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2 **IN THE MATTER OF ARBITRATION OF PETITIONS FOR CAPITAL PASS**
3 **THROUGHS FOR 2013, 2014 AND 2015 PURSUANT TO TITLE 20**
4 **OF CITY OF SAN RAFAEL MUNICIPAL CODE**

5 EQUITY LIFESTYLES PROPERTIES,
6 INC.

7 Petitioners,

8 v.

9 CONTEMPO MARIN HOMEOWNER'S
10 ASSOCIATION, ET AL.

11 Respondents.

DECISION OF ARBITRATOR

Hearing Date: July 19, 2016

Location: Resolution Remedies
1000 4th Street, 8th Floor
San Rafael, CA

Arbitrator: LAWRENCE A. BASKIN

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13 Equity Lifestyles Properties, Inc.(ELS) the owner and operator of the Contempo Marin
14 Mobile Home Park located at 400 Yosemite Road, San Rafael, California (the "Park"), petitioned
15 the City of San Rafael for approval to pass along to the Park's tenants certain expenditures
16 claimed for capital improvements and/or capital replacements. CONTEMPO MARIN
17 HOMEOWNER'S ASSOCIATION ("The HOA") duly objected to the rent
18 increase/reimbursement requests submitted by ELS.
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20 The three petitions were consolidated for purposes of conducting a single
21 arbitration pursuant to the San Rafael Municipal Code.
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23 Pursuant to San Rafael Municipal Code Section 20.12.050, ELS submitted
24 the following three petitions:
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- 26 • September 25, 2013 Petition in the total amount of \$37,906.49.
- 27 • September 26, 2014 Petition in the amount of \$32,887.97.
- 28 • September 28, 2015 Petition in the amount of \$118,117.18

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2 The Arbitrator has numbered the items in the respective petitions and
3 grouped them by the year of the respective petitions to facilitate the order of proof
4 at the arbitration and for reference in this decision. The issues were presented as
5 follows:
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8 2013 PETITION

9 1 \$ 7,500.00 9/8/2012 REPLACE LIFT STATION PUMP
10 2 \$ 7,500.00 10/3/2012 REPLACE LIFT STATION PUMP
11 3 \$ 1,595.07 11/4/2012 INSTALLATION/PARTS FOR REPLACE/REPAIR LIFT STN
12 4 \$ 8,603.42 12/5/2012 REPLACE SITTING MOWER
13 5 \$ 12,708.00 5/12/2013 DRAINAGE IMPROVEMENTS-LINSCOTT

14 2014 PETITION

15 6 \$ 14,400.00 6/30/2014 REPLACE HVAC CLUBHOUSE/OFFICE
16 7 \$ 1,720.00 6/30/2014 PERMITS
17 8 \$ 5,627.86 2/28/2014 REPLACE LAGOON PUMP GATE/LINSCOTT
18 9 \$ 2,643.00 4/17/2014 PRV AT 169 YOSEMITE RD/P. LEVY PLUMBING
19 10 \$ 2,485.00 7/8/14 REPLACE 2' SECTION OF MAIN LINE 77-78YOSEMITE
20 11 \$ 3,669.00 7/11/2014 REPLACE 2' SECTION OF MAIN LINE 253 TETON
21 12 \$ 2,343.00 6/11/2014 REPLACE GYM ELIPTICAL

22 2015 PETITION

23 13 \$ 34,250.00 7/9/2015 REPLACE CLUBHOUSE ROOF #1
24 14 \$ 39,750.00 8/18/2015 REPLACE CLUBHOUSE ROOF #2
25 15 \$ 9,280.00 2/18/2015 REMOVE REPLACE CONCRETE IN PATHWAY
26 16 \$ 4,230.00 2/6/2015 NEW FURNITURE-CLUBHOUSE
27 17 \$ 14,838.25 6/19/2015 POOL FURNITURE
28 18 \$ 10,518.93 6/8/2015 FITNESS ROOM EQUIPMENT

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3 At the commencement of the hearing and during the course of the proceedings ELS
4 withdrew Petition items numbered above as 8, 9, 10, 11, 12 and 16.

5 **San Rafael Municipal Code Title 20**

6 Title 20 of the San Rafael Municipal Code ("MOBILE HOME RENT
7 STABILIZATION") establishes a procedure whereby the owners of mobile home parks may
8 pass along to tenant's expenditures for capital improvements and capital replacements, and a
9 separate procedure for rent increases. The terms capital improvements and capital replacements
10 are defined in SR Municipal Code Section 20.04.020(b) and (c):
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13 **20.04.020 (b). "Capital improvements"** means those new improvements which
14 directly and primarily benefit and serve the existing mobilehome park
15 homeowners by materially adding to the value of the mobilehome park,
16 appreciably prolonging its useful life, or adapting it to new uses, and which are
17 required to be amortized over the useful life of the improvements pursuant to the
18 provisions of the Internal Revenue Code and the regulations issued pursuant
19 thereto.

20 **Capital improvements costs** means all costs reasonably and necessarily related
21 to the planning, engineering and construction of capital improvements and shall
22 include debt service costs, if any, incurred as a direct result of the capital
23 improvement.

24 **20.04.020(c) Capital replacement** means the substitution, replacement or
25 reconstruction of a piece of equipment, machinery, streets, sidewalks, utility
26 lines, landscaping, structures or part thereof of a value of five thousand dollars
27 (\$5,000.00) or more which materially benefits and adds value to the mobilehome
28 park.

Capital replacement costs means all costs reasonably and necessarily related to
the planning, engineering and construction of capital replacement and shall
include debt service costs, if any, incurred as a direct result of the capital
replacement.

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2 Expenditures that are properly viewed as "Maintenance and Repairs" are not
3 subject to pass-through pursuant to the ordinance and must be borne by the owner of the
4 Park, ELS. San Rafael Municipal Code § 20.04.020(G).

5 At the hearing ELS presented evidence and argument on each of the items in dispute. The
6 HOA presented evidence and argument disputing the claims of ELS.

7 HOA MOTION TO SUMMARILY REJECT ELS PETITIONS

8 As a general and procedural matter, the HOA made objection to each of the Petitions and
9 all of the items contained therein and urged the Arbitrator to deny ELS any relief requested in the
10 three petitions based on the failure of ELS to comply with SR Ordinance §§ 20.12.040 and
11 20.12.050. The referenced sections require that when filing a Petition to treat costs either as
12 Capital Improvements or Capital Replacements eligible for pass-through treatment ELS must
13 provide "all information reasonably available" in support of the petitions and each item contained
14 therein. The HOA noted a paucity of information filed with the petitions and presented at the
15 hearing in support of the ELS petitions. In support of its argument the HOA referred to and cited
16 from the transcript of a 2011 hearing before the San Rafael City Council on the appeal of an
17 Arbitrator's decision regarding a group of prior Petitions and Resolution No. 13236, Sept. 19,
18 2011. In brief, council members expressed concern over the failure of ELS (ELS therein) to
19 involve the HOA in the decision making process and supplying inadequate information with and
20 in support of the Petitions that had been filed. The Council encouraged ELS to involve the HOA in
21 the decision making process and receive their input *before* expenditures were made. At the
22 Hearing of 2016 the HOA pointed to the lack of any such "involvement of the HOA" prior to the
23 expenditures referenced in the Petitions and further to the failure of ELS to attach to the petitions
24 or provide "all information reasonably available".

25 The HOA representatives, Richard Heine, current president of the HOA, and Keith
26 Meloney, past president of the HOA, testified they were not consulted prior to specific
27 expenditures being planned or made. Jennifer Barrett, Senior Regional Manager for ELS, oversees
28 15 properties for ELS including Contempo Marin. She testified that she only became responsible
for Contempo Marin in September 2015 and could not testify of personal knowledge as to past
practices and with regard to items of company practices related to the period before September
2015. She did state that since becoming involved with Contempo Marin she has sought to increase
communications with the HOA representatives, has met with them to walk around the property to
discuss perceived needs and desires for the Park and plans on improving the dialog. Robert
Andrews the Park manager came on Board at the site in November, 2014. He meets monthly with
the HOA Board and communications are improving. Ms. Barrett also testified she assisted in
putting the information together for the 3 petitions at issue. She used files and paper records but
did not print and attach documents that may have been in the Company's computer records
system as no-one directed her to do so. More records could be made available for future petitions.

The Arbitrator denies the motion to summarily reject the Petitions as urged by the HOA. It
is not clear what is meant by the requirement to provide with each petition "all information

1 reasonably available” and further there was no evidence ELS purposely withheld information. The
2 Arbitrator prefers to deal with the issue in reviewing the various items for which pass-through
3 treatment is sought and where there is a question of proper treatment and a paucity of information
4 it affects the ability of ELS to meet its burden of proof as to such item.

2013 PETITION

5 **Item #1. \$7,500- 9/8/12 Replace Lift Station Pump**

6 Evidence in support of this item as a Capital Replacement (CR) included:

- 7 • Sept. 1, 2012 invoice no. 12-0901 from SOS (Systems Operation Services, Inc.) which
8 references “New ABS lift station pump.”
- 9 • Testimony of Ms Barrett that it was her understanding the then existing pump had
10 ceased being operational and required complete replacement.
- 11 • The HOA objected to the treatment as a CR and urged it was a maintenance/repair
12 item.

11 The Arbitrator accepted Ms. Barrett’s testimony along with the invoice language and finds
12 this item appropriate for treatment as a Capital Replacement.

13 **Item #2. \$7,500- 10/3/12 Replace Lift Station Pump**

14 Evidence in support of this item as a Capital Replacement (CR) included:

- 15 • Sept. 28, 2012 invoice no. 12-0932 from SOS (Systems Operation Services, Inc.)
16 which references “New ABS lift station pump.”
- 17 • Testimony of Ms Barrett that it was her understanding the then existing pump had
18 ceased being operational and required complete replacement.
- 19 • The HOA objected to the treatment as a CR and urged it was a maintenance/repair
20 item.

19 The Arbitrator accepted Ms. Barrett’s testimony along with the invoice language and finds
20 this item appropriate for treatment as a Capital Replacement.

21 **Item #3. \$7,500- 11/4/12 Installation and Parts for replaced abs lift station**

22 Evidence in support of this item as a Capital Replacement (CR) included:

- 23 • Oct. 31, 2012 invoice no. 12-1021 from SOS (Systems Operation Services, Inc.) which
24 references “Install new ABS in lift station #15, Additional parts for repair.”
- 25 • Ms Barrett was unable to provide any testimony to explain this item.
- 26 • Testimony indicated that ABS referred to a type of pipe that was being replaced to
27 effectuate a repair.

27 The Arbitrator finds that ELS failed to meet the burden of proof that by a preponderance of
28 the evidence this was a CR item. It did not meet the \$5,000.00 minimum cost for a CR

1 under the ordinance. 20.04.020(c) The face of the invoice indicates it was for a repair. The
2 request to pass through the expense is denied.

3 **Item#4. \$8,603.42-12/5/2012 Replace Sitting Mower.**

4 Evidence in support of this item as a Capital Replacement (CR) or a Capital Improvement
5 (CI) included:

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- Bucks Saw Service Invoice 11/26/12.
 - Testimony of Jorge Gonzales (Maintenance Supervisor). Mr. Gonzales testified the sit-on mower was purchased to improve efficiency for mowing around the lagoon at the Park. However, he also testified that the mower was an “additional mower” not a “replacement” He further testified the mower was used for approximately six months and thereafter ELS has contracted with an independent landscaping company to do landscaping and related maintenance at the Park and the mower has been sitting unused in a shed at the property since six months after purchase.
 - ELS initially listed the mower as a CR item, but at the hearing urged it was a CI item.
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12 The Arbitrator finds that the new sit-on mower was not a “Capital Replacement” as it did
13 not replace anything. The Arbitrator also finds that the new sit-on mower was not a
14 Capital Improvement item. 20.04.020 (b) provides in relevant part: "Capital
15 improvements" means those new improvements which directly and primarily benefit and
16 serve the existing mobilehome park homeowners by materially adding to the value of the
17 mobilehome park, appreciably prolonging its useful life, or adapting it to new uses. . . .”
18 The mower does not fit the definition. The mower may have benefited ELS for a short
19 period when it was used by reducing manpower costs, but there was no evidence of any
20 benefit to the residents. The request to pass through the expense is denied.

18 **Item#5. \$12,708.00-5/12/2013 Drainage Improvements-Linscott**

19 Evidence in support of this item as a Capital Replacement (CR) or a Capital Improvement
20 (CI) included:

- 21
- Linscott Engineering invoice dated March 18, 2103.
 - Linscott proposal re #67 dated 2/19/2013 and Linscott proposal re # 79 dated 2/19/2013 (Exhibit C). Both proposals describe the work as removal and replacement of concrete rolled curb and adjoining asphalt to accommodate/alter relative elevations to provide better slope for drainage.
 - ELS urged that the Linscott work could be viewed as either a CR because it replaced existing drainage facilities and cost more than \$5,000.00 or was a CI because the work improved and extended the life of the drainage facilities related to units 67 and 79.
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26 The HOA urged that this was a maintenance item not qualifying as a pass through CI or
27 CR. Further it did not replace the entire drainage for the Park.

1 The Arbitrator finds that the work was of a substantial nature that improved a bad drainage
2 problem and qualifies as a CI "materially adding to the value of the mobilehome park,
3 appreciably prolonging its useful life. . ." It could also readily fit the definition for a
4 CR, 20.04.020(c).

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2014 PETITION

Item# 6. \$14,400.00-6/30/2014-Replace HVAC Clubhouse/Office
Item#7. \$1,720.00-Permits for HVAC Replcement.

Evidence in support of this combined item as a Capital Replacement (CR) is the plain language of the invoice from Caron Climate Control, dated 08/30/14, # 13604.

The HOA presented no real opposition.

The Arbitrator finds that the two items together qualify as a Capital Improvement (CI) and or a Capital Replacement.(CR).

Item #13. \$34,250.00 7/9/2015 Replace Clubhouse Roof #1(payment)
Item #14 \$39,750.00 8/18/2015 Replace Clubhouse Roof #2 (payment)
Item #19 \$5,250.00 8/18/2015 Replace Laundry room Roof

These three items were grouped together because the evidence was essentially the same for each of the items.

Evidence in support of this item as a Capital Replacement (CR) included:

- Jennifer Barrett testified. She was in charge of the site at the time this work was done. She reported that there had been a water leak at the clubhouse which led to having that roof and the laundry room roof inspected. The roofs were a combination pitched metal and flat, tar & gravel, construction. The existing roofs were the original installations from around 1970. The roof inspectors advised her that the roofs had reached the end of their useful life and needed to be replaced. Bids were obtained and the work performed.
- Invoices attached to the petition and cancelled checks supported the requests.
- The HOA did not present evidence in opposition.

The Arbitrator finds that the items together qualify as a Capital Replacement (CR).

Item #15. \$9,280 2/18/2015 Remove Replace Concrete in Pathway

Evidence in support of this item as a Capital Replacement (CR) included:

- American Asphalt R & R Co. invoice dated 2/18/2015, # 6411. However this invoice had no description of the work.

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- Ms Barrett testified the work consisted of replacing sections of the pathway where there had been cracks and uneven surfaces.

2 Evidence in opposition of this item as a Capital Replacement (CR) included:

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- The HOA offered Exhibit 1, pg. 44- constituting page 1 of what appeared as a much longer contract document. ELS was unable to produce the entire contract and acknowledged that the page 1 was part of their standard contract for such work albeit incomplete.
 - There was no testimony from ELS as to the length of the walkway system, what amount of lineal footage or percentage of the system that was actually worked on or replaced.

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The description provided by Ms Barrett appeared to describe work in the nature of maintenance and repair. The Arbitrator finds that ELS failed to meet its burden of proof to establish by a preponderance of the evidence that the work was either a CI or CR. The request to pass through the expense is denied.

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12 **Item #17 \$14,838.25 6/19/2015 Pool Furniture**

13 Evidence in support of this item as a Capital Replacement (CR) or a Capital Improvement (CI) included:

- 14
- Robert Andrews testimony was to the effect that the existing pool furniture was old and needed replacing, as well there were not enough chairs, tables and chaise lounges to more adequately meet the needs of the residents.
 - The purchase consisted of replacing existing furniture and adding additional chairs, tables and chaise lounges. Chairs before-20/after-40; Chaise lounges before-11/after-15; tables before-4/after-10.
 - Valley Furniture Invoice 21909, 2/6/2015; Horizon Casual Invoice # 11591, 6/22/2015 described furniture and "replace old and warn (sic) out pool furni... "

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The Arbitrator finds the expense qualifies in combination as a pass through item as either a CR or CI as the expenditures improved the poolside amenities to the benefit of the residents

23 **Item #18 \$10,518.93 8/18/2015 Fitness Room Equipment**

24 Evidence in support of this item as a Capital Replacement (CR) or a Capital Improvement (CI) included:

- 25
- Testimony of Jennifer Barrett that the weight/fitness room needed updating and additional equipment to service the needs and desires of Park residents.
 - Replaced the old treadmill and purchased new and additional weights
 - Invoices attached to the petition and cancelled checks supported the requests.

1 The Arbitrator finds the expense qualifies in combination as a pass through item as either
2 a CR or CI in a similar context as the pool furniture Item #17.

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4 DECISION

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6 2013 PETITION

7 1 \$ 7,500.00 9/8/2012 REPLACE LIFT STATION PUMP
8 2 \$ 7,500.00 10/3/2012 REPLACE LIFT STATION PUMP
9 5 \$ 12,708.00 5/12/2013 DRAINAGE IMPROVEMENTS-LINSCOTT

10 2014 PETITION

11 6 \$ 14,400.00 6/30/2014 REPLACE HVAC CLUBHOUSE/OFFICE
12 7 \$ 1,720.00 6/30/2014 PERMITS

13 2015 PETITION

14 13 \$ 34,250.00 7/9/2015 REPLACE CLUBHOUSE ROOF #1
15 14 \$ 39,750.00 8/18/2015 REPLACE CLUBHOUSE ROOF #2
16 17 \$ 14,838.25 6/19/2015 POOL FURNITURE
17 18 \$ 10,518.93 6/8/2015 FITNESS ROOM EQUIPMENT
18 19 \$ 5,250.00 8/18/2015 LAUNDRY ROOM ROOF

19 Total amount subject to pass through treatment: **\$ 148,435.18.**

20 ELS proposed and the Arbitrator agreed the cost should be apportioned on the basis of 396
21 spaces. The amount per space would be \$374.84.

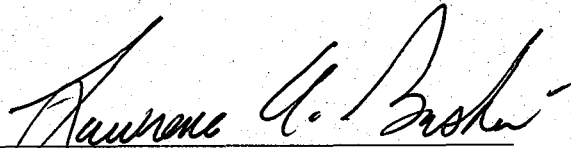
22 The HOA presented evidence, testimony of Richard Heine, a resident and current president
23 of the HOA, to the effect that any even small increase in monthly rent/charges would be a hardship
24 for him and his wife as well as many other retired Park residents living on a limited fixed income.
25 The San Rafael code §20.04.010(C) speaks to the same point as did the San Rafael City Council
in Resolution No. 13236. In consideration thereof the arbitrator finds it would impose a
hardship on the residents to pay the amount in one lump sum and makes the pass through
reimbursement **payable over eighteen (18) months at the rate of \$20.82/month/space.**

26 ELS requested interest on the repayment amount if not paid in a lump sum. The San
27 Rafael ordinance provides interest may be awarded if the Park owner has borrowed money to
28 finance the cost of the improvements. §20.04.020(D) In this case the ELS representatives
testified no such borrowing occurred and the costs were paid from cash flow without the

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necessity of borrowing. The ordinance does not provide for interest in this situation. Moreover, balancing the interests of ELS in recouping its expenditures against the potential hardship of the residents having to pay additional costs, tips in favor of the residents and no interest is awarded or imposed.

Dated: August 2, 2016


LAWRENCE A. BASKIN, ARBITRATOR

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PROOF OF SERVICE

I am a resident of the United States, County of Marin, over 18 years of age, and not a party to the within action. My business address is 999 Fifth Avenue, Ste 200, San Rafael, California 94901, which is located in the County of Marin, where the service described below took place.

On the date set forth below, I served the following document in a sealed envelope described as:

DECISION OF ARBITRATOR

on the interested parties in this action addressed as follows:


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XXX (ELECTRONIC MAIL) - I caused the above referenced document(s) to be served via e-mail to the named persons(s) at their email addresses of record listed above. The transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 2, 2016, at San Rafael, California.


Andrea E. Axelsen