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ARBITRATION PROCEEDINGS UNDER THE SANTA BARBARA COUNTY  
MOBILEHOME RENT CONTROL ORDINANCE

IN RE NOMAD VILLAGE MOBILE HOME PARK )  
)  
) RESPONSE BY  
) NOMAD VILLAGE MOBILE  
) HOME PARK FOR TO  
) PETITION FOR REVIEW  
)  
)  
)  
)  
) [Stephen Biersmith,  
) Esq., Arbitrator]  
)  
) Date: September 19-20 2011  
) Time: 9:00 A.M.  
) Location: Board of  
) Supervisors Hearing Rm

02-06-12P04:52 RCVD

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INTRODUCTION

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3  
4 The homeowners of Nomad Village Mobile Home Park in 2011  
5 filed a petition for arbitration regarding a rent increase  
6 issued by Park management resulting from increased operating  
7 costs of the Park. Pursuant to the terms of the Santa Barbara  
8 County Mobilehome Rent Control Ordinance ("Ordinance") and the  
9 Mobilehome Rent Control Rules for Hearing ("Rules") an  
10 arbitration hearing was conducted by an Arbitrator appointed by  
11 the Board of Supervisors, Stephen Biersmith, Esq., an  
12 experienced attorney on the Board's panel of arbitrators.

13 The Arbitration Hearing was duly noticed and occurred on  
14 September 19 and 20, 2011. The homeowners were represented by  
15 Attorney Bruce Stanton, and called witnesses and introduced  
16 exhibits. Thereafter, the parties stipulated to a briefing  
17 schedule and submitted a series of post-hearing briefs.  
18 Following the briefing, the Arbitrator prepared a draft award on  
19 November 22, 2011, following which time the parties submitted a  
20 stipulated series of calculations, which were incorporated into  
21 the final Opinion and Award which was issued by the Arbitrator  
22 on December 20, 2011 ("Arbitrator's Award"). Thereafter, the  
23 homeowners appealed the Arbitrator's Award for review by the  
24 Board of Supervisors. As a result of the homeowners' appeal,  
25 Park Management elected to appeal a limited issue.

26 The Rules, Rule 23 (a), provide that the standard for the  
27 Board's review of the Arbitrator's decision is to be  
28 "prejudicial abuse of discretion." Rule 23 (A) provides that  
"Abuse of discretion is established where the Arbitrator has

1 failed to proceed in the manner required by law, the decision is  
2 not supported by findings, or the findings are not supported by  
3 substantial evidence."

4 The Rules (Rule 23(b)) require that the Board make its  
5 determination based upon the arbitration "record alone" and may  
6 also "elect to hear oral argument by the parties, their  
7 representatives, and/or their attorneys."

8 The Record of the arbitration proceedings consists of the  
9 following:

10 The Arbitrator's Award (revised) dated December 20, 2011,  
11 including attached Rent Schedule

12 The Hearing Transcript for September 19-20, 2011

13 Park management's Exhibits A-T, referenced in the  
14 Arbitrator's Award

15 Homeowner's exhibits 1-8, referenced in the Arbitrator's  
16 Award

17 Joint exhibits 1-2, referenced in the Arbitrator's Award

18 Post Hearing Briefing by the Parties:

- 19 1. OPENING POST-HEARING ARBITRATION BRIEF BY NOMAD  
20 VILLAGE MOBILE HOME PARK
- 21 2. SUBMISSION OF UPDATED ACCOUNT STATEMENT BY NOMAD  
22 VILLAGE MOBILE HOME PARK FOR PROFESSIONAL SERVICES
- 23 3. HOMEOWNERS' POST-HEARING OPENING BRIEF
- 24 4. CLOSING POST ARBITRATION HEARING BRIEF BY NOMAD  
25 VILLAGE MOBILE HOME PARK
- 26 5. SUBMISSION OF PUC ORDERS BY NOMAD VILLAGE MOBILE HOME  
27 PARK
- 28 6. HOMEOWNERS' POST HEARING CLOSING BRIEF

1 This will constitute Park Management's request that  
2 the Record to be reviewed by the Board in connection with  
3 this Arbitration Proceeding include the above documents,  
4 including the Hearing Transcript.  
5

6 I  
7

8 THE HOMEOWNERS' PETITION SHOULD BE REJECTED AS IT  
9 IMPROPERLY RELIES ON MATTERS OUTSIDE OF THE RECORD AND  
10 FAILS TO ESTABLISH A PREJUDICIAL ABUSE OF DISCRETION  
11

12 The Rules clearly provide that the Board's determination  
13 must be upon the "record alone." (Rule 23(b).) Accordingly, it  
14 is utterly improper for the homeowners to attempt to proffer any  
15 new purported evidence or exhibits, nor may they rely on any  
16 claims not appearing in the record. The homeowners attach to  
17 their Petition for Review several documents, variously labeled  
18 "exhibits" or "attachments" to which they refer in their  
19 Petition and on which they purport to base their appeal (any and  
20 all attachments to the homeowners' Petition will simply be  
21 referred to herein as "attachments"). None of the "attachments"  
22 are contained in the record. These "attachments" are not part  
23 of the record and the Rules preclude the homeowners from  
24 submitting them, and the Board from considering them. These  
25 "attachments" are new documents that are entirely irrelevant and  
26 improper, that the homeowners, now that their legal counsel has  
27 ceased representing them, have chosen to attempt to submit in an  
28 effort to reargue their case. These "attachments" must be

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disregarded.

It should also be noted that the Rules do not provide for the homeowners to submit any further documents or any other written or oral communication to the Board or anyone acting for the Board, in support of their appeal.

The Rules provide that the Board may "elect to hear oral argument by the parties, their representatives, and/or their attorneys." Clearly, any such oral argument may only be after reasonable notice to all parties, and only on the record at a public hearing, at which both parties have an opportunity to be present.

Accordingly, it would be entirely improper for any of the homeowners of Nomad Village to engage in any written or oral communications with the Board outside of any oral arguments at an open meeting that the Board may choose to schedule. Park Management raises this issue because it has become aware, after the fact, of improper secret ex-parte communications by homeowners with persons associated with the Arbitration Proceedings.

II

THE HOMEOWNERS IGNORE THAT THE ARBITRATOR'S AWARD IS SUPPORTED BY THE MNOI-STYLE ANALYSIS DONE PURSUANT TO THE EXPRESS TERMS OF THE ORDINANCE

The homeowners inexplicably claim that the arbitrator "made no finding regarding fair return on investment" and then go through an incomprehensible discussion containing improper,

1 inapplicable, and irrelevant legal case citations. The  
2 homeowners ignore the express terms of the Ordinance, and the  
3 evidence in the case. They confuse the fact that the Ordinance  
4 specifically provides for an operating income analysis in order  
5 to determine whether Park Management is receiving a fair return.  
6 The Ordinance, at section 11A-5, specifies the specific manner  
7 by which rent increases are to be calculated. It is noteworthy  
8 that this analysis is employed for determining the permanent  
9 increase based upon the increased operating costs to Park  
10 Management.

11 The Homeowners ignore the fact that the sole fair return  
12 analysis performed pursuant to the terms of the Ordinance in  
13 evidence in these proceedings is the analyses submitted by Park  
14 Management.

15 The "NOI" or "fair return" increase set out in the  
16 Ordinance, Section 11A-5(i). As spelled out in the Ordinance,  
17 this increase is intended to allow a fair return on investment  
18 and to cover operating cost increases, and is a permanent  
19 increase in space rents. It is based upon significant increases  
20 in the Parks' property taxes and Ground Lease costs. Exhibit D,  
21 Table 3-A, "MNOI Analysis 2007-2010" and Table 3-B, "MNOI  
22 Analysis 1994-2010," follow the methodology set forth in the  
23 Ordinance, and provide analytical support for the rent increase.

24 As Dr. St. John, the Park's consulting economist, explained  
25 at the Arbitration Hearing, the Maintenance of Net Operating  
26 Income (MNOI) analysis is a system employed under some rent  
27 control schemes to determine whether increased operating  
28 expenses support a rent increase. (RT1 49-51.) The MNOI

1 analysis focuses solely on income and expenses, and compares a  
2 base year to a subject year in which the increased expenses have  
3 been incurred. (RT1 50:6-13.) Dr. St. John testified in some  
4 detail that the Santa Barbara County Ordinance specifies an  
5 analytical approach to a permanent rent increase that was not a  
6 classic MNOI analysis but was a variation on it. (RT1 52-54.)

7 Dr. St. John presented the MNOI analysis that he prepared  
8 analyzing the income and expenses, showing that a rent increase  
9 was justified resulting from the increased ground lease and  
10 property tax expenses incurred by Park management. (Exhibit D,  
11 Tables 3-A and 3-B.) Dr. St. John's MNOI analysis was based  
12 upon the financial statements of the Park management. (Exhibit  
13 N.)

14 Dr. St. John testified that he prepared his analysis as  
15 what he called a Santa Barbara type of MNOI analysis in  
16 conformity with the requirements of the Ordinance. (RT1 88.)  
17 Dr. St. John testified that in preparing his analysis, (Exhibit  
18 D, Tables 3-A and 3-B, particularly p. 4 of each table) he  
19 followed the Ordinance "precisely." (RT1 102:13-24.)

20 The homeowners' consultant acknowledged that he did not  
21 disagree that the MNOI analysis prepared by Dr. St. John  
22 (Exhibits D, Tables 3A & B) were prepared in accordance with the  
23 requirements of the Ordinance. (RT1 241:20-242:25.)

24 The homeowners' consultant conceded that he had not  
25 prepared any MNOI analysis for Nomad Village Mobilehome Park.  
26 (RT1 193:6-16.)

27 Accordingly, the sole MNOI-type analysis performed pursuant  
28 to the specific terms of the Ordinance (Exhibits D, Tables 3A &

1 B), should properly be relied upon in determining the  
2 appropriate rent increase under the Ordinance.

3 The MNOI analyses for base years 2007 and 1994 at 100%  
4 indexing justify a permanent rent increase in the amounts of  
5 \$57.09 and \$57.04, respectively. (Exhibit D, Table 3-A, page 4,  
6 cell 1-179 and Table 3-B p. 4, cell 1-179.)

7 In addition, an MNOI was submitted to support the  
8 arbitrator's finding that Park Management was entitled to a rent  
9 increase based upon the property tax increase but not the ground  
10 lease fee increase. (Exhibit T.) This MNOI analysis supports  
11 the permanent increase of \$25.59, factoring in the increased  
12 property tax but not the increased ground lease fees.

13 In sum, the sole MNOI analyses submitted support the  
14 Arbitrator's Award either if his legal conclusion that the  
15 increased ground lease fees should be excluded is accepted or  
16 rejected. If it is accepted, then the ground lease fees are  
17 excluded from the analysis and Exhibit T supports his award; in  
18 the event that they are included, then Exhibit D, Table 3-A  
19 supports an award including these expenses in the analysis. In  
20 either event, the Arbitrator's Award is supported as a matter of  
21 evidence in the record. The homeowner's claims should be  
22 rejected.

23  
24 III

25 HOMEOWNERS' DISCUSSION OF THE ARBITRATOR'S OPINION AND AWARD  
26

27 The homeowners appear to attempt to go through portions of  
28 the Arbitrator's Award on a numerical basis. As noted above,



1 the homeowners fail in all cases to establish or even address  
2 the applicable legal standard. In addition, the homeowners'  
3 discussion is riddled with improper references outside the  
4 record. As such, their entire discussion must be disregarded.  
5 However, Park Management will respond to some of the points  
6 raised, in the same numerical order set forth by the homeowners.  
7

8 1-2. Ground Lease.

9 This matter is the subject of Park Management's Petition  
10 for Review.  
11

12 3. Property Taxes.

13 The homeowners object to the rent increase resulting from  
14 increased property taxes, despite the fact that it is clear from  
15 the Ordinance that such increased property taxes form a  
16 mandatory basis for a rent increase. The homeowners' arguments  
17 in part are improperly based upon their "attachments" as well as  
18 other factual claims that they make from matters outside of the  
19 record, in which they attempt to raise new and misguided  
20 arguments. The homeowners are wrong in their arguments and  
21 analysis, but that is moot. The homeowners claims from outside  
22 the record cannot be considered, and therefore will not be  
23 responded to.

24 Section 11A-5 of the Ordinance, deals with Increases in the  
25 Maximum Rent Schedule, and section 11-A(f) provides in pertinent  
26 part, with emphases added, as follows:

27 (f) [T]he arbitrator shall consider all relevant  
28 factors to the extent evidence thereof is introduced  
by either party or produced by either party on request

1 of the arbitrator.

2 (1) Such relevant factors may include, but are not  
3 limited to, increases in management's ordinary and  
4 necessary maintenance and operating expenses,  
5 insurance and repairs; increases in property taxes and  
6 fees and expenses in connection with operating the  
7 park; capital improvements; capital expenses;  
8 increases in services, furnishings, living space,  
9 equipment or other amenities; and expenses incidental  
10 to the purchase of the park except that evidence as to  
11 the amounts of principal and interest on loans and  
12 depreciation shall not be considered.

13 Accordingly, the rent increase based upon increased  
14 operating costs due to the property tax increases and ground  
15 lease increases are properly the bases for the rent increase.

16 The uncontroverted evidence at the Arbitration Hearing was  
17 that the Park experienced a significant property tax increase,  
18 by which the property taxes nearly tripled. Essentially, the  
19 assessed value of the property went from \$1.94 million in 2008  
20 to \$6.35 million the following year. (Exhibit G; RT1 126: 16-  
21 25.)

22 The evidence presented at the Arbitration hearing clearly  
23 established the basis for a rent increase under the Ordinance  
24 due to the increase in property taxes. Dr. St. John confirmed  
25 that in preparing his analysis he reviewed the property tax  
26 bills and confirmed that the amounts for property taxes listed  
27 in his analysis on which the rent increase is based (Exhibit C)  
28 were accurate (RT1 62:1-63:12), and that the listed property tax  
amounts had been paid by both operators (RT1 64:13-15). Dr. St.  
John testified that, based upon his thorough review of the  
Ordinance, a property tax increase is properly considered by the  
arbitrator in determining an appropriate amount for a rent

1 increase under the Ordinance. (RT1 54:24-55:3.) The apparent  
2 suggestion now by the unrepresented homeowners that the evidence  
3 did not show the rent increase in the amount set forth in Dr.  
4 St. John's MNOI analysis (exhibit D, Table 3-A) defies  
5 comprehension.

6 The homeowners appear to argue that Park Management is not  
7 entitled to recover the increased costs that it has incurred  
8 with respect to the property tax increase, because although they  
9 do not dispute that park management did not incur the cost, they  
10 did not have to incur the cost, but instead could have placed  
11 the cost on the land owner. That argument was not raised at the  
12 Arbitration hearing and is outside the record. Moreover, the  
13 Ordinance makes no such distinction; to the contrary, the  
14 Ordinance is explicit that Park management is entitled to  
15 recover a rent increase for a property tax increase.

16 The homeowners' own consultant conceded that property taxes  
17 are a proper basis for a rent increase in any rent controlled  
18 jurisdiction, and did not dispute that a property tax increase  
19 is properly a basis for a tax increase under the Ordinance.  
20 (See, eg. RT1 221:5-8.)

21 Clearly under the express terms of the Ordinance, increased  
22 property taxes are a basis for a rent increase, as section 11A-  
23 5(f)(1) of the ordinance specifically provides that "increases  
24 in property taxes" is the type of increased operating expense  
25 that the Arbitrator "shall consider" in determining a rent  
26 increase. The Arbitrator properly considered the property tax  
27 increase in basing the award.

28 The homeowners have not and cannot establish that the

1 arbitrator's award is a prejudicial abuse of discretion.

2  
3 4. Amortization Interest Rate

4 The homeowners appear to object to the interest rate for  
5 the temporary increases. The homeowners have failed to  
6 establish that the Arbitrator engaged in prejudicial abuse of  
7 discretion. Dr. St. John testified that the interest rate set  
8 forth in the rent increase notice is based upon his professional  
9 judgment. (RT1 70:3-13.) The homeowners' consultant conceded  
10 that using the interest rate of 7% or 9% "has very little  
11 difference on the outcome." (RT1 181:20-22.) Regardless, the  
12 homeowners have not and cannot establish that the Arbitrator's  
13 Award constituted a prejudicial abuse of discretion.

14  
15 5. Reimbursement for Capital Improvements

16  
17 The homeowners seek reversal of the Arbitrator's Award of  
18 reimbursement for expenses related to the capital improvement of  
19 the Park. The homeowners' misguided objections are not based on  
20 the record, and misstate the Arbitration Award. The homeowners  
21 have failed to establish that the Arbitrator engaged in a  
22 prejudicial abuse of discretion.

23 The homeowners object that the capital improvement costs  
24 have not yet been incurred, but they do not and cannot dispute  
25 that in fact Park management has paid \$320,000 into an escrow  
26 fund specifically to be used in park infrastructure  
27 improvements. They suggest that there is no contractual  
28 obligation by Park management to actually pay these funds for

1 capital improvements. That claim ignores the evidence in the  
2 record, but more fundamentally ignores the express findings of  
3 the Arbitrator.

4 The Ordinance makes it clear that Park management is  
5 entitled to recover all expenses that it incurs in making  
6 capital improvements to the Park as a direct rent increase to  
7 the homeowners. (Ordinance, § 11A-6.) Indeed, failure to have  
8 such a provision would have rendered the Ordinance  
9 unconstitutional.

10 The homeowners further utterly ignore the clear provisions  
11 of the Ordinance that makes clear that the capital expenses that  
12 form the basis for a present rent increase may include those  
13 costs to be incurred in the future.

14 Section 11A-6(b)(1) states:

15 (b) Capital Expenses.

16 (1) The cost of capital Expenses **incurred or**  
17 **proposed**, including reasonable financing costs, may be  
18 passed on to homeowners at the time of an annual  
19 increase.

20 The homeowners ignore the undisputed evidence that the Park  
21 operator has actually paid \$320,000 into the reserve fund to be  
22 used for capital improvements to the Park, that all such funds  
23 are dedicated to be spent and will be spent on capital  
24 improvements to the Park, and that the funds expended will  
25 exceed that amount. (Exhibit K; RT2 145:15-147:1, 166:7-22,  
26 179:1-13.) The Park has unequivocally demonstrated that it has  
27 already incurred \$62,145.55 in costs relating to the capital  
28 improvements of the Park. (Exhibits J & K; RT2 189:2-14.)

1 Moreover, the Park has demonstrated that it has a number of  
2 projects planned, which are supported by a number of proposals.  
3 (Exhibits M, P.)

4 The homeowners object to what they claim is replacement of  
5 electrical meters and other components of the park electrical  
6 system. They base their objections on a legal claim they  
7 contend was made against a prior operator, and attach an  
8 exhibit, purportedly involving a case with Nomad Village, Inc.,  
9 which is **not** a party to this proceeding and is **not** Park  
10 Management in these proceedings. The fact that the homeowners  
11 have patently misrepresented that court case is irrelevant for  
12 the purposes of their appeal. The homeowners are basing their  
13 argument in their Petition on matters wholly **outside of the**  
14 **record** in the case, and their arguments, and proffered exhibit,  
15 **cannot** be considered by the Board in the review of the  
16 Arbitrator's decision. Moreover, the proffered order deals  
17 solely with expenses related to gas and electric meters, and  
18 although the homeowners claim that some of the capital  
19 improvement expenses by the Park relate to meters, their claim  
20 is false; the homeowners cite nothing in the record that shows  
21 that the Park's capital expenses are for such meters.  
22 Disturbingly, the homeowners falsely claim that "the capital  
23 replacement of the meters" is a charge that the Arbitrator is  
24 "requiring the homeowners to pay for." (Petition page 5 (pages  
25 are unnumbered) 3<sup>rd</sup> ¶ under § 5.) Homeowners' flatly misrepresent  
26 the express findings of the Arbitrator: "The Park Owner can  
27 charge the Homeowners this \$320k via a temporary increase, but  
28 any amounts which are not itemized as being eligible and/or

1 spent by from six months of the date of this award, including  
2 for the capital replacement of the meters, must be returned and  
3 no longer charged to the Homeowners."

4 The homeowners' objections are not only baseless, they  
5 ignore the express ruling of the Arbitrator. In addition, the  
6 homeowners claim that no charges relating to the electrical  
7 system can form the basis for a rent increase. Not so.

8 The homeowners completely ignore the 2004 Order Instituting  
9 Rulemaking and Investigation issued by the California Public  
10 Utilities Commission ("PUC"), in which the PUC concluded that  
11 there were a variety of costs incurred by mobilehome parks costs  
12 related to electric or natural gas utility service that are  
13 either not incurred by the utility when it directly served MHP  
14 tenants, or are not reflected in utility rates for direct  
15 service, but are incurred by sub-metered MHP owners, and that  
16 these are costs may be separately charged to tenants by way of a  
17 rent increase. (See Request for Judicial Notice that is part of  
18 the record of proceedings.)

19 Accordingly, the homeowners are flatly wrong in their  
20 sweeping statement that no expense related to the electrical  
21 system can form the basis of a rent increase. In fact, the  
22 expenses to the electrical system involved in this action are  
23 those types of expenses that are not incurred by a utility in  
24 serving their customers, and include expenses related to the  
25 Park common area. The Arbitration Award specifically allowed  
26 the capital expenses that can rightfully be charged to  
27 homeowners.

28

1 The homeowners have not, and cannot, show a prejudicial  
2 abuse of discretion by the Arbitrator.  
3

4 6. Reimbursement for Professional Fees Incurred  
5

6 The homeowners object to the Arbitrator's Award reimbursing  
7 Park management for some of the professional fees that it  
8 incurred relating to capital improvements of the Park, by  
9 claiming that it is not a capital expense.

10 Again the homeowners ignore, and indeed, contradict, the  
11 record of proceedings.

12 The homeowners object to the Arbitrator's treatment of the  
13 professional fees by amortizing them, yet their consultant  
14 acknowledged that this was a valid approach; the homeowners  
15 further ignore that if the professional fees are not amortized  
16 as a temporary rent increase, then they necessarily would be  
17 included in the park's expenses for a permanent rent increase.  
18 Moreover, the homeowners conceded at the arbitration hearing  
19 that the arbitrator has flexibility in the treatment of  
20 amortized expenses.

21 The homeowners' consultant agreed that professional fees  
22 could properly be amortized as proposed by the park operator)  
23 and that this benefits the homeowners--conceding the  
24 applicability of the treatment of such fees as analogous to a  
25 capital expense item. (RT1 174:21-175:4.)

26 Accordingly, the homeowners' opposition to this manner of  
27 treatment set forth in their Petition is at odds with the  
28



1 evidence in these proceedings, and therefore outside of the  
2 record and cannot be considered on review.

3 The Arbitrator was generous to the homeowners in  
4 disallowing more than half of the amount incurred by park  
5 management, and Park Management accepts the Arbitrator's  
6 discretion on this point.

7 The homeowners have not and cannot establish that the  
8 Arbitrator's Award is a prejudicial abuse of discretion.  
9

10 7. Reimbursement for Professional A&E fees Incurred  
11

12 The homeowners object to the Arbitrator's Award reimbursing  
13 Park Management for \$40,000 out of \$90,000 incurred for plans  
14 and permits. The homeowners claim that there was insufficient  
15 evidence, but ignore the fact that there was direct,  
16 uncontradicted evidence that the Park Management incurred  
17 \$90,000 in expenses for the plans and that that these plans were  
18 very valuable to the current operator. (RT2 144:1-142:5.)  
19 These expenses were detailed in a spreadsheet and included  
20 supporting documentation. (Exhibits J and L.) The homeowners  
21 improperly refer to matters outside of the record regarding  
22 permits, and further ignore the fact that these expenses were  
23 primarily for expensive plans, and not permit costs, as outlined  
24 in the foregoing exhibits. The Arbitrator was generous to the  
25 homeowners in disallowing more than half of the amount incurred  
26 by park management, and park management accepts the Arbitrator's  
27 discretion on this point.  
28

The homeowners have not and cannot establish that the

1 Arbitrator's Award is a prejudicial abuse of discretion.  
2

3 8. Reimbursement for Property Tax Increase Payments  
4

5 The homeowners object to the Arbitration Award allowing the  
6 Park Management to recover the costs incurred in the property  
7 tax increase. The sole basis for this claim (other than their  
8 misguided that Park Management is not entitled to recover  
9 anything for the property tax increase, in direct contradiction  
10 to the express terms of the Ordinance) is that Park Management  
11 may only recover for "prospective" costs. The homeowners,  
12 again, make a contention that is without any legal support, and  
13 is **directly contrary** the evidence of their own consultant at the  
14 Arbitration Hearing.

15 The homeowners' consultant did not testify that Park  
16 Management could not recover for past expenses, and acknowledged  
17 that Park Management said he acknowledged that there were "no  
18 absolute lines" as to when a park operator had to notice a rent  
19 increase for expenses incurred in the past. (RT1 223:16.) He  
20 certainly could cite absolutely nothing in the Ordinance that  
21 precluded the Park operator's recovery for past expenses for  
22 regulatory lag. Dr. St. John pointed out that it did not make  
23 good sense effectively to require the park operator to be  
24 subject to frequent fair return proceedings. (RT1 73:3-20.)

25 Indeed, based upon the significant time and expense  
26 involved in these rent control arbitration proceedings (for all  
27 sides—Park management, the homeowners, and the County) it simply  
28

1 does not make sense (for any party) to require excessive  
2 proceedings.

3 The homeowners have not and cannot establish that the  
4 Arbitrator's Award is a prejudicial abuse of discretion.  
5

6 11. Reimbursement for Professional Fees Associated with the  
7 Rent Control Proceedings  
8

9 The homeowners' objection to the Arbitrator's ruling that  
10 the park owner is entitled to recover \$110,000 in professional  
11 fees incurred in connection with the rent control proceedings is  
12 also misguided, ignores the record of proceedings, attempts to  
13 inject new matters outside of the record, and is contradicted by  
14 the homeowners' own testimony at the arbitration hearing.  
15

16 The homeowners object that the \$110,000 is improper because  
17 it is not "definite and certain" and "not supported by  
18 substantial evidence." The homeowners ignore the fact that the  
19 Arbitrator's ruling is supported by the direct, uncontradicted  
20 evidence in the record.

21 The parties stipulated at the hearing that Park management  
22 would submit the account statements supporting the professional  
23 fees on which the rent increase is based with its opening post  
24 arbitration brief. (RT2 207.) Park Management did so, and  
25 submitted detailed account statements on which the Arbitrator  
26 specifically relied. (Exhibits R,S.) These statements provided  
27 evidence that the professional fees incurred by Park Management  
28 as of the date of the submission equaled slightly over \$110,000,  
the amount that the arbitrator awarded.

1  
2 Accordingly, the amount awarded by the Arbitrator was in  
3 fact definite and certain, and were actually incurred by Park  
4 Management prior to the time of the arbitration award.

5 The homeowners' consultant agreed that the Park operator  
6 was entitled to recover professional fees relating to the rent  
7 control proceedings, and that he agreed with the methodology  
8 employed here by making it the basis of a temporary rent  
9 increase amortized over a period of years. (RT1 235:19-236:8.)

10 Dr. St. John, the economist testifying for Park Management,  
11 testified that in his professional opinion, these expenses were  
12 completely appropriately included as a basis for a rent  
13 increase, and that they were properly treated as being amortized  
14 over a period of years. (See, e.g., RT1 17-25.) He further  
15 testified that in his professional opinion, this treatment was  
16 proper under the ordinance. (RT1 84:18-23.) He also pointed it  
17 out that these expenses could properly be included as operating  
18 expenses in an MNOI analysis, but doing so would be using an  
19 extraordinary expense as the basis for a permanent increase, so  
20 that his approach of treating the expense as temporary and  
21 amortizing it over a period of time was favorable to the  
22 homeowners. (RT1 86:1-20.)

23 The homeowners' consultant testified that he agreed with  
24 Dr. St. John's approach of amortizing the expenses for these  
25 types of fees.

26 Q. So it's your experience that an application such as  
27 this may properly charge residents for the professional  
28 fees generated in connection with this application process,  
correct?

1 A. For the rent increase application, yes. Yes, that's -  
2 - if you have a cost in getting a fair return, that's a  
3 reasonable cost.

4 Q. And typically, it would be done, structurally  
5 speaking, the way this exhibit shows, which is rather than  
6 make it an operating cost and put it in the NOI formula and  
7 roll it into the base rent that never goes away, it's a  
8 separate line item pass-through, if you will, correct?

9 A. Yes. And typically it's amortized because it's not  
10 the kind of expense that occurs frequently.

11 Q. Okay. So you're in agreement with what Dr. St. John  
12 was saying about how doing it this way better for the  
13 tenants?

14 A. Yes. Well, it's an amortized expense so it should  
15 end.

16 Q. So you're in agreement with him on that?

17 A. Yes.

18 (RT1 174:8-175:4.)

19 Q. Well, let's talk about that a little. I want to make  
20 sure I understand your position on that. I think you've  
21 agreed with me that the homeowners are better off if this  
22 is essentially treated like a capital expense pass-through  
23 because then it becomes a temporary increase and not a  
24 permanent rent increase, correct?

25 A. Right. Well, it should be amortized, it's not a  
26 recurring expense.

27 (RT1 234:15-22.)

28 Now, with respect to the anticipated professional fees  
relating to the rent increase, as I understand your  
position there, you don't necessarily quarrel with the idea  
that the park owner is entitled to recover professional  
fees relating to the rent increase?

A. That's right.

1 Q. Nor do you argue with the methodology employed here,  
2 which is to do it as a temporary as opposed to the base for  
3 a permanent rent increase?

4 A. Right, that's correct.

5 Q. And you don't object to amortizing it over a period of  
6 years?

7 A. No. It shouldn't be because it's not -- whatever you  
8 incur, you're not incurring it every year so it shouldn't  
9 be added on to the base rent.

10 (RT1 235:19-236:8.)

11 The homeowners inexplicably also improperly refer to an  
12 Oceanside ordinance for unknown reasons; the cited ordinance,  
13 contrary to the Santa Barbara County Ordinance, expressly  
14 prohibits a rent increase based upon a challenge to the  
15 ordinance or the commission. Again, reliance upon other  
16 ordinances is not part of the record of proceedings in this case  
17 and cannot be considered as part of the homeowners' Petition.  
18 Moreover, the Santa Barbara County contains no such provisions.  
19 The instant arbitration proceedings were not any sort of a  
20 challenge by Park Management, but instead were initiated by the  
21 homeowners. Park Management was forced to incur professional  
22 fees as a result of the homeowners' challenge to the rent  
23 increase, and the utter refusal by the purported homeowner  
24 representatives to negotiate any resolution whatsoever of this  
25 matter. (Note, various individual homeowners did negotiate a  
26 resolution with park management, the result of which was a  
27 rental amount relatively close to the amount ultimately awarded  
28 by the arbitrator; these settling homeowners are not part of  
these rent control proceedings.)

1 The homeowners have not and cannot establish that the  
2 Arbitrator's Award is a prejudicial abuse of discretion.  
3

4 12. Permanent and Temporary Increases and Exhibit T.  
5

6 The homeowners' discussion under section 12 is  
7 unintelligible. However, they accurately report the amounts  
8 allowed by the Arbitrator. A review of the numbers is useful.  
9

10 The arbitrator allowed the following rent increases:

|                                 |         |
|---------------------------------|---------|
| 11 Permanent rent increase:     | \$25.59 |
| 12 Temporary rent increase:     | \$67.09 |
| 13 Total Rent Increase Awarded: | \$92.68 |

14

15 The permanent increase as noticed was based upon the Park's  
16 increased costs for the property taxes and the ground lease  
17 fees. These two separate items can be broken out pursuant to  
18 Exhibit D, Table 1, that sets forth the initial rent increase  
19 notice, and the Nomad Village Rent Schedule Calculations  
20 Pursuant to Award, attached to the Arbitrator's Award, that sets  
21 forth the revised amount:

|  |         |
|--|---------|
| 22 Permanent increase noticed:                             | \$58.16 |
| 23 Amount allowed by Arbitrator For Property Tax increase: | \$25.59 |
| 24 Remaining amount-attributable to Ground Lease increase: | \$32.57 |

25

26 Similarly, the rent increase notice had a provision for  
27 Park Management to recover the costs incurred for both items  
28 (property tax and ground lease fees) to the date of the increase

1 for regulatory lag or "uncompensated increase" as a temporary  
2 rent increase. The two items can similarly be broken out as  
3 follows:

4 Temporary increase for uncompensated increase as noticed: \$32.74  
5 Amount allowed by Arbitrator For Property Tax increase: \$14.00  
6 Remaining amount-attributable to Ground Lease increase: \$18.74  
7

8 Accordingly, Park Management's appeal seeks that the Board  
9 further allow, in addition to the amounts allowed by the  
10 Arbitrator, the amount sought by the notice of rent increase for  
11 reimbursement of the costs regarding the ground lease fees, as  
12 follows:

13  
14 Amount allowed by Arbitrator For Permanent Rent increase: \$25.59  
15 Amount attributable to Ground Lease increase: \$32.57  
16 Total permanent rent increase sought: \$58.16  
17

18 Amount allowed by Arbitrator For Temporary Rent increase: \$67.09  
19 Amount-attributable to Ground Lease increase: \$18.74  
20 Total temporary rent increase sought: \$85.93  
21

22 CONCLUSION

23  
24 The homeowners' petition for review improperly relies on  
25 matters occurring outside the record, and should be disregarded  
26 in its entirety.

27 Regardless, as is clear from an examination of the  
28 Arbitrator's Award and the actual record by the arbitrator, the

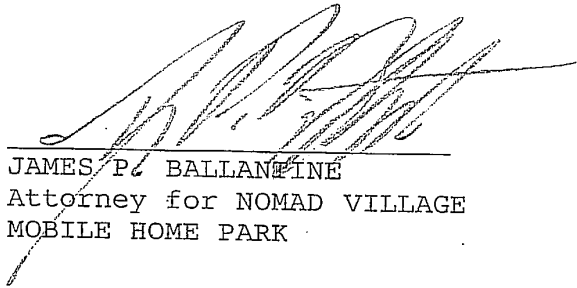


1 homeowners have not and cannot establish that the arbitrator's  
2 award is a prejudicial abuse of discretion on any of the points  
3 that they raise. The homeowners appeal should be rejected in  
4 its entirety for failure to establish any prejudicial abuse of  
5 discretion.

6 The arbitrator did a commendable job in this proceeding.  
7 Park management accepts each and every discretionary  
8 determination made by the arbitrator. Park management has a  
9 difference of opinion with the arbitrator on the sheerly legal  
10 question of whether the ground lease fees incurred by park  
11 management are properly considered as a basis for a rent  
12 increase.

13 Accordingly, the homeowners' petition for review should be  
14 denied.

15  
16 Dated: February 6, 2012

  
\_\_\_\_\_  
17 JAMES P. BALLANTINE  
18 Attorney for NOMAD VILLAGE  
19 MOBILE HOME PARK  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECLARATION OF SERVICE BY PERSONAL DELIVERY**  
[CCP §§ 1011, 2015.5]

State of California                    )  
  )  
County of Santa Barbara            )

I, LISA M. PAIK, declare:

I am a resident of the State of California and am employed in the County of Santa Barbara. I am, and was at the time of the service hereinafter mentioned, over the age of 18 years and not a party to the within action. My business address is 329 East Anapamu Street, Santa Barbara, CA 93101.

On February 6, 2012, I served: RESPONSE BY NOMAD VILAGE MOBILE HOME PARK TO PETITION FOR REVIEW on the interested parties in this action by causing to be delivered a true and correct copy thereof addressed as follows:

Clerk of the Board  
County of Santa Barbara  
105 East Anapamu Street, Fourth Floor  
Santa Barbara, California 93101

Margo Wagner  
Sharon Friedrichsen  
Community Services Department  
County of Santa Barbara  
105 East Anapamu Street, Suite 105  
Santa Barbara, California 93101

I caused to be delivered said document to the addressee as set forth herein.

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

       (Federal)        I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on February 6, 2012, at Santa Barbara, California.

  
\_\_\_\_\_

DECLARATION OF SERVICE BY U.S. MAIL

I, LISA M. PAIK, declare:

I am, and was at the time of the service hereinafter mentioned, over the age of 18 years and not a party to the within action. My business address is 329 East Anapamu Street, Santa Barbara, California 93101, and I am a resident of Santa Barbara County, California.

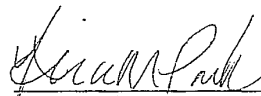
On February 6, 2012, I served the foregoing document described as RESPONSE BY NOMAD VILAGE MOBILE HOME PARK TO PETITION FOR REVIEW on the interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Debra Hamrick  
Nomad Village Homeowners Representative  
4326 Calle Real, #33  
Santa Barbara, California 93111

I caused such document to be mailed in a sealed envelope, by first-class mail, postage fully prepaid. I am readily familiar with the firm's business practices with respect to the collection and the processing of correspondence, pleadings, and other notices for mailing with the United States Postal Service. In accordance with that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Santa Barbara, California in the ordinary course of business.

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

Executed on February 6, 2012, at Santa Barbara, California.

  
\_\_\_\_\_

