be binding upon and inure to the benefit of (i) the Parties' successors, representatives and assigns and (ii) all successors to Petitioners' interest in the Park. This Agreement shall run with the land.

7. Except with respect to any proceedings necessary to enforce this Agreement (as to which and subject to this Agreement, the Parties reserve all rights) or the Substitute Final Decision, including but not limited to any proceedings brought to enforce Sections 3 and 5B hereof, this Agreement and the Substitute Final Decision shall not be relied upon nor cited as precedent in connection with any adversarial proceeding, or rent increase application that Petitioners or their successors may submit to the City at any time under any rent control ordinance or regulation in effect now or in the future. Additionally, except as may be necessary to enforce this Agreement's or the Substitute Final Decision's provisions, this Agreement and the Substitute Final Decision shall not be considered or accepted into evidence by Respondents in any future rent increase application proceeding, whether offered by Petitioners or anyone else. Nothing in this Agreement shall be deemed to limit or affect in any way, any other rent increase that is or may be sought by Petitioners, except as expressly stated in Section 5B which relates to PG&E's Upgrade Work. Under no circumstances may this Agreement, its provisions, terms or conditions, or the fact that it was entered into, or the Substitute Final Decision,

(a) be admissible in evidence in any adversarial proceeding for any purpose, (b) be used for any purpose in any adversarial proceeding, (c) be referred to in any adversarial proceeding or (d) be attempted to be introduced or used in any adversarial proceeding in which any Party to this Agreement, or any successor to such Party is a party, except for any proceeding brought to enforce this Agreement's or the Substitute Final Decision's terms and conditions, including but not limited to the provisions of Sections 3 and/or 5, above. For avoidance of doubt, the term "adversarial proceeding" includes any application for a rent increase and related proceedings.

8. The Parties shall each bear their own costs and fees incurred in prosecuting and defending the Petition.

9. In the event the Substitute Final Decision is not challenged prior to the expiration of the statute of limitations for filing a petition for writ of administrative mandamus as set forth in Code of Civil Procedure § 1094.6, or upon the issuance of a final, non-appealable order denying any such challenge, the Petitioners shall promptly dismiss the Petition, with prejudice. Within a reasonable time after the Effective Date, the Parties shall jointly make an appropriate motion or other submission to the Court informing the Court of this Agreement and seeking an order staying the Petition and all pending motions until the occurrence of any of the following: (i) the dismissal of the Petition is filed in accordance with this Section 9, (ii) the entry of a final, non-appealable order or judgment setting aside or otherwise vacating the Substitute Final Decision, or (iii) otherwise ordered by the Court. The Parties further agree that the running of any and all statutes of limitations relevant to any claims or defenses that any Party may have, arising out of or in any way related to the facts alleged in the Petition, shall be tolled as of the Effective Date and shall remain tolled until the Petition is dismissed or the stay in the Case is lifted, whichever occurs sooner. The Parties further agree that nothing contained in this Agreement shall prevent any Party from asserting as a defense in the Case the expiration of any applicable limitations period that may have expired prior to the Effective Date. Subject to the limitations in this Section 9, in the event of further litigation in the Case pursuant to this Section, Petitioners and Respondents reserve any and all defenses, claims, and arguments that they have made or could make, and neither

Party shall attempt to use or use against the other for any purpose the passage of time that occurred during the tolling period described above.

10. Upon any dismissal of the Petition in accordance with Section 9 above, the Petitioners will release and discharge the Respondents and their agents, officers, employees, and attorneys (hereinafter collectively referred to as "**Releasees**"), and each of them, of and from each and every claim, demand, action, cause of action, damage, cost, expense, attorney's fee, obligation and liability of whatever kind or nature, in law or equity, whether known or unknown, from the beginning of time through the Effective Date, related to the relief sought in the Petition and the Excess Cost. For avoidance of doubt, the release provided in this Section 10 does not apply to, and shall not prevent Petitioners from bringing claims challenging the constitutionality or enforceability of the Ordinance or any other rent control ordinance or regulation in effect now or in the future, or from enforcing this Agreement.

11. As further material consideration for entering into this Settlement Agreement, it is expressly understood and agreed that:

A. All settled claims are disputed and this settlement shall not, and may never be, treated at any time or in any manner whatsoever, by anyone, as an admission by, or against the Parties herein, or any of them, of any liability or obligation or other matter relating to the herein described and referred to events, or the truth of any of the allegations of the Parties, or any of them, with respect to such events. Furthermore, Petitioners' agreement to and receipt of the rent increase in Section 3 shall not be deemed or construed as an admission that Petitioners were not entitled to the relief sought in the Application or that the rent increase specified in Section 3 was, or the resulting space rents are, sufficient to satisfy the United States or California Constitution; provided, however, that Petitioners' release, set forth in Section 10 above, if it becomes effective, will preclude Petitioners from asserting a claim that (i) the Respondents' denial of the rent increase sought in the Petition or (ii) the rent increase permitted under this Agreement itself, constitutes a violation of Petitioners' constitutional rights or is otherwise unlawful.

B. This settlement is considered by the Parties, and each of them, to be fair and equitable to and made in good faith by all Parties, and is entered into freely and

voluntarily with and upon the advice of the attorney retained to represent each of the Parties hereto.

C. All claims or rights pursuant to Section 1542 of the Civil Code of the State of California are hereby expressly waived. The Petitioners understand that said Section 1542 provides:

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

12. The Petitioners represent and warrant that they have been fully advised by counsel with respect to the Petitioners' rights and with respect to the execution of this Agreement.

13. The Respondents represent and warrant that Jeffrey A. Walter, of the law firm of Walter & Pistole, is the attorney employed to represent the Respondents with respect to this Agreement and all matters covered herein, that the Respondents have been fully advised by said attorney with respect to the Respondents' rights and with respect to the execution of this Agreement.

14. The terms of this Settlement Agreement are contractual and not a mere recital. It is further understood and agreed that no promises, representations, understanding, or warranties have been made or extended by any Party hereto other than those which are expressly set forth in this Agreement and this Agreement contains the entire agreement between the Parties relating to the rights and obligations herein. This Agreement shall be construed and enforced pursuant to the laws of the State of California.

15. Each Party warrants, covenants, and represents that it has the complete right and authority to enter into this Agreement and that each individual whose signature is affixed hereto in his or her representative capacity is authorized to execute this Agreement on behalf of and to bind the entity or entities on whose behalf his or her signature is affixed.

16. This Agreement shall not be construed more strictly against any Party, it being recognized that all of the Parties hereto, with the advice of counsel, have contributed substantially and materially to its preparation and that this Agreement has been the subject of negotiations between the Parties and is a product of that negotiation.

17. This Agreement may be executed in one or more counterparts, including facsimile counterparts or counterparts delivered by electronic mail, which shall be deemed an original, with the same force and effect as if all signatures were appended to one instrument.

IN WITNESS WHEREOF, the undersigned Parties have executed this Settlement Agreement on the date(s) indicated below, and this Settlement Agreement shall be effective as of the date of the last signature below ("**Effective Date**").

PETITIONERS:

DMV, LLC,  
a California Limited Liability Company

By: \_\_\_\_\_  
Michael Gelfand, President

Dated: \_\_\_\_\_

TERRA VISTA MANAGEMENT, INC.,  
A California corporation

By: \_\_\_\_\_  
Michael Gelfand, President

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Richard Newman, Chief Financial Officer

Dated: \_\_\_\_\_

Approved as to form:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Bradley M. Yusim, Attorney for  
Petitioners

RESPONDENTS:

CITY OF SONOMA

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its Mayor

Dated: \_\_\_\_\_

CITY OF SONOMA MOBILEHOME  
PARK RENTAL REVIEW BOARD

\_\_\_\_\_  
Name:  
Its Chairperson

Approved as to form:

\_\_\_\_\_  
Dated: \_\_\_\_\_

Jeffrey A. Walter, Attorney  
For Respondents

*(Notary Acknowledgment Attached)*

