

1 David J. Bradford (*pro hac vice*)
Lisa T. Scruggs (*pro hac vice*)
2 JENNER & BLOCK LLP
330 North Wabash, Suite 4700
3 Chicago, Illinois 60611
Telephone: (312) 222-9350
4 Facsimile: (312) 840-7375

5 Kenneth E. Keller (State Bar No. 71450)
KRIEG, KELLER, SLOAN, REILLEY & ROMAN, LLP
6 114 Sansome Street, Ste. 400
San Francisco, California 94104
7 Telephone: (415) 249-8330
Facsimile: (415) 249-8333

8 Robert S. Coldren (State Bar No. 81710)
9 HART, KING & COLDREN
200 East Sandpointe, 4th Floor
10 Santa Ana, California 92707
Telephone: (714) 432-8700
11 Facsimile: (714) 546-7457

12 Attorneys for Plaintiffs
MHC Financing Limited Partnership and
13 Grapeland Vistas, Inc.

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 MHC FINANCING LIMITED
PARTNERSHIP, an Illinois limited
17 partnership, and GRAPELAND VISTAS,
INC., an Illinois corporation,

18 Plaintiffs,

19 vs.

20 CITY OF SAN RAFAEL, a municipal
corporation,

21 Defendant,

22 CONTEMPO MARIN HOMEOWNERS
ASSOCIATION, a California corporation,

23 Defendant-Intervenor.
24
25
26
27
28

Case No. C 00-3785 VRW

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO THE CITY'S
MOTION TO STAY INJUNCTION**

Hon. Vaughn R. Walker

1 On February 12, 2008, the Court issued an order specifically requiring the parties to “brief the
2 issue of whether the Court should stay its judgment pending appeal.” Plaintiffs MHC Financing
3 Limited Partnership and Grapeland Vistas, Inc. (together, “Plaintiffs” or “MHC”) submit the
4 following Memorandum of Points and Authorities in Opposition to Defendant City of San Rafael’s
5 (“Defendant” or the “City”) Motion to Stay Injunction.

6 INTRODUCTION

7 Eight years have passed since the City enacted the current San Rafael Mobilehome Rent
8 Stabilization law, codified at San Rafael Municipal Code (“SRMC”), Title 20 (the “Ordinance”), and
9 effected an unconstitutional taking of MHC’s land. During this time, the Ordinance has:
10 (1) eliminated over 75% of the value of MHC’s land; (2) deprived MHC of approximately \$5.2
11 million in annual net operating income; (3) prevented MHC from seeking investment alternatives for
12 the Park; (4) transferred approximately \$97 million in value from MHC to Park residents; (5) resulted
13 in hundreds of residents at the Park paying premiums as a consequence of an unconstitutional law;
14 and (6) removed from the San Rafael housing marketplace a potentially affordable form of housing.
15 (See Findings of Fact and Conclusions of Law and Order Thereon (the “Order”) at ¶¶ 45, 69, 72-74,
16 125-127, 141.)

17 On January 29, 2008, this Court issued an Order invalidating the Ordinance. (Order at
18 ¶¶ 158, 105.) This Court’s Order appears to reflect that an injunction against enforcement of the
19 Ordinance will issue in the final judgment. Notwithstanding that the City recognized over six years
20 ago, in conjunction with the Court-approved Settlement Agreement, that the Ordinance was not
21 serving its purported purpose, the City apparently will now ask this Court to stay that injunction and
22 permit it to continue to enforce this unconstitutional law.

23 Neither the Association nor the City will be able to meet the extraordinarily heavy burden of
24 proving grounds for staying an injunction against an unconstitutional law. First, they cannot meet
25 their burden of showing a strong likelihood that the Ninth Circuit will reverse this Court’s decision.
26 The legal standards applicable to this case, as set forth in *Penn Central Transp. Co. v. City of New*
27 *York*, 438 U.S. 104, 124 (1978), and *Kelo v. City of New London*, 545 U.S. 469, 482 (2005), are not
28

1 in dispute. And this Court's factual findings are subject to review under a "clearly erroneous"
2 standard. *U.S. v. City of Spokane*, 918 F.2d 84, 86 (9th Cir. 1990). This Court has heard and
3 carefully considered extensive evidence over the course of trial proceedings both in 2002 and 2007.

4 Second, they cannot meet their burden of proving irreparable injury and that the balance of
5 hardship favors a stay. The City and residents will not suffer irreparable injury; at most, the residents
6 will suffer only monetary consequences – like all other renters in San Rafael, they will be required to
7 pay market rent. By contrast, MHC and the public would suffer irreparable injury from continued
8 enforcement. And in balancing hardships, it is apparent that MHC and the public, not the City and
9 Park residents, would face the most significant harm from continued enforcement of this
10 unconstitutional law. The Park residents have already received millions of dollars in invalid private
11 subsidies from MHC. (Order at ¶¶ 23-26; Pls.' 2007 Proposed Findings of Fact ("PFF") at ¶ 106;
12 5/1/2007 Tr. at 994.)

13 Third, allowing the City to continue to engage in unconstitutional conduct will not serve the
14 public interest. MHC demonstrated at trial that the Ordinance has no rational relationship to a
15 legitimate public purpose. The City enacted and enforced that law for the purely private purpose of
16 transferring monetary benefits from MHC to a discrete group of individuals. Permitting the law to
17 continue in effect would allow new members of the public to pay inflated premiums for homes and
18 make the Park less affordable. It would also allow the windfall beneficiaries of the Ordinance, who
19 have enjoyed many long years of invalid private subsidies, to obtain yet another windfall on resale
20 while passing the risks of loss to a new resident who received none of the artificial benefits of the
21 Ordinance. Adherence to the supreme law of the land, the United States Constitution, will best serve
22 the public interest.

23 Fourth, it is particularly inequitable for the City and Association to seek protection from this
24 Court when they eschewed a Settlement Agreement that would have afforded residents substantial
25 protections. The Association and City had the opportunity through the Settlement Agreement to
26 secure rent control for residents during their entire tenure at the Park. Instead, the Association and
27 City decided to roll the dice and make this litigation an all-or-nothing proposition. Having
28

1 consciously chosen that risk, the City and Association should not be protected against the
2 consequences of their own choice.

3 For these reasons and those set forth below, this Court should enter judgment permanently
4 enjoining the Ordinance in its entirety, enforce that injunction immediately, and deny any stay
5 request.

6 LEGAL STANDARD

7 “The burden on the moving party seeking a stay pending appeal is a heavy one, and such
8 motions are sparingly granted.” *Coalition for Economic Equity v. Wilson*, No. 96-4024, 1997 WL
9 70641 (N.D. Cal. Feb. 7, 1997). *See Equal Employment Opportunity Comm’n v. Harris Farms*, No. F
10 02-6199, 2006 WL 1881236, at *2 (E.D. Cal. July 5, 2006) (denying stay of injunction); *see also*
11 *Lopez v. Heckler*, 713 F.2d 1432, 1435-36 (9th Cir. 1983) (denying stay pending appeal). “A stay
12 pending appeal . . . is necessary only if what may be done under the judgment is beyond the power of
13 the Court of Appeals to undo by its judgment.” *Stop H-3 Ass’n v. Volpe*, 353 F. Supp. 14, 18 (D.
14 Haw. 1972) (citing *Moore’s Fed. Prac.* Section 208.03). Stays “are a disfavored remedy because
15 they interrupt the ordinary process of judicial review and postpone relief for the prevailing party.”
16 *Dellums v. Smith*, 577 F. Supp. 1456, 1456 (N.D. Cal. 1984) (parties not entitled to a stay pending
17 appeal of judgment).

18 District courts ordinarily consider four factors in determining whether a stay applicant has
19 met its heavy burden under Rule 62(c): (1) whether the stay applicant has made a *strong* showing that
20 he is likely to succeed on the merits; (2) whether the applicant will be *irreparably* injured absent a
21 stay; (3) whether issuance of the stay will *substantially* injure the other parties interested in the
22 proceeding; and (4) where the public interest lies. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)
23 (emphasis added). Here, the City has failed to carry its heavy burden on *any* of the four factors.

24 ARGUMENT

25 The City and Association cannot meet the heavy burden of proving that this is one of the rare
26 circumstances that would justify imposition of a stay of injunction pending appeal.

1 **I. The City Is Not Likely To Succeed On Appeal.**

2 The City and Association cannot make a strong showing that they likely will succeed on the
3 merits on appeal. *Hilton*, 481 U.S. at 776; *Lopez*, 713 F.2d at 1435. This Court’s Findings of Fact
4 and Conclusions of Law are based on extensive trial proceedings and a seven year record. To
5 support its constitutional claims, MHC presented substantial empirical evidence regarding the effects
6 of the Ordinance, expert testimony from three of the nation’s leading economic, public policy, and
7 real estate experts, Dr. Quigley, Professor Fischel, and Professor Edelstein. And the City itself made
8 a number of fatal admissions about the effects of the Ordinance in connection with public
9 proceedings related to the Settlement Agreement. The Court issued its Order after substantial
10 deliberation and adversarial process; it is grounded in the application of well-established legal
11 standards and a careful review of the compelling facts and circumstances of this case.

12 The City and Association will not be able to meet their heavy burden by merely reiterating the
13 many losing arguments they made on summary judgment, at trial, and again in post-trial briefs.
14 Reiterating those arguments in a motion for stay is insufficient to show a likelihood of success on the
15 merits. *See Coalition for Economic Equity*, 1997 WL 70641 (“motion for stay pending appeal is not
16 a second bite at the preliminary injunction apple” as plaintiff must demonstrate that the Court
17 “abused its discretion or clearly misapprehended the relevant law to be applied”); *Motorola Credit*
18 *Corp. v. Uzan*, 275 F. Supp.2d 519, 520 (S.D.N.Y. 2003) (denying stay pending appeal where
19 defendants “do little more than recite in conclusory fashion numerous points on which the Court has
20 ruled against them”). Thus, the City and Association cannot meet the burden of showing a strong
21 likelihood of success on appeal.

22 **II. The City And Association Cannot Establish That The Balance of Hardship Favors A**
23 **Stay.**

24 “[T]he relative hardship to the parties” is a “critical element” in deciding at which point along
25 the continuum a stay is justified. *Lopez*, 713 F.2d at 1435; *Benda v. Grand Lodge of Int’l Ass’n of*
26 *Machinists*, 584 F.2d 308, 314-15 (9th Cir. 1978), *cert. dismissed*, 441 U.S. 937 (1979). Applicable
27 precedent imposes “a duty on the court to balance the interests of all parties and weigh the damage to
28

1 each,” *Los Angeles Mem’l Coliseum Comm’n v. NFL*, 634 F.2d 1197, 1203 (9th Cir. 1980) and to
2 determine “whether issuance of the stay will substantially injure the other parties interested in the
3 proceeding.” *Hilton*, 481 U.S. at 771; *Harris Farms*, 2006 WL 1881236 at *2.

4 To secure a stay, the City and Association must put forth evidence of a specific irreparable
5 injury that it will suffer if an injunction is not stayed. *See Harris Farms*, 2006 WL 1881236 at *2. In
6 evaluating the harm that will occur depending upon whether or not the stay is granted, a court may
7 consider: “(1) the substantiality of the injury alleged; (2) the likelihood of its occurrence; and (3) the
8 adequacy of the proof provided.” *Id.* at *1 (citations omitted).

9 Here, there is no irreparable harm to the City or Association from enjoining an
10 unconstitutional law. The current residents can hardly complain of an irreparable injury when they
11 have collectively received millions of dollars in private subsidies, without a showing of need. In fact,
12 many residents have received private subsidies in excess of the premium that they paid, while others
13 received private subsidies without paying any premium. (*See PFF ¶ 106.*) The elimination of a
14 private subsidy, to which the residents have never had a valid entitlement, hardly qualifies as a
15 legally cognizable or compelling “injury.” In fact, “prospective monetary damage is *not* irreparable
16 injury.” *Volpe*, 353 F. Supp. at 18 (denying motion to stay injunction which precluded Department
17 of Transportation from expending funds on a highway construction project).

18 All of the residents have had ample opportunity to anticipate and to prepare to pay market
19 rent. For over seven years, MHC has warned residents that if the Ordinance was found
20 unconstitutional, MHC would increase rents to market levels. (*See Order at ¶ 46; 4/11/2007 Tr. at*
21 *317, 394; 5/1/07 Tr. at 994.*) The residents have participated in this litigation through the Association
22 and cannot profess surprise or lack of notice. This Court made preliminary findings last July 2007
23 that established that the Ordinance was unconstitutional. In response to the July 2007 Order, MHC
24 informed all Park residents of its intent to raise the rent to market upon a final judicial determination
25 and also expressed a willingness to discuss a transition plan with residents. (*See Ex. A, attached*
26 *hereto.*)

1 While some residents may contend that they will be forced to sell their home because they
2 cannot afford market rents, that is a risk that they consciously chose. The residents, through their
3 Association, collectively eschewed a Settlement Agreement that would have guaranteed that they
4 would receive rent controlled rents as long as they lived at the Park. Permitting the sales of homes to
5 continue at artificially low rents during an appeal will only transfer the same economic risks and
6 consequences, as to which the current residents complain, to the purchasers of the homes. Unlike the
7 current residents, those purchasers will not have benefited from the private rent subsidies for many
8 years. Thus, the City and Association cannot show irreparable injury from denial of a stay.

9 Additionally, even if the loss of an invalid private subsidy did qualify as irreparable “injury,”
10 which it does not, it would not suffice to tip the balance of hardship. The Order itself details the
11 substantial and irreparable harm MHC, as the sole target of the City’s unconstitutional conduct, has
12 suffered and will continue to suffer unless the Court enjoins the City’s unconstitutional conduct.
13 (Order at ¶¶ 96, 102.) As this Court noted in its Order, MHC’s constitutional injury cannot be
14 compensated. (Order at ¶¶ 23-24.) This fact served as a basis for the Court’s finding that the
15 Ordinance is unconstitutional. (*Id.* at ¶¶104, 105.) The Ordinance has, among other things,
16 diminished the value of MHC’s property by approximately \$97 million, representing over 75% of its
17 value and denied it a fair return. (*See* Order at ¶¶ 72-74.) With each year that passes, MHC suffers
18 exponentially greater economic harm. *See Mainstream Mktg. Serv., Inc. v. F.T.C.*, 284 F. Supp. 2d
19 1266, 1269 (D. Colo. 2003) (denying stay of injunctive relief where plaintiff would suffer irreparable
20 harm due to violation of First Amendment rights and substantial economic hardship, yet defendant
21 Federal Trade Commission offered no evidence of harm).

22 By contrast, the City will suffer no harm whatsoever from invalidation of the Ordinance.
23 *Johnson v. Mortham*, 926 F. Supp. 1540, 1542 (N.D. Fla. 1996) (mere administrative inconvenience
24 to legislature did not justify denial of plaintiff’s fundamental rights). Nor, for the reasons set forth
25 above, will the Park residents suffer any compelling or irreparable harm. Rather, they will simply be
26 obligated to pay fair market rent for the land that they rent – just like every other citizen of San
27 Rafael.

1 Additionally, in the unlikely event that this Court's Order was reversed on appeal and Park
2 residents somehow suffered a compensable monetary injury from this Court's injunction, MHC is in
3 a financial position to compensate those residents. Conversely, however, without an immediate
4 injunction, MHC and its shareholders will continue to be deprived of most of the value of its property
5 without the meaningful prospect of a meaningful source of compensation for its losses.

6 Thus, the absence of irreparable injury and balance of hardship militate against a stay.

7 **III. The Public Interest Will Be Served By Immediate Issuance Of An Injunction.**

8 Where, as here, the case involves invalidation of a public law or a challenge to government
9 policy, courts also consider whether the public interest would be served by staying the injunction.
10 *Lopez*, 713 F.2d at 1435 ("public interest is a factor to be strongly considered" in determining
11 whether stay pending appeal should be granted in cases such as case involving challenge to policies
12 and procedures used in terminating social security disability benefits); *Warm Springs Dam Task
13 Force v. Gribble*, 565 F.2d 549, 551 (9th Cir. 1977) (societal interest important consideration in
14 challenge to adequacy of environmental impact statement); *Coalition for Economic Equity v. Wilson*,
15 1997 WL 70641 (public interest a strong consideration where court reviewing legality of
16 constitutional amendment).

17 Here, the public interest strongly militates against a stay of enforcement pending appeal.
18 "[T]he public interest favors the enforcement of the United States Constitution. This factor weighs
19 against a stay." *Robinson Rubber Prod. Co., Inc. v. Hennepin City, Minnesota*, 927 F. Supp. 343,
20 348 (D. Minn. 1996) (denying motion to stay injunction that prevented enforcement of a county
21 ordinance that the court held was unconstitutional). This Court has found conclusively that the City's
22 application of the Ordinance to MHC has given rise to an unconstitutional taking of MHC's land both
23 as an as applied regulatory taking under *Penn Central*, and a facial and as applied private taking.

24 This Court has also determined that as applied to MHC, the Ordinance is not rationally related
25 to a public purpose. Specifically, the Court held that "the proffered public purposes asserted as
26 justifications for the Ordinance are palpably without reasonable foundation." (Order at ¶ 152.) Thus,
27 any argument by the City that the public interest is somehow served by allowing the City to continue
28

1 enforcing a law that has only the singular purpose of transferring the value of land from one private
2 party to another, is fundamentally flawed. (Order at ¶ 158.)

3 Additionally, as applied by the City, the Ordinance has made housing less affordable for Park
4 residents. (Order at ¶ 145.) Perpetuation of the Ordinance will only frustrate the goal of promoting
5 affordable housing. It will cause members of the public to pay premiums for invalid and
6 unconstitutional statutory benefits and confer a further windfall on park residents. Thus, immediately
7 enjoining further enforcement of the Ordinance will best serve the public interest; staying the
8 injunction will only disserve the public interest.

9 **IV. The Association And City Are Equitably Precluded From A Stay Because They Rejected**
10 **A Judicially-Approved Opportunity To Avoid The Economic Circumstances From**
11 **Which They Now Seek Protection.**

12 The City and Association should be foreclosed by principles of equity from securing
13 extraordinary equitable relief. They had a full and fair opportunity, through the Settlement
14 Agreement approved by this Court, to protect against the very circumstances from which they now
15 seek protection. Instead, they made a conscious and calculated choice to assume the risks of this
16 litigation. When they made that choice, they knew that if they lost, the entire Ordinance would likely
17 be declared invalid. The Association and City should not be protected through extraordinary judicial
18 relief from the consequences of their own decisions.

19 **V. If A Stay Is Granted, The City And/Or Association Should Be Required To Post A**
20 **Supersedeas Bond.**

21 If this Court grants a stay, pending appeal – which it should not – the City and/or Association
22 should be required to post a supersedeas bond.¹ Rule 62(c) provides that this Court may stay a grant
23 of an injunction pending appeal “upon such terms as to bond or otherwise as it considers proper for
24

25 ¹ Because the appellate process, including any rehearing and *certiorari* petitions, may take
26 approximately two years to conclude, a bond in the amount of the difference in current rent rates and
27 market rates to which MHC is entitled, for a period of at least 24 months should be posted. This
28 amount is approximately \$10.56 million: approximately \$1,100 rent increase per resident per month
multiplied by approximately 400 residents for 24 months. Therefore, if this Court grants a stay of its
Order, it should exercise its discretion and condition the stay on the Association and/or City posting
bond in the amount of no less than \$10.5 million.

1 the security of the rights of the adverse party.” Fed. R. Civ. P. Rule 62(c). Here, the City is not
2 exempt from a supersedeas bond requirement even if there is a state statute that provides otherwise.
3 *See Wilmer v. Bd. of County Comm'rs of Leavenworth County*, 844 F. Supp. 1414, 1418 (D. Kan.
4 1993) (holding that the federal stay of execution on appeal rule rather than state statute which
5 excused county from requirement to post bond on appeal controlled question of whether county was
6 required to post bond before it could obtain stay of execution of judgment, as rule was procedural
7 rather than substantive); *see also Markowitz & Co. v. Toledo Metro. Hous. Auth.*, 74 F.R.D. 550, 551
8 (N.D. Ohio 1977) (under federal law, public housing authority was not exempt from supersedeas
9 bond requirement).

10 **CONCLUSION**

11 For the reasons set forth above, the City and Association have not and cannot meet the heavy
12 burden in seeking the extraordinary relief of a stay of injunction pending appeal. To the contrary,
13 after nearly eight years of litigation, the failure to show a strong likelihood of success on appeal, the
14 public interest, and the balance of hardship all militate against the perpetuation of an unconstitutional
15 law.

16 Dated: March 14, 2008

Respectfully submitted,

JENNER & BLOCK LLP

18 By: 

19 One of the Attorneys for Plaintiffs
20 MHC FINANCING LIMITED
21 PARTNERSHIP and GRAPELAND
22 VISTAS, INC.

EXHIBIT A



Equity LifeStyle Properties, Inc.
West Region
7310 N. 16th Street, Suite 165
Phoenix, AZ 85020
(602) 674-5690
(602) 674-5699 Fax

September 25, 2007

Thomas Drummer
1 Yosemite Road
San Rafael, CA 94903

Dear Contempo Marin Tenant(s):

Re: Homesite #0001
Notice of Rent Increase
(California Civil Code Section 798.30)

Pursuant to California Civil Code Section 798.30, Equity LifeStyle Properties, Inc. ("ELS") is required to give you 90 days written notice of any increase in your rent. This letter constitutes the legally required notice for your rent increase, which will take effect January 1, 2008. Chapter 20 of the City of San Rafael Municipal Code ("Ordinance") sets forth a comprehensive scheme for regulating rents in mobilehome parks within the City of San Rafael ("City").

LITIGATION UPDATE/MARKET RENT NOTICE

On July 26, 2007, the United States District Court for the Northern District of California (the "Court") issued Preliminary Findings of Facts and Legal Standards, Preliminary Conclusions of Law and Request for Further Briefing ("Preliminary Findings") in the matter ELS vs. City of San Rafael. The Court concluded in these Preliminary Findings that the City's Ordinance constitutes a regulatory taking and a private taking and requested further briefing on an issue relative to the appropriate remedy. The remedy that ELS has requested is that the entire Ordinance be enjoined and that homeowners within Contempo Marin would no longer be entitled to rent increases determined by reference to the Ordinance.

In the event that the Ordinance is enjoined, resulting in ELS' legal entitlement to collect market rent from you, please be advised that ELS is prepared to discuss options available to you to mitigate the impact of the increase to market and to address any hardships that may occur. ELS has developed a transition plan that would mitigate the impact of this potential outcome on homeowners who currently live in Contempo Marin while preserving ELS' legal rights. This plan would also address demonstrated cases of financial hardship among current homeowners. ELS would welcome the opportunity to meet with you personally or with your association representatives to discuss the circumstances presented by the Preliminary Findings and the transition plan that we have developed.

In this notice, however, ELS must preserve its legal rights by noticing the full amount of the increase to market rent. Thus, in the event the Ordinance is not in effect for any reason, the rent payable for homesites in Contempo Marin would be the market rent and you are hereby notified that in the event ELS is legally entitled to collect the market rent,

your monthly rent will be \$1,925.00 on January 1, 2008. Further, if ELS is entitled to collect the market rent from you beginning at any time in 2008, this will constitute the requisite notice that the monthly rent for your homesite during 2008 will be \$1,925.00. In the event the Court permits ELS to collect a rent that is less than the market rent set forth in this letter, but that is more than the rent permitted under the Ordinance, this notice constitutes the requisite notice that ELS intends to collect the higher amount of rent as is permitted by the Court. The Preliminary Findings are available from the Community office. Read further for background on this litigation.

RENT CONTROL SCENARIO

Subject to the other terms of this letter, should the Ordinance be in effect on January 1, 2008, your current base rent will be increased by \$13.00 from \$690.38 to \$703.38 per month effective January 1, 2008 or such higher amount as is permitted under any order of the Court. If and while the Ordinance is in effect, your new base rent will remain in effect from January 1, 2008 to December 31, 2008, unless sooner adjusted as set forth herein.

It is the opinion of the owner of Contempo Marin that the base rent increase set forth in the immediately preceding paragraph is exempt from review under the Ordinance. The calculations showing the amount of the noticed base rent increase and how such increase was determined are posted in the clubhouse.

In addition, you continue to be responsible for paying seven dollars and fifty cents (\$7.50) per month in 2008 to cover your pro-rata share of Phase 1 of the "Lagoon Transfer Station" capital expenditure. This additional amount became effective April 1, 1997, and will remain in effect for two hundred forty (240) consecutive months from that date. The twelve monthly payments due in 2008 will reflect payments 130 through 141 of the 240 scheduled payments. This notice will constitute the statutorily required notice of such amount.

In addition, you continue to be responsible for paying \$3.72 per month in 2008 for Phase 2 of the Lagoon Transfer Station. The twelve monthly payments due in 2008 will reflect payments 25 through 36 of the 240 scheduled payments. This notice will constitute the statutorily required notice of such amount.

In addition, in 2006 the City of San Rafael approved an additional capital pass-through in the amount of \$24.79 per month for 24 months (the "2006 Capital"). The twelve monthly payments due in 2008 will reflect payments 13 through 24 of the 24 scheduled payments. This notice will constitute the statutorily required notice of such amounts.

In addition, in 2007, ELS pursued a petition to recover capital pass-through in the total amount of \$90,047.33 or \$227.39 per site. An arbitrator appointed by the City awarded ELS \$68,965.12 in the form of monthly payments in the amount of \$14.51 per month per site for 12 months. Both the Contempo Marin Homeowners Association ("CMHOA") and ELS have appealed this decision to the City Council as provided by the Ordinance. The parties have agreed that the appeal to the City Council is stayed pending the Court's final ruling described above. The amounts owed pursuant to the petition described in this paragraph are referred to as the "2007 Capital."

In addition, in the event the Ordinance remains in effect, ELS will be filing a petition pursuant to the Ordinance to recover the cost for recent capital spent at the property. The total

September 25, 2007

Page 3 of 4

amount spent by ELS which we will seek to recover is \$35,000.00. The pro-rata portion of this attributable to the homesite you rent from ELS is \$88.38. Subject to completion of the City's process, this amount will be due on January 1, 2008. ELS will seek to recover both the cost of its capital and, if ELS is required to finance the pass-through over time, interest on amounts financed. The amounts set forth herein do not reflect such costs of capital or interest rate, which would be computed to the date of payment. If the Ordinance is valid, in ELS' opinion, this rent increase is not exempt from review under the Ordinance. The amounts referred to in this paragraph are referred to as the "2008 Capital."

Under the City's Ordinance and applicable state law, certain tenancies and/or spaces are exempt from rent control. Should ELS discover that a tenancy and/or space is exempt from rent control, ELS reserves all of its rights to adjust the rent for such exempt tenancy or space to the fair market rent. By sending this notice, ELS is complying with the Ordinance and California Civil Code Section 798.30. ELS makes no representations or warranty to you that your tenancy or space is eligible for rent control and you should not rely on ELS for any belief that you are entitled to rent control at any time. In fact, it is ELS' position in legal proceedings that the Ordinance should be enjoined in its entirety because it is unconstitutional.

You have previously been advised that ELS sued the City in federal district court alleging that the Ordinance is unconstitutional. In the event that the Court confirms its Preliminary Findings, it is possible that the Ordinance may be invalidated and you may lose any entitlement you might otherwise have to a base monthly rental amount that is limited by the Ordinance.

In ELS' case against the City of San Rafael, we initially sought to create a fairer regulatory environment by obtaining vacancy decontrol. When this effort did not succeed, we challenged the entire Ordinance on constitutional grounds. These efforts were pursued by the Company in lieu of actions that might have caused more disruption. Even though the Preliminary Findings support ELS' view that the Ordinance is unconstitutional, neither the City nor the CMHOA have attempted to negotiate any resolution of the matter short of further litigation. To the extent the Ordinance is not declared unconstitutional, ELS believes that opportunities for realizing the value of its property in its current use will have been significantly impaired. In such event, we intend to continue to pursue action that will provide a more equitable return on the value of this property, such as park closure and conversion to alternative use.

SUMMARY

Your monthly rent will be the market rent, \$1,925.00, commencing on January 1, 2008 or any other date in 2008 on which ELS becomes legally entitled to collect such amount. In the event the Court permits ELS to collect a rent that is less than the market rent set forth in this letter, but is more than the rent permitted under the Ordinance, this notice constitutes the requisite notice that ELS intends to collect the higher amount of rent as is permitted by the Court. We reiterate that we have developed a transition plan that addresses these circumstances and welcome the opportunity to discuss it with you.

In the event the Ordinance is in effect January 1, 2008 and only during the period it is in effect, subject to the possibility that certain sites are exempt from rent control, effective January 1, 2008, your monthly base rent will be \$703.38 and together with the Phase 1 amount, Phase 2 amount, and the 2006 Capital will be a total of \$739.39 per month. In ELS' opinion, all of these amounts are exempt from further review under the Ordinance. Subject to completion of the City's

process, you will also owe the final amount approved with respect to the 2007 Capital and 2008 Capital on January 1, 2008. If the Ordinance is valid, this rent increase is not exempt from review.

A copy of this notice has been sent to the City Attorney for the City of San Rafael to ensure that all legal procedures have been followed with respect to this matter. Finally, ELS asserts the protection of California Civil Code Section 47 in delivering this required notice to you because this notice is required by Civil Code Sections 798.30 (as explained above) as a precondition to a rent increase and because it is an integral part of ELS's assertion of its legal and economic interests in connection with pending litigation.

As always, ELS representatives are willing to meet with you or otherwise discuss any information or questions you have regarding this notice or any concern you may have regarding the notice. You may contact the undersigned in Phoenix or, if more convenient for you, stop by the community office.

Cordially,

EQUITY LIFESTYLE PROPERTIES, INC.

Peter Underhill

Regional Vice President

cc: Homeowner File
Gary Ragghianti, City Attorney, City of San Rafael

1 **PROOF OF SERVICE**

2 I, the undersigned, hereby declare that I am over the age of eighteen years and not a party to
3 the action. My business address is 330 N. Wabash Avenue, Chicago, Illinois 60611. On March 14,
4 2008, I caused the foregoing document described as **Plaintiffs' Memorandum of Points and**
5 **Authorities in Opposition to the City's Motion to Stay Injunction** to be served on the interested
6 parties in the action as follows:

7 by placing the original a true copy thereof enclosed in sealed envelopes
8 addressed as stated on the ATTACHED SERVICE LIST.

9 **BY MAIL:** I am "readily familiar" with the firm's practice of collecting and
10 processing correspondence for mailing. Under that practice, the correspondence or
11 documents would be deposited with the U.S. Postal Service on the same day with
12 postage thereon fully prepaid at Chicago, Illinois in the ordinary course of business. I
am aware that on motion of the party served, service is presumed invalid if the postal
cancellation date or postage meter date is more that one day after deposit for mailing
in the affidavit.

13 **BY OVERNIGHT COURIER:** I caused such envelope to be placed for collection
14 and delivery on this date in accordance with standard Federal Express delivery
procedures.

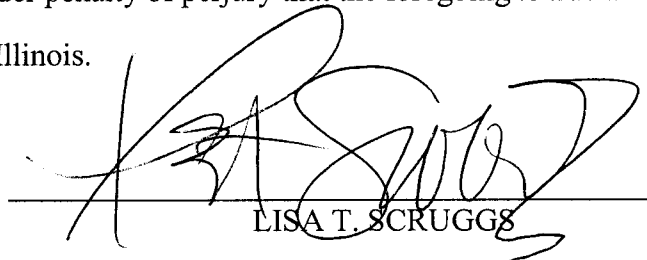
15 **BY ELECTRONIC MEANS:** In addition to service by mail, I transmitted a copy of
16 the foregoing document(s) on this date via electronic mail to the e-mail addresses and
facsimile numbers shown below.

17 **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the
18 above referenced person(s).

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

20 [Federal] I declare under penalty of perjury that the foregoing is true and correct.

21 Executed on March 14, 2008 at Chicago, Illinois.

22 
23 _____
24 LISA T. SCRUGGS
25
26
27
28