



County of Santa Barbara
Department of Housing and Community Development
123 East Anapamu St, Room 27
Santa Barbara, CA 93101

NOTICE OF
NOMAD VILLAGE MOBILE HOME PARK
RENT CONTROL ARBITRATION HEARING

This is a Public Notice that a hearing will be held before an arbitrator as follows:

DATE: September 19, 2011
TIME: 9:00a.m.
PLACE: Board of Supervisors Hearing Room
Fourth Floor
105 East Anapamu Street
Santa Barbara, CA 93101

Relating to the following matter:

Argument in support of and in opposition to a Petition filed by the mobile home owners residing at the Nomad Village Mobile Home Park located at 4326 Calle Real, Santa Barbara, CA 93110, contesting a rent increase in said mobile home park.

All interested persons are invited to attend, however participation may be limited to pertinent information as determined by the arbitrator.

Sharon Friedrichsen, Director
Clerk for the Ordinance

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CHAPTER 11A - MOBILEHOME RENT CONTROL

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Sec. 11A-1. - Purpose.

A growing shortage of housing units resulting in a critically low vacancy rate and rapidly rising and exorbitant rents exploiting this shortage constitutes serious housing problems affecting a substantial portion of those Santa Barbara County residents who reside in rental housing. These conditions endanger the public health and welfare of the County of Santa Barbara. Especially acute is the problem of low vacancy rates and rapidly rising and exorbitant rents in mobilehome parks in the county of Santa Barbara. Because of such factors and the high cost of moving mobilehomes, the potential for damage resulting therefrom, requirements relating to the installation of mobilehomes, including permits, landscaping and site preparation, the lack of alternative homesites for mobilehome residents and the substantial investment of mobilehome owners in such homes, the board of supervisors finds and declares it necessary to protect the owners and occupiers of mobilehomes from unreasonable rents while at the same time recognizing the need for mobilehome park owners to receive a fair return on their investment and rent increases sufficient to cover their increased costs. The purpose of this chapter is to alleviate the hardship caused by this problem by imposing rent controls in mobilehome parks within the unincorporated area of the county of Santa Barbara.

(Ord. No. 3122, § 1)

Sec. 11A-2. - Definitions.

The following definitions shall govern the construction of this chapter:

- (a) "Capital improvement" is any addition or betterment made to a mobilehome park which consists of more than mere repairs or replacement of existing facilities or improvements and which has a useful life of five or more years.
- (b) "Capital expense" is a repair or replacement of existing facilities or improvements which has an expected life of more than one year.
- (c) "Homeowner" is an owner of a mobilehome in a mobilehome park, responsible for paying rent to management.
- (d) "Homeowner majority" is fifty percent plus one vote or more of the number of votes homeowners of a mobilehome park are entitled to cast at the time of voting. A homeowner is entitled to cast one vote for each mobilehome site that he is renting in the mobilehome park and that is occupied by a mobilehome; provided, however, that no homeowner who is a party to a lease is entitled to cast a vote for the site that is the subject of the agreement. The total number of votes homeowners are entitled to cast equals the total number of mobilehome sites rented, occupied by mobilehomes, and not subject to a lease at the time of voting.
- (e) "Lease" is an agreement between management and a homeowner establishing the terms and conditions of a tenancy and providing for a fixed rent and a fixed term exceeding three months.
- (f) "Lessee" is the owner of a mobilehome in a mobilehome park, responsible for paying rent to management under a lease.
- (g) "Management" is the owner of a mobilehome park or an agent or representative authorized to act on his behalf in connection with matters relating to a tenancy in the park.

- (h) "Meet and confer" is an informal meeting between authorized representatives of management and homeowners of the same park for the purpose of discussing a proposed increase in rent and the basis for it.
- (i) "Mobilehome" is a structure designed for human habitation and for being moved on a street or highway, whether commonly referred to as a "mobilehome" or as a "trailer."
- (j) "Mobilehome park" is an area of land where two or more mobilehome sites are rented, or held out for rent, to accommodate mobilehomes used for human habitation.
- (k) "Once a year" is once every twelve months.
- (l) "Park" is a mobilehome park.
- (m) "Rent" is any consideration demanded or received in connection with the use or occupancy of any mobilehome site. Rent does not include charges for the use of coin-operated washing machines and dryers nor for storage facilities off the mobilehome site.
- (n) "Rent schedule" is a statement of the rent charged for each tenancy in a mobilehome park.
- (o) "Services" means those facilities which enhance the use of the mobilehome site, including, but not limited to, repairs, replacements, maintenance, water, utilities, security devices, security patrols, storage, bath and laundry facilities and privileges, janitorial services, refuse removal and recreational and other facilities in common areas of the mobilehome park.
- (p) "Tenancy" is the right of a tenant to the use of a site within a mobilehome park on which to locate, maintain and occupy a mobilehome, site improvements and accessory structures for human habitation, including the use of the services and facilities of the park.

(Ord. No. 3122, § 1; Ord. No. 3179, § 1; Ord. No. 3589, § 1)

Sec. 11A-3. - Exemptions.

This chapter applies as of November 21, 1979, to all mobilehome tenancies in mobilehome parks located in the unincorporated area of Santa Barbara County, except:

- (a) Tenancies used primarily for commercial purposes.
- (b) Tenancies in mobilehome parks of four spaces, or fewer, where one space is occupied by the owner.
- (c) Tenancies in mobilehome parks, the construction of which began after the effective date of this chapter; provided, however, that such exemption shall continue in effect for only five years after such construction began.
- (d) Tenancies which a government agency owns, manages, or operates.
- (e) Tenancies as to which there is no rental agreement and which both the management and the tenant do not expect to exceed three months.
- (f) Tenancies the rental of which are subsidized by any governmental agency, if federal or state law or regulations pertaining thereto specifically exempt such spaces from rent regulation.
- (g) Tenancies governed by a lease between management and homeowner.

(Ord. No. 3122, § 1; Ord. No. 3179, § 2; Ord. No. 3589, § 2)

Sec. 11A-4. - Arbitration.

- (a) Arbitration shall be used to fix maximum rent increase schedules for mobilehome tenancies under this chapter, following a petition by a homeowner majority. The method of selection, appointment and compensation of an arbitrator, and hearing procedures shall be in accordance with the mobilehome rent control ordinance rules for hearings and amendments thereto as approved by the Santa Barbara County board of supervisors.
- (b) The arbitrator shall set and adjust rents in accordance with the standards set out in this chapter.
- (c) The real property division manager of the Santa Barbara County department of public works shall serve as clerk under this chapter. The duties and responsibilities of the clerk shall be stated in the rules for hearings.
- (d) The rules for hearing shall provide for the collection of fees or costs from the parties not to exceed the actual costs of administration and of arbitration services.

(Ord. No. 3589, § 4)

Sec. 11A-5. - Increases in maximum rent schedule.

- (a) Management's notice of an increase in the maximum rent schedule shall:
 - (1) Comply with state law; and
 - (2) Indicate whether or not the percentage of noticed increase in relation to the previous maximum

rent schedule, less allowed costs for capital improvements and/or capital expenses, if any, is in excess of seventy-five percent of the percentage by which the most recently published edition of the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers, Los Angeles-Long Beach-Anaheim area, all items, Base Index 1967=100, shows that such index has increased during the immediately preceding twelve months for which said index has been published at the time notice of said increase was given or since the last rent increase (hereinafter called "in excess of seventy-five percent of CPI"); and

- (3) Where the noticed increase is in excess of seventy-five percent of CPI, management shall:
 - (A) Itemize amounts for increased operating costs; any capital expenses incurred in the prior year to be undertaken for which reimbursement is sought, hereinafter "new" capital expenses; any capital expenses allowed in prior years but not fully reimbursed, hereinafter "old" capital expenses; any offset against new or old capital expenses; and capital improvements.
 - (B) Set a meet and confer session. The procedure for meet and confer shall be set out in the rules for hearing.
- (b) Homeowners may, no later than forty-five days after the date of notice, file a petition for hearing to contest the proposed increase but only if the increase is in excess of seventy-five percent of CPI.
- (c) The hearing shall be set by the clerk, held before an arbitrator, and governed by the provisions of this chapter and of the rules for hearing.
- (d) The arbitrator shall deny a hearing on a noticed increase:
 - (1) Where management has not waived its right to object and proves by a preponderance of evidence that:
 - (A) The homeowners' petition for hearing was not supported by a homeowner majority or was untimely filed. For purposes of this determination, management may require the testimony of the clerk but may not require the production of homeowner's petitions or copies thereof, except that said petitions may be examined by the arbitrator; or
 - (B) The noticed increase is not in excess of seventy-five percent of CPI; or
 - (2) Where no homeowners' representatives attended meet and confer.
- (e) The arbitrator shall deny an increase in the maximum rent schedule where homeowners prove by a preponderance of evidence that:
 - (1) Management has previously increased the maximum rent schedule such that the effective date of the proposed increase will be less than twelve months after the effective date of the previous increase; or
 - (2) Management has failed to provide a meet and confer session.
- (f) If the hearing and/or increase is not denied pursuant to the foregoing paragraphs, the arbitrator shall consider all relevant factors to the extent evidence thereof is introduced by either party or produced by either party on request of the arbitrator.
 - (1) Such relevant factors may include, but are not limited to, increases in management's ordinary and necessary maintenance and operating expenses, insurance and repairs; increases in property taxes and fees and expenses in connection with operating the park; capital improvements; capital expenses; increases in services, furnishings, living space, equipment or other amenities; and expenses incidental to the purchase of the park except that evidence as to the amounts of principal and interest on loans and depreciation shall not be considered.
- (g) The arbitrator shall automatically allow a rent increase of seventy-five percent of the CPI increase (hereinafter "automatic increase").
- (h) The arbitrator may allow an increase in excess of the automatic increase for increased costs where increases in expenses and expenditures of management justify such increase.
- (i) To determine the amount of any increase in excess of the automatic increase, the arbitrator shall:
 - (1) First, grant one-half of the automatic increase to management as a just and reasonable return on investment. The arbitrator shall have no discretion to award additional amounts as a just and reasonable return on investment;
 - (2) Next, grant one-half of the automatic increase to management to cover increased operating costs. The arbitrator shall have no discretion to award less than this amount for operating costs.
 - (3) Next, add an amount to cover operating costs, if any, in excess of one-half of the automatic increase. The arbitrator shall have discretion to add such amounts as are justified by the evidence and otherwise permitted by this chapter.
 - (4) Next, add an amount to cover new capital expenses. Where one-half of the automatic increase is more than the actual increase in operating costs for the year then ending, the arbitrator shall offset the difference against any increases for new capital expenses.
 - (5) Next, add an amount to cover old capital expenses. Where one-half of the automatic increase is more than the actual increase in operating costs for the year then ending, the arbitrator shall offset the difference against any increase for old capital expenses unless such difference has already been used to offset an increase for a new capital expense or another old capital expense. The

arbitrator shall have discretion to review operating costs and the sufficiency of any offset, but not to redetermine the right of management to reimbursement for an old capital expense.

- (6) Finally, add an amount to cover increased costs for capital improvements, if any. The arbitrator shall have discretion to add such amount as is justified by the evidence and otherwise permitted by this chapter.
- (j) The total increase shall not exceed the amount in management's notice of rent increase.
- (k) Evidence as to costs to be incurred prior to the next rent increase may be considered only where such evidence shows that these costs are definite and certain.
- (l) Increases in the maximum rent schedule set by the arbitrator shall become effective as of the effective date in the notice or rent increase.

(Ord. No. 3589 § 6; Ord. No. 3678, § 1)

Sec. 11A-6. - Capital improvements and capital expenses.

- (a) Capital Improvements.
 - (1) The cost of capital improvements incurred or proposed, including reasonable financing costs, may be passed on to homeowners at the time of an annual increase:
 - (A) After written approval of a homeowner majority without hearing; or
 - (B) After failure of homeowners to contest a rent increase which includes costs for capital improvements; or
 - (C) After approval at hearing.
 - (2) Any notice of a rent increase which is in excess of seventy-five percent of CPI and includes costs for capital improvements shall contain a payment plan showing the cost of the improvement per mobilehome space and the time period required to amortize the cost of the improvement, e.g., ten dollars per space for seventy-two months.
 - (3) Notwithstanding any other provision to the contrary, the cost of capital improvements required by a change in governmental law or regulation may be automatically passed on to homeowners at the time of an annual increase. Any hearing on such costs shall be solely for the purpose of determining whether management's plan for compliance or for recoupment of costs is unreasonable if so alleged by homeowners.
 - (4) Management shall deduct increases allowed for capital improvements at the time which was specified by the arbitrator, or if no time was so specified, then at the time specified by the payment plan.
 - (A) If management fails to automatically deduct such increase, then such increase shall be considered an increase in the maximum rent schedule and shall be subject to all the provisions of this chapter, including, but not limited to, amount and frequency of increase.
 - (B) If the arbitrator finds that management failed to deduct the increase, the arbitrator shall order management to credit such amount to each homeowner retroactive to the date the increase should have been deducted together with interest at the legal rate.
 - (5) If management fails to begin construction of a capital improvement within six months after approval of the cost of the capital improvement, then management shall discontinue the increase for the capital improvement and shall credit any amounts collected to each homeowner. If management fails to automatically discontinue such increase, then such increase shall be considered an increase in the maximum rent schedule and shall be subject to all the provisions of this chapter, including, but not limited to, amount and frequency of increase.
- (b) Capital Expenses.
 - (1) The cost of capital expenses incurred or proposed, including reasonable financing costs, may be passed on to homeowners at the time of an annual increase.
 - (2) Any notice of a rent increase which is in excess of seventy-five percent of CPI and includes costs for capital expenses shall contain a payment plan which shows the amount needed per month to amortize the cost of the capital item(s) over the useful life of the item(s). Payment plans for old capital expenses are not subject to modification by the arbitrator unless mutually agreed to by management and homeowners.
 - (3) Notwithstanding any other provision to the contrary, the cost of capital improvements required by a change in governmental law or regulation may be automatically passed on to homeowners at the time of an annual increase. Any hearing on such costs shall be solely for the purpose of determining whether management's plan for compliance or for recoupment of costs is unreasonable, if so alleged by homeowners.
 - (4) Management shall deduct increases allowed for capital expenses at the time which was specified by the arbitrator, or if no time was so specified, than at the time specified by the payment plan.
 - (A) If management fails to automatically discontinue such increase, then such increase shall be considered an increase in the maximum rent schedule and shall be subject to all the provisions of this chapter, including, but not limited to, amount and frequency of increase.
 - (B) If the arbitrator finds that management failed to discontinue the increase, the arbitrator

shall order management to credit such amount to each homeowner retroactive to the date the increase should have been deducted together with interest at the legal rate.

- (5) If management fails to begin construction of a capital expense item within six months after approval of the cost of the capital expense, then management shall discontinue the increase for the capital expense and shall credit any amount collected to each homeowner. If management fails to automatically discontinue such increase, then such increase shall be considered an increase in the maximum rent schedule and shall be subject to all the provisions of this chapter, including, but not limited to, amount and frequency of increase.
- (c) Whenever costs for capital improvements and/or capital expenses are included in rent, management shall provide each homeowner at least once a year a statement showing the following:
 - (1) The amount of rent without charges for capital improvements and/or capital expenses; and
 - (2) The monthly amount for each capital improvement and/or capital expense;
 - (3) The date by which the charge for each capital improvement and/or capital expense will be fully amortized;
 - (4) If this information is provided in an annual notice of rent increase, an additional statement is not required.

(Ord. No. 3589, § 8; Ord. No. 3678, § 2)

Sec. 11A-7. - Leases.

Nothing in this chapter shall operate to restrict the right of a homeowner and management to enter into a lease. During the term of the lease, rent shall be that amount agreed to by management and lessee under the terms of the lease. Prior to the lease and following the expiration or termination of the lease or any continuance thereof, the rent shall be in accordance with the maximum rent schedule for the same, or if there is none, similar tenancies of the same park.

(Ord. No. 3589, § 8)

Sec. 11A-8. - Collection and frequency of increases.

- (a) Management may increase the maximum rent increase schedule no more than once a year for tenancies not subject to a lease. Assuming proper notice, management may collect increases as of the effective date of increase specified in the notice.
- (b) Where a homeowner majority has petitioned for a hearing on an increase and the hearing is to be held after the effective date of increase, management may collect the increase pending the arbitrator's decision; however, any portion of an increase in excess of seventy-five percent of the CPI increase shall be placed in an interest-bearing account in the name of management as trustee for the homeowners of that park.
 - (1) Where the arbitrator approves the full amount of noticed increase, management shall be entitled to retain the full amount in the interest-bearing account together with accrued interest, if any.
 - (2) Where the arbitrator approves an increase in an amount less than the amount noticed, management shall be entitled to the full amount in the interest-bearing account subject to a homeowner credit against future rent. The amount of the credit shall be the difference between the amount deposited in the interest-bearing account and the amount approved, plus a proportional amount of the interest, if any, prorated among the tenancies. Management shall notify each homeowner in writing of the amount of credit.
- (c) Where a new maximum rent increase schedule has been set by the board of supervisors upon review or by the arbitrator upon rehearing, adjustments in rent paid shall be made in accordance with subsection (b)(1) and (2) of this section.

(Ord. No. 3589, § 8)

Sec. 11A-9. - Cost savings.

If management reduces or eliminates any service to a homeowner in effect on the date the ordinance codified in this section became effective, management shall reduce each homeowner's rent by his proportionate share of the cost savings due to such reduction or elimination.

(Ord. No. 3589, § 8)

Sec. 11A-10. - Subleases and assignments.

Management may make reasonable rules regarding subleases and assignments and may increase the maximum rent schedule during the duration of the sublease or assignment by an amount not to exceed ten percent.

- (a) This increase is in addition to other increases authorized under this chapter and is not subject to

- the once-a-year limitation of section 11A-8(a).
- (b) After an increase under this section, further increases shall be governed by the provisions of this chapter.
- (c) After the termination of the sublease or assignment, the maximum rent increase schedule shall be reduced to the level it would have been but for the sublease or assignment, provided that the owner tenant resumes occupancy.

(Ord. No. 3589, § 8)

Sec. 11A-11. - Retaliation.

Management shall not retaliate against any homeowner because of his assertion or exercise of any rights provided by this chapter.

(Ord. No. 3589, § 10)

Sec. 11A-12. - Penalties.

- (a) Any wilful violation of the provisions of this chapter shall be punished by a fine not exceeding five hundred dollars or imprisonment for a term not exceeding six months, or by both such fine and imprisonment. Every day any such violation shall continue shall constitute a separate offense.
- (b) Any homeowner aggrieved by the wilful violation of any of the provisions of this chapter may sue thereon and recover actual damages therefor, plus a civil penalty not to exceed two hundred dollars for each such violation.

(Ord. No. 3589, § 10)

Sec. 11A-13. - Judicial intervention.

- (a) Should the operation or enforcement of this chapter, as amended, be stayed or temporarily restrained or preliminarily enjoined by a court of competent jurisdiction, petitions may continue to be filed as authorized herein and will be heard as provided herein on the discharge of such stay or temporary restraining order or preliminary injunction, to the extent permitted by the court. The time in which to decide such petitions shall be extended by the time such stay, order or injunction was in effect.
- (b) Should any decision of a mobilehome rent control board be set aside and remanded, the petition on which such decision was based shall be reheard by the arbitrator and a new decision made within ninety days of the date the previous decision was set aside, excluding from the computation of such period any time during which this chapter, as amended, was stayed, temporarily restrained or preliminarily enjoined.
 - (1) The new decision shall become effective as if it were the original decision subject to section 11A-5.
 - (2) Any rent paid by homeowners in excess of that approved by the subsequent decision shall be credited to homeowners in accordance with section 11A-8(b)(2) insofar as possible.
 - (3) Any rent paid by homeowners less than that approved by the subsequent decision shall be prorated among the tenancies.

(Ord. No. 3179, § 18; Ord. No. 3185, § 2; Ord. No. 3589, § 11)

Sec. 11A-14. - Increase upon sale.

- (a) Except as provided below, a "sale" is a change of ownership of a mobilehome whether or not for value.
- (b) A change of ownership which, if a mobilehome were real property, would be excluded from reassessment under California Revenue and Taxation Code Sections 62 and 63 as the same exist on the date of enactment of the ordinance codified in this section or as later amended is not a sale pursuant to this section.
- (c) Management may increase the maximum rent schedule, less amounts for capital improvements and capital expenses, if any, by an amount not to exceed ten percent upon the sale of a mobilehome in accordance with the provisions of this section and subject to the following:
 - (1) This increase may be made on the first sale following the effective date of the ordinance codified in this section.
 - (2) Increases may be made following subsequent sales provided that at least sixty months shall have elapsed between that sale and the previous sale.
- (d) This increase is in addition to other increases under this section and is not subject to the once-a-year limitation of section 11A-8(a).
- (e) After an increase under this section, further increases shall be governed by the provisions of this chapter.

(Ord. No. 3678, § 3)

Sec. 11A-15. - Severability.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are severable.

(Ord. No. 3122, § 1; Ord. No. 3179, § 17; Ord. No. 3185, § 3)

MOBILEHOME RENT CONTROL

RULES FOR HEARINGS

The following rules, together with applicable provisions of Santa Barbara County ordinances, shall govern hearings held pursuant to the Santa Barbara County Mobilehome Rent Control Ordinance:

1. Definitions.

The following definitions shall apply:

a. "Arbitrator" means the arbitrator who makes decisions pursuant to the Santa Barbara County Mobilehome Rent Control Ordinance.

b. "Clerk" means the Clerk for the Santa Barbara County Mobilehome Rent Control Ordinance; the Clerk is the manager of the Real Property Division of the County Department of Public Works or his designee, and mail should be sent to Real Property Manager, Department of Public Works, 123 East Anapamu Street, Santa Barbara, California 93101.

c. "Management" means the owner of a mobilehome park or his agents or representatives.

d. "Homeowners" means the owners of mobilehomes in the mobilehome park, ~~responsible for paying rent to management.~~

e. "Homeowner majority" is fifty percent (50%) plus one (1) vote or more of the number of votes homeowners of a mobilehome park are entitled to cast at the time of voting. A homeowner is entitled to cast one (1) vote for each mobilehome site that he is renting in the mobilehome park and that is

occupied by a mobilehome; provided, however, that no homeowner who is a party to a lease is entitled to cast a vote for the site that is the subject of the lease. The total number of votes homeowners are entitled to cast equals the total number of mobilehome sites rented, occupied by mobilehomes and not subject to a lease at the time of voting.

f. "Homeowner representative" means the person or persons designated by the homeowners on whom all notices and papers may be served on behalf of the homeowner majority and who is empowered to enter into stipulations and agreements on behalf of the homeowner majority.

g. "Petition" means the document filed by homeowners with the Clerk to obtain a hearing or by homeowners or management to obtain a review by the Board of Supervisors.

h. "Petitioner" means the party who files a petition with the Clerk.

i. "Respondent" means the party against whom the petitioner seeks determination of a rent schedule or a review of the Arbitrator's decision.

j. "Verification" means that a petition has been verified; date of verification is the date the Clerk notifies the parties that a verified petition is on file and that a hearing will be set.

2. Meet and Confer.

a. Management shall include in its notice of rent increase a time and place for a meet and confer session whenever the amount of that increase exceeds 75% of the CPI as used in the

Mobilehome Rent Control Ordinance. Meet and confer shall be scheduled between seventeen (17) and twenty-five (25) days following the date in the notice of increase unless otherwise agreed to by the parties. Meetings shall be held within the mobilehome park or at another location agreeable to the parties. No later than ten (10) days following the date in the notice of increase, management shall make available to representatives selected by homeowners a detailed list of expenses and income, including utility costs and charges, for the prior four (4) years unless such is unavailable on account of transfer of ownership of the park, together with any other information upon which an increase is based.>

b. The contents of paragraph 2a above shall be included in the notice of rent increase in substantially the following form:

"In accordance with provisions of the County Mobilehome Rent Control Ordinance and Rules for Hearing, we are providing you with the following information:

"The increase in this notice is greater than 75% of the increase in the Consumer Price Index. A meet and confer session is scheduled for (date) at (place) to discuss the basis for this increase. You must send representatives to this session. If you fail to send representatives to this session, you may be forfeiting your right to a hearing to contest this increase. Your

representatives may obtain information upon which this increase is based at (place) beginning (date). If the date for meet and confer is not convenient for your representatives, it may be possible to change that date by consulting with (person)."

c. Management shall have no more than four representatives at the meet and confer session(s) and shall include at least one representative personally familiar with the basis for the rent increase, including income/expense documents, and with sufficient authority to make decisions binding on park management.

d. Homeowners shall have no more than four representatives at the meet and confer session(s), and these representatives shall have sufficient authority to make decisions binding on all homeowners in the park subject to veto by the homeowners. If homeowners provide four representatives, one representative who is not a park resident may be included.

e. Any settlement agreement resulting from meet and confer shall be put into writing, signed by all representatives, and circulated among homeowners. Such settlement agreement shall be effective in lieu of the noticed increase unless vetoed by the homeowners.

f. Homeowners may veto a settlement agreement by filing a valid petition to contest the noticed increase pursuant to Rule 3 below. The filing of a valid petition shall nullify the agreement.

3. Petitions.

a. No later than forty-five (45) days after the date of a notice from management increasing the maximum rent schedule, mobilehome owners of that park may file a petition requesting a hearing.

b. The petition shall be dated and signed by the homeowners and the homeowners' representative. The petition shall contain the following:

(1) The name and address of the homeowners and of the mobilehome park involved.

(2) The date of the notice increasing rent, the amount of the proposed increase, and the effective date of the proposed increase.

(3) The name of the homeowners' representative.

(4) The date the previous rent schedule was first charged.

c. There is no right to an individual hearing, and a petition must be signed by at least a homeowner majority within forty-five (45) days of the noticed increase before a hearing will be set.

d. A sample petition may be obtained from the office of the Clerk.

4. Verification of Petition.

a. The Clerk shall determine whether the petition was timely filed and contains all required information. The Clerk shall reject any petition not meeting these criteria and promptly notify the homeowners' representative thereof. If a petition is

so rejected, the homeowners may thereafter file another petition for the same relief, subject to the same requirements and time for filing as the original petition. Petitions not rejected are deemed verified, and the Clerk will promptly notify homeowners and management that a verified petition is on file and a hearing will be set.

b. At the Clerk's request, management shall furnish the names of all homeowners not subject to a lease as of the deadline for filing petitions, a copy of the notice of increase, and the date the previous rent schedule was first charged. Failure to provide this information within a reasonable time of request shall be deemed an automatic waiver of any objection to the petition's validity.

5. Hearings.

a. After the petition has been verified, the Clerk shall set a hearing and shall promptly notify both parties of the time, date, and place for the hearing, and of the available arbitrators.

(1) The Clerk shall provide management with the name and address of the homeowners' attorney, if any, and the name and address of the homeowners' representative. The Clerk shall provide the homeowners' representative with the name and address of management's attorney, if any.

(2) The Clerk shall not reveal to management the names of homeowners signing or not signing the petition for hearing.

(3) Service of notice may be made on the attorneys for both parties or, if there is none, on the homeowners' representative for the homeowners and on the representative of record for management.

6. Time for Hearing.

A petition shall be heard and decided within ninety (90) days of its filing unless time is extended by agreement of the parties.

7. Notice.

The Clerk shall set a petition for hearing not less than forty (40) days or more than sixty (60) days after it has been filed, and shall within fourteen (14) calendar days of filing send the parties notice of the time and place set for hearing. The Clerk shall also give any public notice required by law. The notice to the parties shall be in substantially the following form, but may include other information:

"You are hereby notified that a hearing on the homeowners' petition will be held on the ____ day of _____, 19____, at _____, at the hour of _____.

You may be present at the hearing, may but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other sources of

evidence by applying to the Clerk for the Mobilehome Rent Control Ordinance, at _____. You will be responsible for paying any mileage or attendance fees in connection with subpoenas so issued."

A statement of facts contained in the homeowners' petition shall be sent with such notice to management of the mobilehome park concerning which the petition was filed, but the names of homeowners signing the petition shall be omitted therefrom and shall not be sent or revealed.

8. Management's Objections And Response.

a. Management may file objections to the homeowners' petition on the following grounds: that the petition was not timely filed, that the petition does not contain material information required by the applicable rules and ordinance(s), and/or that the proposed increase fails to exceed 75% of the CPI as defined by the Mobilehome Rent Control Ordinance. If such objections are not made as provided in this Rule, they shall be deemed waived.

b. Management shall file a response to the homeowners' petition. (This response shall consist in relevant facts, argument and law in support of the proposed increase and shall contain as an exhibit a detailed list of expenses and income for the prior four years unless such is unavailable on account of a transfer of ownership of the park.) In addition to other expenses and income, this list shall include utility costs and charges. Failure to file a response will result in a sixty

(60) day delay in the effective date of any increase granted by the Arbitrator.

c. Time and form for objections and responses shall be:

(1) No more than ten (10) 8 1/2" x 11" double-spaced, single-sided, typewritten pages each, exclusive of exhibits.

(2) Filed with the Clerk no more than fourteen (14) calendar days from the date of the Clerk's verification of the petition.

(3) Served on the homeowners' attorney or, if there is none, on the homeowners' representative on or before the filing deadline in Rule 8c(2) above.

d. Management's filing fee:

(1) Management shall pay a filing fee at the time of filing its response.

(2) The amount of this fee shall be equal to Ten Dollars (\$10.00) for every space in the park controlled by the Mobilehome Rent Control Ordinance.

(3) This fee shall be in the form of a personal check, bank check, or money order payable to "County of Santa Barbara."

(4) Fifty percent (50%) of the filing fee shall be refunded to management provided that the Clerk is notified no less than seventy-two (72) hours prior to the hearing that homeowners have withdrawn their petition.

(5) Management may pass on to homeowners, as a one-time-only increase, an amount equal to fifty percent (50%) of the filing fee in Rule 8d(2) above less any refunds from Rule 8d(4) above.

9. Homeowners' Counter-Response.

Homeowners may file a counter-response to management's response. If homeowners file a counter-response, it shall consist in relevant facts, arguments, and law in opposition to the proposed increase and shall be:

a. No more than ten (10) 8 1/2" x 11" double-spaced, single-sided, typewritten pages, exclusive of exhibits.

b. Filed with the Clerk no more than twenty-eight (28) days from the date of the Clerk's verification of the homeowners' petition.

c. Served on management's attorney or, if there is none, on the owner or his representative on or before the filing deadline in Rule 9(b) above.

d. Homeowners' duty to file a counter-response is optional, and failure to file shall be without legal consequence..

10. Subpoenas.

Before the hearing has commenced, the Clerk shall issue subpoenas and subpoenas duces tecum at the request of either party in accordance with the provisions of Section 1985 of the Code of Civil Procedure. After the hearing has commenced, the Arbitrator may issue subpoenas and subpoenas duces tecum.

Such process shall extend to all parts of the state and be served in accordance with the provisions of Sections 1987

and 1988 of the Code of Civil Procedure. No witness shall be obliged to attend at a place out of the county in which he resides unless the distance is less than 150 miles from his place of residence, except that, upon affidavit of either party showing that the testimony of such witness is material and necessary, the Arbitrator may endorse on the subpoena an order requiring the attendance of such witness.

All witnesses appearing pursuant to subpoena, other than the parties, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in a superior court. Witnesses appearing pursuant to subpoena, except the parties, who attend hearings at points so far removed from their residences as to prohibit return thereto from day to day shall be entitled, in addition to fees and mileage, to a reasonable per diem compensation for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to and from the hearing. Fees, mileage and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed.

11. Discovery.

There is no right of discovery.

12. Appointment, Selection, and Payment of Arbitrators.

An Arbitrator shall preside at all hearings and rehearings regarding maximum rent increase schedules under the Mobilehome Rent Control Ordinance and shall make findings and

decisions on such increases in accordance with the provisions of the Ordinance and these Rules. The decision of the Arbitrator shall be final except as otherwise specifically provided.

a. Qualifications. Arbitrators shall be attorneys currently licensed to practice law in the State of California or certified public accountants currently licensed by the State of California. Arbitrators shall have no financial interest in mobilehome parks.

b. Appointment.

(1) The staff of the Real Property Division of the Department of Public Works shall submit to the Board of Supervisors a list of qualified candidates for Arbitrator.

(2) By a majority vote, the Board of Supervisors shall appoint five (5) candidates from this list to form a panel of prospective arbitrators.

(3) The staff of the Real Property Division shall propose additional candidates in the event that resignation or other removal reduces the panel to less than five (5).

(4) A panelist shall disqualify himself or herself from serving as arbitrator in a particular matter where there is a conflict of interest.

c. Selection of an Arbitrator for a Hearing.

(1) After the petition of a homeowner majority has been filed and verified, the Clerk shall notify each party of the top three (3) available panelists on the list. Each party shall choose two of the three to serve as Arbitrator at the hearing.

(2) If the parties choose the same two panelists, then the panelist highest on the list shall be selected, and if later he cannot serve, then the other panelist shall be selected.

(3) If the parties choose only one panelist in common, then that panelist shall be selected, and if later he cannot serve, then the fourth panelist on the list shall be considered together with the others and each party shall again choose two (2) panelists.

(4) After a panelist has served as Arbitrator at a hearing, the name of that panelist shall be placed at the bottom of the list of panelists.

d. Selection for Rehearings.

(1) A panelist who served as Arbitrator for a hearing shall serve as Arbitrator on any rehearing so far as possible.

(2) If the panelist who served as Arbitrator for the hearing cannot serve as Arbitrator for the rehearing, then an arbitrator for the rehearing shall be selected in accordance with Rule 12(c) above.

e. Payment.

(1) Arbitrators shall be paid for hearings and rehearings at the same hourly rate as hearing officers for the Santa Barbara County Civil Service Commission.

(2) Time spent in preparation for hearings is included in the hourly hearing rate and shall not be billed separately.

(3) No more than two (2) total hours may be billed for the analyzing evidence and preparing the Statement of Decision and Findings.

(4) The source of payment shall be the filing fees of homeowners and management so far as possible.

13. Record.

Hearings shall be reported by a court reporter. The official record of a hearing, which shall constitute the exclusive record for decision of the issues at any review, rehearing, or judicial review, shall include: all written notices; all papers and documents filed prior to the proceedings; all exhibits admitted and rejected as evidence during the proceedings; a list of participants present; the reporter's transcript; a statement of all materials officially noticed; the ruling on each exception or objection, if any; and all findings, decisions and orders.

The reporter need not transcribe the notes of the proceedings unless requested to do so by a party or the Clerk.

14. Official Notice.

In reaching a decision, official notice may be taken of any fact which may be judicially noticed by the courts of this state. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Either party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral

presentation of authority, the manner of such refutation to be determined by the Arbitrator.

15. Hearings.

a. All hearings held before an Arbitrator shall be open to the public, and notice thereof given as required by law, except as specifically provided in Rule 19.

(1) All participation by the public shall be channeled through the respective attorneys for homeowners and management or, if there is none, through their respective representatives. The attorney for each party or, if there is none, the respective representative shall determine the participation of individual members of the public and the content of that participation, subject to the ruling of the Arbitrator.

(2) The Arbitrator or Clerk may exclude members of the public for conduct which is unruly or disorderly and which disrupts or threatens to disrupt the proceedings.

b. Each party to a hearing may be represented by attorneys or other persons of the party's choice.

c. Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness, regardless of which party first called him to testify; and to rebut the evidence against him.

d. Hearings need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence is admissible if it is the sort of evidence on which

responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.

e. Irrelevant and unduly repetitious evidence shall be excluded.

16. Evidence Required by the Arbitrator.

The Arbitrator may request either party to provide pertinent books, records and papers. <However, management may substitute an affidavit by a certified public accountant, as long as the affidavit contains the information sought from such books, records and papers, and as long as such certified public accountant is available for cross-examination at the hearing concerning such statement.> A subpoena duces tecum shall not be issued for the books, records or papers on which such statement was based.

Failure or refusal of a party to produce material requested by a Board may be considered by the Arbitrator as evidence that such material, if produced, would be adverse to such party.

17. Relevant Evidence.

a. In determining petitions, the Arbitrator shall consider all relevant factors to the extent evidence thereof is introduced by either party or produced by either party on request of the Arbitrator..

b. Such relevant factors may include, but are not limited to, increases in management's ordinary and necessary maintenance and operating expenses insurance and repairs; increases in property taxes and fees and expenses in connection with operating the park; capital improvements; increases in services, furnishings, living space, equipment or other amenities.

18. Decision.

The Arbitrator shall consider management's response and homeowners' counter-response, if any, prior to rendering his decision.

The Arbitrator shall prepare the written decision, which shall include a statement of the issues, the findings of facts on which the decision is based, and the rent schedule imposed. The decision shall be supported by a preponderance of the evidence and shall state the time for seeking review by the Board of Supervisors and judicial review as provided in Section 1094.6 of the Code of Civil Procedure. The decision shall be signed by the Arbitrator and filed as a public record with the Clerk no later than thirty (30) days following the hearing. The Clerk shall serve a copy of the decision on each party or through such party's attorney or, if there is none, through the party's representative.

19. Continuances.

Continuances may be granted by the Arbitrator for good cause shown, provided that sufficient time remains after the continuance to complete the hearing within the time allowed; parties may waive the limitation on time.

A party seeking a continuance shall apply therefor within ten (10) calendar days following the time the party discovered or reasonably should have discovered the event or facts establishing cause for the continuance. A continuance may be granted after such time has lapsed only if the party seeking the continuance is not responsible for and has made a good faith effort to prevent the event or fact establishing good cause. Continuances may be granted by the Arbitrator after discussion with both parties and without public hearing.

20. Contempt.

If any person in proceedings before the Arbitrator disobeys or resists any lawful order or refuses to respond to a subpoena, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct during a hearing or so near the place thereof as to obstruct the proceeding, the Arbitrator may on his own motion, or shall on request of a party and such party's prepayment of the cost therefor, certify the pertinent parts of the record and file the same with a superior court in and for Santa Barbara County. If such action is taken on the Arbitrator's own motion, the Arbitrator shall be responsible for prosecuting the proceeding in court. If such action is taken on request of a party, that party

shall be responsible for prosecuting the proceeding in court. The court may thereupon issue an order directing the person to appear before the court and show cause why he should not be punished as for contempt. The order and a copy of the certified record shall be served on the persons. Thereafter, the court shall have jurisdiction of the matter. The same proceeding shall be had, the same penalties may be imposed, and the person charged may purge himself of the contempt in the same way as in the case of a person who has committed a contempt in the trial of a civil action before a superior court.

21. Oaths.

In any proceeding before an Arbitrator, oral testimony offered as evidence shall be taken only on oath or affirmation, and the Clerk, his designee, and the Arbitrator have the power to administer oaths and affirmations and to certify to official acts.

Oaths of witnesses may be given individually or en masse. Witnesses should be asked to raise their right hands and to swear or affirm that the testimony they shall give will be the truth, the whole truth, and nothing but the truth.

22. Motions.

All motions by the parties shall be in writing, unless made on the record during hearing, and shall clearly state the action requested and the grounds relied on.

23. Review by the Board of Supervisors.

a. The decision of the Arbitrator shall be reviewed by the Board of Supervisors upon a petition alleging prejudicial abuse of discretion. Abuse of discretion is established where

the Arbitrator has failed to proceed in the manner required by law, the decision is not supported by findings, or the findings are not supported by substantial evidence.

b. This review shall ordinarily be made on the record alone; however, the Board may elect to hear oral argument from the parties, their representatives, and/or their attorneys. The Board shall affirm or reverse the Arbitrator's decision in whole or in part and may remand the case to the Arbitrator for reconsideration in light of the Board's review or, where appropriate, the Board may make a new decision without remand.

c. The petition for review shall be filed by a party or his representative with the Clerk of the Ordinance no later than the fifteenth judicial day following the date the Clerk mailed the Arbitrator's decision to the parties. The Board shall have no discretion to consider late petitions. A proof of service showing service on the opposing party or his representative shall accompany the petition filed with the Clerk. A response, if any, shall be served and filed within fifteen (15) judicial days of the filing of the petition.

d. The Clerk shall furnish the Board with the official record of the hearing, except that a copy of the reporter's transcript shall be included only where requested by the petitioner or respondent. The requesting party shall pay the cost of the reporter's transcript plus one copy to be furnished to the opposing party.

e. The Board shall render its decision no later than thirty (30) judicial days following its receipt of all pleadings,

records and transcripts, as covered in subparagraphs c and d above. The decision of the Board is final on the date signed, and there shall be no further review or appeal except as specifically provided by Rules 24 and 25.

24. Rehearings.

Rehearings are available only on matters remanded by the Board of Supervisors. The Clerk shall set a rehearing within twenty (20) judicial days following the date which the Board's decision becomes final.

25. Judicial Review.

Code of Civil Procedure sections 1094.5 and 1094.6 are applicable to judicial review of Arbitrators' decisions under the Santa Barbara County Mobilehome Rent Control Ordinance and Rules.

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B.A., 1969, Wesleyan University, Middletown, Conn. Major: Government

M.A., 1982, Urban Planning, University of California at Los Angeles

Foreign Languages: French and Italian

Visiting Professor (Fulbright Scholar), Technical University, Tirana, Albania
(Introduction to urban planning) (2002-2003)

Visiting Assistant Professor, Urban Planning Department, School of Architecture, Planning, and Preservation, Columbia University, New York (1994 - 1995) (courses: planning law, introduction to housing, comparative housing)

Visiting Professor (Fulbright Scholar), Budapest University of Economic Sciences (Sept. 1991- June 1993)

Instructor, San Francisco State University, Urban Studies Program (1983-1984)

Polis University, Tirana, Albania, urban planning studios (two week courses, 2009 & 2010)

Netherlands Ministry of Housing (1997)

Kiev University Law School, real estate law (1992, one week course)

Technical University of Budapest, Planning Department Series of lectures Professional Extension Courses and Undergraduate Courses (1991-1992)

Projects: 1980-2010

Study of Development Impact Fees for the City of Los Angeles (in association with Economic Roundtable, Los Angeles)(2009-2010)

Study of Performance of Rental Housing Investments for the City of Los Angeles (in association with Economic Roundtable, Los Angeles)(2007-2009)

Consultant to California cities and counties on mobilehome park rent control policies, drafting of ordinances, fair return issues, and/or mobilehome ownership characteristics and market studies (1985-2010) (American Canyon, Azusa, Capitola, Carpinteria, Carson, Ceres, Chula Vista, Citrus Heights, Clovis, Cotati, Escondido, Fremont, Fresno, Healdsburg, Milpitas, Marina, Modesto, Montclair, Oceanside, Palmdale, Palm Desert, Perris, Riverbank, Rohnert Park, Salinas, San Marcos, Santa Cruz County, Santa Rosa, Santee, Simi Valley, Sonoma, Vallejo, Ventura, Visalia, Watsonville, Yucaipa)

Consultant to California cities drafting of apartment rent control ordinances and/or regulations. Oakland, Santa Monica, Cotati, East Palo Alto, (fair return regulations).

Consultant to Takoma Park, Maryland, Drafting Rent Stabilization ordinance and Rent Petition Analyst (2006-2007, 2009-2010)

Institute of Transportation and Development Policy (New York City), Study on European policies governing location of shopping malls (2001-2002)

Open Society Budapest (Soros Foundation), Study on contracting out of public services and freedom of information in Hungary, Czech Republic, Romania, and Slovakia (2000-2001)

Consultant to World Bank (Budapest office), Studies on municipal contracting out of public services, policies for the provision for the provision of district heating, and land use policies in Hungary (1998-1999)

Urban Institute, U.S. Aid for International Development (A.I.D.) funded technical assistance, Hungarian Subnational Development Project (1998 & 1999)

Consultant, Institute for Transportation and Development Policy, to East European Organizations on Transportation Policies (1997-98)

Studies for the Golden State Mobilehome Owners League on Issues Related to Mobilehome Ownership and Statewide Referendum on Mobilehome Owners Rights (1995-96)

U.S.A.I.D. funded technical assistance to Albanian Ministry of Construction (Sept. 1993- March 1994)

Consultant, East European Real Property Foundation, (U.S. A.I.D. funded), development of education and training in Hungary (July 1993)

Study of Hungarian Land Use Regulations (1992, publication and technical assistance sponsored by Urban Institute, Wash. D.C.)

Report for Hungarian Ministry of Justice, Comparison of Landlord-Tenant Law in France, United States, and Hungary (1992, funded by Urban Institute, Wash. D.C.)

Consultant, City of Santa Monica, Cal., Incentive Housing Program

Expert witness on behalf of cities in judicial and administrative proceedings on real estate fair return issues (San Francisco, Oceanside, Rancho Mirage, Cathedral City, Berkeley, and Santa Monica, California; Fort Lee, New Jersey)

Consultant, State of New Jersey Attorney General and Public Advocate, on fair return standards under state statute regulating evictions of senior citizens from condominiums

Studies of Impacts of Local Regulations on Housing Supply, Cities of Santa Monica and Fremont, Cal.

Preparation of a Guide for New Jersey Rent Control Boards on Fair Return Standards and Landlord Hardship Applications (National Housing Law Project, 1981)

Research and Writing Articles on Inequalities in Property Tax Assessments (Legal Services Corporation, Washington, D.C., 1982-83)

Consultant, Peter L. Bass & Associates, Development of Contracts with Developers under the California Coastal Conservancy Lot Consolidation Program

Expert Witness, City of San Francisco, on the impacts of city policies on apartment construction in litigation involving applicability of antitrust regulations

Project Director, survey of merchants and commercial property owners for City of Berkeley, Cal., Planning Dept.

Preparation of apartment operating cost studies for the cities of Berkeley, Santa Monica, and Cotati, California)

Consultant, Real Property Division, First Nationwide Bank on disposition of assets in operations inventory

Assistant (on contract) to Deputy City Attorney of San Jose, California on drafting of environmental and subdivision regulations

Publications

Articles

Baar, "Fair Return under Mobilehome Park Space Rent Controls: Conceptual and Practical Approaches," 29 Real Property Law Reporter 333 (Sept. 2006)

"Legislative Tools for Preserving Town Centres and Halting the Spread of Hypermarkets and Malls Outside of Cities" published in Etudes Foncières (Land Studies) No. 102, pp. 28-34 (March-April 2003, Paris, translated into French); also published in Falu, Varos, es Regio (Village, Town, and Region), issue no. 2, pp. 11-22 (2003), (Budapest, translated into Hungarian)

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(translated versions of "The National Movement to Halt the Spread of Multi-family Housing (1890-1926)", Journal of the American Planning Association, Vol. 58, no. 1, 39-48, Dec. 1991)

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"A Területrendezési Dilemmai a Demokratikus Piacgazdaságokban", Ter és Tarsadalom, Vol.6, no. 1-2, 89-99 (1992, Budapest) ["Dilemmas of Land Use Planning in a Democracy with a Market Economy", Space and Society]

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"California Rent Controls: Rent Increase Standards and Fair Return", Real Property Law Reporter, Vol. 8, no. 5, 97-104 (July 1985, California Continuing Education of the Bar)

"Rent Control: An Issue Marked by Heated Politics, Complex Choices and a Contradictory Legal History", Western City, Vol. 60 (June 1984)

"Rent Controls and the Property Tax Base:The Political-Economic Relationship", Property Tax Journal Vol. 3, no. 1, 1-20 (March 1984)

"Il Dibattito Sul Controllo Degli Affitti Negli Stati Uniti", Bolletino Daest (Sept. 1984, University of Venice)
["The Debate Over Rent Controls in the United States"]

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"Defining 'Fair Return' For Rent Controlled Landlords", 59 New Jersey Municipalities (no. 3) 24 (1982)

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"Open Competition, Transparency, and Impartiality in Local Government Contracting Out of Services" (Chapter 2), Navigation to the Market Regulation and Competition in Local Utilities in Central and Eastern Europe, ed. Peteri and Horvath (2001, Local Government and Public Service Reform Initiative, Open Society Institute, Budapest)

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Editors Baar and Pojani, Urban Planning in a Market Economy, (Tirana, Albania 2004); author of chapters: "Decentralization in Service Provision and Urban Planning - An International Perspective, Private", "Property Rights, Public Expropriations, and Public Rights to Undertake Urban Planning", "Contracting Out Public Services in Hungary - Regulatory, Contracting and Transparency Issues". Coauthor of chapters: "Urban Planning in a Democracy with a Market Economy", "Local Service Provision in Albania".

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Kirkpatrick v. City of Oceanside, (1993, Superior Court, San Diego County)

440 Company v. Borough of Fort Lee, New Jersey (1996, U.S. Federal District Court, New Jersey)

Cashman v. City of Cotati, (2002, U.S. Federal District Court, Northern District California)

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Mayes v. Jackson Township, 103 N.J. 362; 511 A.2d. 589 (1986) New Jersey Supreme Court; cert. denied, 479 U.S.1090 (1987).

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Calimesa,

Ponderosa (2008)

Capitola

Castle MHP (2000)

Carpinteria,

Vista de Santa Barbara (2002)

Carson,

Carson Gardens (2003)

Park Villa (2004)

Park Granada (2004)

Vista del Loma (2006)

Laco (2007)

Carson Gardens (2007)

Colony Cove (2008)

Colony Cove (2009)

Colony Cove (2011)

Laco (2011)

Chula Vista,

Bayscene MHP (2006)

Escondido,

Carefree Ranch (1995)

Town and Country (1995)

Westwinds (1995)

Lake Bernardo (1996)

Valley Parkway (1997)

Mobilepark West (1997)

Eastwood Meadows (1997)

1 Ponderosa (1997)
2 Casa de Amigos (1997)
3 Town and Country (1999)
4 Greencrest (1999)
5 Casa de Amigos (2001)
6 Town and Country (2002)
7 Town and Country (2005)
8 Mobilehome Park West (2006)

9 Palmdale,

10 Grecian Island (2007)
11 Mountain View (2007)

12 Salinas,

13 Alisal Country Estates (1997)

14 San Luis Obispo County,

15 Oak Terrace (2008)

16 San Marcos,

17 Villa Vista (2008)
18 Villa Vista (2010)
19 Rancho San Marcos (2010)

20 Santa Rosa,

21 Coddington (2003)

22 Thousand Oaks

23 Thunderbird (2010)
24 Ranch (2010)

25 Vallejo,

26 Vallejo Mobile Estates (2002)
27 Tall Trees Mobilehome Park (2002)

28 Ventura,

Stardust (2003)

Watsonville,

Colonial Manor (1998)
Portola Heights (2001)
Meadows Manor (2008)

Yucaipa,

Wishing Well (2004)
Valley Breeze (2008)
Grandview West (2009)

Amended
II

Appendix A

Indexing Ratios in MNOI Standards

Legislative Standards

An MNOI standard generally designates an indexing ratio (a rate of growth in NOI that must be permitted). Since the early 1980's California mobilehome rent ordinances with MNOI formulas have indexed NOI at varying percentages of the percentage increase in the CPI, ranging from 40% to 100%.

INDEXING RATIOS UNDER MAINTENANCE OF NET OPERATING INCOME STANDARDS IN MOBILEHOME PARK SPACE RENT CONTROL ORDINANCES

<u>City</u>	<u>Indexing Ratio</u> (% of CPI)
<u>Mobilehome Space Rent Control Laws</u>	
Beaumont	100%
Calimesa	80%
Calistoga	75%
Concord	60%
Healdsburg	100%
Indio	50%
Lompoc	100%
Milpitas	50%
Modesto	100%
Morgan Hill	40%
Oceanside	40%
Oxnard	75%
Pacifica	100%
Palm Desert	50%
Palm Springs	50%
Pleasanton	100%
Riverbank	100%
Riverside County	100%
Rohnert Park	60%
Salinas	75%
San Jose	85%
Santa Paula	75%
Scotts Valley	75%

Ventura
Yucaipa

50%
66% to 80%

Judicial Guidelines

The indexing issue has been the subject of discussion in the California appellate court opinions for over 20 years. In 1984, Fisher v. City of Berkeley, the California Supreme Court ruled that a rent regulation may not “indefinitely freeze” net operating income.¹

... although defendants’ ordinance may properly restrict landlords’ profits on their rental investments, it may not indefinitely freeze the dollar amount of those profits without causing confiscatory results.²

While the Court did not consider the issue of what rate of growth in net operating income must be permitted, it did indicate that rent controls may “reduce” the value of property, without violating constitutional safeguards.

Any price-setting regulation, like most other police power regulations of property rights, has the inevitable effect of reducing the value of regulated properties. But it has long been held that such reduction in property value does not by itself render a regulation unconstitutional.³

Furthermore, although the Court expressed disapproval of “indefinitely” freezing net operating income, it did not express any disapproval of formulas which permitted less than 100% indexing.

In Oceanside Mobilehome Park Owner’s Ass’n v. City of Oceanside,⁴ which was decided before Fisher, and in Baker v. City of Santa Monica,⁵ which was decided two years after Fisher, California appellate courts upheld fair return standards providing for growth in NOI at 40% of the rate of increase in the CPI.

¹ Fisher v. City of Berkeley, 37 Cal.3d. 644, 683 (1984).

² Id. at 37 Cal.3d. at 68.

³ Id., 37 Cal.3d. at 686.

⁴ 157 Cal. App. 3d. 887, 204 Cal.Rptr. 239 (1984)

⁵ 181 Cal.App.3d. 972 (1986)

In Berger v. City of Escondido (2005) the Court of Appeal upheld a Board decision which provided for indexing net operating income by 40% of the percentage increase in the CPI and rejected a claim that indexing by 100% of the percentage increase in the CPI was constitutionally required in order to provide a fair return.

The Court ruled:

Indexing for Inflation To Protect NOI

It is not our province to specify what standard the Board should use on remand. For its instruction, however, we address Berger's contention that as a matter of law in an MNOI analysis, to account for inflation the base year NOI must be indexed by no less than 100 percent of the increase in the CPI to avoid unconstitutional confiscation over time. We are unpersuaded by Berger's position.

Berger relies on *City of Berkeley,*, 27 Cal.App.4th 951, in which the issue was whether the rent stabilization board abused its discretion by adopting certain regulations, including a regulation allowing full indexing of rents for inflation to protect base year NOI, without excluding debt service. (Id. at p. 964.) The court found the regulation was within the board's discretion to set rents that provide a fair return on investment to the landlord. (Id. at p. 968.) The board there presumably relied on advice from its consultants "that fully indexing for inflation, including the debt service component, is necessary because the failure to do so will inevitably lead to the slow erosion of net operating income." (Id. at p. 975.)

City of Berkeley, however, does not indicate that indexing at the 100 percent level is a constitutional mandate; that question was not before the court. The court noted, "we are not called upon to actually decide whether the Board could have legally decided to exclude debt service; we need only observe that it acted legally when it decided to include it." (*City of Berkeley, ...*, 27 Cal.App.4th at p. 977.)

In *Yee v. Mobilhome Park Rental Review Bd., ...*, 17 Cal.App.4th at page 1105, this court rejected the park owners' argument they were denied substantive due process because the Ordinance under review here does not require annual increases in rents equal to changes in the CPI. (See also *Carson Mobilehome Park Owners' Assn. v. City of Carson, ...*, 35 Cal.3d at p. 195 [CPI increase "might not be warranted for a particular mobilehome park if there has been a decrease in maintenance expenditures or a reduction in services provided to the tenant"].)

Here, the City's consultant, Dr. Baar, advised that 100 percent indexing is not required for the Park to achieve a fair return. A mobilehome park's operating expenses do not necessarily increase from year to year at the rate of inflation,

and indeed, during the relevant time here the CPI increased 14.55 percent, but Berger's operating expenses increased only 9.4 percent. On appeal, Berger concedes that a "general increase at 100% of CPI . . . would be too much if expenses have increased at a lower rate." Moreover, as Dr. Baar explained in his report, the use of indexing ratios may satisfy the fair return criterion because park owners typically derive a return on their investment not only from income the park produces, but also from an increase in the property's value or equity over time. In other words, investors are motivated to acquire, retain and maintain mobilehome parks both for the yearly income and for appreciation in real estate.¹⁰

The Board will reconsider the issue at the new hearing, in light of the fair return standard. It is not, however, required as a matter of law to use 100 percent indexing of NOI in an MNOI approach.⁶

Subsequently, another Court of Appeal handed down a similar ruling, upholding a standard which provided for indexing by 50% of the percentage increase in the CPI.⁷ The Court opinion states:

Stardust argues that the trial court erred in upholding the Rent Board's decision to use the preferred MNOI method. We disagree.

The Guidelines presume that the NOI (gross income minus operating expenses) received in the 1980 base year provided the park owner with a just and reasonable return above the required minimum on his property, unless there is clear and convincing evidence to the contrary. (Guidelines, §§ 1.03, 3.01.) The Guidelines are structured to permit continuation of a just and reasonable return on the owner's property above the required minimum by evaluating a discretionary rent increase request by the "preferred" MNOI method formula. The MNOI method permits an application for a discretionary rent increase to adjust the base year NOI by 50 percent of the increase in the CPI from the base year to the comparison year, the latest calendar year or the latest fiscal year used by the applicant for accounting purposes. Under the MNOI method, an applicant is entitled to a rent increase in the amount by which the sum of the applicant's base year NOI and the price level adjustment exceeds the applicant's comparison year NOI. A park owner may request a method other than the preferred method. However, unless clear and convincing evidence is presented by the park owner that another method is more appropriate, the Rent Board will use the preferred method. (Guidelines, § 1.05.)

⁶ H.N. & Francis Berger Foundation v. City of Escondido, 127 Cal. App.4th. 1, 15 (Jan. 2005).

⁷ Stardust Mobile Estates v. City of San Buenaventura, 147 Cal. App. 4th 1170 (2007).

The standards established by this method are similar to those approved in several cases. For example, in *Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside* (1984) 157 Cal.App.3d 887, 903, and *Rainbow Disposal Co. v. Escondido Mobilehome Rent Review Bd.* (1998) 64 Cal.App.4th 1159, 1172, the courts approved 40 percent indexing. More recently, in *H.N. & Frances C. Berger Foundation v. City of Escondido* (2005) 127 Cal.App.4th 1, 15 (Berger), the court held that an MNOI approach does not require 100 percent indexing. Stardust correctly notes that in *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 683, the court stated that the rental board was required to increase rents to account for inflation. Fisher did not, however, disapprove an index for inflation at less than 100 percent of the CPI percentage increase.

Stardust also argues that the Rent Board improperly relied upon Baar's leveraging argument to support adjusting its MNOI at less than 100 percent of the CPI because Stardust owns the Park "free and clear." We disagree. The Berger court rejected an equivalent argument recently, stating, "For purposes of determining a fair return, however, a rent control board may impute an investment to a landlord who acquires a park by gift or inheritance, for instance by using the transferor's investment with any necessary adjustments. [Citation.] [Park owner] has given no convincing rationale for treating leveraged owners differently from owners privileged to acquire property without incurring any debt." (Berger, *supra*, 127 Cal.App.4th at p. 15, fn. 10.)

There is no general constitutional entitlement to an increase in base date rents predicated on market conditions. (*Apartment Assn. of Greater L.A. v. Santa Monica Rent Control Bd.* (1994) 24 Cal.App.4th 1730, 1737.) "'Setting rent ceilings is essentially a legislative task, and agencies, not courts, choose which administrative formula to apply.'" (Galland, *supra*, 24 Cal.4th at p. 1022, italics added, citing *Kavanau v. Santa Monica Rent Review Bd.* (1997) 16 Cal.4th 761, 784 (Kavanau).) Substantial evidence supports the Rent Board's decision to use 50 percent of the CPI increase in adjusting the rent and its conclusion that Stardust failed to present clear and convincing evidence why its modified MNOI (100 percent CPI) method was more appropriate than the preferred method.⁸

Rationale for Indexing at Less than 100% of the Rate of Increase in the CPI

This section discusses the rationale for indexing NOI at less than 100% of the rate of increase in the CPI.

⁸ *Id.*, 147 Cal.App.4th. at 1181-1182.

In the typical situation of leveraged ownership of real estate an investment may be very profitable although net operating income increases by less than the full rate of increase in the CPI. Due to leveraging, growth in equity may far exceed the rate of increase in NOI.

In order to simply explain the foregoing phenomenon the case of a simple house purchase may be used. If a person purchases a house for \$100,000 financed with an \$80,000 loan and \$20,000 cash (original equity), and if the house value increases by 20%, up to \$120,000, the homeowner's equity will double from \$20,000 to \$40,000 (the difference between the new value and the purchase loan).

The following hypothetical is designed to illustrate the impact of indexing at 75% of the rate of increase in the CPI on a park owner's equity in a case in which the owner has financed 70% of the purchase cost. The NOI and, therefore, the value of the park increases at 75% of the rate of increase in the CPI. However, because 70% of the purchase is financed with a mortgage, the investor's equity increases by a much greater rate than the CPI. (An 83% increase in equity compared to a 50% increase in the CPI.)

**Impact of 50% Indexing on Growth in Investor's Equity
Loan to Purchase Price Ratio 70%**

	Base Year	Current Year	Pct.Increase
CPI	100	150	50%
NOI	420,000	525,000	25%
Property Value	6,000,000* (purchase price)	7,500,000*	25%
Mortgage	4,200,000	4,200,000	0%
Equity (property value minus mortgage)	1,800,000	3,300,000	83%

* In this hypothetical the value is computed by dividing the net operating income by a capitalization rate of 7%. Use of a different capitalization rate would not significantly impact the rate of increase in equity.

The mortgage loan to purchase price ratio of 70% in this hypothetical is typical among park purchasers.

Gardena

14.04.180 Standards for review.

In making a decision based on a petition for rent review, the arbitrator shall consider the purposes of this chapter and shall specifically consider all relevant factors to determine whether the proposed rent increase is just, fair and reasonable, including, but not limited to, the following:

- A. Changes in the current series of the "Urban Wage Earners and Clerical Workers: Los Angeles-Riverside-Orange Counties, CA" which is maintained by the Bureau of Labor Statistics; (Ord. 1626, § 6, 2003)
- B. Any lawfully established state or federal government wage and price guideline;
- C. The rent lawfully charged for comparable rental units in the city;
- D. The length of time since the last increase for the rental unit or units for which the owner seeks a rent increase;
- E. The completion of any capital improvement or rehabilitation work related to the rental units, as distinguished from normal repair, replacement or maintenance, and the cost thereof, including such items of cost as materials, labor, construction interest, permit fees and other items as the arbitrator deems appropriate;
- F. Changes in property taxes, other taxes, or fees, related to the subject rental unit or units;
- G. Changes in mortgage payments or rent paid by the owner for the rental unit or units or the lease of the land upon which such units are located;**
- H. Changes in the utility charges for the rental unit or units paid by the owner and the extent, if any, of reimbursement from the tenants;
- I. Changes in reasonable operating and maintenance expenses, including, but not limited to, insurance, government assessments, materials and services;
- J. The need for repairs caused by circumstances other than ordinary wear and tear;
- K. The amount and quality of services provided by the owner to the affected tenant or tenants;
- L. Changes in the size of the rental unit or units;
- M. Compliance by the owner with applicable housing, health, and safety codes; and

~~140~~
A III

N. Any existing written lease lawfully entered into between the owner and the affected tenant or tenants and any leasehold obligations of the landlord which affect the property. (Prior code § 12-1.118)

Santee

2.44.110 Fair Return Review Hearings And Special Adjustments.

A. Presumption That NOI Provided Fair Return. Given the absence of space rent regulations which could have restricted rent increases prior to the space rent ceiling date of December 31, 1989 it shall be presumed that the net operating income produced by a manufactured home park during the twelve months prior to the space rent ceiling date did, subject to rebuttal, provide the park owner with a just and reasonable return. Park owners shall be entitled to maintain and, as justified, increase their net operating income from year to year in accordance with the adjustment procedures contained in this ordinance.

B. Presumption That NOI Adjustment Under the Chapter Provides a Fair Return. It shall be further presumed that the adjustments provided for in this chapter, including any adjustments to the base year NOI ending December 31, 1989, and any annual adjustments thereafter, provide all adjustments necessary to allow the park owner a just and reasonable return on investment for any given year.

C. NOI Less Than Fifty Percent of Gross Income. It shall be further presumed that where the NOI for the base year ending December 31, 1989, is less than fifty percent of the gross income in the base year, the park owner was receiving less than a just and reasonable return on the manufactured home park.

D. Application for Special Adjustment. However, in the event a park owner contends that the initial permissive adjustment and its NOI alternative adjustment, or the annual permissive adjustment and its NOI option, does not result in a just and reasonable return to the park owner, the park owner may apply for an additional "special adjustment". The application for a special adjustment shall be in writing in such form as provided by the commission and shall be heard by the commission at a public hearing to be known as a "fair return hearing". The application shall not be deemed complete unless it contains a recital that the park owner has previously received a decision on an application for an NOI adjustment and the date of that decision. Notice of the fair return hearing shall be given to the park owner/applicant and to the residents of the park by first-class mail sent not less than twenty days before the date set for the hearing.

E. Fair Return Hearing. At the fair return hearing, the park owner shall bear the burden of presenting evidence rebutting the presumption stated in subsection A of this section and the commission shall consider and hear all relevant evidence, and determine, based upon the evidence presented, whether the adjustments as provided in this chapter are adequate to allow the park owner a just and reasonable return, and whether and to what extent a special adjustment is necessary to realize a just and reasonable return. The commission shall grant a special adjustment to the extent and only to the extent it finds by clear and convincing evidence such adjustment is necessary to effectuate a just and reasonable return to that park owner/applicant under the law. In applying the standard, the commission shall consider all relevant factors bearing upon the fair return for the park owner including but not limited to: a) changes in the Consumer Price Index; b) capital improvements made to the park and the costs for such improvements; c) changes in property taxes or other assessed taxes to the park; **d) rent paid by**

park owner/applicant for leased land; e) change in utility charges or rates; f) changes in reasonable operating and maintenance expenses; g) the need for repairs caused by circumstances other than ordinary wear and tear; h) the amount and quality of services and amenities provided by the park owner/applicant to the home owners of the park; i) the park owner/applicant's return on investment considering initial cash investment, additional investment, appreciation, depreciation, and possible tax benefits; and j) any particular hardship circumstances of the park owner/applicant or the home owners and residents; k) the salability and sales price of manufactured homes in the park and whether the same are selling for fair market value or greater or less than a fair market amount; and l) the quality of management of the park, the fairness and reasonableness of park rules and any other factors which affect the quality of life in the park. It shall be the responsibility of the applicant for a special adjustment to provide the commission with a financial statement reviewed by a certified public accountant for accuracy and any such evidence available to him or her upon request by the commission.

F. Attorney's Fees and Related Costs. In the event the park owner elects to seek an adjustment under section 2.44.100 (B) (2) and section 2.44.110 and if the commission in awarding such adjustment fails to give park owner a rent increase in excess of the increase he was entitled to under the other adjustment provisions of this ordinance, the commission shall order that park owner pay reasonable attorneys' fees and related costs incurred by home owners in the park and/or the home owners' association in opposing the park owner's special adjustment claim. (Ord. 412 (part), 2001: Ord. 381 § 1 (part), 1998: Ord. 324 § 12, 1994)

Santa Clarita

6.02.120 Standards of Reasonableness to Be Applied to Rent Adjustments.

The panel shall determine whether rent adjustments are reasonable under the circumstances, taking into consideration that the purpose of this chapter is to permit park owners a fair and reasonable return on their investment, while protecting residents from arbitrary, capricious, or unreasonable rent increases. The panel's determination shall be made with reference to the following standards:

A. Adjustments Deemed Reasonable. The following adjustments in rent shall be deemed reasonable:

1. An adjustment of gross space rental income equal to a minimum of three percent (3%) and a maximum equal to the lesser of either six percent (6%) or the annual adjustment in the CPI-U reported each August for the previous twelve (12) month period of August through July 31st reported by the Bureau of Labor Statistics for the Los Angeles-Anaheim-Riverside areas. Such adjustment shall apply to all rental increases effective during the following calendar year. The Director of Community Development or designee, annually, will receive the CPI-U updated result and cause notice of such to be mailed to each park in the City.

2. A pass through adjustment of the increases in the cost of government-required services.

3. A pass through adjustment of any increases in utility costs where such utilities are included in the space rent.

B. Standards Applicable to Rent Adjustments Which Exceed Increases Deemed Reasonable. In order to assure to park owners a fair and reasonable return, the panel shall, when the amount of any rent adjustment or portion thereof exceeds any of the standards identified in subsection A of this section, determine what is reasonable under the circumstances, taking into account all relevant factors, including the following:

1. Debt Service Costs. Where such costs are limited to increases in interest payments from those interest payments made during the base year which result from one of the following situations, or the equivalent thereof:

a. Refinancing of the outstanding principal owed for the acquisition of a park where such refinancing is mandated by the terms of a financing transaction made on commercially available terms, e.g., termination of a loan with a balloon payment; or

b. Increased interest costs incurred as a result of a variable interest rate loan used to finance the acquisition of the park on commercially available terms; or

c. Increases in rental payments made on leases of land and under such circumstances the park owner may include as expenses an amount not to exceed the increase in such land lease rental payments occurring since the previous rental adjustment for the park where such increase in land

lease rental payments is the result of inflation or the decrease in space rental income or based on other terms documented in writing. Such increased land lease rental obligations shall be permitted only where the park owner can show that the terms of the lease are reasonable and consistent with prudent business practices under the circumstances. In refinancing, increased interest shall be permitted to be considered as an operating expense only where the park owner can show that the terms of the refinancing were reasonable and consistent with prudent business practices under the circumstances.

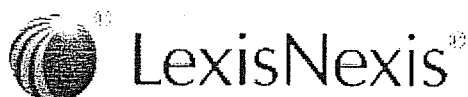
2. The rental history of the manufactured home park, including:
 - a. The presence or absence of past increases;
 - b. The frequency of past rent increases and the amounts;
 - c. The park owner's response to any cost reduction measure;
 - d. The occupancy rate of the mobilehome park in comparison to comparable units in the same general area.
3. The physical condition of the mobilehome space or the park of which it is a part, including the quantity and quality of maintenance and repairs performed during the last twelve (12) months.
4. Any increases or reduction in services during the twelve (12) months prior to the effective date of the proposed rent increase.
5. Existing space rents for comparable spaces in comparable parks.
6. A decrease in net operating income as provided in Section 6.02.150 of this chapter.
7. A fair return on the property prorated among the spaces of the park.¹
8. Other financial information which the owner is willing to provide.
9. The cost of capital replacement or capital improvement. The panel may take into account the life expectancy of the capital replacement or improvement as set forth in Section 6.02.140. (Ord. 90-38, 11/27/90; Ord. 91-24, 6/11/91; Ord. 92-11, 9/8/92; Ord. 96-8, 1/23/96; Ord. 06-1 § 1, 2/28/06)

Upland

5.68.070 Request for additional rent increases.

D. In the consideration of the reasonableness of a proposed rent increase, the arbitrator shall consider all relevant factors in determining whether such increase yields a just and reasonable return on the mobilehome park owner's property, to include, but shall not be limited to the following:

1. Changes in the Consumer Price Index;
2. The Voluntary Pay and Price Standards promulgated by the President of the United States or any other lawfully established state or federal government wage and price guidelines;
3. The rent lawfully charged for comparable mobilehome spaces in the Inland Empire of Western San Bernardino County;
4. The length of time since the last rent increase for the mobilehome space or spaces in the subject park;
5. The arbitrator shall specify that an increase in rent or a portion of an increase in rent granted be limited to the length of time necessary to allow the park owner to reasonably amortize the cost of a capital improvement, including interest. Such increase granted as a result of the capital improvement shall not continue beyond the time necessary for reasonable amortization of the cost of such improvement;
- 6. Changes in the rent paid by the park owner for the lease on which the subject mobilehome park is located;**
7. Changes in the utility charges for the subject mobilehome park paid by the park owner and the extent, if any, of reimbursement from the homeowners;
8. Changes in reasonable operating and maintenance expenses;
9. The need for repairs caused by circumstances other than ordinary wear and tear not covered by owner's insurance;
10. The amount and quality of services provided by the park owner to the affected homeowner;
11. Any existing written lease lawfully entered into between the park owner and other homeowners in the park;
12. The present market value of the mobilehome park owner's property;
13. The investment of the park owner in the subject park property.



APP IN

1 of 100 DOCUMENTS

**RAINBOW DISPOSAL COMPANY, INC., Plaintiff and Appellant, v. ESCONDIDO
MOBILEHOME RENT REVIEW BOARD, Defendant and Respondent; CITY OF
ESCONDIDO, Real Party in Interest.**

No. D027338.

**COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT,
DIVISION ONE**

*64 Cal. App. 4th 1159; 75 Cal. Rptr. 2d 746; 1998 Cal. App. LEXIS 539; 98 Cal. Daily
Op. Service 4613; 98 Daily Journal DAR 6533*

May 26, 1998, Decided

SUBSEQUENT HISTORY: The Publication Status of this Document has been Changed by the Court from Unpublished to Published June 15, 1998. Review Denied August 19, 1998, Reported at: *1998 Cal. LEXIS 5521*.

PRIOR-HISTORY: APPEAL from a judgment of the Superior Court of San Diego County. Super. Ct. No. N67137. Lisa Guy-Schall, Judge.

COUNSEL: Terry R. Dowdall for Plaintiff and Appellant.

Endeman, Lincoln, Turek & Heater, Donald R. Lincoln and Linda B. Reich for Defendant and Respondent.

Jeffrey Epp for Real Party in Interest.

JUDGES: Opinion by O'Neill, J., * with Nares, Acting P. J., and McDonald, J., concurring.

* Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

OPINION BY: O'NEILL

OPINION

O'NEILL, J. * --Rainbow Disposal Company, Inc. (Rainbow), owner of a mobilehome park in the City of Escondido, appeals a judgment denying its petition for writ of mandate (*Code Civ. Proc.*, § 1094.5) challenging the adequacy of a rental increase authorized by the Es-

condido Mobilehome Rent Review Board (the Board). Rainbow contends (1) the Board improperly excluded from consideration as capital improvement expenses the money Rainbow spent in improvements to the park's gas and electric utilities and (2) the rental increase the Board authorized gives Rainbow an insufficient return on the park's depreciated net assets. We affirm.

* Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

FACTUAL AND PROCEDURAL BACKGROUND

In 1990 Rainbow purchased a 165-space mobilehome park known as Lake Bernardo Mobile Estates (the park) for \$ 4,950,000 plus closing costs. The park is subject to an Escondido rent control ordinance which, as this court has noted, "has generated significant appellate activity." (*Westwinds Mobile Home Park v. Mobilehome Park Rental Review Bd.* (1994) 30 Cal. App. 4th 84, 88 [35 Cal. Rptr. 2d 315], fn. omitted.)

In June 1994 Rainbow filed its second application for a rent increase. The Board granted an increase of \$ 6 in January 1995. ¹ In March Rainbow commenced the instant action by filing a petition for administrative mandamus challenging the Board's decision. Rainbow filed a first amended petition in May in response to the Board's demurrer and motion to strike the original petition. ²

1 References to dollar amounts of rent increase are to the amount per month per space. Rainbow's first application resulted in an increase of \$ 7 in 1992. In 1989 the Board granted the park's previous owner an increase of about \$ 22.

2 The Board demurred to and moved to strike the second cause of action of Rainbow's first amended petition in which Rainbow alleged it was denied a fair hearing because the Board was composed of members of the city council. The court sustained the demurrer and granted the motion to strike with leave to amend. Rainbow chose not to amend the second cause of action. Consequently, the action proceeded on the first cause of action alleging the Board's findings were not supported by the evidence.

Before a hearing was held on Rainbow's first amended petition, the parties stipulated that the Board would rescind its decision granting a \$ 6 rent increase and rehear the matter. In November 1995 Rainbow filed a new application seeking a rent increase of \$ 58.33.

The Board issued a comprehensive staff report on Rainbow's new application. Attached to and discussed in the staff report were the reports of two consultants, Dr. Kenneth Baar and Dr. James Gibson, each of whom the Board hired to perform a "fair return" analysis--i.e., an analysis of how much rent increase would be required to give Rainbow a fair return on its investment in the park.

Baar's analysis was based on a "maintenance of net operating income" (MNOI) approach into which he factored the increase in the consumer price index (CPI) between June 1991 and June 1995, the increase in Rainbow's operating expenses during that same period, and a return on Rainbow's expenditures on capital improvements to the park. Based on these factors Baar recommended a range of rent increase from \$ 37.21 to \$ 57.33.

In calculating Rainbow's capital improvement costs, Baar excluded expenditures of over \$ 200,000 for gas and electric improvements, which comprised 48 percent of Rainbow's total expenditures for capital improvements during the relevant time period. Baar excluded the gas and electric improvements on the theory Rainbow was already being compensated for them through the rates it charged tenants for gas and electricity. Amortizing the remaining capital improvement costs over 27 and 1/2 years at 10 percent interest, Baar proposed a rent increase of \$ 11.80 for capital improvements, in addition to other increases.

Gibson used an "historical cost/book value" approach in his fair return analysis. Gibson's approach involved calculating a rate of return for the park by dividing various estimates of the park's net income by various estimates of the value of its assets, and then comparing

the resulting rates of return with certain published "benchmark" rates of return for profitable businesses. Gibson determined the amount of overall annual rent increase required to provide Rainbow with a fair return by multiplying the difference between a particular benchmark rate and the park's rate by the park's asset value. The results of Gibson's approach varied greatly depending on the data used. However, Gibson initially recommended an increase between \$ 45.17 and \$ 58.33. At a hearing on Rainbow's application, Gibson stated that if the gas and electric improvements were subtracted from his estimate of the park's historical cost/book value, his recommended range of rent increase would be from \$ 35.17 to \$ 48.33.

Also attached to the staff report were a fair return analysis by the park residents' representative, John Herzing, and an appraisal report by James Brabant, concluding the value of the park at the time Rainbow purchased it was \$ 3,685,000. Based on his own MNOI analysis, Herzing requested a rent increase of \$ 10.08, minus \$ 6.14 for loss of amenities and other offsetting factors.

The staff report mathematically "harmonized" the data, including Baar's and Gibson's recommendations, the CPI, and the amount by which the park's rent was below comparable parks in the area, to arrive at a recommended increase of \$ 36.09.³

3 The staff's harmonizing approach was as follows: The highest recommended increase (Gibson's \$ 58.33) and the lowest recommended increase (presumably Herzing's) were discarded, leaving the following four components: \$ 45.17 (Gibson's low), \$ 12.90 (60 percent of CPI), \$ 37.21 (Baar's low) and \$ 49.08 (Baar's high). These were added together and the total (\$ 144.36) was divided by four, resulting in the recommended increase of \$ 36.09.

On January 14, 1996, the Board held a hearing on Rainbow's revised application. Baar and Gibson explained their fair return analyses; Herzing argued there should be no rent increase; Brabant reiterated his opinion that the park was worth \$ 3,685,000 at the time Rainbow purchased it; and Rainbow introduced a real estate broker who supported Rainbow's \$ 4,950,000 purchase price. One resident advocate argued the hearing was illegal because the Board lacked jurisdiction to reconsider its original \$ 6 rent increase and another discussed loss of amenities in the park.

On February 14 the Board issued a supplemental staff report to which supplemental reports by Baar and Herzing were attached. Baar explained differences between his analysis and Herzing's and reiterated his recommendation that rent be increased by \$ 37.21. Herzing

criticized Baar's analysis and reiterated his recommendation that no increase be granted. The Board staff now concurred completely with Baar's analysis and recommended the Board adopt the \$ 37.21 rent increase he recommended.

The Board reopened the hearing on Rainbow's application on February 21. At that hearing Rainbow raised the amount of its requested rent increase from \$ 58.33 to \$ 120 while Herzing continued to criticize Baar and requested a rent *decrease*. There was also additional testimony about loss of amenities and argument that the hearing was illegal. The Board continued the hearing to March 20.

On March 15 the Board staff issued a second supplemental staff report reaffirming its concurrence with Baar's recommendation of a \$ 37.21 increase, including \$ 11.80 for capital improvements. The report concluded any loss of amenities was minor, justifying no more than a \$ 1 offset against any allowable increase. Prior to the March 20 hearing the Board also received additional reports from Baar and Herzing.

On March 20 the Board again reopened the hearing, at which time the staff reiterated its recommendation that the Board adopt Baar's recommendation; Herzing continued his criticism of Baar's analysis; loss of amenities was further discussed; and the legality of the hearing was again questioned. After all present were allowed to speak, the Board closed the hearing and voted to grant a rent increase of \$ 36.21, which included a \$ 11.80 capital improvement increase for 27 1/2 years.⁴ The Board issued its formal findings and decision on March 27. The Board's resolution granting the rent increase discussed each of 11 factors required to be considered under the rent control ordinance.

⁴ The Board decreased Baar's recommendation by \$ 1 to reflect its concern for the loss of amenities.

On April 30 Rainbow filed a motion for administrative mandamus in the instant action challenging the Board's March 1996 decision to grant a rent increase of \$ 36.21. The court heard the matter and ruled that (1) Rainbow's original challenge to the Board's January 1995 \$ 6 rent increase was mooted when the parties stipulated that the Board could rescind its original decision and rehear the matter, and (2) the Board's March 1996 rent increase of \$ 36.21 was supported by substantial evidence. The court entered judgment denying Rainbow's petition for administrative mandamus and dismissing the action with prejudice.

DISCUSSION

I. *Standard of Review*

Appellate review of a decision by a mobilehome rent control board is governed by the substantial evidence standard. (*Westwinds Mobile Home Park v. Mobilehome Park Rental Review Bd.*, *supra*, 30 Cal. App. 4th at p. 90.) Regarding the Escondido rent control ordinance, this court has noted the substantial evidence question is whether the rental rate granted by the Board "provided a 'fair rate of return on the cost of that applicant's equity investment.' [Citation.]" (*Id.* at pp. 90-91.)

II. *Exclusion of Utility Improvement Costs From Capital Expenses*

Rainbow's main contention in this appeal is that the Board erred by excluding \$ 223,847 Rainbow spent to improve the park's gas and electric utility systems from consideration as capital improvement costs.

A. *Public Utilities Commission Ruling*

The Board ultimately accepted Baar's analysis and conclusion regarding an appropriate rent increase for capital improvements. Baar excluded gas and electric improvements from consideration as capital improvements based on a published decision of the Public Utilities Commission (PUC) entitled *Re Rates, Charges, and Practices of Electric and Gas Utilities Providing Services to Master-metered Mobile Home Parks* (1995) 58 Cal.P.U.C.2d 709 (*Rates, Charges, and Practices*).

In *Rates, Charges, and Practices*, *supra*, the PUC explained: "Most mobile home park owners take gas and electric service through a master-meter. The park owners, in turn, submeter service to their tenants. To at least partially cover the cost of submetering, the serving utility's master-meter rate schedules provide a submetering discount to the park owners.

"[*Public Utilities Code section*] 739.5 regulates the rates that master-metered mobile home parks with submetered utility systems may charge their tenants. This code section requires master-metered mobile home parks to charge tenants at the same rate the utility would charge the tenants for direct service. The discount is intended to cover the 'average costs' of park owners to provide submetered service, but is not to exceed the 'average cost' of the serving utility to provide comparable service to tenants directly served by the utility. The park owner must maintain and, as necessary, replace the distribution system beyond the master-meter. In addition, the park owner must maintain and read the submeters and provide each submeter customer with an itemized billing similar in form and content to bills provided by the public utility. Basically, within the mobile home park, the park owner performs the functions (except some emergency and safety functions) of the public utility." (*Rates, Charges, and Practices*, *supra*, 58 Cal.P.U.C.2d at p. 710, *fn. omitted.*)

The PUC concluded master-metered park owners are barred from recovering the costs of improving their gas and electric systems through rent increases because *Public Utilities Code*⁵ section 739.5 expressly limits their recovery of such costs to the amount derived from the submetering discount. (*Rates, Charges, and Practices*, *supra*, 58 Cal.P.U.C.2d at p. 717.) The PUC focused on the language in section 739.5, subdivision (a), stating that " 'the master-meter customer shall charge each user of the service at the same rate which would be applicable if the user were receiving gas or electricity, or both, directly from the gas or electrical corporation.' " (*Rates, Charges, and Practices*, *supra*, at pp. 717-718, quoting § 739.5, *subd. (a)*, original italics.) The PUC further noted section 739.5, subdivision (a) caps the submeter discount " 'at a level which will provide a sufficient differential to cover the reasonable average costs to master-meter customers of providing submeter service, except that these costs shall not exceed the average costs that the corporation would have incurred in providing comparable services directly to the users of the service.' " (*Rates, Charges, and Practices*, *supra*, at p. 718, quoting § 739.5, *subd. (a)*, original italics.)

5 All further statutory references are to the Public Utilities Code.

The PUC concluded: "The plain language of the statute allows (1) for recovery of master-meter costs only up to the average cost that the utility would have incurred were it to provide service to the master-meter customer, and (2) that the master-meter customer charge each user of the service at the same rate that user would pay were he a direct utility customer." (*Rates, Charges, and Practices*, *supra*, 58 Cal.P.U.C.2d at p. 718.) Consequently, "tenants of master-metered parks shall not be subject to utility cost rent surcharges for ongoing utility system repair and replacement. Master-meter customers are compensated in the manner and to the extent directed by [section] 739.5[, subdivision] (a), which provides a reasonably accessible means to obtain a return on property. There is no need to establish a procedure for individual parks to obtain rate increases to offset reasonably incurred uncompensated system replacement costs" (*Ibid.*)

In short, if submetered mobilehome tenants were required to pay the cost of maintaining and improving gas and electric systems through rent increases in addition to paying the park owner the same rate that would apply if they were receiving gas and electricity directly from a gas or electric company, they would effectively be paying more for gas and electricity than directly metered customers in contravention of section 739.5. For that reason the PUC in *Rates, Charges, and Practices*, *supra*, prohibited park owners from recovering the cost

of maintaining and improving gas and electric systems from submetered tenants through rent increases.

B. Applicability of the PUC Ruling

Rainbow contends *Rates, Charges, and Practices*, does not apply to a park subject to a rent control ordinance. There are only two statements in *Rates, Charges, and Practices* that could possibly be interpreted as excluding rent-controlled parks from its ruling. First, after noting its "complete jurisdiction over utility rates, including the mobile home park discount . . . [and its] responsibility for adjudicating complaints that allege violation of [section 739.5's] requirement that the 'master-meter customer shall charge each user of the service at the same rate which would be applicable if the user were receiving gas or electricity, or both, directly from the gas or electrical corporation[.]'" THE PUC STATED: "However, we fully accept and embrace the fact that the [PUC] has no 'rent control' jurisdiction over mobile home parks and park owners." (*Rates, Charges, and Practices*, *supra*, 58 Cal.P.U.C.2d at p. 718.)

We agree with the Board's suggestion that in making that reference to rent control, the PUC was merely acknowledging its task is to control utility rates, not rent. Accordingly, its prohibition against recovering gas and electricity costs from submetered tenants through rent surcharges should not be construed as rent control but rather as utility-rate control.

That the PUC lacks rent control jurisdiction does not mean rent control boards are free to ignore its rulings concerning utility rates. The rationale of *Rates, Charges, and Practices* applies to rent-controlled parks as much as to parks that are not subject to rent control. Section 739.5, subdivision (a), as interpreted by the PUC, precludes master-metered park owners from recovering the costs of repair and maintenance of gas and electric systems through rent whether such surcharges are unilaterally imposed by a park owner or authorized by a rent control board. There is no language in the statute that suggests it does not apply to parks subject to rent control. If the PUC was of the opinion that section 739.5, subdivision (a), was inapplicable to rent-controlled parks, it presumably would have made that clear in *Rates, Charges, and Practices*.⁶

6 In *Steiner v. Palm Springs Mobilehome Properties* (1997) Cal.P.U.C. Decision No. 97-07-009 [1997 WL 449535], cited by the Board at oral argument, the PUC confirmed that its ruling in *Rates, Charges, and Practices* applies to a mobilehome park subject to a rent control ordinance. *Steiner* involved a mobilehome park resident's challenge to an increase in natural gas utility charges approved by the Rent Review Com-

mission of the City of Palm Springs. The PUC ruled that "to the extent the Rent Commission has ordered a 'rent' increase to cover the costs of the natural gas submeter system incurred by the Sahara Mobilehome Park . . . , the Rent Commission has impermissibly intruded on the constitutional and statutory ratemaking authority of the [PUC]." (*Id.* at p. *2.) The PUC held that "a mobilehome park owner . . . is prohibited from collecting utility costs from tenants, no matter what the rubric under which the utility costs are charged, except for those costs included in the applicable residential tariff of the serving public utility" (*Ibid.*) Noting the state through the PUC has occupied the field of regulating costs paid for utility services by residents and owners of mobilehome parks, the PUC concluded ". . . the Rent Commission may not intrude in this area of regulation. The Rent Commission's order in question in this proceeding is, therefore, unconstitutional because it directly conflicts with both the current . . . tariffs applicable to Sahara Park and its tenants and the orders in [*Rates, Charges, and Practices*]. Just as the Rent Commission does not have authority to approve the tariffs of [utility companies], by the plain language of *section 739.5*, it is preempted from ordering the rates and charges Sahara Park tenants pay for utility service . . . notwithstanding the label applied to [the] order." (*Steiner, supra*, at p. *9.) The PUC denied the park owner's application for rehearing of the *Steiner* decision, rejecting, among other arguments, various constitutional objections to the decision. (*Steiner v. Palm Springs Mobilehome Properties* (1997) Cal. P.U.C. Dec. No. 97-11-033 [1997 WL 797198].)

The other reference to rent control in *Rates, Charges, and Practices* followed the PUC's statement that park owners who are "aggrieved by [*section 739.5*] have every right to seek legislative amendment to authorize the recovery of additional charges by mobilehome park operators." (*Rates, Charges, and Practices, supra*, 58 Cal. P.U.C.2d at p. 718.) The PUC added: "As to mobilehome parks subject to rent control ordinances, those owners may seek amendments to the applicable ordinances to authorize specific types of infrastructure improvements necessary to preserve the quality of utility service to their mobilehome tenants." (*Id.* at pp. 718-719.) To the extent this statement suggests local ordinances can override the PUC's proscription against recovering utility maintenance and improvement costs through rent increases, it is incorrect, as an order of the PUC controls over a local ordinance where the two conflict. (*Orange County Air Pollution Control Dist. v. Public Util. Com.* (1971) 4 Cal. 3d 945, 950 [95 Cal.

Rptr. 17, 484 P.2d 1361].) ⁷ The PUC's reference to seeking amendment of the "applicable ordinances" is ambiguous dictum which has no effect on the essential ruling and rationale of *Rates, Charges, and Practices*. ⁸

7 Rainbow argues the PUC's rulings are not binding on the Board because the PUC acts only in a legislative capacity, and a legislative determination cannot bind a trier of fact in a quasi-adjudicatory, evidentiary, rate-setting hearing. The logical extension of Rainbow's argument is that courts are not bound by statutes, which of course is not true. In any event, the PUC does not act only in a legislative capacity; its authority has been liberally construed, and includes judicial as well as legislative and administrative powers. (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal. 4th 893, 915 [55 Cal. Rptr. 2d 724, 920 P.2d 669].)

8 In *Steiner* the PUC clarified its ordinance amendment reference as follows: "We note that with respect to the exclusivity of this Commission's mandate, the Rent Commission misapprehended the meaning of one sentence in [our decision in *Rates, Charges, and Practices*] where we observed that mobilehome park 'owners may seek amendments to the applicable [rent control] ordinances to authorize specific types of infrastructure improvements necessary to preserve the quality of utility service to their mobilehome park tenants.' . . . The Rent Commission apparently misinterpreted and unduly extended the import of this statement to infer that we conceded a local rent control ordinance could set the costs of utility service to be paid by the tenants by authorizing infrastructure improvements for utility service.

"TO CLARIFY THIS POINT: we did not mean, and we are not authorized to propose, that a local ordinance could or may preempt the rate-making authority vested in the Commission by the State's Constitution and statutory law. Our intention was only to suggest that some infrastructure improvements which may affect a mobilehome park and other surrounding properties, such as costs for a flood diversion project, may be considered by the park owner to preclude future submeter system maintenance costs. By applying the standard rules of text construction, our statement cannot mean, and obviously was not intended to mean, anything which contradicts or is inconsistent with the explicit Conclusions of Law and the express orders of [*Rates, Charges, and Practices*] prohibiting submeter system costs in rent charges. . . . [P] [O]ur [decision in *Rates, Charges, and Practices*] prohibiting the mobile-

home park owners from recovering submeter system costs from the park tenants in rent or other charges not approved by [the PUC] was upheld by the California Supreme Court. . . . Therefore, the Rent Commission directly contravened a duly established final order of this Commission, and impermissibly intruded in the area of utility rate-setting. It is well-established that this Commission's orders may not be hindered, evaded, or ignored. [Citations.]" (*Steiner v. Palm Springs Mobilehome Properties*, *supra*, Cal. P.U.C., Dec. No, 97-07-009) [1997 WL 449535 at p. *10].)

The Board correctly viewed *Rates, Charges, and Practices* as precluding Rainbow's recovery of its expenditures on gas and electric improvements through a rent increase. Even if section 739.5 and *Rates, Charges, and Practices* were inapplicable to rent-controlled parks, the Board still had the discretion to apply the reasoning of *Rates, Charges, and Practices* and limit Rainbow's recovery of utility improvement costs to the income it obtained through its submeter discount.

C. Constitutionality of PUC Ruling

Rainbow contends the PUC's decision in *Rates, Charges, and Practices* is unconstitutional because it may operate in a confiscatory fashion. However, we are not at liberty to review the constitutionality of *Rates, Charges, and Practices*. Only the California Supreme Court has jurisdiction to review orders of the PUC issued before January 1, 1998. (§ 1759; ⁹ *Barnett v. Delta Lines, Inc.* (1982) 137 Cal. App. 3d 674, 681 [187 Cal. Rptr. 219]; *Hickey v. Robey* (1969) 273 Cal. App. 2d 752, 763 [77 Cal. Rptr. 486].)

9 By a 1996 amendment to section 1759 the Legislature extended jurisdiction to review PUC orders to the Courts of Appeal. However, the amendment applies only to review of orders and decisions effective on or after January 1, 1998. PUC orders and decisions effective before that date, such as *Rates, Charges, and Practices*, are reviewable only by the Supreme Court under the previous version of section 1759. (See Historical and Statutory Notes, 57A West's Ann. *Pub. Util. Code*, § 1759 (1998 pocket supp.) p. 18.)

Certain mobilehome park owners filed applications for rehearing in *Rates, Charges, and Practices*, arguing, among other things, that the PUC's ruling infringed their right to contract and resulted in an unlawful taking. (*Re Rates, Charges, and Practices of Electric and Gas Utilities Providing Services to Master-metered Mobile Home Parks* (1995) 61 Cal. P.U.C.2d 225, 226-227.) The PUC rejected these constitutional challenges and denied the applications for rehearing. (*Id.* at pp.

227-232.) The park owners then sought review by the California Supreme Court. The Supreme Court denied review on October 6, 1996 (S048893) *sub nom. Western Mobilehome Parkowners Assn. v. Public Utilities Commission*. Consequently, we are bound by the PUC's interpretation of section 739.5 in *Rates, Charges, and Practices*. (*Hickey v. Robey*, *supra*, 273 Cal. App. 2d at pp. 763-764 ["Though an order of the [PUC] be palpably erroneous in point of law, until it is annulled by the Supreme Court, it is binding . . . on all courts of this state. [Citations.]"].)

III. Sufficiency of the Evidence

Apart from objecting to Baar's exclusion of utility expenditures from capital improvements, Rainbow raises no other challenge to the sufficiency of the evidence to support Baar's MNOI analysis. The staff report and Board's resolution granting the rent increase adopted Baar's approach and considered each of 11 factors required to be considered under Escondido's rent control ordinance, including increase in the CPI, comparable rents, capital improvements, income and expenses. The Board's decision was the result of thorough expert analysis of the relevant evidence and exhaustive debate over its proper use in the Board's fair return determination. The evidence sufficiently supports the Board's finding that Baar's recommended increase, less \$ 1 for loss of amenities, provided Rainbow a fair return on its equity investment.

IV. Return on Depreciated Net Book Assets

Although the Board adopted Baar's MNOI approach and rent-increase recommendation, it noted the increase it approved also fell within the range of increases recommended by Gibson and, therefore, provided a fair return under his historical cost/book value approach as well.

Rainbow takes issue with Gibson's "historical cost" analysis because in making his ultimate rent increase recommendations, Gibson relied on Brabant's appraised value of the park at the time of acquisition of \$ 3,685,000 rather than Rainbow's actual acquisition cost of nearly \$ 5 million. ¹⁰ Rainbow cites a financial analysis of the park done by Brinig & Company at the Board's request in connection with the January 1995 proceedings resulting in the \$ 6 rent increase. The Brinig report determined the net book value of the park's assets at the end of 1993 was \$ 5,197,721 and the park's net operating income for 1993 was \$ 280,699. Based on these figures, the Brinig report noted the net operating income was 5.4 percent of the net book assets. Rainbow contends the Board should have approved a rent increase that would raise Rainbow's operating income to 10 percent of \$ 5,197,721, because this court in *Yee* noted the same Board assumed a fair rate of return in that case was 10 percent. (*Yee v. Mobi-*

lehome Park Rental Review Bd., *supra*, 17 Cal. App. 4th at p. 1103.) This contention is without merit.

10 The acquisition cost of a park is a key component in the historical cost approach to calculating a fair rate of return. In *Yee v. Mobilehome Park Rental Review Bd.* (1993) 17 Cal. App. 4th 1097 [23 Cal. Rptr. 2d 1], this court explained: "The 'historical cost' standard treats the actual cost of the property including that represented by encumbrances (the rough equivalent of book value) as the 'investment' and the net operating income with no deduction for interest paid on encumbering debt as the 'return.'" (*Id.* at p. 1104, fn. 5.) To determine a park's annual rate of return under this approach the park's "operating profit" (net income plus interest expenses) is divided by the net book value of the "investment" (acquisition cost plus capital improvements minus accumulated depreciation). (*Westwinds Mobile Home Park v. Mobilehome Park Rental Review Bd.*, *supra*, 30 Cal. App. 4th at pp. 91-92.)

Gibson's report supplemented the "normal return on total book assets method" with a return on assets using an "imputed park value as a means to estimate true imputed book assets." The imputed park value was based on Brabant's appraised value of the park at the time of purchase or \$ 3,685,000. Gibson's report concluded: "Under our rate of return scenarios, all of the book value estimates for a rent increase should be highly discounted because of (1) the inflated and uncertain nature of the park sales price"

It is clear from the record the Board adopted Baar's MNOI analysis in determining the amount of rent increase needed to provide Rainbow a fair rate of return. The Board merely noted in passing that the approved rent increase also fell within the range of Gibson's recommendations. Because there is substantial evidence to support the finding that Baar's MNOI approach and resulting rent increase provided Rainbow a fair return, we need not address Rainbow's objections to Gibson's analysis or its contention it is getting an insufficient rate of return on depreciated net book assets.

As this court has repeatedly noted, ". . . there is no single constitutionally required formula which must be utilized when government seeks to regulate the price charged for a good or service. [Citation.] . . . [A] governmental entity may choose to regulate pursuant to any fairly constructed formula *even though other proper*

formulas might allow for higher prices." (*Palomar Mobilehome Park Assn. v. Mobile Home Rent Review Com.* (1993) 16 Cal. App. 4th 481, 487 [20 Cal. Rptr. 2d 371], italics added; *Yee v. Mobilehome Park Rental Review Bd.*, *supra*, 17 Cal. App. 4th at p. 1104; *San Marcos Mobilehome Park Owners' Assn. v. City of San Marcos* (1987) 192 Cal. App. 3d 1492, 1498 [238 Cal. Rptr. 290].) The United States Supreme Court held: "It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry . . . is at an end." (*Power Comm'n v. Hope N Gas Co.* (1944) 320 U.S. 591, 602 [64 S. Ct. 281, 288, 88 L. Ed. 333].)

"A 'just and reasonable' rate of return is one high enough to encourage good management, reward efficiency, discourage the flight of capital, and enable operators to maintain their credit, and which is commensurate with returns in comparable enterprises, but which is not so high as to defeat the purpose of rent control to prevent excessive rents. [Citation.] There is a range of rents which can be charged, all of which could be characterized as allowing a 'just and reasonable' return. [Citations.] Thus, many decisions by rent control boards will focus on the issue of where the requested increases fall within the range of possible rents--all of which rents would allow the owner a return sufficiently 'just and reasonable' as to not be constitutionally confiscatory." (*San Marcos Mobilehome Park Owners' Assn. v. City of San Marcos*, *supra*, 192 Cal. App. 3d at pp. 1502-1503.)

Baar's MNOI approach adopted by the Board is a "fairly constructed formula" which provided Rainbow a sufficiently "just and reasonable" return on its investment. "The [MNOI] approach has been praised by commentators for both its fairness and ease of administration. [Citations.]" (*Palomar Mobilehome Park Assn. v. Mobile Home Rent Review Com.*, *supra*, 16 Cal. App. 4th at p. 486.) The Board was not obliged to reject Baar's MNOI analysis just because an historical cost/book value formula using Rainbow's actual cost of acquisition and a 10 percent rate of return would have yielded a higher rent increase.

DISPOSITION

The judgment is affirmed.

Nares, Acting P. J., and McDonald, J., concurred.

Appellant's petition for review by the Supreme Court was denied August 19, 1998. Baxter, J., did not participate therein.

APP
IV.

The chart below sets forth the legal expense claims associated with those cases

Legal Expenses

Rent Increase Petitions under Mobilehome Park Space Rent Regulations

Park/City/Year	Description - Procedural	Description - Issues	Legal Cost
Carson Gardens Carson (2006)	-fair return rent increase application -three administrative hearings (2003, 2004, 2007) -two writs of mandate, -city appeal of trial ct decision <i>amount requested: \$105.50</i> <i>amount granted: \$61.44</i>	-treatment of debt service recent purchaser,- interpretation of writ decision - back rent (for denial of fair return)	\$172,063
Valley Breeze Yucaipa (2008)	-fair return rent increase application, -two administrative hearings (one before writ 2005 and one after writ 2008) <i>amount requested: \$228.71</i> <i>amount granted: \$73.13 + (\$43.96 for five years)</i>	-base period under MNOI standard in light of settlement in 19__, -reasonable operating expenses -compensation for lost rents due to denial of fair return	\$57,213 (excluding writ)
Grandview Yucaipa (2009)	-fair return rent increase application, -administrative hearing <i>amount requested: \$144.76</i> <i>amount granted: \$60.62</i> <i>(reversed by City Council, on appeal to trial ct.)</i>	- appropriate MNOI methodology - calculation of base year expenses in the absence of base year data	\$24,000
Ponderosa Calimesa (2008)	-fair return rent increase application, -administrative hearing <i>amount requested: \$175.13</i> <i>amount granted: \$86.41</i>	-treatment of investment recent purchaser, -MNOI analysis, reasonable operating expenses	\$38,000
Villa Vista San Marcos (2008)	-fair return rent increase application, -two administrative hearings <i>amount requested: \$192.71</i> <i>amount granted: \$8.47</i>	-return on investment, -treatment of investment of recent purchaser, -MNOI analysis - reasonable operating expenses	\$36,730
Valley Breeze Yucaipa (2005 & 2008)	rent increase application plus resubmission after writ granted	MNOI analysis	\$69,463

Yucaipa Village (Yucaipa 2011)	fair return application, one administrative hearing, <i>amount requested - \$195.19</i> <i>amount granted - \$86.85</i>	maintenance of net operating income (including base rent adjustment), extensive documentation of expenses required	\$48,066

the pre-existing improvement prior to the expiration of its normal expected life, as adjusted pursuant to this article.

(3) The interest rate charged is greater than financing reasonably available to the park owner in an arm's length transaction with a private lending institution.

(4) The improvement was not reasonably related to the operation of the mobilehome park business.

(c) Remedy If Burden of Proof Met By Mobile-home Owners. The purpose of the provisions in this chapter providing for contesting capital improvement rent increases is to ensure the good faith of park owners, including but not limited to ensuring that park owners do not engage in nepotism, kick backs and/or deferred maintenance, or make improvements which are unnecessary to the operation of the mobilehome park business. If the hearing officer determines that the mobilehome owners have satisfied their burden of proof with respect to all or any part of the cost of a capital improvement expenditure, the hearing officer may reduce the amount of the rent increase by a corresponding amount, but not more, subject to the limitations set forth in this article and chapter. In the event the hearing officer determines that the park owner has engaged in perjury, fraud, nepotism or kickbacks with respect to a capital improvement rent increase, the hearing officer may reduce the amount of the rent increase to the level the hearing officer deems appropriate under the circumstances consistent with providing a fair and reasonable return on investment.

(d) Limitations On Ground For Contesting Rent Increases. In determining the normal expected life of a capital improvement the hearing officer shall look first to the amortization table in this section or, if not applicable, the ADR system and/or the regulations, guidelines and amortization tables established by the Internal Revenue Service for capital improvements. It is recognized that the normal expected life of a capital improvement is based on averages and that the actual life may fall short of the normal expected life, for reasons other than deferred maintenance. In the event the normal expected life of a capital improvement is less than five years, the "adjusted expected life" of the capital improvement shall be ninety percent of its normal expected life. In the event the normal expected life of a capital improvement is five years or more, the "adjusted expected life" of the capital improvement shall be eighty percent of its normal expected life. Where a petition is filed challenging a capital improvement rent increase, the hearing officer may not reduce the amount of the rent increase by an amount in excess of the difference between the actual life of the capital improvement and its "adjusted expected life." For example, if the mobilehome owners establish that as a result of deferred maintenance a preexisting capital improvement with an expected life of ten years and an "adjusted expected life" of eighty years, in fact only lasted seven years, the hearing officer may reduce the amount of the requested rent increase by ten percent, but no more. In no event may the hearing officer reduce the amount of a capital improvement rent increase based on alleged deferred maintenance where the capital improvement rent increase is necessitated by a catastrophe, act of God, or other uncontrollable circumstance, including earthquakes, landslides, earth movement, fire or flood.

(e) Schedule of Amortization of Capital Expenditures for Mobilehome Parks.

The following amortization schedule shall be used for the amortization of capital improvements unless the parties present clear and convincing evidence to the contrary.

Item	Asset Life in Years

Air conditioning units	17
Air ducts	
Galvanized steel	20
Aluminum	25
Plastic	30
Air duct insulation	15
Appliances	5
Dishwasher	2
Garbage disposal	5
Refrigerator	5
Stove	5
Water heater	5
Boilers	15

Item	Asset Life in Years
Fans and ancillary items	
Fans and motors	12
Electric controls	10
Pneumatic controls	12
Heating and cooling coils	12
Humidifiers and air washers	10
Land improvements, such as sidewalks, roads, canals, waterways, drainage facilities, sewers, bridges, fences, landscaping, shrubbery	20

Laundry equipment	10
Lights	10
Painting	
Exterior	5
Interior	5
Paving	
Reslurry	4
Resurfacing	8
Pipe	
Galvanized	12
Copper	25
Pipe valves and special items	12
Plastering	10
Plumbing	
Fixtures	10
Pipes	10
Pumps	
Pool	5
Sump	10
Recreation equipment	10
Refrigeration machines	
Reciprocating	15
Rotary	20

Roofing	15
Sauna	25
Security entry telephone intercom	10
Stokers and burners	12
Stucco	15
Swimming pools	25
Tennis courts	25
Therapy pools	25
Water cooling towers	15
Water evaporative condensers	20
Windows	
Awnings	5
Drapes	5
Screens	5
Shades	5

(Ord. 95-31, § 2).

Article 540-2.14. Rights and Obligations

540-2.1402 Obligation of the parties.

(a) If the final decision by the hearing officer finds that the rent increase, or any portion thereof, is justified, each affected mobilehome owner shall pay, to the extent such payment has not already been

RETURN TO #33

DESIGNATION OF REPRESENTATIVE

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Dated: 7/30/, 2011

Resident: Jered Harwin

(Sign)

Jered Harwin
(Print)

Dated: _____, 2011

Resident: _____

(Sign)

(Print)

Space No. 3

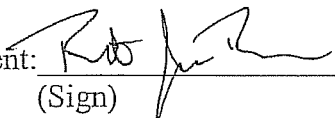
Telephone No. _____

151
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Dated: July 13TH, 2011

Resident: 
(Sign)

ROBERT JASON BROWN
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 

Telephone No. 

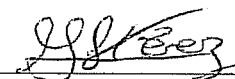
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Dated: 7-30, 2011

Resident: 
(Sign)

Gerardo Perez
(Print)

Dated: 7-30, 2011

Resident: Lorena Perez
(Sign)

Lorena Perez
(Print)

Space No. 

Telephone No. 

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Dated: 7-30, 2011

Resident: Louise Marqueling
(Sign)

Louise Marqueling
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No.

Telephone No.

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Dated: 7-24, 2011

Resident: Pablo Landeros
(Sign)

Pablo Landeros
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 176

Telephone No. [REDACTED]

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Dated: 7/18/11, 2011

Resident: Jonathan Rose
(Sign)

Jonathan Rose
(Print)

Dated: 7/18, 2011

Resident: Imelda Rose
(Sign)

Imelda Rose
(Print)

Space No. 7

Telephone No. [REDACTED]

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Dated: 7/28/11, 2011

Resident: Maha Ati
(Sign)

Maha - Ati
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 79

Telephone No. 805-268-2687

805-268-2687

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Attorney shall present any such settlement offers to residents for consideration.

Dated July 29, 2011

Resident: Jerrie Taylor

(Sign)

JERRIE TAYLOR
(Print)

Dated: _____, 2011

Resident: _____

(Sign)

(Print)

Space No. _____

Telephone No. _____

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Dated: July 19, 2011

Resident: Jennifer L. Corwell
(Sign)

Jennifer L. Corwell
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. [REDACTED]

Telephone No. [REDACTED]

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Dated: 7-20-, 2011

Resident: Gonzalo Reynoso
(Sign)
Gonzalo Reynoso
(Print)

Dated: 7 / 20, 2011

Resident: Margarita Reynoso
(Sign)
Margarita Reynoso
(Print)

Space No. [REDACTED]

Telephone No. [REDACTED]

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Dated: 7/18, 2011

Resident: Roxanne Zamarron
(Sign)

Roxanne Zamarron
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 5

Telephone No. [REDACTED]

DESIGNATION OF REPRESENTATIVE

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Dated: 7-14-2011, 2011

Resident: Rogelio López P.
(Sign)

Rogelio López P.
(Print)

Dated: 7-14-2011, 2011

Resident: Maria López
(Sign)

Maria López
(Print)

Space No. [REDACTED]

Telephone No. [REDACTED]

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Dated: 7-18-11, 2011

Resident: Angel Rodriguez Valle.
(Sign)

ANGEL R. VALLE.
(Print)

Dated: 7-18-11, 2011

Resident: Angelica Maria Castorena
(Sign)

ANGELICA M. CASTORENA.
(Print)

Space No. [REDACTED]

Telephone No. [REDACTED]

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Dated: August 2, 2011

Resident: Arlene Figone
(Sign)
ARLENE FIGONE
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. [REDACTED]

Telephone No. _____

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Dated: _____, 2011

Resident: *Jean McHenry*
(Sign)

(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No.

Telephone No. _____

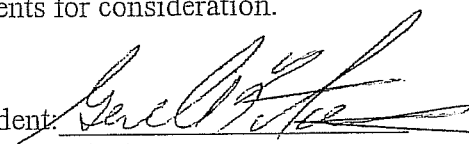
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Dated: AUGUST 1, 2011

Resident: 

(Sign)

GERALD L. QUATTRONE

(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 

Telephone No. 

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Dated: 7-25, 2011

Resident: Estela Cobian
(Sign)

Estela Cobian
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 20

Telephone No. 821-2218

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Dated: JULY 22, 2011

Resident: Mark R Okinaka
(Sign)
MARK R OKINAKA
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 22

Telephone No. 805 764 4444
805 764 4444

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Dated: 7-25, 2011

Resident: Luciana Craner
(Sign)

LUCIANA CRANER
(Print)

Dated: 7-25, 2011

Resident: M. Craner
(Sign)

MARTIN CRANER
(Print)

Space No. [REDACTED]

Telephone No. [REDACTED]

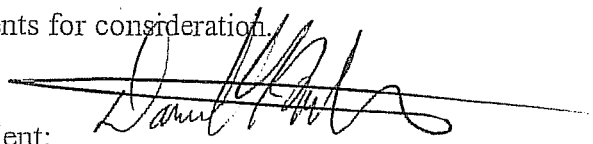
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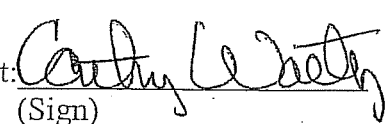
Dated: 7/25/11, 2011

Resident: 

(Sign)

Daniel Waltz
(Print)

Dated: 7/25/11, 2011

Resident: 

(Sign)

Cathy Waltz
(Print)

Space No. 

Telephone No. 

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Dated: 7-19, 2011

Resident: Debra Hamrick
(Sign)

Debra Hamrick
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. [REDACTED]

Telephone No. [REDACTED]

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Dated: 7/25, 2011

Resident: Pedro Segovia
(Sign)

(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 4

Telephone No. 927-65

RETURN TO #33

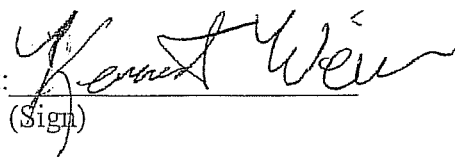
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Dated: 7/30/11, 2011

Resident: 
(Sign)

(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 

Telephone No. _____

RETURN TO #33

DESIGNATION OF REPRESENTATIVE

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Dated: 7/30/11, 2011

Resident: Laura Avendaño
(Sign)

Laura Avendaño
(Print)

Dated: 7/30/11, 2011

Resident: Jaime Cervera
(Sign)

Jaime Cervera
(Print)

Space No. [REDACTED]

Telephone No. [REDACTED]

DESIGNATION OF REPRESENTATIVE

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Dated: 07-25-, 2011

Resident: Rga Williams
(Sign)

(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No.

Telephone No. _____

DESIGNATION OF REPRESENTATIVE

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Attorney shall present any such settlement offers to residents for consideration.

Dated: 7/15/11, 2011

Resident: Juan Horta
(Sign)
JUAN HORTA
(Print)

Dated: 7/15/11, 2011

Resident: Maria Horta
(Sign)
Maria Horta
(Print)

Space No. [REDACTED]

Telephone No. [REDACTED]

DESIGNATION OF REPRESENTATIVE

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Dated: 7-15-11, 2011

Resident: Luis Cobian
(Sign)

Luis Cobian
(Print)

Dated: 7-15-11, 2011

Resident: Ana Cobian
(Sign)

Ana Cobian
(Print)

Space No. 52

Telephone No. 064-5013

DESIGNATION OF REPRESENTATIVE

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Dated: 7-17, 2011

Resident: *Tony Olson*

(Sign)

(Print)

Dated: _____, 2011

Resident: _____

(Sign)

(Print)

Space No. 

Telephone No. 

DESIGNATION OF REPRESENTATIVE

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Dated: 7-25-11, 2011

Resident: Ermila Gonzales
(Sign)

Ermila Gonzalez
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No.

Telephone No.

DESIGNATION OF REPRESENTATIVE

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Dated: 07-19, 2011

Resident: Socorro Escareño
(Sign)

Socorro Escareño
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 3739

Telephone No. 805-966-828

RETURN TO #33

DESIGNATION OF REPRESENTATIVE

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Dated: JULY 30, 2011

Resident: S Monaco
(Sign)

Samantha Monaco
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. [REDACTED]

Telephone No. [REDACTED]

DESIGNATION OF REPRESENTATIVE

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Dated: 7 / 15, 2011

Resident: Fco. Miguel Garcia
(Sign)

Miguel Garcia
(Print)

Dated: 7 / 15 /, 2011

Resident: CECILIA ORTEGA
(Sign)

Cecilia Ortega
(Print)

Space No. [REDACTED]

Telephone No. [REDACTED] - [REDACTED] - [REDACTED]
[REDACTED] - [REDACTED]

DESIGNATION OF REPRESENTATIVE

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Dated: 7/15, 2011

Resident: Tom Lopez
(Sign)

Tom Lopez
(Print)

Dated: 7/15, 2011

Resident: Mary Lopez
(Sign)

Mary Lopez
(Print)

Space No. [REDACTED]

Telephone No. (822) 771-3820

DESIGNATION OF REPRESENTATIVE

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Dated: July 15, 2011

Resident: David V. Mitchum
(Sign)

David V. Mitchum
(Print)

Dated: 7/15, 2011

Resident: David Mitchum
(Sign)

David L. Mitchum
(Print)

Space No. [REDACTED]

Telephone No. [REDACTED]

RETURN TO #33

DESIGNATION OF REPRESENTATIVE

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Dated: July 30, 2011

Resident: Wilma Gyesko
(Sign)

WILMA GYESKO
(Print)

Dated: July 30, 2011

Resident: Lee Gyesko
(Sign)

LEE GYESKO
(Print)

Space No. [REDACTED]

Telephone No. [REDACTED]

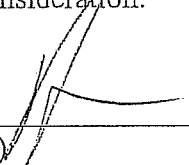
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Dated: 07.25., 2011

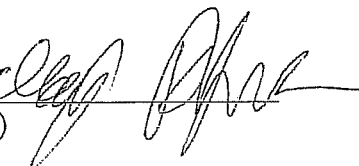
Resident: _____

(Sign) 

MARC PFAENDLER
(Print)

Dated: 07.25., 2011

Resident: _____

(Sign) 

CLAY PFAENDLER
(Print)

Space No. 

Telephone No. 

DESIGNATION OF REPRESENTATIVE

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Dated: July 19, 2011

Resident: Margie Bolstad
(Sign)

MARGIE BOLSTAD
(Print)

Dated: _____, 2011

Resident: Craig Bolstad
(Sign)

Craig Bolstad
(Print)

Space No. [REDACTED]

Telephone No. [REDACTED]

DESIGNATION OF REPRESENTATIVE

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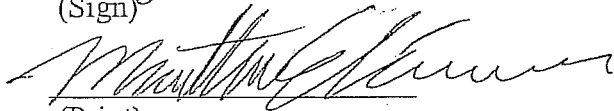
Dated: 7 - 16 -, 2011

Resident: 
(Sign)

(Print)

Dated: _____, 2011

Resident: Martha Elizavira
(Sign)


(Print)

Space No. 

Telephone No. 



DESIGNATION OF REPRESENTATIVE

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Dated: 7/25/11, 2011

Resident: _____

(Sign)

Javier Figueroa Lopez
(Print)

Dated: _____, 2011

Resident: _____

(Sign)

(Print)

Space No. _____

Telephone No. _____

RETURN TO #33

DESIGNATION OF REPRESENTATIVE

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Dated: 07/30/, 2011

Resident: Juan A. Ch

(Sign)

Juan A. Chancer
(Print)

Dated: _____, 2011

Resident: _____

(Sign)

(Print)

Space No. 

Telephone No. _____

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Dated: 7/15/, 2011

Resident: _____

(Sign)

Gabriel Mejia
(Print)

Dated: 7/15/, 2011

Resident: _____

(Sign)

Gabriela Mejia
(Print)

Space No. 72

Telephone No. 805-512-1512

DESIGNATION OF REPRESENTATIVE

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Dated: 7/25/11, 2011

Resident: Margaret Erace
(Sign)

MARGARET ERACE
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. [REDACTED]

Telephone No. [REDACTED]

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Dated: July 20, 2011

Resident: [Signature]
(Sign)

Christopher Story III
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. [Redacted]

Telephone No. [Redacted]

DESIGNATION OF REPRESENTATIVE

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Dated: 7-26, 2011

Resident: _____

(Sign)

ALICE G. WILSHUSEN
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 82

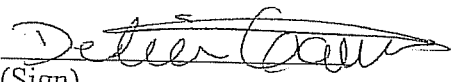
Telephone No. 836-7065

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Dated: 7-15-11, 2011

Resident: 
(Sign)

Delia Gallagner
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 

Telephone No. 

DESIGNATION OF REPRESENTATIVE

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Dated: July 25, 2011

Resident: Tony Allen
(Sign)

Tony Allen
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 82

Telephone No. _____

DESIGNATION OF REPRESENTATIVE

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Dated: 7-25-11, 2011

Resident: George Alfaro
(Sign)

GEORGE-ALFARO
(Print)

Dated: 7-25-11, 2011

Resident: Alma Alfaro
(Sign)

Alma R Alfaro
(Print)

Space No. 36

Telephone No. (805) 692-5308

RETURN TO #33

DESIGNATION OF REPRESENTATIVE

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Dated: 8/31/11, 2011

Resident: Jose Perez
(Sign)

Jose Perez
(Print)

Dated: 8/31/11, 2011

Resident: Jose Perez
(Sign)

Jose Perez
(Print)

Space No. [REDACTED]

Telephone No. [REDACTED]

RETURN TO #33

DESIGNATION OF REPRESENTATIVE

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Dated: 8-4-11, 2011

Resident: Ricardo Diaz
(Sign)

Ricardo Diaz
(Print)

Dated: 8-4-11, 2011

Resident: Carmen Diaz
(Sign)

[Signature]
(Print)

Space No. [Redacted]

Telephone No. [Redacted]

DESIGNATION OF REPRESENTATIVE

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Dated: 7-25, 2011

Resident: *E. Smith*
(Sign)

E. Smith
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 20

Telephone No. [REDACTED]

RETURN TO #33

DESIGNATION OF REPRESENTATIVE

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Dated: 8 - 8, 2011

Resident: Francisco Ortega
(Sign)

FRANCISCO ORTEGA
(Print)

Dated: 8-08, 2011

Resident: Yze R. Ortega
(Sign)

Guadalupe E. Ortega
(Print)

Space No. [REDACTED]

Telephone No. [REDACTED]

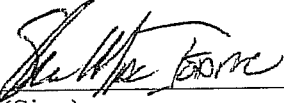
RETURN TO #33

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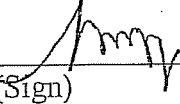
Dated: 8/1/11, 2011

Resident: 

(Sign)

Shawn MacIsaac
(Print)

Dated: 8/1/11, 2011

Resident: 

(Sign)

Sherron Reddy
(Print)

Space No. 

Telephone No. 

RETURN TO #33

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Dated: July 29, 2011

Resident: Angelica Castillo
(Sign)

Angelica Castillo
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 4

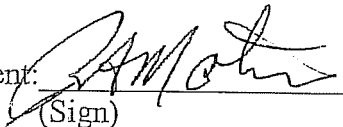
Telephone No. 805 729 5945

DESIGNATION OF REPRESENTATIVE

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Dated: 7-19, 2011

Resident: 
(Sign)

RICK MOLITERIO
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 

Telephone No. _____

RETURN TO #33

DESIGNATION OF REPRESENTATIVE

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Dated: _____, 2011

Resident: Elena Hernandez
(Sign)
Elena Hernandez
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No.

Telephone No.

DESIGNATION OF REPRESENTATIVE

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Attorney shall present any such settlement offers to residents for consideration.

Dated: 7-15, 2011

Resident: Stephanie A. Muir
(Sign)

Stephanie A. Muir
(Print)

Dated: 7-15, 2011

Resident: [Signature]
(Sign)

Aaron J. Brophy
(Print)

Space No. [Redacted]

Telephone No. [Redacted]
[Redacted]

DESIGNATION OF REPRESENTATIVE

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Dated: 7-25-11, 2011

Resident: Rodrigo Herrera
(Sign)

RODRIGO HERRERA
(Print)

Dated: 7-25-11, 2011

Resident: Rodrigo Herrera
(Sign)

RODRIGO HERRERA
(Print)

Space No. 7-978

Telephone No. 805-627-12

DESIGNATION OF REPRESENTATIVE

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Dated: 7/25/, 2011

Resident: _____

(Sign)

Gerardo Rios
(Print)

Dated: _____, 2011

Resident: _____

(Sign)

(Print)

Space No.

Telephone No.

DESIGNATION OF REPRESENTATIVE

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Dated: 7-15, 2011

Resident: [Signature]

(Sign)

Laura Bonifacio
(Print)

Dated: 7-15, 2011

Resident: [Signature]

(Sign)

Marcela Rojas
(Print)

Space No. [Redacted]

Telephone No. [Redacted]

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Dated: Jul 26, 2011

Resident: ELVIRA PENALOSA
(Sign)

ELVIRA
(Print)

Dated: Jul / 26 / 2011, 2011

Resident: ELVIRA PENALOSA
(Sign)

(Print)

Space No. [REDACTED]

Telephone No. [REDACTED]

DESIGNATION OF REPRESENTATIVE

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Dated: 7-01-11, 2011

Resident: _____

(Sign)

Erwin S. Martinez
(Print)

Dated: _____, 2011

Resident: _____

(Sign)

(Print)

Space No. _____

Telephone No. _____

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Dated: 7/25/, 2011

Resident: Rosalinda L. Almaguer
(Sign)

Rosalinda L. Almaguer
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 03

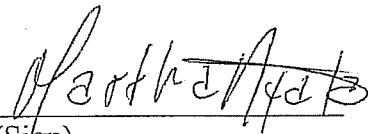
Telephone No. (805) 67-0815

DESIGNATION OF REPRESENTATIVE

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Dated: 7-25-11, 2011

Resident: 
(Sign)

(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 

Telephone No. 

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Dated: 7-14, 2011

Resident: Jean
(Sign)

Bernardo JEAN
(Print)

Dated: 7-14, 2011

Resident: ABEL MEDINA SANDOVAL
(Sign)

Abel Medina S
(Print)

Space No. [REDACTED]

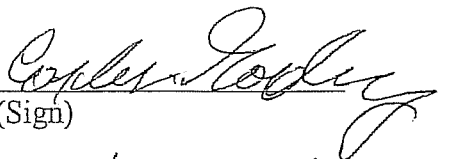
Telephone No. [REDACTED]

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Dated: 07/27, 2011

Resident: 
(Sign)
Carlos Godinez
(Print)

Dated: _____, 2011

Resident: C
(Sign)

(Print)

Space No. 

Telephone No. 

RETURN TO #33

DESIGNATION OF REPRESENTATIVE

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Dated: July 30, 2011

Resident: Cathy LaRue
(Sign)

Cathy LaRue
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 105

Telephone No. 805-752-2087

DESIGNATION OF REPRESENTATIVE

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Dated: August 8, 2011

Resident: Lynda M^cCool
(Sign)

Lynda M^cCool
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 1/E

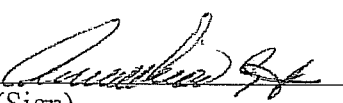
Telephone No. 805 767 707

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Dated: 7-19-, 2011

Resident: 

(Sign)

AURELIANO CORTES

(Print)

Dated: 7-19, 2011

Resident: 

(Sign)

ELVA CORTES

(Print)

Space No. 

Telephone No. 

RETURN TO #33

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Dated: 7-31-, 2011

Resident: _____

(Sign)

Margaret J Guidotti
(Print)

Dated: _____, 2011

Resident: _____

(Sign)

(Print)

Space No. _____

Telephone No. _____

RETURN TO #33

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Dated: _____, 2011

Resident: Malinda Roth
(Sign)

MALINDA ROTH
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 714

Telephone No. 805-375-0111

RETURN TO #33

DESIGNATION OF REPRESENTATIVE

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Dated: _____, 2011

Resident: *Donna Mateo*
(Sign)

(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No.

Telephone No. _____

RETURN TO #33

DESIGNATION OF REPRESENTATIVE

The undersigned resident(s) hereby designate BRUCE E. STANTON, attorney at law, to represent him/her/them for all purposes at any and all administrative hearings and/or proceedings held or conducted in connection with that certain request for a rent increase requested by Nomad Village Mobilehome Park with an effective date of May1, 2011, in a total amount of \$161.00 in excess of the allowable annual adjustment.

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Dated: _____, 2011

Resident: _____

(Sign)

Yolanda Navaro
(Print)

Dated: _____, 2011

Resident: _____

(Sign)

(Print)

Space No. _____

Telephone No. _____

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Dated: July 25, 2011

Resident: Rosario Ruiz
(Sign)

ROSARIO RUIZ
(Print)

Dated: July 25, 2011

Resident: Ruben Ruiz
(Sign)

RUBEN RUIZ
(Print)

Space No. [REDACTED]

Telephone No. [REDACTED]

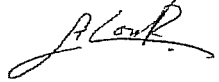
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Dated: 7/30/19, 2011

Resident: 
(Sign)

Alfonso Contreras
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 

Telephone No. _____

RETURN TO #33

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Attorney shall present any such settlement offers to residents for consideration.

Dated: 8/2/11, 2011

Resident: [Signature]

(Sign)

(Print)

Dated: _____, 2011

Resident: _____

(Sign)

(Print)

Space No. _____

Telephone No. _____

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Dated: 8/1, 2011



Resident: Bernice Pagliaro
(Sign)



Bernice Pagliaro
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 162

Telephone No. 805-257-162

DESIGNATION OF REPRESENTATIVE

The undersigned resident(s) hereby designate BRUCE E. STANTON, attorney at law, to represent him/her/them for all purposes at any and all administrative hearings and/or proceedings held or conducted in connection with that certain request for a rent increase requested by Nomad Village Mobilehome Park with an effective date of May 1, 2011, in a total amount of \$161.00 in excess of the allowable annual adjustment.

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Dated: July 14, 2011

Resident: Carol L. Schmitter
(Sign)

Carol L. Schmitter
(Print)

Dated: July 14, 2011

Resident: Stephen N. Schmitter
(Sign)

Stephen N. Schmitter
(Print)

Space No. 102

Telephone No. 805-241-1011

DESIGNATION OF REPRESENTATIVE

The undersigned resident(s) hereby designate BRUCE E. STANTON, attorney at law, to represent him/her/them for all purposes at any and all administrative hearings and/or proceedings held or conducted in connection with that certain request for a rent increase requested by Nomad Village Mobilehome Park with an effective date of May 1, 2011, in a total amount of \$161.00 in excess of the allowable annual adjustment.

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Dated: 7-28-2011, 2011

Resident: Carole Johnson
(Sign)

CAROLE JOHNSON
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 27

Telephone No. 805-777-8522

DESIGNATION OF REPRESENTATIVE

The undersigned resident(s) hereby designate BRUCE E. STANTON, attorney at law, to represent him/her/them for all purposes at any and all administrative hearings and/or proceedings held or conducted in connection with that certain request for a rent increase requested by Nomad Village Mobilehome Park with an effective date of May1, 2011, in a total amount of \$161.00 in excess of the allowable annual adjustment.

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Dated: 7-19-11, 2011

Resident: Juavita Espinosa
(Sign)

Juavita Espinosa
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. [REDACTED]

Telephone No. [REDACTED]

RETURN TO #33

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Dated: 7/30/11, 2011

Resident: Jose J. Perez
(Sign)

JOSE J. PEREZ
(Print)

Dated: 7-30-11, 2011

Resident: Maria Isabel Perez
(Sign)

Maria Isabel Perez
(Print)

Space No. [REDACTED]

Telephone No. _____

DESIGNATION OF REPRESENTATIVE

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Dated: 14 JULY, 2011

Resident: Donald G Grand
(Sign)

DONALD G GRAND
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 25

Telephone No. (805) 964-1282

DESIGNATION OF REPRESENTATIVE

The undersigned resident(s) hereby designate BRUCE E. STANTON, attorney at law, to represent him/her/them for all purposes at any and all administrative hearings and/or proceedings held or conducted in connection with that certain request for a rent increase requested by Nomad Village Mobilehome Park with an effective date of May1, 2011, in a total amount of \$161.00 in excess of the allowable annual adjustment.

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Dated: 7/15, 2011

Resident: Cesar Rodriguez
(Sign)

Cesar Rodriguez
(Print)

Dated: 7/15, 2011

Resident: Elizabeth Rodriguez
(Sign)

Elizabeth Rodriguez
(Print)

Space No. [REDACTED]

Telephone No. (805) 974-0386

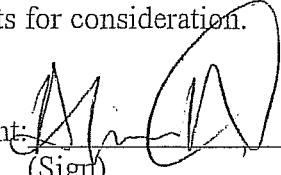
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Dated: _____, 2011

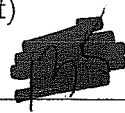
Resident: 
(Sign)

(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 

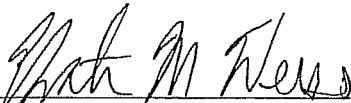
Telephone No. _____

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Dated: 7/18, 2011

Resident: 
(Sign)

ELIZABETH M WEISS
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 

Telephone No. 

DESIGNATION OF REPRESENTATIVE

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Dated: 7-14-11, 2011

Resident: Roger Polan
(Sign)

ROGER POLAN
(Print)

Dated: 7-16-11, 2011

Resident: Roger Polan
(Sign)

ROGER POLAN
(Print)

Space No. [REDACTED]

Telephone No. [REDACTED]

RETURN TO #33

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Dated: July 30 -, 2011

Resident: Laura Hackstein
(Sign)
LAURA HACKSTEIN
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 472

Telephone No. _____

RETURN TO #33

DESIGNATION OF REPRESENTATIVE

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Dated: 8/8/11, 2011

Resident: Jane Kelley
(Sign)
Jane Kelley
(Print)

Dated: 8/9/11, 2011

Resident: Marina Jimenez
(Sign)
Marina Jimenez
(Print)

Space No. 14

Telephone No. 0508-136

DESIGNATION OF REPRESENTATIVE

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Dated: Nov. 14, 2011

Resident: Enrique Martinez
(Sign)

ENRIQUE MARTINEZ
(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. 50

Telephone No. _____

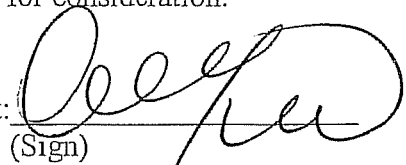
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Dated: 8-1-, 2011

Resident: 

(Sign)

Amanda Graybill

(Print)

Dated: _____, 2011

Resident: _____
(Sign)

(Print)

Space No. _____

Telephone No. _____

DESIGNATION OF REPRESENTATIVE

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Dated: 7-12, 2011

Resident: _____

(Sign)

Bernice Pagliaro
(Print)

Dated: _____, 2011

Resident: _____

(Sign)

(Print)

Space No. _____

Telephone No. _____

APP 7

shall divide the total cost of the improvement by its useful/amortizable life and then divide the result of that calculation by twelve and then by the number of spaces in the park.

For example, the allowable capital improvement rent increase for a street replacement costing \$10,000 and having a useful/amortizable life of ten (10) years is calculated as follows:

$$\begin{array}{rcl}
 \$10,000.00 & & \\
 \hline
 10 \text{ years} & = & \$1,000.00 \text{ annual amortization.} \\
 \\
 \$ 1,000.00 & & \\
 \hline
 12 \text{ months} & = & \$83.33 \text{ monthly amortization cost.} \\
 \\
 \$ 83.33 & & \\
 \hline
 30 \text{ spaces} & = & 2.78 \text{ monthly rent increase per space for 10 years.}
 \end{array}$$

5.0004. AMORTIZATION

A. Capital Improvements shall be amortized in accordance with the following schedule; or, if not itemized therein, in accordance with any useful life table utilized by the Internal Revenue Service. An asterisk (*) next to the number shown below indicates that if the improvement is performed during initial construction, it shall be depreciated as a part of the building over thirty-one and a half (31.5) years.

Improvement	Amortization Period In Years
Air Conditioners	7
Appliances (other than those listed)	7
Cabinets	7
Carpentry	10*
Carpeting	7
Dishwasher	7
Doors	10*
Dryer	7
Electrical Wiring	15*
Elevator	20*
Fan	7
Fencing	15
Fire Alarm System	7
Fire Escape	15
Floor Covering (linoleum or vinyl)	7*
Flooring	7*
Furniture	7

Garbage Disposal	7
Gates	15
Gutters	15
Heating	10*
Insulation	10*
Landscaping	15
Locks	7
Painting (exterior)	7
Paving	15
Plastering	10*
Plumbing	10*
Pumps	7
Refrigerator	7
Roofing	10*
Security Entry Telephone Intercom	7
Smoke Detector	7
Stove	7
Stucco	10*
Washing Machine	7
Water Heater	7
Window Coverings	7

B. In general, a capital improvement should not be amortized over a period which would yield a monthly per space increase over ten percent (10%). In such a case, a longer amortization period may be appropriate. The percent increase represented by a particular capital improvement rent increase shall be calculated by dividing the proposed capital improvement rent increase by the amount of the existing base rent.

Thus, in the case of the above street replacement example, the percent increase is calculated as follows:

$$\begin{aligned} \$ 2.78 \text{ (proposed capital improvement rent increase)} &= 2.1\%(\text{increase}) \\ \$130.00 \text{ (existing base rent)} \end{aligned}$$

5.0005. COST OF THE CAPITAL IMPROVEMENT

The applicant shall provide documentary evidence of the actual cost incurred for the capital improvement. The cost thereof shall include the interest expense incurred on money borrowed to pay for the capital improvement or a part thereof. In the event that the applicant used his/her own funds to pay for the improvement, interest at the rate equal to the prime rate, plus 2½ percent as of the date of the application, computed over a reasonable amount of time shall be included as a part of the capital improvement cost. In determining the reasonable amount of time over which interest shall be allowed, the RA shall be guided by the current practices of state and federally chartered banks and/or savings and loan associations as to the length of time for repayment of improvement loans, provided, however, that the time shall not exceed the amortization period determined by the RA and used in calculating the allowable capital improvement rent increase.

September 19, 2011

APP 8

Bruce E. Stanton, Esq.
Law Offices of Bruce E. Stanton
6940 Santa Teresa Blvd., Suite 3
San Jose, CA 95119

Dear Mr. Stanton:

RE: DESIGNATION OF REPRESENTATION:

Attached please find signed Designation of Representation Forms from the following homeowners at Nomad Village living in the Units listed below by space number:

[REDACTED]

The last 2 signed documents do not have the space numbers listed on them.

Please contact me if you have questions regarding these documents.

Debra Hamrick
Nomad Village Homeowners Representative