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ARBITRATION PROCEEDINGS UNDER THE SANTA BARBARA COUNTY MOBILEHOME RENT CONTROL ORDINANCE

IN RE NOMAD VILLAGE MOBILE HOME PARK	RESPONSE BY PARK MANAGEMENT OF NOMAD VILLAGE MOBILE HOME PARK TO THE PETITION FOR REVIEW FILED BY HOMEOWNERS OF THE ARBITRATOR'S REMAND OPINION AND AWARD DATED 8/28/16 [Stephen Biersmith, Esq., Arbitrator] REMAND ARBITRATION HEARING DATE: August 10, 2016 TIME: 9:00 A.M. LOCATION:

PARK MANAGEMENT OF NOMAD VILLAGE MOBILE HOME PARK ("Park Management") hereby submits its Response to the Petition for Review by the Homeowners' Representative on behalf of the homeowners of Nomad Village Mobile Home Park collectively ("homeowners") and purportedly (but improperly) served on Park Management's counsel on September 22, 2016, appealing the Opinion and Award (Revised on Remand) ("Remand Award") issued by the Arbitrator on August 28, 2016, in the above-referenced Arbitration proceedings, as follows:

I

INTRODUCTION

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

The Arbitration Hearing was duly noticed and occurred on September 19 and 20, 2011. The homeowners were represented by Attorney Bruce Stanton, and called witnesses and introduced exhibits. Thereafter, the parties stipulated to a briefing schedule and submitted a series of post-hearing briefs. Following the briefing, the Arbitrator prepared a draft award on November 22, 2011, following which time the parties submitted a stipulated series of calculations, which were incorporated into the final Opinion and Award which was issued by the Arbitrator on December 20, 2011 ("Arbitrator's Award"). Thereafter, the homeowners appealed the Arbitrator's Award for review by the Board of Supervisors ("Board").

The Board patently violated the rights of Park Management by engaging improper ex-parte communications with the homeowners. The Santa Barbara Superior Court later found

these communications to be in violation of the law and improper. The Board further acted illegally by vacating in its entirety the rent increases granted by the Arbitrator's Award. Park Management thereafter sued the Board, and after extensive proceedings, which were unnecessarily protracted by the homeowners, the Court ruled in favor of Park Management and against the Board and the homeowners and set aside the Board's illegal order vacating the rent increases, and remanded the matter for further proceedings consistent with the law and the Court's Order. The Arbitrator conducted another hearing upon remand on February 17, 2016. Both parties, the homeowners and Park Management, appeared through counsel. The Arbitrator did not admit any further evidence, but heard argument and received briefing from both parties. The Arbitrator issued his Remand Award dated March 5, 2016. The homeowners then filed yet another Petition for Review to the Board. On July 19, 2016, over the objection of Park management, the Board voted to remand the matter back to the Arbitrator to make certain further findings On August 10, 2016, the Arbitrator conducted a remand hearing, and again did not hear any further evidence, but received pre-hearing briefs and heard argument from both parties, and allowed the parties an opportunity to file post arbitration hearing briefs. On August 28, 2016, the Arbitrator issued his Opinion and Award (Revised on Remand) making the same awards as before and in which he set forth additional findings in support of each of his awards. The Arbitrator again awarded Park Management a permanent space rent increase of $25.59 and temporary increase of $39.44.

The homeowners then filed yet another Petition for Review to the Board.

A. THE HOMEOWNERS' PETITION REVEALS ON-GOING IMPROPER EX-PARTE COMMUNICATIONS BY THE COUNTY

The homeowners' latest Petition continues to be governed by Rule 23. The Rules (Rule 23(b)) require that the Board make its determination based upon the arbitration "record alone" and may not consider evidence outside of the record. The homeowners' Petition again improperly violates Rule 23, as it is not based solely on the record of proceedings. Moreover, the homeowners' Petition is not based on any legitimate grounds for review, but is an improper

attempt by homeowners to reargue their case (based largely on spurious claims not on the Record), and get the Board to improperly substitute their own judgment for that of the Arbitrator, and make a different finding not based on the record, but on the homeowners' unsupported and false claims of alleged matters that do not appear in the Record. In addition, the homeowners' latest Petition also repeatedly refers to ex-parte communications with the County outside of any hearing to which Park Management was never a party, showing that the County again continues to engage in improper conduct and further violate Park Management's rights.

B. THE DELAY IMPOSED BY THESE RENT PROCEEDINGS IS VIOLATING PARK MANAGEMENT'S RIGHTS AND UNCESSARILY SUBJECTING THE HOMEOWNERS TO INCREASED RENTS AND THE COUNTY TAXPAYERS TO GREAT EXPENSE

This proceeding involves a legitimate rent increase that was first noticed by Park Management **nearly six years ago**. Aside from the patently illegal conduct by the Board in overturning the Arbitrator's Award, the Arbitrator has repeatedly reaffirmed the Award, and the Superior Court has ruled that the Board violated the law and set aside the Board's illegal conduct, and found Supervisor Wolf's ex-parte communications with homeowners to have been "improper" and "inappropriate" and in violation of governing law. Park Management is further suffering harm from the significant delay that to which the County process has subjected it. The County was a party to significant delay in submitting the administrative record to the Superior Court and having the writ proceeding be heard by the Court. Inexplicably, the County took well over a year to actually set aside its illegal order vacating the Arbitration Award, after being ordered to do so by the Court. Then the County further protracted these proceedings by yet again unnecessarily vacating the Arbitrator's award and remanding the matter back to the Arbitrator yet again; now the Arbitrator has reaffirmed exactly the same rent increases that he previously awarded. The Arbitrator's decision is well reasoned and amply supported by the record from the 2-day arbitration hearing at which the homeowners were represented by counsel and an expert witness and presented significant evidence and argument.

The California Supreme Court in *Galland v. Clovis* (2001) 24 Cal.4th 1003, 1027-1028, has made it clear that municipal administrative mobilehome rent control proceedings that subject Park Management to undue delay and expense are confiscatory and violate Park Management's constitutional rights. The Supreme Court has further made it clear that Park Management is entitled to recover all legal and administrative costs of the proceedings to which the County has subject it, either through a rent increase and/or monetary judgment against the County. Therefore, the County's conduct in these proceedings is having the effect of subjecting all of the homeowners to increased rents and the taxpayers of Santa Barbara County to significant costs.

The homeowner's Petition for Review is patently improper and without merit, and should be promptly rejected by the Board of Supervisors. Should the Board fail to do so, Park Management will be forced to pursue all available legal rights against it.

II

FACTUAL AND PROCEDURAL BACKGROUND

Nomad Village Mobile Home Park ("Park") is a 150-space mobile home park, located at 4326 Calle Real, Santa Barbara, CA, 93110, between El Sueño Road and San Marcos Pass. The Park was first developed in the late 1950's and was operated for many years by Nomad Village, Inc., pursuant to a ground lease or series of ground leases, which expired on July 31, 2008, and were not renewed. Commencing August 1, 2008, a new ground lessee, Lazy Landing MHP, LLC ("Lazy Landing"), entered into a 34-year ground lease for the property on which the Park is located, pursuant to arms-length negotiations with the ground lessor and fee owner of the property, the Bell Trust, at which time Waterhouse Management Corp. ("Waterhouse Management"), became the management company in charge of the operation of the Park. At the Arbitration hearing, Park Management confirmed on the record that they, Lazy Landing MHP, LLC, and Waterhouse Management were indeed "Management" of the Park pursuant to the terms of the Ordinance.

The Park is located in the unincorporated area of Santa Barbara County, and therefore is

subject to the jurisdiction of Santa Barbara County ("County"), and is subject to the provisions of the Ordinance and the Rules for Hearing adopted pursuant to the Ordinance. (A copy of the Ordinance and Rules are Arbitration Joint Exhibit 1.) The Park is one of four mobilehome parks located in the area between El Sueño Road and San Marcos Pass on the west and east, respectively, and Calle Real and Cathedral Oaks Road in the south and north respectively, and are located in the second Supervisorial District. The Park is a rental park, in which the mobilehomes are all owned by homeowners who rent their spaces in the Park from Park Management. The tenancies are subject to the terms of the Ordinance. Some homeowners entered into settlement agreements with Park Management and therefore are not subject to those Arbitration proceedings.

Notice of Rent Increase

On January 26, 2011, the Park delivered to all homeowners in the Park notices of rent increases to be effective on May 1, 2011, (Hearing Exhibit A) issued pursuant to the terms of the Ordinance and the California Mobilehome Residency Law ("MRL"). The notice covered the standard CPI increase allowed under the Ordinance, which varied slightly by space, plus a proposed $161 per space increase, comprising of a permanent increase of $58.16 per space and proposed temporary increase of $102.84 per space. The Residents were given a detailed breakdown of the rent increase (Hearing Exhibit C). The prior space rent increase at the Park was made by Nomad Village, Inc., and was effective May 1, 2008. There had not been any space rent increases in the Park at all since Park Management had taken over management in 2008. Expenses, on the other hand, had increased significantly, including due to the County tripling the Park's property taxes. There were capital projects planned and some $320,000 had been paid by Park Management into a reserve account to accomplish capital improvements, and the Park Management had incurred other capital or one-time expenses.

Homeowners' Petition for Arbitration

In April 2011, Park Management was notified that a Petition challenging the Park's rent increase had been filed with Santa Barbara County. Park Management filed a response. The terms of the Ordinance and the Rules set forth a detailed process for the selection of an arbitrator to hear challenges to rent increases, and for the noticing and conduct of the hearing. Pursuant to the terms of the Ordinance and the Rules for Hearing, the County appointed Stephen Biersmith, Esq., as Arbitrator and noticed an Arbitration Hearing.

Arbitration Hearing

The Arbitration Hearing was held on September 19 and 20, 2011, presided over by Mr. Biersmith, Arbitrator. Prior to the hearing, the Petitioner homeowners and Park Management both submitted arbitration briefs. The homeowners were represented by San Jose Attorney Bruce Stanton, and called witnesses and introduced Petitioner's exhibits, Exhibits 1-8. Witnesses called by the homeowners were: Dr. Kenneth Barr, and Dan Waltz. Respondent Park Management was represented by Santa Barbara Attorney James Ballantine, and also called witnesses and introduced exhibits, Respondent's Exhibits A-T. Witnesses called by Park Management were: Dr. Michael St. John, Ken Waterhouse and Ruben Garcia. There were also exhibits received by Stipulation, Joint Exhibits 1 & 2.

The Arbitration Hearing was transcribed by a court reporter who prepared a Reporter's Transcript (referred to herein as RT1 for the September 19, 2011 hearing and RT2 for the September 20, 2011 hearing).

At the conclusion of the Arbitration hearing, the parties stipulated to a briefing schedule, including submission of billing statements in support of Park Management's claim for reimbursement of professional fees (RT2 206:20 – 207:25) and submitted a series of post-hearing briefs, and pursuant to the Stipulation, Park Management submitted exhibits documenting its professional fees incurred (Exhibits Q, R & S). Following the post-hearing briefing, the Arbitrator prepared a draft award on November 22, 2011, and then Park Management submitted revised rent calculations pursuant to the Arbitrator's directions, which were incorporated into the final Opinion and Award which was issued by the Arbitrator on

December 20, 2011 ("Arbitration Award"). A true and correct copy of the Arbitration Award is attached hereto as **Exhibit 1**.

The Arbitration Award found that Park Management was entitled to a space rent increase under the terms of the Ordinance, finding: The Permanent increase is to be $25.59 and the Temporary Increase $67.09, for a total increase of $92.68, as supported by Respondent's Exhibit T. The Arbitrator expressly maintained jurisdiction until March 1, 2012, to oversee the effectuation of the Award.

Appeal to Board of Supervisors I

Notwithstanding the Arbitrator's reservation of jurisdiction, in January 2012, Deborah Hamrick, as homeowners' representative of the homeowners of Nomad Village Mobile Home Park, filed a Petition for Review of the Arbitration Award to the Board. As a result of the homeowners' appeal, Park Management elected to appeal a limited issue of the Award, solely the denial of a rent increase due to the doubling of the costs of the ground lease.

The Board held a hearing on the appeal on May 15, 2012.

Despite the fact that the Rules clearly provide that the Board's determination must be upon the "**record alone,**" the Board considered matters far outside the record of proceeding. Despite the fact that the standard for the Board's review of the Arbitrator's decision is to be "prejudicial abuse of discretion," which is defined as "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," (Rule 23) the Board proceeded in a manner in which it substituted its own political judgment based upon its ex-parte communications with homeowners, rather than simply reviewing the record of proceedings.

It has since been revealed that prior to the hearing, members of the Board received improper ex-parte communications in opposition to the rent increase awarded by the Arbitrator, including the Second District Supervisor prior to the hearing having met with the Debra Hamrick, the homeowner representative, as well as other homeowners from other parks.

These ex-parte communications were later held by the Santa Barbara Superior Court to have been "improper" and "inappropriate" and in violation of governing law.

At the Board hearing, the Second District Supervisor, in front of her many constituents present, made a motion, which the Board approved, to reverse every single rent increase granted by the Arbitrator, and to remand the Arbitrator's approval of the rent increase based on the property tax increase back to the Arbitrator for reconsideration, and for recalculation.

The Board remanded the question of the portion of the rent increase based upon the County's property tax increase of the Park, even though the Board admitted that the law clearly provides for a rent increase based upon a property tax increase. In accordance with this action by the Board, the Arbitrator conducted a remand hearing on the property tax issue, on July 13, 2012, at which time Park Management and the homeowners appeared through representatives, and thereafter, on August 6, 2012, issued an Opinion and Award on Remand ("Property Tax Remand Award"). The Property Tax Remand Award upheld the full amount of permanent rent increase based upon the increased property taxes as set forth in the Arbitration Award, the sole discretionary matter remanded to the Arbitrator. The remaining aspect of the Property Tax Remand Award was a ministerial calculation based upon the changes set forth in the decision by the Board.

Writ of Mandate Litigation

On August 13, 2012, Park Management filed a Petition and Complaint for writ of mandate and for substantial monetary damages for illegally taking Park Management's property and denying it a fair return on its investment in the Park, naming County of Santa Barbara and the Board as Respondents and Debra Hamrick, as representative of the homeowners, as Real Party in Interest as to the Writ action, on the grounds that the Board's Order reversing the Arbitration Award was improper. The case was assigned to the Honorable Superior Court Judge Thomas P. Anderle. The case was bifurcated so that the Writ of Mandate action ("Writ Action") would be adjudicated first to a conclusion, before Park Management's takings lawsuit against the

County and the Board would proceed, so that the nature and extent of Park Management's damages caused by the County and the Board would be ascertained first.

The Writ Action proceeded in the Court. The County filed its Administrative Record of Proceedings. The homeowners actively participated in the Writ Action, hiring legal counsel, Thomas Griffin. Resolution of the Writ Action was delayed by over a year while the homeowners actively litigated the case, filing numerous motions, all of which were denied by the Court, and engaging in unauthorized discovery (the Court ruled that the homeowners' were not entitled to discovery since an administrative writ proceeding is determined solely on the administrative record). The writ petition issues were extensively briefed for Judge Anderle.

On November 10, 2014, Judge Anderle entered his Order on Writ of Mandate ("Order"), which attached a detailed 31-page decision ("Decision") by which Judge Anderle thoroughly discussed the basis of the Order.

In the Order, Judge Anderle granted virtually all of the relief Park Management sought, ordering that the Board **vacate** its order reversing the Arbitration Award as to Awards numbered 4, 5, 6, 7, 8, 11, and 12, and remanded for further findings Arbitration Awards numbered 4, 5, 6, 7, and 12 (these award numbers follow the numbering set forth in the Arbitration Award).

Thereafter, the homeowners, through Deborah Hamrick again as homeowner representative, and again represented by Thomas Griffin, filed a separate writ proceeding, naming the County as Respondent and Park Management as well as the land owners, the Bells, as real parties in interest. In this writ proceeding, the homeowners claimed that Park Management was not entitled to any rent increase or even to collect any rent at all since 2008. The homeowners disqualified Judge Anderle, so the matter was assigned to Judge Colleen K. Sterne. That action was resolved entirely against the homeowners on summary judgment, and Judge Sterne entered Judgment against the homeowners on December 18, 2015, which judgment is now final.

Board of Supervisors Remand Hearing

On January 19, 2016, the Board held a remand hearing, as ordered by Judge Anderle (albeit over a year after Judge Anderle ordered that the Board conduct a rehearing and vacate its prior order overturning the Arbitrator's Award). At that time the Board voted to remand to the Arbitrator for further hearing to consider Awards numbered 4, 5, 6, 7, 8, 11, and 12. The remand of Awards numbered 8 and 11 was contrary to the Court order and contrary to the Board's own legal counsel's direction, since the Board was simply ordered to set aside its order vacating those awards so that the Arbitrator's Award was reinstated.

Remand Arbitration Hearing

On February 19, 2016, the Arbitrator, Steven Biersmith, Esq., held a Remand Arbitration Hearing, at which Park Management and the homeowners appeared through counsel and through representatives of both Park Management and the homeowners. The Arbitrator declined to take any new evidence at the Remand Arbitration Hearing, and determined to render a decision based upon the existing evidentiary record of proceedings. The Remand Arbitration Hearing was transcribed by a Court reporter. On March 5, 2016, the Arbitrator issued his Remand Award, awarding Park Management a permanent space rent increase of $25.59 and temporary increase of $39.44, as itemized therein. A true and correct copy of the March 5, 2016 Opinion and Award (Revised on Remand) is attached hereto as **Exhibit 2**.

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Appeal to Board of Supervisors II

The homeowners again appealed to the Board. Park Management filed a Response to the Appeal, pointing out that the appeal was without basis and should be denied. (See Park Owner's Response, incorporated herein by reference.) County staff prepared a Board letter recommending that the Board find that the Remand Award did not contain sufficient findings and should be remanded to the Arbitrator to make further findings in support of the Award. Ironically, the Board Letter itself was conclusionary in nature, and failed to make sufficient

findings in support of its conclusion. On July 19, 2016, the Board held a hearing on the homeowners' appeal. Debra Hamrick addressed the Board and demanded that the Board vacate the Remand Award and assign the matter to a new arbitrator. Other homeowners addressed the Board demanding that the Board vacate elements of the initial arbitration award that had already been upheld by the Superior Court. Park Management's representative addressed the Board, pointing out that the Remand Award was proper and consistent with the Court's order and should be upheld, but if the Board were to remand the matter for further findings, the Rules, as well as common sense and judicial economy, clearly would dictate that the matter must be remanded to the Arbitrator who actually heard and received the evidence on which the award was based.

Ultimately the Board voted to remand the Remand Award to the Arbitrator for further findings in support of the Award. The instant Remand Arbitration Hearing followed.

Further Remand Arbitration Hearing

On August 10, 2016, pursuant to the Board's Order remanding the matter to the Arbitrator for further findings, the Arbitrator, Steven Biersmith, Esq., held another Remand Arbitration Hearing, at which Park Management and the homeowners appeared through their representative, respectfully. The Arbitrator declined to take any new evidence at the Remand Arbitration Hearing, and determined to render a decision based upon the existing evidentiary record of proceedings. The Arbitrator received pre-Arbitration hearing and post-Arbitration hearing briefs from both of the parties. The Remand Arbitration Hearing was transcribed by a Court reporter. On August 28, 2016, the Arbitrator issued his Remand Award, awarding the same rent increase set forth in his March 5, 2016 Remand Award, awarding Park Management a permanent space rent increase of $25.59 and temporary increase of $39.44, as itemized in the Remand Award, and containing additional findings of fact and making specific findings in support of each of the awards.

A true and correct copy of the Arbitrator's Remand Award is attached hereto as **Exhibit 3**, along with the calculations sheet itemizing the awards.

The Homeowners' Expert Has Admitted Park Management is Entitled to Recover its Costs

Park Management has incurred over $600,000 to date in costs, and is continuing to incur additional costs, in defending against the homeowners' proceedings attempting to deprive Park Management from recovering the rents to which it is legally entitled under the law. Park Management will recover these costs through rent increases, the law clearly provides and as the homeowners' expert has admitted Park Management is entitled to do. In the event that Park Management is deprived of this right, which the homeowners expert has admitted Park Management has, to recover its costs through a rent increase, then Park Management will recover these costs through its civil lawsuit for damages, including, inter-alia, against the County and the Board.

III

REVIEW BY THE BOARD OF SUPERVISORS MUST BE BASED UPON THE EXISTING RECORD ALONE AND NOT ANY EVIDENCE OUTSIDE OF THE EXISTING RECORD

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

The Record of the Arbitration Proceedings consists of the following:

- The Arbitrator's Award (revised) dated December 20, 2011, including attached Rent Schedule, along with the prior draft Award
- Arbitration Hearing Transcript for September 19-20, 2011
- Park Management's Exhibits A-T, referenced in the Arbitrator's Award
- Homeowner's exhibits 1-8, referenced in the Arbitrator's Award
- Joint exhibits 1-2, referenced in the Arbitrator's Award
- Post Arbitration Hearing Briefing by the Parties:

1. Opening Post-Hearing Arbitration Brief by Nomad Village Mobile Home Park
2. Submission of Updated Account Statements by Nomad Village Mobile Home Park for Professional Services
3. Homeowners' Post-Hearing Opening Brief
4. Closing Post Arbitration Hearing Brief by Nomad Village Mobile Home Park
5. Submission of PUC Orders by Nomad Village Mobile Home Park
6. Homeowners' Post-Hearing Closing Brief

- Remand Hearing Brief by Park Management
- Property Tax Remand Award, dated August 6, 2012
- Property Tax Remand Arbitration Hearing Transcript for July 13, 2012
- Order on Writ of Mandate, entered by Santa Barbara Superior Court on November 10, 2014
- Remand Arbitration Exhibits U, V & W proffered by Park Management
- Remand Hearing Brief by Park Management
- Real Party In Interest Debra Hamrick's Arbitration Brief on Remand for Revised Findings
- Remand Arbitration Hearing Transcript for February 19, 2016
- Remand Award dated March 5, 2016
- Remand Arbitration Pre-Hearing Briefs by Park Management of Nomad Village Mobile Home Park and the Homeowners
- Remand Arbitration Hearing Transcript for August 10, 2016
- Post Remand Hearing Brief for the Arbitration Hearing on the Remand by Park Management of Nomad Village Mobile Home Park AND THE HOMEOWNERS
- Remand Award dated August 28, 2016

This will constitute Park Management's request that the Record to be reviewed by the Board in connection with this Arbitration Proceeding include the above documents, including the Remand Arbitration Hearing Transcript for August 10, 2016.

The Board has been warned by the Court that its consideration of matters outside of the record, including its illegal ex-parte communications with the homeowners or homeowners of other Parks, is improper. To the degree that the Board persists in such conduct in the face of this admonishment by the Court, then Park Management will consider the Board's conduct to be intentional conduct to violate Park Management's legal rights and will seek the appropriate damages and other remedies in its civil action against the Board for this violation.

IV

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

The Rules clearly provide that the Board's determination must be upon the "**record alone.**" (Rule 23(b).) Accordingly, it is utterly improper for the homeowners to attempt to proffer any new purported evidence or exhibits, nor may they make or rely on any claims not appearing in the record. The homeowners refer in their Petition for Review to various claims and alleged "evidence" that are not contained in the record.

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

or other mobilehome park to continue 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 again because it became aware, after the fact, of improper secret ex-parte communications by homeowners with persons associated with the Arbitration Proceedings.

Moreover, the homeowners' Petition to the Board repeatedly refers to alleged "evidence presented by the homeowners," without ever actually identifying any of such alleged evidence.

The Petition is replete with claims that the "homeowners presented evidence" without identifying any such evidence. The Petition is further replete with various purported assertions of alleged facts with no citation to the record, and when in reality the alleged "facts" asserted by the homeowners in their Petition are not in evidence, and in fact are false. The Petition is further replete with purported legal arguments, again without citation to the record, and when in fact no such arguments were ever made in the Arbitration Proceedings and such purported arguments are meritless and without any evidentiary foundation on which the arguments purport to be made. A particularly egregious example of this is the homeowners' repeated references, without any citation to the record, to alleged "code violations" and to alleged "violations and related penalties" and references to alleged "violations of California Civil Code section 798.39.5." These reckless and irresponsible claims have no foundation in fact or law; there is no such evidence of any such alleged "violations and associated penalties" in the record of proceedings, nor was there any argument by the homeowners as to Civil Code section 798.39.5. The homeowners' Petition for Review is also replete with inflammatory references to alleged "fraud" when, similarly, there is utterly no evidence in the record of any such thing. It is important to note that no such claims were made by the homeowners in the Arbitration Hearing while they were represented by a legitimate attorney. No doubt because a legitimate attorney recognizes that such claims would be reckless and irresponsible. These patently false and improper statements now made repeatedly by the homeowners taint their entire Petition for review and must be disregarded.

Essentially, the homeowners' Petition is not a petition for review, but an improper attempt by the homeowners to have the case reheard based upon their own false claims of matters not in evidence, in violation of Rule 23.

V

DISCUSSION OF AWARDS REMANDED TO ARBITRATOR

The homeowners appear to attempt to go through and purport to discuss certain elements of the Arbitrator's Award on a numerical basis, although they incorrectly identify each of the elements of the Award. As noted above, the homeowners fail in all cases to establish or even address the applicable legal standard. In addition, the homeowners' discussion is riddled with improper references outside the record. As such, their entire discussion must be disregarded. However, Park Management will respond to some of the points raised, in the same numerical order set forth by the homeowners. (Note, the homeowners misidentified the numbers of the awards set forth in the Remand Award; the Award numbering of the Remand Award differs from the numbering of the prior Award.)

Award No. 5. Amortization Rate

The homeowners refer to Award No. 4 as dealing with "Amortization period and rate" when in fact that topic is covered in the Remand Award as Award No. 5.

Award No. 5 is that "[a]ll granted temporary increases are to be amortized at 9% for seven (7) years."

The Ordinance provides for amortization over the useful life of a capital expense. (S.B. County Code, ch. 11A, § 11A-6(b)(2).) The Ordinance otherwise provides no guidance as to either the time span for amortization or the interest rate.

The Court affirmed the Arbitration Award as to the amortization: "The record shows that there was substantial evidence to support the arbitrator's decision of seven years and nine percent. Petitioners presented this amortization schedule [Exhibit C] and Dr. St. John testified that these numbers were the result of his professional judgment." (Decision, p. 30.)

The Court further found that since certain other matters were being remanded back for further proceedings and findings, that the "items subject to amortization may change as a result of the further proceedings" so that Award No. 4 must be subject to potential reconsideration. (*Id.*)

Accordingly, the amortization potentially could have been changed, but need not have been changed, under the terms of the Court's ruling. Since the Court has already affirmed the amortization as being supported by substantial evidence, based upon Dr. St. John's professional judgment, already in the record, the Court has already determined that substantial evidence supports the Arbitrator's decision, it continues to support the Arbitrator's decision as set forth in the Remand Award. Similarly, the Court has found that the Arbitrator's findings were sufficient to support the award. The Board acknowledged this fact in its July 19, 2016 Order. Accordingly, there are no grounds for review of this award, and in fact, any such review would be improper.

Award # 6. Capital Items.

The homeowners refer to Award No. 5 as dealing with "Costs expended" and refer to the $62,145.55 in capital items in evidence, when in fact that topic is covered in the Remand Award as Award No. 6.

Award No. 6 is that the "The Homeowners are to pay the $62,145.55 which were capital improvement expenses incurred prior to the commencement of the arbitration."

Park Management's rent increase notice sought a rent increase for capital items, including items already incurred and items planned.

The capital items in evidence at the Arbitration Hearing, were of two components, capital items that had been incurred at the time of the Hearing, and those items that were prospective in nature.

At the time of the Arbitration Hearing, Park Management had already incurred $62,145.55 in capital improvement expenses for the Park. These expenses are itemized in Exhibit J, and the invoices for these expenses are set forth in Arbitration Exhibit K. Waterhouse

Management Vice President Ruben Garcia, who oversees the day-to-day operation and financial management of the Park, **testified that these expenses itemized in Exhibit J, backed up by the invoices in Exhibit K, were all expenses actually incurred by Park Management for capital items improving the Park, as set forth in the documents**. (RT2 182:13-183:23; 188:18-189:14.)

The Ordinance provides for capital improvements and capital expenses as follows: "'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." (S.B. County Code, ch. 11A, § 11A-2(a).) "'Capital expense' is a repair or replacement of existing facilities or improvements which has an expected life of more than one year." (Id., § 11A-2(b).) "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 ...." (S.B. County Code, ch. 11A, §11A-6(a)(1).) "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." (*Id.*, § 11A-6(a)(5).) Similar provisions apply for capital expenses. (*Id.* § 11A-6(b).) Accordingly, the Ordinance permits the pass through of the costs of capital improvements and expenses, whether those costs have already been incurred or are merely proposed.

The Court found that the evidence of proposed prospective capital improvements and capital expenses was not sufficiently "definite and certain" and that the Arbitration Award contained no findings that any proposal was definite and certain so that the finding "to include collection of $320,000 was not supported by substantial evidence." (Decision, p. 26.) However, the Court did find that there was evidence of $62,145.55 of specific items of costs incurred by Park Management for capital improvements and expenses (Exhibits J and K), but the Arbitration Award did not make specific findings allowing these expenses, and the Board improperly overturned this award and in doing so "the Board has not proceeded in the manner required by law." (Decision, pp. 26-27.) The Court reversed the Board's order disallowing Award No. 5 and

remanded it for appropriate action and appropriate findings, and the Board remanded the matter back to the Arbitrator.

In the Remand Award, the Arbitrator made a clear finding that the $62,145.55 awarded were for capital improvement expenses incurred by Park Management prior to the commencement of the Arbitration Hearing. The Arbitrator in his Remand Award made the specific finding of fact based on the record:

> Exhibit J and the invoices as presented in Exhibit K showed that $62,145.55, as confirmed as paid by Ruben Garcia, were defmitive and represented the amount spent for capital improvements prior to the commencement of the arbitration.

The Court's Ruling had simply found that the Arbitrator did not make a specific finding as to the $62,145.55, distinguished from the $320,000 awarded for all capital items. The Arbitrator has now done so in the Remand Award, having specified that Park Management is entitled to the $62,145.55 separate and apart from the $320,000 which expressly was not awarded. At the Remand Arbitration hearing, these findings were properly made that the $62,145.55 of specific items of costs incurred by Park Management for capital improvements and expenses (Exhibits J and K) are for capital items provided for under the Ordinance, based upon the evidence in the record, cited above. As set forth in the Remand Award, Exhibit J and K and the testimony of Ruben Garcia, all of which are in evidence in the Arbitration Proceedings, support the Arbitrator's findings that the $62,145.55 was spent for specific items of costs incurred by Park Management for capital improvements and expenses and are for capital items provided for under the Ordinance. Accordingly, substantial evidence supports this Award, and there are no grounds under Rule 23 for the Board to alter this Award.

Award # 7. Professional Fees.

The homeowners refer to Award No. 6 as dealing with "Professional Fees" when in fact that topic is covered in the Remand Award as Award No. 7.

Award No. 7 is that the homeowners are to pay $25,000 for professional fees associated with the capital improvements.

The Arbitration Award states as follows:

"The professional fees spent on capital improvement item should not be treated as a one shot expense, but rather amortized (Ex. K & Q). After considering the objections raised by the Homeowners, a good portion of the line items submitted by the Park Owner do not appear to be relevant to any capital improvements, therefore, a reduction of $25,000 from the original request is warranted. The remaining $25,000 is to be charged to the Homeowners."

The Remand Award made the additional findings:

Per the testimony presented by Waterhouse, $50,973 in professional fees were incurred and paid by the Respondent. A good portion of the line items in Exhibits K & Q itemizing the same do not appear to be relevant to any capital improvements and a reduction is appropriate. Exhibits K & Q do support a finding that at least $25,000 of those fees were related to capital items.

The Court found that the Ordinance clearly allowed Park Management to recover for professional fees related to a capital item: "where professional fees may be correctly categorized as a cost of either a capital improvement or capital expense, such fees may be passed on." (Decision, pp. 27-28.) The Court reversed the County Board of Supervisors' Order vacating the Arbitration Award No. 6, and remanded back to the Arbitrator for further findings as which professional fees are awarded based upon being related to capital expenses.

Park Management sought to recover for $50,973 in legal fees incurred in December, 2010 for legal matters related to the operation of the Park. This work is itemized in detail in the statement in evidence as Exhibit Q, and the areas of work are summarized in single page exhibit in Exhibit K. The billing statement was reviewed by Mr. Waterhouse and the fees were incurred and paid by Park Management as a normal and legitimate expense in operating the Park. (RT2 145: 6-14.)

The Arbitration Award was a reasonable award as stated. The itemized statement (Exhibit Q) clearly has entries supporting $25,000 in legal time spent on issues related to the capital items of the Park.

Moreover, Park Management is entitled to recover professional fees incurred by Park Management, both as fees related to capital expenses and as fees incurred as ordinary and necessary operating expenses in operating the mobilehome park. The evidence in these proceedings would support awarding the full $50,973 sought by Park Management, not just for

legal fees related to capital expenses, but also for matters constituting ordinary and necessary operating expenses, provided for in the Ordinance.

As noted by the Court, Park Management is entitled to recover its costs for legal services in connection with capital expenses and improvements under section § Section 11A-6, subdivisions (a)(1) and (b)(1) of the Ordinance. In addition, Park Management is also entitled to recover its costs for legal services incurred in the operation of the Park as an ordinary and necessary operating expense under section § 11A-5(f)(1) of the Ordinance, as found by the Court in allowing Park Management to recover its professional fees incurred in these rent control proceedings (see discussion under Award #11).

The professional services performed was set forth in the detailed billing statement (Exhibit Q) and the one page summary of work (included in Exhibit K).

Dr. St. John noted that Park Management was entitled to recover the full $50,973 in legal fees, either through a permanent rent increase by including it the MNOI analysis, or through a temporary rent increase as proposed. It has to be accounted for one way or another, and it is properly treated as the basis for a temporary rent increase:

> Q. .... With respect to professional fees, such as legal fees and for professional consultants, is it related to dealings with regulatory agencies and the like, is that something that's typically an expense that's included in an expense calculation, either through MNOI or through another kind of amortized pass-through?
>
> A. In my experience it is.

(RT1 135:1-8.)

Dr. St. John further commented on the subject:

> That's the judgment that was made because a $51,000 legal expense is not the kind of expense that occurs every single year, so if it was to be left in the budget, it would make a big difference in the outcome.
> If on the other hand you take it out here, delete it completely from the MNOI, it means that the rent increase from the MNOI is significantly lower than

> it would otherwise be. But if that amount is appropriately amortized and allowed over some number of years at some rate of interest, then that is an alternative way to account for these particular legal fees and, in my judgment, it's a way that is more fair.
>
> … … …
>
> …..It's not an element in the MNOI. It is included elsewhere, because this was an amount that truly was paid in connection with expenses and has to be accounted for one way or another.

(RT1 95:3-15, 96:1-4.)

The homeowners improperly refer in their Petition for Review to alleged "code violations" without any citation to the record, and in fact there are is no such evidence in the record. Such irresponsible claims must be disregarded. The homeowners further suggest in their Petition for Review that the professional fees do no relate to capital items, when the Remand Award expressly finds to the contrary, that Exhibits K & Q, which were in evidence and reviewed by the Arbitrator, support the finding that at least $25,000 in fees were related to capital items. The homeowners further miss the point that regardless of whether the fees were related to capital items or operating expenses, they are still compensable through a rent increase.

The fact that legal fees incurred by Park Management as an ordinary and necessary operating expense under section § 11A-5(f)(1) of the Ordinance, as well as a capital item to the extent that the fees deal with capital expenses and improvements under Section 11A-6, subdivisions (a)(1) and (b)(1) of the Ordinance, are still compensable through a rent increase, is apparent under the terms of the Ordinance, the Court's Decision, and existing law. Indeed, the Court and the homeowners expressly acknowledged that Park Management was entitled to recover its legal fees incurred as an operating expense for the purpose of these rent control proceedings (see discussion regarding Award No. 12, below). In *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Board* (1999) 70 Cal.App.4th 281, 294, cited by the Court, the Court of Appeal noted that attorneys fees related to mobilehome park operations, such as determining compliance with regulations affecting the Park and dealing with regulatory agencies, as well as for such matters as evictions and responding to lawsuits by homeowners,

were properly recoverable through a rent increase. The Court of Appeal also found that these fees could also be treated as a temporary rent increase. In the case before the Arbitrator, several matters were proposed and upheld by the Court to be treated as amortized, temporary expenses, and this treatment is discussed in a separate section herein, *infra*.

The Court's Ruling had simply found that the Arbitrator's ruling on this item may have been influenced by the $320,000 awarded for all capital items. The Arbitrator in the Remand Award has clearly addressed the capital items, as discussed above, and has made a finding that **based upon his review of Exhibits K & Q in evidence, he found that at least $25,000 of professional fees reasonably related to capital expenses and improvements**. This finding is supported by substantial evidence in the record at the Arbitration Hearing, as noted above. Accordingly, there are no grounds under Rule 23 for the Board to alter this award.

Award # 8: Architecture and Engineering Fees

The homeowners refer to Award No. 7 as dealing with "Architecture and Engineering Fees" when in fact that topic is covered in the Remand Award as Award No. 8.

Award No. 8 is that the homeowners are to pay $40,000 for fees incurred by Park Management in purchasing plans and drawings and permits from the prior operator, in order to proceed with capital improvements of the Park.

The Court found as follows: "The same analysis [as with the award for professional fees] applies to Award No. 7 for architecture and engineering (A&E) fees. As with other professional fees, the Ordinance provides for passing on such fees to the extent such fees are properly categorized as "costs" of capital improvements and expenses.

The Arbitration Award states as follows:

> "Waterhouse testified he purchased certain plans to facilitate evaluating and then moving forward on certain capital improvements for the Park. Given the age on some of the supporting documentation, some of this work appears stale. Although the Park Owner represented that the County will work with them with such things as expired permits, some of this work may have little or no value as of this date. A more reasonable amount to be charged would [be] $40k."

The Remand Award makes the additional findings:

The testimony presented by Waterhouse supported a finding that the plans and drawings

purchased by the Respondents in Exhibits J & L have value as to operation and capital improvements for the park. Given the amount of time that has passed since their purchase, some of this work appears to be stale and would now have less utility. A more reasonable amount for such items would be $40,000.

The components of the A&E fees are itemized in the spreadsheet in evidence, Exhibit J. The invoices supporting these individual entries are in evidence in Exhibit L, and these invoices summarize the work or other basis for the expense. These include costs for the preparation of plans and drawings of the entire Park. They also include costs paid to the County for permits for work at the Park.

Mr. Waterhouse testified that these items were purchased from the prior operator, and included a number of plans and CAD drawings for the entire Park, and were and remained valuable to Park Management as the current operator in moving forward with capital improvements for the Park. (RT2 144:6-145:5.) He also testified that these items include, in addition to the plans and drawings prepared by the Engineering Firm Penfield and Smith, fees paid to the County of Santa Barbara Planning and Development for permits for work related to various aspects of the Park. (166:23-167:3.) There was also discussion at the hearing between the Arbitrator and Park Management that although these permits had expired, the County had indicated that they will work with Park Management and extend the timelines for the permits so that there was perceived value in the permits. (RT2 179:18-180:11; 181:8-17.)

The Arbitrator's findings with respect to this item were reasonable and well taken. Plans and diagrams for the entire Park, particularly those which are computerized CAD drawings, are obviously something of enduring value to the Park operator on an ongoing basis far into the future for a variety of different purposes related to the improvements to and operations of the Park. The $40,000 awarded reflects compensation for a large portion of the expense of the Plans and drawings. (Exhibits J and L.) Limiting the award to compensation for the expense of these drawings was a reasonable resolution, and well supported by the record.

The Court's Ruling had simply found that the Arbitrator's ruling on this item may have been influenced by the $320,000 awarded for all capital items. The Arbitrator in the Remand Award has clearly addressed the capital items, as discussed above, and has also made a finding

that $40,000 is a reasonable amount relating to these A&E fees associated with capital expenses and improvements. This finding is supported by substantial evidence in the record at the Arbitration Hearing, as noted above. Accordingly, there are no grounds under Rule 23 for the Board to alter this award.

Award No. 9 Property Taxes

The homeowners refer to Award No. 8 as dealing with "Real Property Taxes" when in fact that topic is covered in the Remand Award as Award No. 9.

Award No. 9 is that the "Homeowners are to pay $130,531 for the supplemental tax increase payments." The Remand Award also makes the following additional finding: "As supported by Exhibit G, the Respondent paid $130,531 for supplemental tax increase payments."

The Court found that the "increases in property taxes" were properly considered by the Arbitrator in his December 20, 2011 Arbitration Award as a basis for a rent increase under the Ordinance, section 11A-5(f)(1), and that the Board's purported reading of the Ordinance to exclude supplemental property taxes was in violation of the clear law on the subject. (Decision pp. 22-23.) The Court further found that the Arbitrator properly weighed the evidence and followed Dr. St. John's opinion that the supplemental property taxes should properly be charged to the Homeowners in the form of a rent increase. (*Id.*, pp. 23-24.) The Court upheld the Arbitration Award:

> There is substantial evidence to support the arbitrator's decision. Consequently, under the standard of review to be used by the Board under the Hearing Rules, the arbitrator did not abuse his discretion by making a determination supported by substantial evidence, notwithstanding the Board's view that it would have reached a different result reweighing the evidence. Thus, the Board has not proceeded in the manner required by law by reversing Award No. 8 on the basis of either an erroneous interpretation of the Ordinance or a reweighing of the evidence not permitted by Hearing Rules, rule 23(a)."

(Decision, p. 24.)

On this basis, the Court ordered that the Board vacate its order reversing Arbitration Award No. 8 (the number of the award in the initial Arbitration Award awarding a rent increase based upon the supplemental property taxes). **The Court did <u>not</u> order the matter**

reconsidered for further findings or any other action.

The Court's decision, and the Arbitrator's December 20, 2011 Arbitration Award, were correctly based upon the express terms of the Ordinance, which provides that increased property taxes will properly form the basis of a rent increase. Section 11A-5 of the Ordinance, deals with Increases in the Maximum Rent Schedule, and section 11-A(f) provides in pertinent part, with emphases added, as follows:

> (f) **[T]he 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.

Accordingly, the rent increase based upon increased operating costs due to the property tax increases are properly the bases for the rent increase.

County Counsel presented the following Findings to the Board for adoption at the Board's January 19, 2016, remand hearing, which it prepared in adherence to the Court's Order:

> The Arbitrator included findings of fact and was supported by substantial evidence. The Board of Supervisors determines that the Arbitrator did not abuse his discretion and affirms Award 8.

Instead of following the Court's Order and their own Counsel, the Board at its January 19, 2016, remand hearing, made the following revised findings, improperly finding that the "Arbitrator abused his discretion," despite the fact that the Court found that the Arbitrator's award was proper, and remanded the matter back to the Arbitrator:

> The Arbitrator did not make findings to bridge the analytic gap between the evidence presented and the ultimate decision made by the Arbitrator. The Arbitrator did not identify whether the supplemental tax increase was categorized as an increase in operating costs, cost of a capital improvement, or capital expense so as to be passed through to the homeowners; thus, the Board of Supervisors determines that the Arbitrator abused his discretion. The Board of Supervisors remands this Award to the Arbitrator to make findings of fact on which the Arbitrator's decision is based that are supported by a preponderance of the evidence.

The Board's reference to "capital improvement, or capital expense" is non-sensical. The increased property taxes are clearly an operating expense properly considered by the Arbitrator as the basis for a rent increase under the express terms of the Ordinance, as already held by the Court. To the extent that the Board's reference to capital items meant to refer to the treatment of the supplemental property taxes as an amortized temporary increase, similar to how a capital item is treated, that treatment has been expressly found by the Court to be proper, and the homeowners conceded that treatment was proper, as discussed herein in the section on temporary increases, *infra*.

Clearly under the express terms of the Ordinance, increased property taxes are a basis for a rent increase, as section 11A-5(f)(1) of the ordinance specifically provides that "increases in property taxes" are the type of increased operating expense that the Arbitrator "shall consider" in determining a rent increase.

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

There can be no dispute that Park Management incurred the expense of the supplemental property taxes. Dr. St. John testified that Park Management did incur some $130,000 in property tax increases that were not recovered by the permanent rent increase, and that the most reasonable means by which to recover them was through the temporary increase, amortized as he prepared it.

> A. It was. And just to state it again for clarity, this $130,531 tax increase is the amount that the park owner really did pay, I mean that's actual out-of-pocket, $130,000 and change without being compensated at all, whereas under the system we're using here, park owners deserve compensation for cost increases.
>
> Q. And actually, it's fair to say that that is -- even more specifically to say, that's the amount of increase that the park owner is out-of-pocket. In fact, the park owner is out-of-pocket more than that in the total property taxes, that $130,000 is just the increase

number for the period of time in question?

A. Yes. I mean, I would only say the rest of the property tax amount was covered by the income, by the space rents, but this amount is not covered by space rents and should be.

(RT1 77:19-78:10.)

The homeowners never disputed at the Arbitration hearing that these supplemental property taxes were not paid or that they could not be recovered through a temporary award, amortized for a limited period of time. This methodology, undisputed by the homeowners, was upheld by the Court.

The only objection by the homeowners at the Arbitration Hearing was as to the "regulatory lag" or the delay from the time that the Park Management incurred the expense (which was long after the transfer date) to the time that it was the subject of the rent increase. This "regulatory lag" objection was dispelled by Dr. St. John. The Court found that the issue was properly decided by the Arbitrator.

The Court noted that the testimony of Dr. St. John supported the Arbitration Award:

"[T]he County isn't quick, usually, in changing the tax rates, they wait a while and then they eventually change the taxes and then they send our supplemental tax bills. … Then the question is, how long will it be before the park owner begins being compensated for that tax increase? And the answer is, until May 2011. The increases that were imposed, effective May 1, 2011, covered that amount, so from then forward the park owner is whole, but for the period from August 2008 to May 2011 the park owner was obligated to pay these amounts but the residents were not obligated – before this proceeding, or otherwise, wouldn't be obligated to pay it. But in my view, these are amounts that residents, in the end, have to pay. This is an increase, it's a legitimate increase, it's government imposed, it's not within the park owner's discretion, it is an extra cost."

St. John continued: "So I think [homeowners' counsel] might tell us … you should have petitioned right away. Well, okay, but that would imply that we have to petition kind of for every year, every single time an increase comes up we're going to have to petition, petition, petition, and these petition processes are quite time consuming, if you don't know. And so to my mind, it simply does not make good sense to, in effect, command the park owners do an entire NOI fair return petition every year. That doesn't make good sense, and the way to not do that is to allow park owners to do this kind of a fair return hearing periodically, when appropriate, when it feels appropriate, and then to be compensated for – to be compensated after the arbitrator has decided on the justification for the increases

in question, to be compensated for the past."

(Decision, pp. 23-24.)

The Arbitrator acted consistently with with the terms of the Court's order by reaffirming Park Management's legal right to recover these property tax costs through the rent increase.

Moreover, the homeowners' challenge to the Remand Award as to the Supplemental Property Taxes is completely unmeritorious. In the first place, they claim that the property tax is being treated as a "capital asset." That claim reflects their continued fundamental misunderstanding of the nature of a temporary rent increase. As explained in the section on temporary expenses, below, just because an expense is treated as a temporary rent increase does not mean that it necessarily is a capital expense. Temporary rent increases may be employed for a large one-time expense incurred by park management, such as capital expense, but not limited to a capital expense.

The homeowners improperly attempt to reargue the facts of the case with matters outside of the record, claiming that Park Management did not incur the supplemental property tax expense. The homeowners claims are not in the record, and indeed the record directly contradicts the homeowners' claims. In fact, the evidence was undisputed that the Park Management incurred and paid a $130,531 supplemental property tax liability. As found by the Arbitrator, the record, including Exhibit G, showed that Park Management incurred and paid a $130,531 supplemental property tax liability. (RT1 77: 19-25; 125: 4-7.) Dr. St. John confirmed based upon his review of the financial records of the Park that the $130,531 in supplemental property taxes was in fact paid by Park Management:

> And just to state it again for clarity, this $130,531 tax increase is the amount that the park owner really did pay, I mean that's actual out-of-pocket, $130,000 and change without being compensated at all, whereas under the system we're using here, park owners deserve compensation for cost increases.

(RT1 77:19-25.)

There is nothing properly before the Board in these proceedings that would give rise to any basis for any change to Arbitration Remand Award No. 9. Indeed, under the terms

of the Court's ruling, the Board has no authority whatsoever to take any action to change Arbitration Award Remand No. 9. Moreover, substantial evidence supports the Arbitrator's Remand Award No. 9 finding that Park Management paid $130,531 in supplemental property tax payments, and that the homeowners are responsible for paying this increased property tax expense by way of a rent increase.

Award # 12 Expert and Legal Fees Incurred In Rent Control Proceedings

The homeowners refer to Award No. 11 as dealing with "Legal Fees Associated with the Challenge to the Rent Increase" when in fact that topic is covered in the Remand Award as Award No. 12.

Award No. 12 is that the "Homeowners are to pay $110,000 for legal fees associated with the challenge to the rent increase." The December 20, 2011 Arbitration Award states as follows: "After reviewing the itemizations submitted by the Park Owner for expert and legal services expended in this matter (Ex. R & S) and the Homeowners' response, a reasonable amount to be paid by the [latter] would be $110,000."

Although the Arbitrator's $110,000 award set forth in his December 20, 2011 Arbitration Award was fully upheld by the Court, and was not remanded back to the Arbitrator for further findings, nevertheless the Arbitrator made another specific finding in the Remand Award to support the $110,000 fee award:

> "The homeowner's expert conceded that legal fees incurred by the Respondent could be the basis for a rent increase. Exhibits R & S support a finding that $110,000 in legal fees incurred by the Respondent were associated with the challenge to the rent increase."

The Court found that these fees could properly be charged to the homeowners under the terms of the Ordinance, and that the Arbitration Award properly awarded the fees as part of the rent increase. The Court noted that the homeowners conceded that these fees could properly be the basis for a rent increase. The Court further found that the Arbitrator proceeded properly, allowing Park Management to submit an itemized statement of fees, and the homeowners to respond, and making an award based upon these submissions. "This evidence constitutes

substantial evidence to support the factual determination. Thus, the arbitrator did not abuse his discretion in making this award." (Decision, p. 29.)

As noted by the Court, there was no disagreement that Park Management is entitled to recover its professional fees incurred in these proceedings, nor the treatment of it in amortizing these costs over seven years. The Court quoted the following admission in this regard by Dr. Baar:

> "[Q.] 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.
>
> "Q. Nor do you argue with the methodology employed here, which is to do it as a temporary as opposed to the base for a permanent rent increase?
> "A. Right, that's correct. [¶] ... [¶]
>
> "Q. ... So, your sole quarrel is with the number?
>
> "A. That's correct."

(Decision, p.29.)

The Court concluded that "Baar's testimony is substantial evidence that legal fees, if reasonable in amount, are appropriately included as a basis for a rent increase as an ordinary and necessary operating expense."

The Court found that the Board of Supervisors acted improperly: "The Board did not proceed in the manner required by law by reversing Award No. 11 (the number of the award in the initial Arbitration Award awarding a rent increase based upon the professional fees) on the grounds that these legal fees were not to be considered by the arbitrator under the terms of the Ordinance." (Decision, pp. 29-31.) (The Court ordered that the Board vacate its order reversing Arbitration Award 11.

The Court did <u>not</u> order the matter to be remanded for further consideration by the Arbitrator; indeed, it made clear that there was nothing further to consider. County Counsel understood this fact. The findings that County Counsel prepared for the Board, which it

expressly stated at the Board's remand hearing, were carefully drafted to be consistent with the Court Ruling.

County Counsel presented the following Findings to the Board for adoption, which it prepared in adherence to the Court's order:

> The Arbitrator included findings of fact and was supported by substantial evidence. The Board of Supervisors determines that the Arbitrator did not abuse his discretion and affirms Award 11.

Instead of following the Court's Order and their own Counsel, the Board made the following revised findings, improperly finding that the "Arbitrator abused his discretion," despite the fact that the Court found that the Arbitrator's Award was proper, and remanding the matter back to the Arbitrator:

> The Arbitrator did not make findings to bridge the analytic gap between the evidence presented and the ultimate decision made by the Arbitrator. Findings for this Award are especially important because legal fees are not expressly identified in the Ordinance as an allowable operating expense. The Arbitrator did not make findings regarding the final calculation of the legal fees awarded nor did the Arbitrator identify whether the legal fees were categorized as an increase in operating costs, cost of a capital improvement, or capital expense so as to be passed through to the homeowners. Thus, the Board of Supervisors determines that the Arbitrator abused his discretion. The Board of Supervisors remands this Award to the Arbitrator to make findings of fact on which the Arbitrator's decision is based that are supported by a preponderance of the evidence.

Pursuant to the Court's Order, Arbitration Award No. 11, awarding Park Management a rent increase based upon $110,000 in professional fees incurred through the date of the application made by Park Management during the initial arbitration, is not at issue in this Remand Arbitration proceeding.

The homeowners through the Petition for Review improperly attempt to reargue the issue of the fees to which the Park Owner is entitled, based upon false claims and arguments not in the record. Beyond the falsity of their claims, the homeowners' attempt is improper. The award is final.

There is nothing properly before the Board in these proceedings that would give rise to any basis for any change to Arbitration Award No. 12. Indeed, under the terms of the Court's ruling, the Board has no authority whatsoever to take any action to change

Arbitration Award No. 12. Regardless, substantial evidence in the record, including the Arbitrator's finding that the homeowners expert conceded that legal fees incurred by Park Management could properly form the basis for a rent increase, and that the itemized statements submitted by Park Management supported an award of $110,000 in fees incurred by Park Management for expenses associated with the homeowners challenge to the rent increase.

Moreover, the California Supreme Court has made it clear that a park owner is entitled to recover through a rent increase its legal and administrative costs and expenses in having to go through legal and/or administrative proceedings to seek a rent increase. (*Galland v. Clovis*, *supra*, 24 Cal.4th 1003, 1027-1028). Therefore, it is clear that under *Galland v Clovis*, any failure to award a rent increase based upon Park Management's legal and professional fees incurred in the Arbitration would have been a violation of Park Management's legal rights, and would constituted a violation of Park Management for which the County would be liable, and will be liable should they take any act to deprive Park Management of the rent increase awarded by the Arbitrator. (The ongoing legal fees and costs that Park Management continues to have to suffer as a result of the homeowners' pursuit of ongoing proceedings will be the subject of other and further rent increases, and should Park Management not recover all of those fees and costs through rent increases, Park Management will seek to recover them from the County as damages for violation of its constitutional rights.)

Amortization of Professional Expenses and Property Taxes As A Temporary Rent Increase

To the degree that the homeowners are now objecting to the treatment of professional fees (and the supplemental property taxes although they are not properly involved in these remand proceedings) as an amortized temporary rent increase, similar to the treatment of a capital expense, the homeowners ignore that this treatment has already been adjudicated to be proper and that the **homeowners have already conceded** that this treatment is appropriate. Moreover, the homeowners conflate the treatment of temporary expenses in general with capital

expenses, which are also temporary expenses. Both are amortized and passed through as a rent increase of a limited duration. The homeowners' claims are not only contrary to the overwhelming facts and law to the contrary, but also contracted by the homeowners' own admissions and evidence presented by the expert witness at the Arbitration Hearing.

The homeowners repeatedly throughout the Arbitration Hearing conceded that the treatment of professional fees as an amortized temporary expense, or as a "pass through," in the same manner in which a capital item is treated, is the appropriate treatment for the professional fees at issue in these proceedings.

The homeowners' attorney expressly conceded:

> And finally, the anticipated professional fees relating to the rent increase itself of $125,000, the homeowners do not disagree that it is beneficial for the homeowners to have any such fees passed through so that they are paid once and then they drop off of the rent statement. We don't disagree with those remarks that counsel made, so we are not here to say that those should become operating expenses.

(RT1 41:1-8.)

Dr. St. John explained that the treatment of large essentially one-time or non-recurring expenses, including professional expenses, could be analogized as a capital expense, not because they are capital expenses, but because they are large essentially one-time expenses:

> They're not capital improvements, that's true, but they are large expenses that shouldn't be treated simply as an annual -- an annual cost item.

(RT1 84:15-17.)

Dr. St. John gave a detailed explanation of the basis for amortizing the expenses, and treating them as a temporary expense, and why it is favorable for the homeowners:

> Q. Essentially, you made a distinction between either treating it as a normal operating expense, treating these expenses as a normal operating expense for the purposes of calculating a permanent rent increase under MNOI or pulling it out and making it something separate, essentially. Is that correct, a fair distinction?

A. It is a fair distinction.

Q. And let me ask before we go on with the analysis, in your professional opinion is it appropriate to include in some manner for the purposes of rent increase under a mobile home rent control ordinance, expenses of this type that a park operator would incur -- for example, legal and appraiser and other professional fees relating to property tax litigation and to rent increase hearings and litigation?

A. Yeah, I do, I think that it's appropriate.

Q. So to start off as a basis, you think the type of expense we're talking about is an appropriate expense to be included in some way in a rent control space rent increase?

A. Oh, completely, I do think it is. And parenthetically, if I can just say, if these amounts were to be included in the MNOI and if the arbitrator were to ask me or Dr. Baar to compute it that way, it would come out less advantageous to the residents. So --

Q. And the reason for that would be because if you included it as a MNOI analysis, or a similar type of operating income analysis for the purposes of a permanent increase of rent, you'd essentially have an extraordinary expense being deemed to being a normal operating expense and it would essentially be forever, become a permanent rent increase that would go on forever for the residents and would be based on what arguably would be a fiction -- that is, that this extraordinary expense is really a regular recurring expense?

A. Correct.

Q. So what you're saying is by treating it this way as a temporary increase, it's more fair to the homeowners?

A. That's right.

(RT1 84:24-86:16.)

Dr. St. John went on to state:

Q. And in this case, however, the fees that we're talking about are not part of the permanent MNOI increase but they're a separate, temporary pass-through item the way they're being calculated here, correct?

A. Yes, in the way they're being calculated here. And the footnote I wanted to make a few minutes ago is to say all of these items that we're speaking about right now could either be handled through MNOI or in this manner, and we're suggesting that they be handled in this manner so they would be amortized to lessen the impact on the residents. If these large, chunky amounts were to be included in the MNOI either for this year or for another year, it would have quite an impact and might make the rent increase higher.

(RT2 22:2-15.)

Q. There was a fair amount of time spent regarding your treatment of the items 5 and 6 on the Exhibit C spreadsheet, the professional fees, and you talked about analogizing them to, essentially, capital improvements.

A. Yes.

Q. Is it the case that the only other way to treat them would be to consider them under the MNOI analysis?

A. Yes, as far as I know, the only other way would be to put them into the MNOI equation.

Q. And would it be the case, in that case, it would essentially result an inflated number for a present year and lead to a permanent rent increase that's essentially an inflated permanent rent increase, if you treated it that way?

A. It might very well. Some of these expenses span more than one year, so only a portion would be in any particular year, when you do MNOI you only include those years, so we'd have to see how it would come out. But this way, the beauty of doing it this way is we take all of the expenses in one category, no matter which year they appear in, we sum them, we then amortize them, and we then apply them.

Q. And is that pretty favorable for homeowners, making it temporary versus permanent?

A. I believe it is.

(RT2 116:17-117:18.)

The homeowners' expert witness, Dr. Baar, unequivocally agreed with Dr. St. John that the professional fees incurred in connection with the rent control proceedings are recoverable by Park Management, and are properly amortized as a temporary rent increase:

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

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

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

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

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

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

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

A. Yes.

(RT1 174:8-175:4.)

The Court in its Decision affirmed the treatment of these various items as temporary rent increases. Notably, in *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Board* (1999) 70 Cal.App.4th 281, 293, cited by the Court, the Court of Appeal held that

although the ordinance in question did not specifically provide for allocation of an operating expense over an extended period of time, the hearing officer (in that case a rent control board) had sufficient flexibility to do so and amortizing it to treat it as a temporary rent increase. That was also the Court's ruling in this case in upholding the propriety of the temporary rent increases in this case.

Moreover, the homeowners have expressly agreed that Park Management is entitled to recover its fees and expenses incurred in the writ proceedings and through remand.

The homeowners' expert, Dr. Baar testified to this upon the homeowners' attorney's questioning:

> Q. ....My questions to you are, when an administrative hearing decision such as this is appealed to the courts, do the courts typically, if they find something wrong with that decision, remand it back to the administrative body for further or additional hearings?
>
> A. Yes, that's the standard procedure.
>
> Q. Do you have any knowledge as to whether or not, as part of that remand process, and **at that time of the remand, that the park owner would then be able to claim additional expenses as they're then being incurred?**
>
> A. You can say that would be an additional clarification to make. In these cases, park owner claims expenses as to they've incurred as legal expenses for the application, and then **if it goes to court and gets remanded back, then a second, additional claim is made at that time.**
>
> Q. **So on remand, the park owner is able to calculate the additional expenses that are now being incurred, because of the litigation, correct, the appeal?**
>
> A. **Right.**
>
> Q. And typically, the litigation in this case would be a writ of mandamus that would name the City [sic-County] as a party defendant, correct?

A. Yes.

Q. Because the hearing officer is employed [sic-appointed] by the City [sic-County] and --

A. Right.

Q. -- the residents are real parties in interest?

A. Right. See, the park owner, their expense to date was $35,000. **If they end up going to court and prevailing in a writ of mandate action, they are not boxed in, they can come back again.**

(RT1 243:23-245:7., emphasis added.)

Accordingly, Park Management will recover its legal fees and costs incurred as a result of all of the post Arbitration Hearing proceedings, which were initiated by the homeowners, through separate rent increases. If Park Management is not fully reimbursed for these costs, including interest, through rent increases, then it will seek to recover them as monetary damages against the County, pursuant to the California Supreme Court authority in *Galland v. Clovis*, *supra*, 24 Cal.4th 1003.

Award # 13 Total Permanent and Temporary Increase

The Court noted in its Decision: "the arbitrator's final calculation is again subject to recalculation after further proceedings mandated by this disposition." (Decision, p. 30.)

The Arbitrator properly determined the total amount of permanent and temporary increases, consistent with the Court's order and supported by substantial evidence in the record.

The Arbitrator in the Remand Award has clearly addressed the items on which the award is based, supported by substantial evidence in the record at the Arbitration Hearing, as noted above. Accordingly, there are no grounds under Rule 23 for the Board to alter this award.

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CONCLUSION

In accordance with the foregoing, the Arbitrator properly took the following action with respect to the following Awards as they are enumerated in the Remand Award:

5. Continued to employ the amortization calculations set forth in the initial Arbitration Award, and approved by the Court Order, ordered as follows:

All granted temporary increases are to be amortized at 9% for seven (7) years.

6. Ordered that the homeowners are to pay the $62,145.55 for capital improvements and expenses already in evidence, in Exhibits J and K, as testified to by Ruben Garcia, finding that they were capital expenditures made prior to the commencement of the Arbitration.

7. Ordered that the homeowners are to pay $25,000 for legal fees associated with capital improvements, pursuant to Exhibits K and Q, and the testimony of Ken Waterhouse, finding that was a reasonable amount for services associated with the capital expenses and improvements.

8. Ordered that the homeowners are to pay $40,000 for the A&E fees associated with the capital improvements, as partial reimbursement for the plans and drawings for the entire Park, pursuant to Exhibits J and L, and the testimony of Ken Waterhouse, finding that amount was reasonable and warranted and the fees were associated with capital expenses and improvements.

9. No action was directed by the Court, which has already ordered that substantial evidence supported the Arbitrator's initial Arbitration Award. However, since the matter was remanded by the Board, the Arbitrator properly ordered as before that the homeowners are to pay $130,531 for the supplemental tax increase payments already paid by Park Management, in evidence through Exhibit G.

12. No action was directed by the Court, which has already ordered that substantial evidence supported the Arbitrator's initial Arbitration Award. However, since the matter was remanded by the Board, the Arbitrator properly ordered as before that the homeowners are to pay $110,000 for legal and professional fees associated with the challenge to the rent increase through the initial arbitration hearing, as supported by Exhibits R and S in evidence in the proceedings.

13. The final calculations are in accordance with the Arbitrator's rulings; they are also itemized in the separate calculation sheet provided by Park Management.

The homeowners' petition for review improperly relies on alleged claims not in the Arbitration record, and apparently on ex-parte communications with the County, and therefore should be disregarded in its entirety.

Regardless, as is clear from an examination of the Remand Award and the Arbitration Award, and the actual record of Arbitration proceedings, the homeowners have not and cannot establish that the Remand Award constituted a prejudicial abuse of discretion on any of the points that the homeowners raise. The homeowners' Petition for Review should be rejected in its entirety for failure to establish any prejudicial abuse of discretion.

The arbitrator did a commendable job in this proceeding. Park Management again accepts each and every discretionary determination made by the Arbitrator.

Accordingly, the homeowners' Petition for Review should be denied.

Dated: October 13, 2016

JAMES P. BALLANTINE
Attorney for Park Management
LAZY LANDING MHP, LLC;
WATERHOUSE MANAGEMENT CORP.

EXHIBIT “1”

IN THE MATTER OR ARBITRATION BETWEEN

NOMAD VILLAGE MOBILE HOMEOWNERS,

Petitioner

and

OPINION AND AWARD
(Revised)

NOMAD VILLAGE MOBILE HOME PARK

Respondent.

ARBITRATOR	Stephen M. Biersmith Attorney at Law
DATE OF AWARD	December 20, 2011
HEARING SITE	County Administration Building County of Santa Barbara
HEARING DATES	September 19 -20 2011
RECORD CLOSED	October 19, 2011
REPRESENTING THE PETITIONER	Mr. Bruce Stanton, Esq. Law Offices of Bruce Stanton 6940 Santa Teresa Blvd. Suite 3 San Jose, CA. 95119
REPRESENTING THE RESPONDENT	Mr. James Ballantine Attorney at Law 329 East Anapamu Street Santa Barbara, CA. 93101

JURISDICTION

The Arbitrator was selected to serve pursuant to agreement by the parties and the relevant clauses in the Santa Barbara County Mobile Home Ordinance (hereinafter "Ordinance"). Both the Nomad Village Home Park (hereinafter "Park Owner") and the Nomad Village Mobile Homeowners (hereinafter "Homeowners") were afforded a full and fair opportunity to present their cases. Witnesses were sworn and their testimony was subject to cross-examination. The parties agreed to submit written closings, both of which were received by the Arbitrator.

ISSUE

Was the notice of increase dated January 26, 2011, demanding a percentage increase of 2.59% of the current base rent and an additional $161 per space, effective May 1, 2011 from Nomad Village Management appropriate? If not what is the appropriate amount of the increase?

WITNESSES

For the Petitioner:

1. Kenneth Baar
2. Dan Waltz

For the Respondent:

1. Dr. Michael St. John
2. Ken Waterhouse
3. Ruben Garcia

EXHIBITS

Joint Exhibits:

1. Text of Santa Barbara county Rent Control Ordinance
2. Notice of Hearing

For the Petitioner:

1. Resume of Kenneth Baar

2. Appendix A Indexing Ratios in MNOI Standards.
3. Gardena (14.04.180 Standards for Review)
4. Court Decision (Rainbow Disposal)
5. Legal Expenses
6. Chapter 540-2 Mobile Home Space Rent Stabilization
7. Amortization table from unidentified document
8. Consent forms from homeowners

For the Respondent:

A. Notice of Increase dated 1/26/11
B. Example of space rent increases
C. Nomad Village space rent increase spreadsheet, dated 5/11
D. Tables
E. Curriculum vitae for Michael St. John, PhD.
F. CPI documents
G. Property tax documents
H. Lazy Landing ground lease
I. Nomad Village, Inc. ground lease
J. Capital expenses documents incurred by Nomad Village, Inc.
K. Proposals to Waterhouse Management Corporation
L. Nomad Village, Inc. financials, 1994, 2006 – 2008
M. Proposal dated May 26, 2001
N. Profit and Loss Statement dated 12/31/08
O. Profit and Loss dated December 31, 1994
P. Various Estimates
Q. Statement of Account by Ballantine's fees for Professional Services
R. Statement of Account of St. John & Associates
S. Statement of Account by Ballantine's fees for professional services
T. Table 3A Revised

PROCEDUARL MATTERS/STIPULATIONS

The parties agreed to the correctness of the CPI multiplier and the base data point used to make that calculation. Without waiving their right to argue the appropriateness of the professional fees category at all or any claim in a future proceeding, the parties stipulated to the fact that an actual numeric number will be submitted as opposed to using anticipated amount for professional fees. The parties also stipulated to the fact that Waterhouse Management and Lazy Landing MHP LLC ("Lazy") are the owners and subject to the provisions of the ordinance. They also agreed that the due process requirements for the meet and confer process were met.

TESTIMONY PRESENTED

Dr. Michael St. John

St. John testified as an expert witness. He is an economist with a PhD form UC Berkeley and has authored a study on the principle of fair return on mobile rent control. MNOI stands for maintenance of net operating income. It generally focuses on income and expenses. It is St. John's opinion that the ground lease would be such an expense. Besides the Ordinance allowing for an arbitrator to decide on the how to do a CPI calculation, it also has a provision for capital expenses, which can be noticed in advance if the Park Owner begins work within six months.

St. John noted there had been two large increase expense items in both the lease payment and property tax associated with the change in ownership. It is his understanding that the Park Owners are contemplating a challenge to the increased taxes, which if successful, would reduce the permanent increase and allow for the reimbursed tax payments from the County to pass through to the residents. . He believes a lease arrangement with the land owner in the range of 10 -20 % rental amount is reasonable. Besides his permanent increase calculation he also did one for temporary increases using a 9% amortization for capital improvements. Some of these items had a "regulatory lag, " which is the time from when the Park Owner first incurred the charges and when it could go through the regulatory process and begin recovering the cost. It could be due to the time it takes to calculate the CPI and get the books and records prepared before one can bring a fair return application. St. John believes a number of the large expenses could be treated as annual cost items. Instead he spread them out overtime similar to the way the capital expenses are treated. As to monies already spent by the Park Owner, St. John was not aware of any time

limit on going back and requesting that the Homeowners pay those amount whether it be 2, 5 or even ten years. Some adjustments to the data he used were necessarily given that the current and previous park owners had used different bookkeeping systems

St. John noted there had been no rent increase since 2008. He used 100% indexing instead of 75% to come to his permanent increase number. He acknowledged partial indexing is very often used for annual, but not fair return adjustments. As to which base year he used, St. John ran parallel calculations using 1994 and 2007, but believes the latter was more appropriate.

In putting together his findings, it was St. John's opinion that the Park Owners should be able to recover legal and professional fees. St. John confirmed that $320,000 has been paid into escrow for park infrastructure, but was unaware of what improvements they were designated for to be spent on. He confirmed there had been some debate as to whether gas and electric expenses should be included. If such expenditures were for a major replacement, he believes it should be recoverable from the Homeowners. He would not contest a longer and more reasonable amortization schedule for such expenses such as 15 years, which would be more appropriate for streets and electrical replacement.

As to the professional fees associated with a possible property tax appeal, .St. John believes if there was a reimbursement those amounts should also be returned to the Homeowners and any portion of the permanent rent increase associated with the same should be also reduced. He did acknowledge some charges, such as bank fees and professional dues may not have be appropriately categorized. He confirmed the ordinance prohibits debt service, interests and loan costs.

Kenneth Baar

Baar has a PhD in urban planning from UCLA and a law degree from Hastings. For approximately 20 years he has served as a consultant on mobile home park rent issues in about 30 different jurisdictions. Although he was not prepared to give an opinion as to what amount of rent increase would be appropriate, but did not believe a large one is justified. Baar agreed that the MNOI was the most appropriate fair return methodology to use in this case. Although not mandated by the ordinance he would have used 1994 and 75% indexing. He would not have included the increased lease payments in the MNOI analysis. He has seen cases where land rent

has both been allowed and not allowed. If it was allowed, it was something that was included in a particular ordinance. There is no such expressed provision here in Santa Barbara. Barr sees the ground lease payments as an allocation of profits between the landowner and Park Owner. He believes it should be treated as an acquisition costs which the ordinance does not allow to be considered. To allow payment would give the Park Owners a type of rent increase they could not have had if they instead had purchased the land. Barr argues that such a scheme would become circular, if the rent goes up, then it would increase the land lease payments, which would again justify another rent increase.

As to whether or not capital items which were incurred or paid for in the previous years should have been included in the rent increase, Baar believes it would be unusual. There is recover prospectively as long as the work is done within six months. He noted in this case bids have been received but nothing has been done. As far as any recoupment in the capital requests for replacing meters, a court in the *Rainbow* decision held they are pre-empted by utility regulations. The utilities provide the Park Owner with a differential to cover such costs. If those monies are not adequate, then Barr believes their argument is with the PUC. His opinion would include those professional fees associated with the same. He believes a 7% amortization rate would be more appropriate than the 9%. As for how long, he would like to see an opinion about how long they expect the assets to last.

As for the legal fees incurred in challenging the tax assessment, As long as they are reasonable, Baar believes they may be justified since the residents might benefit from a tax reduction but believes the $125k number put forth by the Park Owners is too high. It was his opinion that $30,000 - $40,000 would have been more appropriate. If the Park Owners were to appeal, he would agree that they could come back and ask for additional legal fees. In regards to the supplemental tax increases, generally park owners do not make a claim for past expenses, unless there was a reason why they could not have claimed them sooner. Barr does not know of a clear time limit which would allow the Park Owner to pass along cumulative past increases. Some of the residents have moved and others were not in the park when expenses were incurred.

Ken Waterhouse

Waterhouse is a member of Lazy, the entity which purchased the land lease where the homeowners currently reside. He confirmed that the financial statements entered into evidence were kept in the normal course of business and that the bank fees noted as a charge were a late fee charged by the lender after Lazy initially did not initially pay the new property tax assessment. In his years of experience as a Park Owner of multiple parks, 10 – 20% is the typical range of rents paid for mobile home parks operating on long term leases. This particular investment is not risk free and Lazy is not building any equity in the property. Once the lease expires Lazy will have nothing.

Waterhouse initially looked into the propriety of the tax reassessment, but after talking to outside professional she believed Lazy was stuck with the increase. After receiving the assessment notice Waterhouse met with the Homeowners who told him that if they would pay professional fees to fight the assessment, they would get a credit for those amounts not spent. The Homeowners he spoke to did not want anything to do with it. He stated that the landowner stands ready to cooperate if the decision is made to move forward with an appeal. He has no idea as to the time period when such an appeal must be brought.

Waterhouse also testified that Lazy purchased plans and permits from the previous operator of the park. Several of those permits have expired, but he believes the County will work with them on that issue. He confirmed that the $50k in professional fees listed was paid by Lazy and that $320k is indeed in escrow for capital expenses. He has no problem with using the 15 years for the amortization period for recouping the same from the Homeowners. It is his understanding they can pass through to the Homeowners the costs for replacing the sub-metering gas or electric systems. Although discussions with the County are ongoing, he believes those improvements will cost about $400k, including from $230 - $271 for replacement of the electrical system. As to the appropriateness of the legal fees submitted to the Homeowners, Waterhouse testified he has spent much more in other cases.

Rueben Garcia

Garcia is a vice-president for Waterhouse Management Corporation, responsible for its day to day operations. Garcia confirmed the records introduced into evidence were within the normal course of business and that he was present along with Waterhouse for the meet and

confers with the Homeowners. During those meetings they discuss the property tax appeal process, but the Homeowners told them they did not want to participate in the appeal process.

Dan Waltz

Waltz is a current resident of the park and has lived there for about the last 10 years. He was elected by the other Homeowners to serve as a representative and meet with the Park Owners. Waltz testified the representatives never told the Park Owner that they did not want them to go forward with the tax appeal. Waltz stated that to the contrary the Homeowners offered their help since they were the ones who were paying the rent. The Park Owners discussed in general terms what the legal fees noted were for, but the Homeowners were never asked by them to fund the appeal. The Homeowners never agreed to or disagreed about paying the anticipated professional fees for property taxes.

POSITION OF THE PARTIES

It is the Homeowner's position that their petition was not deficient in that it was verified by the County Clerk. They also believe that the $161.00 per month charge as noticed by the Park Owners was really base rent in character. The County's ordinance does not contain specific authority to allow rent increases in a dollar-for-dollar fashion without looking at certain relevant factors. There is no precedent in fair return theory for the pass through the Park Owner is seeking. The burden of proving a rent increase rests with the Park Owner. Although it did not give one of their own during the hearing, the Homeowners did point out items which were either not supported by the evidence or inappropriate. Any inquiry into a fair return should utilize the MNOI which is what the Park Owner's expert even used.

As to the property tax line item, the Homeowners believe it is premature to make a determination as to the appropriateness of this amount. They do not believe these amounts should be claimed as part of the MNOI calculation and passed through if there is any chance there will be a determination that the reassessment was improper.

They also believe the increase lease payments being required of the Park Owner should not have been included in the MNOI analysis since it is not an operating expense. It is an investment expense and was part of the bargaining in reaching a purchase price of the leasehold. If allowed, there would be no incentive for them to negotiate a lower rate if the Park Owner

knew it could just pass it through. The Homeowner's expert noted such an item is allowed in other jurisdictions, if it is specifically spelled out in the ordinance. The Ordinance in this case is silent as to whether or not it is permissible. The Park Owner's expert admitted such pass through were relatively rare and he could not recall being involved in a case where it was allowed. The circular nature of such an allowance and other contingencies and variables associated with building them into an award are additional reasons why they should be excluded.

The Homeowners do not object to the use of the MNOI analysis, just as to how it was used in this case. They believe the 1994 base year should be used since it is the oldest data available. As to indexing, because the Ordinance indexes annual adjustments at 75%, that is the percentage the Homeowners feel it should be in this case. The Park Owner's attempt to pass through temporary expenses should also be denied in that they are being treated as capital items.

As to capital improvements, it is unclear as to why $50,000 for professional fees would be needed. In regards to the "A & E" fees, the actual amount is $62,145.55. Expense items incurred by the previous park owner should not be subject to reimbursement. Any portion associated relating to repairs, maintenance upgrade or replacement of the sub-metered gas or electric systems should also not be passed through given the sub-metered discount they receive each month from the utilities. The $320k should not be allowed in that the Park Owner is not even sure what it is going to spend it on. The upgrade to the electrical system should not be included. It is unlikely the streets could be completed within six months. All capital expense should be identified, plus the definition of the capital improvements must be met before an increase is authorized. The "anticipated Profession Fees" need to be specifically explained and accounted for as well as supported by good faith estimates or billings of incurred legal expenses. The amounts due to what has been characterized as "regulatory lag amounts" are monies the Park Owner should have tried to recapture sooner. In any case, Baar testified the "lag" should be no more than 12 months.

It is the Park Owner's position that all of the components of the rent increase were well supported by the evidence presented and that the homeowners conceded the legal basis for all aspects of the rent increase. They did not present evidence establishing that the rent increase should be another number. As to the permanent increase, the Park Owner believes that the ordinance supports a request for recoupment of the increased operating expenses it has occurred

including those for the increased property tax and ground lease payments. There is no dispute that the taxes have nearly tripled. If the property taxes were reduced, the Homeowners would benefit with a reduced rent.

As to the increased rent, there is also no dispute that the amount the Park Owners have to pay the owners of the land has doubled or that it represents a market price for the same. It was an arms; length negotiation. Such amounts are typically included in a MNOI analyses. They did not object on the basis of the S.B. ordinance, but on what exists in other jurisdictions, which are irrelevant in this matter. The homeowner's consultant conceded that this increase could be considered by the arbitrator.

Unlike the Park Owners, the Homeowner did not do their own MNOI analysis and that their consultant did not disagree with the one put into evidence by St. John. The evidence they presented that the 1994 base year should be used and a discounted 75% indexing rate was not persuasive. The ordinance essentially leaves open the determination of which base year to use to the judgment of the analyst. The Homeowners had no knowledge of any factors that would make 1994 more appropriate. The argument that 100% indexing should not be used because the park was a risk free investment and the benefit of equity growth was unsupported by the evidence.

As to the temporary rent increase, the homeowners conceded that a "regulatory lag" could occur. There is no absolute line how far back a Park Owner can go before giving notice for such past expenses. The amortization for anticipated professional fees for challenging the assessment is also proper. Expensing them over time was to the benefit of the Homeowners as would be a reduction in the assessment. In regards to the amortization of costs of capital improvement, amounts paid into escrow for such items and for the plans associated with the same should also be recovered. The Park Owner believes that the interest used for the amortization period was correct.

OPINIONS AND FINDINGS

A. Permanent Increase

1. CPI Increase

With the stipulation agreed to by the parties and with a finding that such a proposed amount is within the parameters of the Ordinance, this particular increase should be granted as originally noticed in the letter to the Homeowners dated January 26, 2011 (Ex. A).

2. Lease Payment Increase

On or about July 31, 2008 the Park Owner executed a thirty-four (34) year lease with the Bell Trust UDT dtd 8/12/91 the current owners of the land (Ex H). The previous lease between the landowner and Nomad Village, a California corporation, expired on August 1, 2008. Over the years the owners of the property have entered into various leases and amendments since 1958 (Ex. I). The new lease contained a number of different terms, including a provision for the payment of $500,000 plus an amount equal to 20% of all collected rents. There was no evidence disputing Waterhouse's representation that this new lease was an arm's length transaction.

Historically the 10% rent increase under the old lease had been passed through and paid by the Homeowners. There is no evidence that any of the present Homeowners or their predecessors in interest ever challenged those charges. With the new leasehold and corresponding increase to 20%, the question is whether or not this increase should be classified as an operating expense and passed along. The Ordinance is clear that ordinary and necessary maintenance and operating expenses can be considered by the arbitrator (Section 11A-5f). As noted by Baar, this additional lease obligation is more properly characterized as a cost of acquisition and not an operating expense. It was just one of the new lease terms negotiated by the parties, some of which appear to have been to the benefit of the landowner and others more to Park Owner.

To allow such a pass through would take away the incentive of any future operator to keep this percentage down. They could for example, in the future with a new lease or possibly even an amendment to pay only $250,000 (which could not be recouped) in exchange for even a larger rent, which the Homeowners would then have to pay using the Park Owner's rational.

The Ordinance is silent as to whether or not such a contractual expenditure can be passed along to the Homeowners. Although every jurisdiction is different, there is some value to be gained by looking at other ordinances and how they handle such payments. There are ordinances in other jurisdictions which specifically allow such a recovery. It is a fair assumption then that by omission the County most likely did not want to allow such amounts, which are really more in line of acquisition costs, passed through to the Homeowners.

3. Property Tax Increase

Section 11A-5 of the Ordinance allows the arbitrator to consider "increases in property taxes and fees. Historically the Homeowners have been paying the property tax assessed to the landowners. The issue now is whether they should be responsible for the increase in property

taxes associated with the change of ownership as the result of the Park Owner purchasing the leasehold. The weight of the evidence supports the Park Owner's position that the Homeowners are responsible for these amounts. Unlike the lease purchase negotiations, the outcome of which was controlled by those parties, this tax increase was not negotiable. It was an amount apparently decided on by the County and its interpretation of the *California Revenue and Tax Code*. The Park Owners would not be charging the Homeowners any more than the County is charging them (Ex. G).

As the Homeowners noted, there is a certain amount of the uncertainty on how any appeal or reassessment will come out if one is pursued. It is rational that the Park Owner should not bear the cost burden of any such challenge alone. There is no benefit at all to the Park Owner associated with such an increase. Given the allowance in the Ordinance that the Homeowners could be charged for taxes paid, they are the only ones who would benefit from any past of future reduction.

The purpose of this hearing was not to determine the probability of success with either an appeal or reassessment, but with the reduction of property values statewide, there may be an opportunity for the latter. The Park Owner believes there is some possibility that the park could be reappraised or that this assessment could be successfully challenged on appeal. The protective mechanism, as acknowledged by the Park Owner, in the form of a reimbursement for all excess amounts paid and a reduction in the permanent rate going forward is sufficient protection for the Homeowners. Absent such an adjustment, the increase in taxes associated with this new assessment should be paid by the Homeowners to the Park Owners as a permanent increase.

B. Temporary Increase

As to the Park Owner's request for a temporary increase to cover additional expenditures, there is some justification that would allow charges in some areas, but not in others.

Capital Improvements (Infrastructure)

In reading the Ordinance it is clear that the Park Owner can pass along capital improvements and expenses, if they are properly characterized and are completed within six months of the approval of such amounts. In this case Waterhouse testified that as a financing condition of the loan taken out to purchase the leasehold, the Park Owner was required to place $320k in escrow for capital improvements. It was unclear as to whether or not these amounts were part of a sinking fund, which could be drawn down as expenditures dictate, or if this escrow amount was a minimum that needed to be maintained for the length or some portion of the term of the loan. Regardless, this escrow requirement, like the increase in the land lease payments,

was associated with the acquisition of the leasehold and an amount the Homeowners should not have to pay on that basis alone.

It is notable that had a purchaser of the leasehold paid all cash, there would have been no such escrow requirement. If there were no plans to spend these monies for capital expenses or improvements, the Ordinance does not allow the Park Owner to recoup these amounts. This is not the stated intention of the Park Owner. Waterhouse testified that Lazy will be spending much more than this escrow amount on other capital items besides just the utilities, including for the roads in the park.

The Ordinance makes it clear that such funds can be collected, but with the restriction that those monies must be spent on eligible items within six months or returned. As far as what is eligible, the Ordinance in Section 11A-2(b) defines such items as a "repair or replacement of existing facilities or improvements which have an expected life of more than one year." The Park Owner can charge the Homeowners this $320k via a temporary increase, but any amounts which are not itemized as being eligible and/or spent by from six months of the date of this award, including for the capital replacement of the meters, must be returned and no longer charged to the Homeowners.

Professional fees

The professional fees spent on capital improvement item should not be treated as a one shot expense, but rather amortized (Ex. K & Q). After considering the objections raised by the Homeowners, a good portion of the line items submitted by the Park Owner do not appear to be relevant to any capital improvements, therefore, a reduction of $25,000 from the original request is warranted. The remaining $25,000 is to be charged to the Homeowners.

A&E Fees

Waterhouse testified he purchased certain plans to facilitate evaluating and then moving forward on certain capital improvements for the park. Given the age on some of the supporting documentation, some of this work appears stale. Although the Park Owner represented that the County will work with them with such things as expired permits, some of this work may have little or no value as of this date. A more reasonable amount to be charged would b $40k.

Uncompensated Increases

Supplemental Tax Increase

The $130,531 spent by the Park Owners can be included in the temporary increase. The parties were unsure whether or not such fees could be awarded as part of any favorable property tax appeal. If there is such an award, judgment or settlement in the future those amounts should be credited to the Homeowners.

Increased Land Lease

For the same rational as noted above denying the request for the lease payments as part of the proposed permanent increase, these amounts should also not be passed along to the Homeowners.

Anticipated professional fees relating to property taxes

Although the Park Owner has expressed an interest in and has already done some preliminary investigation into the matter, it remains unknown as to whether or not it will unilaterally proceed with a tax appeal or request a reassessment without a financial contribution from the Homeowners. The Park Owner should not be expected to start such an appeal and expend professional and legal fees if none of the benefit of a reduction would fall to them. Unlike the property owners, who one suspects would want a lower base both for possible future lease negotiations and/or a reversion of the property the Park Owners have no real incentive to move forward. If they do nothing, as noted above, the Homeowners will be responsible for the additional assessment and any multiplier affect related to the same as the years go on.

From the testimony presented there is a dispute as to whether or not the Homeowners wanted to go forward. Both Waterhouse and Garcia testified they asked the representatives of the Homeowners if they wanted to participate by paying the anticipated fees, but they declined. Waltz, testifying as a Homeowner representative, said they were never asked to contribute. This was an important matter and one that needed to be clarified further before any additional legal expenses pursuing this particular item were incurred. Since the arbitration the Homeowners have now decided and the Park Owner had been informed that they do not wish to pursue any reassessment or appeal of the property tax increase.

Anticipated professional fees relating to rent increase

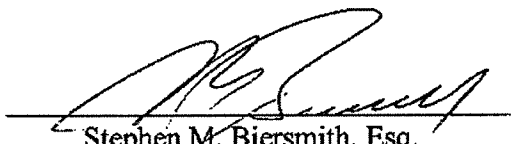
After reviewing the itemizations submitted by the Park Owner for expert and legal services expended in this matter (Ex. R & S) and the Homeowners response, a reasonable amount to be paid by the later would be $110,000.

AWARD

1. The CPI increase as calculated and proposed by the Park Owners in its letter dated January 26, 2011 can be charged to the Homeowners.
2. The Homeowners do not have to pay the additional 10% increase in ground rents.
3. The Homeowners are to pay the Park Owners for all real property taxes assessed by the County.

4. All granted temporary increases are to be amortized at 9% for seven (7) years.
5. The Homeowners are to pay the $320,000. If any of these monies are not spent on eligible items with six months from the date of this award, the residual amounts are to be returned to the Homeowners.
6. The Homeowners are to pay $25,000 for professional fees associated with the capital improvements.
7. The Homeowners are to pay $40,000 for the A&E fees associated with the capital improvements.
8. The Homeowners are to pay $130,531for the supplemental tax increase payments already paid by the Park Owner.
9. The Homeowners do not need to pay for the uncompensated increases associated with the increased lease payments.
10. The Homeowners have elected not to proceed with a property tax appeal or reassessment and should not be charged with professional fees associated with the same.
11. The Homeowners are to pay $110,000 for legal fees associated with the challenge to the rent increase.
12. The Permanent Increase is to be $25.59 and the Temporary Increase $67.09 as supported by Respondent's Exhibit T.
13. The Parties are to work towards agreement and payment of any overpayments by the Homeowners as a result of this award by March 1, 2012.
14. The Arbitrator will maintain jurisdiction until the expiration of the time line noted in #13 above.

Dated: December 20, 2011



Stephen M. Biersmith, Esq.
Arbitrator

NOMAD VILLAGE - Rent Schedule Calculations Purusant to Award

(Item Numbering follows numbering in Award)

1	CPI increases - as noticed.							*variable*
2	n/a							
3	Property Tax Increase: Per year:		46,070			Per Month per Space:		$25.59
4	Amortization applied per award (9% for 7 years) see below							
	Amortization:	rate:	0.09	years:	7	PER MONTH		PER SPACE
5	Capital Improvements		320,000			5,149		$34.32
6	Professional Fees		25,000			402		$2.68
7	A&E Fees		40,000			644		$4.29
8	Supplemental Tax Payments		130,531			2,100		$14.00
9	n/a							
10	Anticipated professional fees relating to Property Tax Appeal					NOT INCLUDED IN TOTAL		$5.36
11	Legal Fees re: space rent increase		110,000			1,770		$11.80

RENT INCREASE SCHEDULE SUMMARY:

TOTAL PERMANENT INCREASES	
CPI Increase	*as noticed*
Property Tax Increase	$25.59
TOTAL TEMPORARY (7-YEAR) INCREASES	$67.09
TOTAL INCREASES AWARDED	$92.68

EXHIBIT "2"

IN THE MATTER OR ARBITRATION BETWEEN

NOMAD VILLAGE MOBILE HOMEOWNERS,

Petitioner

and

OPINION AND AWARD
(Revised on Remand)

NOMAD VILLAGE MOBILE HOME PARK

Respondent.

ARBITRATOR	Stephen M. Biersmith Attorney at Law
HEARING SITE	County Administration Building County of Santa Barbara
HEARING DATES	September 19 – 20, 2011 & February 17, 2016
REPRESENTING THE PETITIONER	Mr. Tom Griffin Attorney at Law 1758 Calle Cerro Santa Barbara, CA. 93101
REPRESENTING THE RESPONDENT	Mr. James Ballantine Attorney at Law 329 East Anapamu Street Santa Barbara, CA. 93101

PROCEDURAL MATTERS

On January 19, 2016 the Board of Supervisors remanded the Arbitrator's original decision dated December 20, 2011 for reconsideration of several findings including Awards No. 4, No. 5, No. 6, No. 7, No. 11 & No. 12. Although the evidentiary record was deemed close, an additional day of hearing was held on February 17, 2016 to give both sides an opportunity to be

heard as to whether or not the original determination should be modified. Both parties moved to introduce additional documents. The items were marked, but not admitted.

ADDITIONAL EXHIBITS

For the Petitioner:

9. Tax bill spreadsheet (Not admitted)

For the Respondent:

U. Noman Village Rent Schedule (Not admitted)

V. Nomad Village post – 2011 capital expenses (Not admitted)

AWARD

1. The CPI increase as calculated and proposed by the Park Owners in its letter dated January 26, 2011 can be charged to the Homeowners.
2. The Homeowners do not have to pay the additional 10% increase in ground rents.
3. The Homeowners are to pay the Park Owners for all real property taxes assessed by the County.
4. All granted temporary increases are to be amortized at 9% for seven (7) years.
5. The Homeowners are to pay the $62,145.55 which were capital improvement expenses incurred prior to the commencement of the arbitration. The Homeowner are not required to pay the $320,000 held in escrow at the time of the hearing in that they were not definite and certain prior to the commencement of the arbitration.
6. The original request of $50,973 in professional fees for payment by the Homeowners is reduced to $25,000, which is a reasonable amount for services associated with the capital expenses and improvements.
7. The Homeowners are to pay $40,000 for the A&E fees associated with the capital improvements, a smaller number than petitioned for due to the reduced utility of those items since their purchase.
8. The Homeowners are to pay $130,531 for the supplemental tax increase payments.
9. The Homeowners do not need to pay for the uncompensated increases associated with the increased lease payments.

10. The Homeowners have elected not to proceed with a property tax appeal or reassessment and should not be charged with professional fees associated with the same.
11. The Homeowners are to pay $110,000 for legal fees associated with the challenge to the rent increase.
12. The Permanent Increase is to be $25.59 and the Temporary Increase $39.44 as supported by the attached.

Dated: March 5, 2016

Stephen M. Biersmith, Esq.
Arbitrator

NOMAD VILLAGE – RENT SCHEDULE CALCULATIONS Pursuant to Arbitration Award
(Item Numbering Follows Numbering in Arbitration Award)

1.	CPI increases – as noticed			*variable*
2.	n/a			
3.	Property Tax Increase: Per year	46,070	Per Month per Space	$25.59
4.	Amortization applied per award (9% for 7 years) see below			
	Amortization rate:	0.09 years	7 Per Month	Per Space
5.	Capital Improvements	62,145.55	1,000	6.67
6.	Professional Fees	25,000	402	2.68
7.	A&E Fees	40,000	644	4.29
8.	Supplemental Tax Payments	130,531	2,100	14.00
9.	n/a			
10.	Anticipated professional fees relating to Property Tax Appeal		0	0.00
11.	Legal Fees re: space rent increase	110,000	1,770	11.80

RENT INCREASE SCHEDULE SUMMARY:

TOTAL PERMANET INCREASES	
CPI Increase	(variable)
Property Tax Increase	25.59
TOTAL TEMPORARY (7-Year) INCREASES	39.44
TOTAL INCREASES AWARDED	65.03

DECLARATION OF SERVICE BY MAIL

I am employed in the County of Ventura, State of California, I am a citizen of the United States, over the age of 18 years and not a party to nor have an interest in the within action. My business address is 5462 Rincon Beach Park, Ventura, California 93001.

On March 5, 2016 I served the within document described as:

FINAL RECOMMENDED FINDNGS OF FACT AND RECOMMENDED DECISION

__X__ By placing the true copies in a sealed envelope(s) addressed as follows:

Mr. Don Grady
Real Property Division
County of Santa Barbara
1105 Santa Barbara Street
Santa Barbara, CA. 93010

Debra Hammick
833 E. Mason Street
Santa Barbara, CA.

Mr. James R. Ballantine
Attorney at Law
329 East Anapamu Street
Santa Barbara, CA. 152015

__X__ (BY MAIL) I am readily familiar with the normal business practice of my employer for the collection and processing of correspondence and other materials for mailing with the United States Postal Service. In the ordinary course of business, any material designated for mailing with the United States Postal Service and place by me in a designated "OUT" box in the office of my employer is deposited the same day with the United States Postal Service.

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

Executed on March 5, 2016, at Ventura, California

Stephen M. Biersmith, Esq.

EXHIBIT "3"

IN THE MATTER OR ARBITRATION BETWEEN

NOMAD VILLAGE MOBILE HOMEOWNERS,

Petitioner

and

OPINION AND AWARD
(Revised on Remand)

NOMAD VILLAGE MOBILE HOME PARK

Respondent.

ARBITRATOR	Stephen M. Biersmith Attorney at Law
HEARING SITE	County Administration Building County of Santa Barbara
HEARING DATES	September 19 – 20, 2011 & February 17th and August 10th, 2016
REPRESENTING THE PETITIONER	Ms. Debra Hamrick 813 East Mason Street Santa Barbara, CA. 93103
REPRESENTING THE RESPONDENT	Mr. James Ballantine Attorney at Law 329 East Anapamu Street Santa Barbara, CA. 93101

STATEMENT OF THE ISSUES

Was the notice of increase dated January 26, 2011, demanding a percentage increase of 2.59% of the current base rent and an additional $161 per space, effective May 1, 2011 from the Nomad Village Management appropriate? If not, what is the appropriate amount of the increase?

PROCEDURAL MATTERS

On July 19 2016 the Board of Supervisors reviewed the arbitration decision on March 5, 2016. It remanded the decision back to the arbitrator for additional findings of fact as to the original Award Numbers 4, 5, 6, 7, 8, 11 & No. 12. No additional evidence was considered. Closing briefs were submitted by both parties.

If either party wishes to have this arbitration decision reviewed, such a "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" (Rule 23 of the Mobilehome Rent Control Rules for Hearings). Any party wishing to seek a judicial review of the Board's decision should refer sections 1094.5 and 1094.6 of the *California Code of Civil Procedure*.

ADDITIONAL FINDINGS OF FACT

1. Exhibit C and the expert testimony of Michael St. John regarding the same supported a finding that all temporary increases be amortized at 9% for seven (7) years.
2. Exhibit J and the invoices as presented in Exhibit K showed that $62,145.55, as confirmed as paid by Ruben Garcia, were definitive and represented the amount spent for capital improvements prior to the commencement of the arbitration. The $320,000 held in escrow at the time of the hearing were not definite and certain expenditures made prior to the commencement of the arbitration.
3. Per the testimony presented by Waterhouse, $50,973 in professional fees were incurred and paid by the Respondent. A good portion of the line items in Exhibits K & Q itemizing the same do not appear to be relevant to any capital improvements and a reduction is appropriate. Exhibits K & Q do support a finding that at least $25,000 of those fees were related to capital items.
4. The testimony presented by Waterhouse supported a finding that the plans and drawings purchased by the Respondents in Exhibits J & L have value as to operation and capital improvements for the park. Given the amount of time that has passed since their purchase, some of this work appears to be stale and would now have less utility. A more reasonable amount for such items would be $40,000.

5. As supported by Exhibit G, the Respondent paid $130,531 for supplemental tax increase payments.
6. The homeowner's expert conceded that legal fees incurred by the Respondent could be the basis for a rent increase. Exhibits R & S support a finding that $110,000 in legal fees incurred by the Respondent were associated with the challenge to the rent increase.

AWARD

1. The notice of increase dated January 26, 2011, demanding a percentage increase of 2.59% of the current base rent and an additional $161 per space, effective May 1, 2011 from the Nomad Village Management was not appropriate.
2. The CPI increase as calculated and proposed by the Park Owners in its letter dated January 26, 2011 can be charged to the Homeowners.
3. The Homeowners do not have to pay the additional 10% increase in ground rents.
4. The Homeowners are to pay the Park Owners for all real property taxes assessed by the County.
5. All granted temporary increases are to be amortized at 9% for seven (7) years.
6. The Homeowners are to pay the $62,145.55 which were capital improvement expenses incurred prior to the commencement of the arbitration. The Homeowner are not required to pay the $320,000 held in escrow at the time of the hearing in that they were not definite and certain prior to the commencement of the arbitration.
7. The original request of $50,973 in professional fees for payment by the Homeowners is reduced to $25,000, which is a reasonable amount for services associated with the capital expenses and improvements.
8. The Homeowners are to pay $40,000 for the A&E fees associated with the capital improvements.
9. The Homeowners are to pay $130,531 for the supplemental tax increase payments.
10. The Homeowners do not need to pay for the uncompensated increases associated with the increased lease payments.

11. The Homeowners have elected not to proceed with a property tax appeal or reassessment and should not be charged with professional fees associated with the same.
12. The Homeowners are to pay $110,000 for legal fees associated with the challenge to the rent increase.
13. The Permanent Increase is to be $25.59 and the Temporary Increase $39.44 as supported by the attached.

Dated: August 28, 2016

Stephen M. Biersmith, Esq.
Arbitrator

DECLARATION OF SERVICE BY MAIL

I am employed in the County of Ventura, State of California, I am a citizen of the United States, over the age of 18 years and not a party to nor have an interest in the within action. My business address is 5462 Rincon Beach Park, Ventura, California 93001.

On September 7, 2016 I served the within document described as:

OPINION AND AWARD (REVISED ON REMAND)

__X__ By placing the true copies in a sealed envelope(s) addressed as follows:

Mr. Don Grady
Real Property Manger
County of Santa Barbara
105 East Anapamu Street, Rm. 108
Santa Barbara, CA. 93101

__X__(BY MAIL) I am readily familiar with the normal business practice of my employer for the collection and processing of correspondence and other materials for mailing with the United States Postal Service. In the ordinary course of business, any material designated for mailing with the United States Postal Service and place by me in a designated "OUT" box in the office of my employer is deposited the same day with the United States Postal Service.

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

Executed on September 7, 2016 at Ventura, California

Stephen M. Biersmith, Esq.

NOMAD VILLAGE - Rent Schedule Calculations Pursuant to Arbitration Award (Revised on Remand 8/28/16)

(Item Numbering follows numbering in Award)

1 n/a

2 CPI increases - as noticed. *variable*

3 n/a

4 Property Tax Increase: Per year: 46,070 Per Month per Space: 25.59

5 Amortization applied per award (9% for 7 years) see below

Amortization:	rate:	0.09	years:	7	PER MONTH	PER SPACE
6 Capital Improvements		62,145.55			1,000	6.67
7 Professional Fees		25,000			402	2.68
8 A&E Fees		40,000			644	4.29
9 Supplemental Tax Payments		130,531			2,100	14.00
10 n/a						
11 Anticipated professional fees relating to Property Tax Appeal					0	0.00
12 Legal Fees re: space rent increase		110,000			1,770	11.80

TOTAL PERMANENT INCREASES	
CPI Increase	[variable]
Property Tax Increase	25.59
TOTAL TEMPORARY (7-YEAR) INCREASES	39.44
TOTAL INCREASES AWARDED	65.03

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 October 13, 2016, I served: RESPONSE BY PARK MANAGEMENT OF NOMAD VILLAGE MOBILE HOME PARK TO THE PETITION FOR REVIEW FILED BY HOMEOWNERS OF THE ARBITRATOR'S REMAND OPINION AND AWARD DATED 8/28/16 on the interested parties in this action by causing to be delivered the original thereof addressed as follows:

General Services Department
Attn: Don Grady
Clerk of the Ordinance
Real Property Manager
Courthouse East Wing, Second Floor
1105 Santa Barbara Street
Santa Barbara, CA 93101

I caused to be delivered said document to the addressee.

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 October 13, 2016, in Santa Barbara, California

Lisa M Paik

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 October 13, 2016, I served the foregoing document described as RESPONSE BY PARK MANAGEMENT OF NOMAD VILLAGE MOBILE HOME PARK TO THE PETITION FOR REVIEW FILED BY HOMEOWNERS OF THE ARBITRATOR'S REMAND OPINION AND AWARD DATED 8/28/16 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
813 E. Mason Street
Santa Barbara, California 93103

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 October 13, 2016, at Santa Barbara, California.

Lisa M. Paik