

Attachment O
Homeowners' Petition

To: The Clerk of the Board
Re: Rent Increase Arbitration
Nomad Village Homeowners
Nomad Village Mobile Home Park

01-13-12P03:34 RCVD

January 13, 2012

We the homeowners' representatives for the homeowners of Nomad Village respectfully petition for Review by the Board of Supervisors of the opinion and award, dated December 20, 2011, in the matter or arbitration between Nomad Village Homeowners and Nomad Village Mobile Home Park. This petition alleges prejudicial abuse on the behalf of the arbitrator as set forth below.

BACKGROUND

Prior to August 1, 2008 Nomad Village Mobile Home Park was operated by Nomad Village Inc., a closely held company owned by the Bremer family. The Bremer family had held the ground lease for approximately 50 years and had constructed all the Infrastructure, buildings and improvements necessary to open and operate the mobile home park. As of July 31, 2008, the ground lease expired and the ownership of the infrastructure, buildings and improvements reverted to the lessor, the Bell Trust. (Exhibit I)

The current operator, Lazy Landing, LLC (management) signed a new 34 year lease effective August 1, 2008. The terms of the lease require Lazy Landing to pay \$500,000, 20% of all collected rents and all property taxes. In return, Lazy Landing stepped into a turnkey operation generating cash-flow from day one, a right of first refusal and a subordination clause which has subsequently allowed them to borrow \$2.97 million unrelated to park operations. (Exhibit J)

On January 19, 2011 management noticed the homeowners at Nomad Village of a rent increase of \$161.00 plus 75% of CPI for the last three years, averaging over 50% of the current rent. (Exhibit A)

THE ARBITRATOR MADE NO FINDING REGARDING FAIR RETURN ON INVESTMENT

The arbitrator provides no finding that management is not receiving a 'fair return on their investment'. Likewise, he provides no support as to how any and all his allowed increases contribute to a fair return or how he applied the formula in the ordinance § 11A-5(f) through (i)(1)-(6) to arrive at a fair return.

The courts have found that no specific percentage rate of return or dollar amount of return on the investment is constitutionally required. What is "fair" varies with the risk of **the investment** and the **amount of capital** on which investors are entitled to a return. (*Duquesne Light Co.*, *supra*, 488 U.S. at p. 310.) Thus, "[t]here is a range of rents which can be charged, all of which could be characterized as allowing a 'just and reasonable' return." (*San Marcos*, *supra*, 192 Cal.App.3d at p. 1502.) The term "fair return" (or "just and reasonable return," or "fair rate of return"), as used in the context of rent and other price controls, "refers to a constitutional *minimum* within a broad zone of reasonableness." (*Galland*, *supra*, 24 Cal.4th at p. 1026; see also *Power Comm'n v. Pipeline Co.* (1942) 315 U.S. 575, 585 [lowest reasonable rate is not confiscatory in constitutional sense].) It is only when rent ceilings are set so low

that a landlord cannot stay in business and operate successfully that the constitutional minimum return on investment has been breached and the rents become confiscatory. (*Galland, supra*, 24 Cal.4th at p. 1026; *Birkenfeld*, at p. 169; *TG Oceanside, supra*, 156 Cal.App.4th at p. 1373.) " Here, there is no contention, nor does the evidence suggest, that if the Commission denied the requested rent increases, the park owners would be in such an unfavorable economic position they would go out of business." (*San Marcos, supra*, 192)

Management's initial cash outlay was \$500,000 (exhibit H) and their 'unadjusted' net operating income (NOI) for 2010 was \$122,821.44. Their 'adjusted' NOI was \$166,881.14. (9/16/11 Hearing brief) This provides a return on investment of 24.56%, unadjusted or 33.37% adjusted without subtracting management's possessory cost (land lease) disallowed by the arbitrator and Ord. (§11A-5)(f)(1). The arbitrator found that management was entitled to the 2.6% CPI adjustment as well as 33.36% ($\$25.59 + 67.09 \times 150 \text{ spaces} \times 12 \text{ months} / \$500,000 \text{ investment}$) in addition to the CPI adjustment. No support is given as to how 24.56% does not provide for the ordinance standard of 'fair return on investment'.

The arbitrator alludes to the maintenance of net operating income (MNOI) as presented by management but does not provide support as to how it was used to arrive at the increases allowed or how it conforms to the 'fair return on investment' standard explicit in §11A-1 of the ordinance . Management's post closing brief explains that "The MNOI analysis focuses solely on income and expenses, and compares a base year to a subject year in which the increased expenses have been incurred.", without regard to investment, rendering it insufficient to determine 'fair return on investment'.

ARBITRATOR'S OPINION AND 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.

Homeowners agree.

2. The Homeowners do not have to pay the additional 10% increase in ground rents.

Homeowners agree.

3. The Homeowners are to pay the Park Owners for all real property taxes assessed by the County.

Nomad Village Mobile Home Park Petition for Review seeks review and reversal of the Arbitrator's decisions regarding Issue #3

The arbitrator's finding that "Historically the Homeowners have been paying the property tax assessed to the landowners." is factually incorrect and is not supported by the record.

Prior to 7/31/2008 the property tax was split into three components. Property number 059-240-006 included the land and was billed to, and paid by, the Bells, the Property Owners. Property number 059-240-06-001-8 included the buildings and improvements and was billed to, and paid by Nomad Village Inc. Nomad Village Inc. built and owned the structures so they were taxed on the unsecured rolls. There was also Property number 059-240-06-002-2, the miscellaneous business property reported on the 571-L.

When the prior lease ended, 7/31/2008, all the property included in Property number 059-240-06-001-8, the buildings and improvements, reverted to the Bells and became part of Property number 059-240-006, now the land, buildings, and improvements. This is documented in the assessed values from the County. (See Attachment 1, Exhibit 1)

Management's closing brief stating "Essentially, the assessed value of the property went from \$1.94 million in 2008 to \$6.35 million the following year. (Exhibit G; RTI 126: 16-25.) The County indicated that the tax increase resulted from a reassessment upon the conclusion of the long-term lease of the prior operator', which the County contended was a change of ownership. (RT2 139: 12-21)" materially omits that \$1.6 million in infrastructure and improvements as well as the \$1.94 million (or \$3.54 million) is now included in the \$6.35 million number.

The arbitrator's finding that "Unlike the lease purchase negotiations, the outcome of which was controlled by those parties, this tax increase was not negotiable" is factually incorrect and ignores the ground lease presented into evidence. Page 1 of the ground lease, section 3, contains "...Ground Lessee agrees to continue to pay before delinquency any and all real estate taxes assessed,..." Just as the land lease costs, increases in the park owner's possessory cost are not includable as operating expenses which may be passed onto park residents unless they are involuntarily incurred by forces beyond the owner's control, these costs were clearly in the control of and negotiated by management.

The property taxes are a contractual issue between management and the property owners, not directly a government pass-through. Management, with all due diligence, took responsibility for the taxes in an arm's length transaction, and received valuable consideration in return.

At the time management signed the ground lease, 7/31/2008, the expiration of the prior 50 year lease had already triggered a reappraisal by the county assessor explicit in the California tax code.

California Revenue and Taxation code section

60. A "change in ownership" means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.

*61. Except as otherwise provided in Section 62, change in ownership, as defined in Section 60, includes, but is not limited to: (c)(1)(B) **The termination of a leasehold interest in taxable real property which had an original term of 35 years or more (including renewal options).***

The arbitrator erred in finding that there was a \$46,070 increase from tax year 2008 to tax year 2009. This calculation is based on respondent exhibit G., printouts from the County's website. These documents do not take into account the 7/31/2008 reversion of the buildings and improvements or 7/31/2008 reassessment. They are not the same group of assets and cannot be compared. The arbitrator ignored the evidence in management's hearing brief and exhibit O that 2007 property taxes were \$37,966.32 compared to 2010 \$66,485.84, a difference of \$28,519.52.

Using management's methodology of reporting sewer charges separately, the actual taxes are \$62,960.22, \$66,523.21, \$66,448.49 and \$67,047.45 for tax years 2008, 2009, 2010 and 2011 respectively. (See Attachment 1, Exhibit 2) When calculated by calendar year payments, this agrees to

management's financial statements. (See Attachment 1, Exhibit 3) There was no \$46,070 increase. This can be independently confirmed by the County's tax collector's office.

In allowing an increase based on an individual line item, the arbitrator failed to 'consider all relevant factors' as prescribed by Ord. (§11A-5)(f). An increase, or decrease in any given line item is to be taken in context of the overall operating expenses and expenditures. To allow line item increases provides management with an economic disincentive toward cost containment, and is clearly not the intention of the ordinance.

The arbitrator made no effort to follow the procedures for applying any increase set forth in the ordinance §§11A-5(g) through 11A-5 (i)(1)-(6). These sections provide a formula for the arbitrator to follow after the arbitrator has considered all factors. §11A-5(h) requires that any increase be compared to the automatic increase already granted. §11A-5 (i)(1)-(6) requires the arbitrator to consider any incremental increase in direct relation to those increases granted following the prior ordinance section.

The Homeowners position is that management's exhibit G is incomplete and a material misrepresentation. It is pernicious in that management omits the fact that they are comparing an assessment on the ground alone with an assessment for the ground, infrastructure, buildings and improvements. Any increase in taxes resulting from reappraisal was either known or knowable when management entered into a contract to pay them on behalf of the Landowner. The property taxes are one of the terms of financing as evidenced by the lease agreement. To consider a financing item in the analyses of operating expenses would provide an incentive for management to negotiate further expenses to be passed to the homeowners in return for valuable consideration that provides no benefit to the homeowners.

We request that the Board of Supervisors:

- (A) Find that the Arbitrator abused his discretion when he allowed the Park to impose a permanent increase in a manner contrary to the requirement of Ordinance (§11A-5)(f) that 'the arbitrator shall consider all relevant factors'.
- (B) Find that the Arbitrator abused his discretion when he allowed the Park to impose a permanent increase disregarding the formula set forth in Ordinance (§11A-5)(h) and (§11A-5)(i)(1)-(6).
- (C) Find that the Arbitrator abused his discretion when he failed to consider all property taxes included in managements financial statements and relied solely on website printouts in exhibit G.
- (D) Find that the Arbitrator abused his discretion when he ignored the evidence that the property taxes are a financing activity set forth in the terms of the lease agreement and not an operating expense outside the control of management.
- (E) Reverse the Arbitrator's decision based on findings (A) through (D).

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

Lazy Landing's loan and assignment of rents has an interest rate of 6.79%. (Exhibit K) Ordinance §11A-6(a)(1) states that "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." The arbitrator failed to support his decision to allow a 2.21% premium, 9%, above management's cost of funds.

We request that the Board of Supervisors:

(A) Reverse the Arbitrator's decision and amortize the cost of any capital item(s) over the useful life of the item(s) including any reasonable financing costs incurred in acquiring the capital item.

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.

Nomad Village Mobile Home Park Petition for Review seeks review and reversal of the Arbitrator's decisions regarding Issue 5.

In finding that "The park owner can charge the homeowner's this \$320k via a temporary increase...", the arbitrator failed to identify the capital improvement, incorrectly cited the definition of a capital expense when discussing a purported capital improvement, and ignored the requirements of the ordinance necessary to pass-through capital improvement costs to the homeowners, Ord. §11A-6(a).

Except for "...including for the capital replacement of the meters...", the arbitrator does not identify the capital improvement or improvements that he is requiring the homeowners to pay for. Nor has management identified or itemized any capital improvement per Ord. §11A-5(a)(3)(A).

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

(a) Management's notice of an increase in the maximum rent schedule shall:

(3) Where the noticed increase is in excess of seventy-five percent of CPI, management shall:

(A) **Itemize amounts for increased** operating costs; any capital expenses incurred in the prior year to be undertaken for which reimbursement is sought, hereinafter "new" capital expenses; any capital expenses allowed in prior years but not fully reimbursed, hereinafter "old" capital expenses; any offset against new or old capital expenses; and **capital improvements**.

The arbitrator is barred from considering unidentified and un-itemized items per Ord. §11A-5(k).

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

(k) Evidence as to costs to be incurred prior to the next rent increase may be considered **only** where such evidence shows that these costs are **definite and certain**.

The findings of arbitrator's own decision letter are that "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 found that Waterhouse testified that "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."

The "replacement of the electrical system" is the abatement of health and safety violation number 03BDV-00000-00241 issued by the county, and does not meet the ordinance definition of a capital improvement. The arbitrator did not address whether this 'replacement' is legal under California Public Utilities Code Section 739.5. This code section controls what costs may be recovered in a Master-Metered park, such as Nomad, and would need to be addressed as a threshold requirement. This is explicit in ordinance §11A-5(a) Management's notice of an increase in the maximum rent schedule shall: (1) Comply with state law.

The arbitrator's inclusion of 'the capital replacement of the meters' does not comply with state law and has been addressed by the court. (See Attachment 2)

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*2. The provisions of this Judgment including the Permanent Injunction contained herein at paragraphs 3 and 4 are applicable to Defendant NOMAD VILLAGE MOBILE HOME PARK, INC, its agents, employees, officers, directors, representatives, parent, **successors**, assigns, affiliates, subsidiaries, and divisions, and to any and all persons, corporations: or other entities who are acting in concert or participation with the Defendant, or of them with actual or constructive notice of this judgment;*

3. Pursuant to Business and Professions Code Sections 17203, Defendant is permanently enjoined and restrained from directly or indirectly engaging in illegal business practices in violation of Business and Professions Code section 17200 et seq., including but not limited to:

a. Assessing fess against or charging tenants in any manner for the costs of replacing gas or electric meters in violation of Public Utilities Code §739.5 and or Public Utilities Commission Decision 04-04-043.

The arbitrator ignored exhibit H and found that "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." The loan originates from the subordination clause in Lazy Landing ground lease, page 2 (exhibit H):

Subordination. Ground Lessor agrees to subordinate its interest to any financings of the Ground Lease in an amount not to exceed seventy percent (70%) of the Fair Market Value of the Property (appraised at the time of the loan as if this Ground Lease did not exist), and with terms of amortization of repayment of such financings not to exceed thirty (30) years. Funds obtained by Ground Lessee from any such financing shall be used first, to reimburse Ground Lessee for sums expended to bring the Property into compliance with and maintain the Property at the standards of California Housing and Community Development Department (HCD) Title 25 regulations or its successor regulations...

Lazy Landing recorded the loan, assignment of rents, etc. with the Santa Barbara County clerk recorder on November 21, 2008, almost four months after the start of the leasehold. This loan from Capmark for \$2,970,000 at 6.79% (Exhibit K) does have an Imposition Deposit requirement but **does not require any capital improvements**. There is no requirement that loan principal have any relation to Park operations, and has not, except as described above.

The Homeowners position is that the general category, 'infrastructure', classified as capital improvements in this rent increase are not legal under the ordinance or under California law. Management is attempting to charge the Homeowners for management's legal responsibility of implied warranty of habitability and general levels of health and safety. Management has deferred maintenance to the point of receiving health and safety violations and now wishes to pass along those costs which resulted due to the owner's failure to undertake prudent and ongoing maintenance activities or activities required by law; or costs which were caused by unnecessary and unreasonably deferred negligent, or otherwise improper repair and/or maintenance or other act or unreasonable omissions of the owner. Management has collected the premiums allowed by the California Public Utilities Code without providing maintenance required as evidenced by the notice of violation and further by managements \$52,011.05 reduction in 'repairs and maintenance' in 2010 over those in 2009.

We request that the Board of Supervisors:

- (A) Find that the Arbitrator abused his discretion when he classified a reserve account at a bank as a capital improvement contrary to Ord. §11A-2(a).
- (B) Find that the Arbitrator abused his discretion when he ignored the requirement to itemize any capital improvement as required by Ord. §11A-5(j).
- (C) Find that the Arbitrator abused his discretion allowing cost when the record does not support that these cost meet the requirement of **definite and certain** as required by §11A-5(k).
- (D) Find that the Arbitrator abused his discretion in not considering any capital improvement proposed meet the threshold retirements of CPUC 739.5.
- (E) Reverse the Arbitrator's decision based on findings (A) through (D).

6. The Homeowners are to pay \$25,000 for professional fees associated with the capital improvements.

Nomad Village Mobile Home Park Petition for Review seeks review and reversal of the Arbitrator's decisions regarding Issue 6.

In finding that the professional fees in exhibit K & Q are a capital improvement, or part of some other capital improvement, the arbitrator ignored the definition contained in the ordinance.

Sec. 11A-2. - Definitions.

The following definitions shall govern the construction of this chapter:

- (a) "Capital improvement" is any addition or betterment made to a mobilehome park which consists of more than mere repairs or replacement of existing facilities or improvements and which has a useful life of five or more years.

An improvement provides **new economic utility**, not in existence prior, such as a second story to a recreation room or an elevator where there were only stairs before.

The exhibit is a 9 page attorney time and billing statement covering 8/12/2008 to 11/30/2010, paid in total 12/31/2010 (Exhibit K). An attorney's service on a myriad of differing issues over three calendar years does not meet the criteria of a Capital Improvement per Ord. §11A-2(a) as management has asserted.

The arbitrator award letter states "The professional fees spent on capital improvement item should not be treated as a one shot expense, but rather amortized", however, the arbitrator provides no rational for determining that these fees were toward any eventual capital improvement or legal basis that they are amortizable on their own.

The arbitrator does not have the discretion to award \$25,000 without identifying any of its components.

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

- (i) To determine the amount of any increase in excess of the automatic increase, the arbitrator shall:
 - (6) Finally, add an amount to cover increased costs for capital improvements, if any. The arbitrator shall have discretion to add such amount as is **justified by the evidence** and otherwise permitted by this chapter.

The record does not support the contention that any of the items in the attorney statement contribute to the progress of creating any succinct capital improvement in any way. Managements financial statement classify these attorney fees as **an expense** in the category 'Legal – General'. Their remittance of payment gives the description 'Legal – Regulatns'. (Exhibit K)

The arbitrator cannot support his award of \$25,000 'Professional fees' as a capital improvement on its own, nor does he spell out a capital improvement it relates to.

The Homeowners position is that Management is attempting to pass on the costs of an ordinary expense item, attorney fees, as a capital item. Amounts in exhibit Q include attorney's fees either completely unrelated or incurred in connection with complying with applicable provisions of federal, state or local law with regard to the operation of the park (including code enforcement violations by the owner and related fines and penalties)

We request that the Board of Supervisors:

- (A) Find that the Arbitrator abused his discretion when he classified attorney's fees as a capital improvement, or in relation to a capital improvement, contrary to Ord. §11A-2(a)
- (B) Find that the Arbitrator abused his discretion when he failed to support his decision to allow the Park to pass through the cost of attorney's fees as a capital improvement, or in relation to a capital improvement, to the residents of the park pursuant to Ord. §11A-5(i)(6)
- (C) Reverse the Arbitrator's decision based on findings (A) and (B).

7. The Homeowners are to pay \$40,000 for the A&E fees associated with the capital improvements.

Nomad Village Mobile Home Park Petition for Review seeks review and reversal of the Arbitrator's decisions regarding Issue 7.

As with the attorney fees above, the arbitrator does not have the discretion to award this \$40,000 without identifying any of its components.

The arbitrator found that "Waterhouse also testified that Lazy purchased plans and permits from the previous operator of the park. Several of those permits have expired,...". No documentation as to this transaction was presented. There is no evidence as to the price paid in this 'purchase'. There is no documentation as to permits. The County Planning and Development can confirm that there were no active permits or applications at the time management purchased the park. They can also confirm that none of this paperwork, is being used in regard to the 2011 electrical replacement permit application to abate the health and safety violation.

We request that the Board of Supervisors:

- (A) Find that the Arbitrator abused his discretion when he classified A&E fees as a capital improvement, or in relation to a capital improvement, contrary to Ord. §11A-2(a)

- (B) Find that the Arbitrator abused his discretion when he failed to support his decision to allow the Park to pass through the cost of A&E as a capital improvement, or in relation to a capital improvement, to the residents of the park pursuant to Ord. §11A-5(i)(6)
- (C) Reverse the Arbitrator's decision based on findings (A) through (B).

8. The Homeowners are to pay \$130,531 for the supplemental tax increase payments already paid by the Park Owner.

Nomad Village Mobile Home Park Petition for Review seeks review and reversal of the Arbitrator's decisions regarding Issue 8.

The homeowners reassert their objections set forth in issue 3 regarding property taxes.

The arbitrator overstepped his authority in finding that an 'uncompensated increase' can be passed to the homeowners in the manner prescribed for capital items. Ordinance §§11A-5(g) through 11A-5 (i)(1)-(6) sets forth allowable increases and contains no provision for pass-through of non-capital items to the homeowners.

The arbitrator made no finding that management was not receiving a fair return on investment going back to August 1, 2008. Moreover, the ordinance does not allow retroactive increases. The remedy for a return on investment falling below the constitutional minimum is a prospective rent increase as prescribed by the ordinance.

Management's calculation is based on 34 months. Homeowners post-hearing brief points out that August 2008 through April 2011 is 33 months. The arbitrator ignored this fact and accepted management's number without scrutiny. Had the arbitrator reviewed the calculation, he would have found that this provides management with an average net expense approximately half of prior management's (\$18,512.85 per year for the tax years 2008, 2009 and 2010 compared to \$38K in 2007) as well as all future years.

We request that the Board of Supervisors:

- (A) Find that the Arbitrator abused his discretion when he allowed a non-capital item to be capitalized contrary to Ordinance §§11A-5(g) through 11A-5 (i)(1)-(6).
- (B) Find that the Arbitrator abused his discretion when he failed to support his decision to allow a retroactive increase contrary to the ordinance.
- (C) Find that the Arbitrator abused his discretion when he failed to support his decision with substantial evidence.
- (D) Reverse the Arbitrator's decision based on findings (A) through (C).

9. The Homeowners do not need to pay for the uncompensated increases associated with the increased lease payments.

Homeowners agree.

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.

It should be noted that this was not an option allowed by management at the February 16, 2011 meeting. The homeowners have been charged for this since May 1, 2011 and the only way to remove this charge was requesting arbitration.

11. The Homeowners are to pay \$110,000 for legal fees associated with the challenge to the rent increase.

Nomad Village Mobile Home Park Petition for Review seeks review and reversal of the Arbitrator's decisions regarding Issue 11. Temporary Increase, Anticipated professional fees relating to rent increase.

The arbitrator's finding that "...a reasonable amount to be paid by the later would be \$110,000." is not supported by substantial evidence, does not meet the ordinance requirement that "Evidence as to costs to be incurred prior to the next rent increase may be considered only where such evidence shows that these costs are **definite and certain.**" Ord. §11A-5(k) and contains no support as to how he arrived at this decision.

The arbitrator provided no application of the ordinance as support for his decision. The ordinance contains no provision for the capitalization of an ordinary operating expense. Since these fees are "anticipated" and not incurred, they cannot be included in the arbitrator's consideration of all relevant factors per Ord. §11A-5(f)(1).

These fees do not meet the ordinance definition, or any other definition of a capital item. The ordinance allows only for the pass-through or a capital improvement or a capital expense and then, only to the extent provided by the formula set forth in Ord. §11A-5(j)(1) through (6). There is no indication that the arbitrator followed these procedures for evaluation.

The arbitrator ignored Ord. §11A-5(k) "Evidence as to costs to be incurred prior to the next rent increase may be considered only where such evidence shows that these costs are definite and certain." The arbitrator does not have the discretion find a "reasonable amount to be paid..", nor the discretion to consider cost that are not definite and certain.

While there is no authority for allowing an ordinary expense item such as these professional fees to be treated as a capital item, there is support and rationale for excluding them completely in the context of mobile home rent increase hearing. The courts found in *Oceanside Mobilehome Park Owners' Assn. V. City of Oceanside* 157 Cal. App. 3d 887 that Oceanside's exclusion of professional fees related to a rent increase are permissible. "Section 16B.14.B.4 of the ordinance excludes from operating expenses "[a]ttorneys fees and costs incurred in proceedings before the Commission, or in connection with legal proceedings against the Commission or challenging this [ordinance]." The trial court incorrectly determined this provision unconstitutionally impedes park owners from seeking legal redress and representation to protect their property interests. The provision only prevents park owners from passing the burden of those fees to their tenants in the form of higher rents regardless of the outcome of the proceedings. The exclusion has no more of a "chilling effect" on park owners' rights to [157 Cal. App. 3d 910] pursue their legal remedies than does the traditional American rule denying litigant attorney fees in

the absence of express authority. Further, the burden on park owners is likely to be less than on the tenants, because the park owners are able to treat these attorney fees as business deductions for income tax purposes.”

The homeowners believe that management acted in bad faith in including a \$125,000 fund in the rent increase. Had the homeowners done nothing, management reaps \$125,000 plus 9% interest. The homeowners were forced into costly arbitration based on management’s circular argument that we are charging you \$125K because it will cost us \$125K to defend the act of charging you \$125K. The arbitrator gave no consideration as to how or if this fits into the overall Mobilehome rent control ordinance. Nor did he consider whether this separately charged ‘service’ is legal as a threshold matter under California Civil Code Sec. 798.31, controlling mobilehome residency, “A homeowner shall not be charged a fee for other than rent, utilities, and incidental reasonable charges for services actually rendered.”

We request that the Board of Supervisors:

- (A) Find that the Arbitrator abused his discretion when he failed to base his findings on substantial evidence.
- (B) Find that the Arbitrator abused his discretion when he failed to support his decision to allow the Park to pass through the cost of professional fees related to rent increase in any way, and specifically contrary to Ord. §11A-5(k)
- (C) Reverse the Arbitrator’s decision based on findings (A) and (B).

12. The Permanent Increase is to be \$25.59 and the Temporary Increase \$67.09 as supported by Respondent's Exhibit T.

The homeowners request that any temporary increase calculation incorporate the formula for an annuity due, payments are required at the beginning of each period, rather than the ordinary annuity, payments at the end of the period.

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.

Homeowners agree

14. The Arbitrator will maintain jurisdiction until the expiration of the time line noted in #13 above.

Homeowners agree

Respectfully submitted,

Nomad Village Homeowners



Debra Hamrick
Homeowners Representative

EXHIBIT 1

Assessed Values For Assessor Parcel Number (APN): 059-240-006

TaxYear	Land &		Improvements	Personal			Homeowner		Other		Net Assessed Value
	Mineral Rights			Property	Exemption	Exemption	Exemption	Exemption	Exemption		
2008	\$1,940,189		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,940,189
2009	\$6,000,000		\$350,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$6,350,000
2010	\$5,985,780		\$349,170	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$6,334,950

2008 - Nomad Inc. Tax: \$1,602,021 and Bell Trust tax \$1,940,189. The total property tax value for 2008 was \$3,542,210.

2009- APN includes all property including improvements

EXHIBIT 2

Nomad Village Property Taxes
Sorted by tax year

Installment Number	Year Bill Type	Property Address	Delinquent	Paid Due	Paid	Total per tax year	Sewer	Net Property tax
059-240-06-00-3-1	2008 Secured	4326 CALLE REAL SANTA BARBARA CA 93110	12/10/2008	\$35,298.99	11/26/2008			
059-240-06-00-3-2	2008 Secured	4326 CALLE REAL SANTA BARBARA CA 93110	4/10/2009	\$35,298.99	4/8/2009			
5360089-00-3-1	2008 Supplemental	4326 CALLE REAL SANTA BARBARA CA 93110	12/10/2009	\$15,766.98	12/10/2009			
5360089-00-3-2	2008 Supplemental	4326 CALLE REAL SANTA BARBARA CA 93110	4/10/2010	\$15,766.98	4/10/2010			
0008523-00-2-1	2008 Unsecured	4326 CALLE REAL SANTA BARBARA CA 93110	8/31/2008	\$10,829.09	8/21/2008			
0008524-00-8-1	2008 Unsecured	4326 CALLE REAL SANTA BARBARA CA 93110	8/31/2008	\$143.81	8/21/2008		50,144.62	\$62,960.22
059-240-06-00-3-1	2009 Secured	4326 CALLE REAL SANTA BARBARA CA 93110	12/10/2009	\$60,555.56	12/8/2009			
059-240-06-00-3-2	2009 Secured	4326 CALLE REAL SANTA BARBARA CA 93110	4/10/2010	\$60,555.56	4/7/2010		54,587.91	\$66,523.21
059-240-06-00-3-1	2010 Secured	4326 CALLE REAL SANTA BARBARA CA 93110	12/10/2010	\$60,518.20	12/9/2010			
059-240-06-00-3-2	2010 Secured	4326 CALLE REAL SANTA BARBARA CA 93110	4/10/2011	\$60,518.20	4/8/2011		54,587.91	\$66,448.49
059-240-06-00-3-1	2011 Secured	4326 CALLE REAL SANTA BARBARA CA 93110	12/10/2011	\$60,817.68	12/10/2011			
059-240-06-00-3-2	2011 Secured	4326 CALLE REAL SANTA BARBARA CA 93110	4/10/2012	\$60,817.68	4/10/2012		54,587.91	\$67,047.45

EXHIBIT 3

Nomad Village Property Taxes
Sorted by calendar year of date paid

Installment Number	Year Bill Type	Property Address	Delinquent	Paid Due	Paid	Sewer	one half sewer	Expected journal entry	F/S Per calendar year
0008523-00-2-1	2008 Unsecured	4326 CALL	8/31/2008	\$10,829.09	8/21/2008			\$10,829.09	
0008524-00-8-1	2008 Unsecured	4326 CALL	8/31/2008	\$143.81	8/21/2008			\$143.81	
059-240-06-00-3-1	2008 Secured	4326 CALL	12/10/2008	\$35,298.99	11/26/2008	50144.62	\$25,072.31	\$10,226.68	\$21,199.58
059-240-06-00-3-2	2008 Secured	4326 CALL	4/10/2009	\$35,298.99	4/8/2009	50144.62	\$25,072.31	\$10,226.68	Agrees to 2008 F/S
059-240-06-00-3-1	2009 Secured	4326 CALL	12/10/2009	\$60,555.56	12/8/2009	54587.91	\$27,293.96	\$33,261.61	
0013203-00-3-1	2009 Unsecured Delinquent	4326 CALL	8/31/2009	\$172.78					
5360089-00-3-1	2008 Supplemental	4326 CALL	12/10/2009	\$15,766.98	12/10/2009			\$0.00	
059-240-06-00-3-2	2009 Secured	4326 CALL	4/10/2010	\$60,555.56	4/7/2010	54587.91	\$27,293.96	\$33,261.61	\$43,488.29
5360089-00-3-2	2008 Supplemental	4326 CALL	4/10/2010	\$15,766.98	4/10/2010			\$15,766.98	
059-240-06-00-3-1	2010 Secured	4326 CALL	12/10/2010	\$60,518.20	12/9/2010	54,587.91	\$27,293.96	\$33,224.25	\$82,252.83
059-240-06-00-3-2	2010 Secured	4326 CALL	4/10/2011	\$60,518.20	4/8/2011	54,587.91	\$27,293.96	\$33,224.25	Agrees to 2010 F/S
0012860-00-6-1	2010 Unsecured Delinquent	4326 CALL	8/31/2010	\$156.47					
059-240-06-00-3-1	2011 Secured	4327 CALL	12/10/2011	\$60,817.68		54,587.91	\$27,293.96	\$33,523.73	
059-240-06-00-3-2	2011 Secured	4327 CALL	4/10/2012	\$60,817.68		54,587.91	\$27,293.96	\$33,523.73	

1 THOMAS W. SNEDDON, JR.
2 DISTRICT ATTORNEY
3 BY: B. Allan Kaplan
4 Senior Deputy District Attorney
5 1105 Santa Barbara Street
6 Santa Barbara, CA 93101
7 Telephone: (805) 568-2300
8 State Bar #076946

FILED
SANTA BARBARA
SUPERIOR COURT

MAY 27 2005

CLERK OF COURT
ROSA REYES, DEPUTY

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Attorneys for Plaintiff

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SANTA BARBARA

11 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 vs.

16 NOMAD VILLAGE MOBILE HOME PARK, INC.

17 Defendant.

Case No. 1167390 A+F 298.02

FINAL JUDGMENT AND
PERMANENT INJUNCTION
PURSUANT TO STIPULATION

#191168

19 Plaintiff, the People of the State of California, having filed its Complaint herein, and
20 Plaintiff appearing through its attorney, THOMAS W. SNEDDON, JR., District Attorney of the
21 County of Santa Barbara, by B. ALLAN KAPLAN, Senior Deputy District Attorney; and
22 Defendant, NOMAD VILLAGE MOBILE HOME PARK, INC, a California corporation,
23 appearing through its attorney, James P. Ballantine; and

24 It appearing to the Court that Plaintiff and Defendant have stipulated and consented to
25 the entry of this Final Judgment and Permanent injunction ("Judgment") without the trial or
26 adjudication of any issue of fact or law, and without any admission or finding of liability on the
27 part of Defendant. NOMAD VILLAGE MOBILE HOME PARK, INC;

28 NOW, THEREFORE, THE COURT ORDERS THAT:

1 1. The Court has jurisdiction of the subject matter hereof and over the parties
2 hereto. Venue is proper in the County of Santa Barbara. The Court has jurisdiction to enter
3 this Judgment as a full and final settlement of all claims which were or could have been
4 raised in the Complaint based on the facts alleged therein;

5 2. The provisions of this Judgment including the Permanent Injunction contained
6 herein at paragraphs 3 and 4 are applicable to Defendant NOMAD VILLAGE MOBILE HOME
7 PARK, INC, its agents, employees, officers, directors, representatives, parent, successors,
8 assigns, affiliates, subsidiaries, and divisions, and to any and all persons, corporations, or
9 other entities who are acting in concert or participation with the Defendant, or of them with
10 actual or constructive notice of this judgment;

11 3. Pursuant to Business and Professions Code Sections 17203, Defendant is
12 permanently enjoined and restrained from directly or indirectly engaging in illegal business
13 practices in violation of Business and Professions Code section 17200 et seq., including but
14 not limited to:

- 15 a. Assessing fess against or charging tenants in any manner for the costs
16 of replacing gas or electric meters in violation of Public Utilities Code
17 §739.5 and or Public Utilities Commission Decision 04-04-043.
18 b. Assessing fees against or charging tenants in any manner for the cost of
19 water meters installed prior to May 1, 2005.

20 4. Defendants shall be and are hereby permanently ordered and mandated,
21 pursuant to Business and Professions Code sections 17203 to do all of the following:

- 22 a. As of May 1, 2005 cease and desist from collecting any assessment or
23 fee from tenants for the cost of replacing gas, water, and electric meters.
24 b. Refund all monies paid by tenants for the cost of replacing gas or
25 electrical meters including but not limited to:

- 26 1. Refund the total collected of \$5,793.12 collected at a rate of \$1.62
27 per month for each of 149 tenants between May 1, 2003 and May 1,
28 2005;

1 2. Refund the total collected of \$4,201.80 collected at a rate of \$2.35
2 per month for each of 149 tenants between May 1, 2004 and May 1,
3 2005;

4 5. Jurisdiction is retained for the purpose of enabling any party in this action to
5 apply to the Court at any time for such further orders, directions, modifications, or
6 terminations as may be necessary or appropriate for the construction of, for the carrying out
7 of, or in connection with the injunctive provisions of this Judgment.

8 6. The consent of the People to this Final Judgment is expressly premised upon
9 the truthfulness, accuracy, and completeness of the data and other information concerning
10 the cost of the gas, electric and water meters installed and the subsequent charges to the
11 tenants that were provided by Defendant to counsel for the People during the course of this
12 investigation. Counsel for the People have relied upon this data and the documents in
13 negotiating and agreeing to the terms of this Final Judgment, and Defendant certifies that it
14 has provided all such data in good faith and believes to the best of its knowledge that such
15 data is accurate in all material respects.

16 7. This Judgment shall take effect immediately upon entry thereof without further
17 notice to Defendant.

18 8. Each party shall bear its own fees and costs.

19 9. The Clerk is ordered to enter this forthwith.

20
21 Dated: 5-27-05

22
23 
24 JUDGE OF THE SUPERIOR COURT
25 J. WILLIAM McLAFFERTY
26
27
28

1 THOMAS W. SNEDDON, JR.
2 DISTRICT ATTORNEY
3 BY: B. Allan Kaplan
4 Senior Deputy District Attorney
5 1105 Santa Barbara Street
6 Santa Barbara, CA 93101
7 Telephone: (805) 568-2300
8 State Bar #076946

9 Attorneys for Plaintiff

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

MAY 20 2005

GARY H. BLANKENHORN, CLERK OF COURT
TERRI CHAVEZ, Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SANTA BARBARA
12 ANACAPA DIVISION

13 THE PEOPLE OF THE STATE OF CALIFORNIA,
14 Plaintiff,

15 vs.

16 NOMAD VILLAGE MOBILE HOME PARK, INC.
17 Defendant.

Case No. 01167390

COMPLAINT FOR INJUNCTION,
CIVIL PENALTIES AND OTHER
EQUITABLE RELIEF

18 Plaintiff, The People of the State of California, appearing through their attorney Thomas
19 W. Sneddon, Jr., District Attorney for the County of Santa Barbara by Allan Kaplan, Senior
20 Deputy District Attorney, acting to protect the general public within the State of California from
21 unlawful business practices, acting on information and belief allege:

22 PRELIMINARY ALLEGATIONS

23 1. The District Attorney's authority to bring this action is derived from the statutory law
24 of the State of California, including but not limited to, Business and Professions Code sections
25 17200, 17203, 17204, 17205, and 17206.

26 2. Plaintiff is informed and believes and thereon alleges that at all times material
27 herein, defendant Nomad Village Mobile Home Park Inc. (hereinafter referred to as "Nomad" or
28 "Defendant") is a California corporation doing business within the State of California.

Mc Summary Issued

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C-

1 3. Plaintiff is informed and believes and thereon alleges that Defendant has
2 transacted, and continues to transact business within the County of Santa Barbara, State of
3 California. All activities mentioned herein have been carried out in whole or in part within the
4 County of Santa Barbara, State of California.

5 4. When, in this complaint, reference is made to any act of Defendant, such
6 allegations shall be deemed to mean that the officers, directors, agents, employees,
7 representatives of the defendant carried out, or authorized such acts, or recklessly or carelessly
8 failed to adequately supervise, or control or direct their employees or agents while engaged in the
9 management, direction, operation, or control of the affairs of the business or organization, and did
10 so while acting within the course and scope of that agency, employment, partnership, or
11 conspiracy.

12 JURISDICTION AND VENUE

13 5. The District Attorney of Santa Barbara County acting to protect the general public
14 within the State of California from unlawful business practices bring this suit in the name of the
15 People of the State of California. Plaintiff, by this action and pursuant to Business and
16 Professions Code sections 17200, 17203, 17204, 17205, and 17206 seeks to enjoin defendant
17 from engaging in the unfair and unlawful business practices alleged herein and seeks to obtain
18 civil penalties, restitution, and disgorgement of unlawful gain for Defendant's violations of the
19 aforementioned statutes.

20 FIRST CAUSE OF ACTION

21 UNFAIR BUSINESS PRACTICE

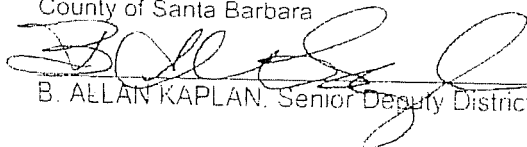
22 (Business and Professions Code §17200)

23 6. Plaintiff realleges and incorporates herein by reference all allegations contained in
24 paragraph 1 through 5 inclusive, of this complaint.

25 7. Plaintiff is informed and believes and thereon alleges that beginning on an exact
26 date unknown to plaintiff, but at least within the four years prior to the filing of the complaint
27 herein and continuing to the present, Defendant, has engaged in unlawful acts or practices in the
28 conduct of business, which acts of practices constitute unfair competition within the meaning of

2

26 DISTRICT ATTORNEY
27 County of Santa Barbara

28 
B. ALLAN KAPLAN, Senior Deputy District Attorney

3

1 section 17200 of the Business and Professions Code by passing through "meter replacement"
2 costs for gas and electric meters to their tenants in violation of Public Utilities Code §739.5 and
3 Public Utilities Commission Decision 04-04-043.

4 DEMAND FOR RELIEF

5 WHEREFORE, plaintiff demands judgment as follows:

6 1. That pursuant to Business and Professions Code sections 17203 and the Court's
7 inherent equity powers, Defendant and its officers, directors, partners, employees, agents,
8 representatives, successors, assigns and all persons, corporations or other entities acting in
9 concert with or in participation with or for them, be preliminarily, and thereafter permanently,
10 restrained and enjoined from engaging in any of the following acts or practices:

11 (a) From engaging in acts set forth in paragraph 7 of this complaint,

12 2. Pursuant to Business and Professions Code section 17206, defendant be assessed
13 a civil penalty in the amount of TWENTY FIVE HUNDRED DOLLARS (\$2,500.00) for each and
14 every act of unfair competition in violation of Business and Professions Code section 17200,
15 according to proof.

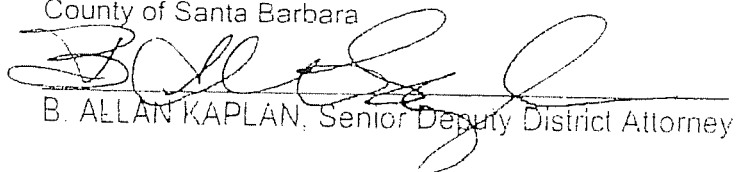
16 3. That the plaintiff recover its costs of suit, including, but not limited to, costs of
17 investigation, pursuant to Business and Professions Code section 17206.

18 4. That the Court assess appropriate restitution and order disgorgement of unlawful
19 gain acquired by the Defendants as a result of their false, misleading, unfair, or via cy pres
20 restitution, for the benefit and protection of the consuming public.

21 5. That the plaintiff has such other and further relief as the nature of the case may
22 require and the court deems appropriate to dissipate the unlawful and unfair acts complained of
23 herein.

24 DATED: April 1, 2005.

25 Respectfully submitted,
26 THOMAS W. SNEDDON, JR.
27 DISTRICT ATTORNEY
28 County of Santa Barbara


B. ALLAN KAPLAN, Senior Deputy District Attorney

PROOF OF SERVICE
(C.C.P. 1013a & 2015.5)

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action; my business address is: P.O. Box 1082 Santa Barbara, California. 93116

On January 13 , 2012, I served the foregoing document's described as,

Petition for Review of Arbitration Award,

on interested parties in this action:

JAMES BALLANTINE, ESQ.

329 East Anapamu Street
Santa Barbara, CA. 93101

Attorney For : Defendants

By fax. to number

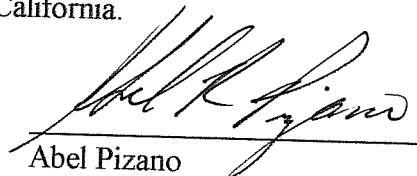
(BY PERSONAL SERVICE) I caused such document to be delivered by hand to the addressee at above physical address.

By enclosing a true copy in a sealed envelope addressed as shown above by placing said envelope(s) for collection and mailing on the date and at the place shown above following ordinary business practices form Santa Barbara County. I am "readily familiar with the firm's practice of collecting and processing correspondence for mailing. On that same day that the correspondence is placed for collection and mailing, it is deposited with the U.S. Postal Service with postage thereon fully prepaid at Santa Barbara, California.

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

(FEDERAL) I declare 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 January 13, 2012, at Santa Barbara, California.


Abel Pizano

We, the Homeowners at Nomad Village Mobil Home do request an Appeal of the Decision of the Award of Arbitration dated December 20, 2011. We approve and have full knowledge of the Substitution of Attorney and wish to move forward at this time.

Signature:

Space No.

Rocela Muñoz de Lopez

Elvira Torres

Leonora Luna

Norma Mata

Melinda Matt

Elizabeth K. J.

Tommy Odson

Mary Gilbert

Jennifer L. Caswell

Kaysa Luna

Tom Lopez

Adrian Arango

Tris Cavanah

Heather Story / Laura Story VII

Ang P. Ortega

Mrs. Fry

Fus Gobato

José R. Perez

Alfred

[Redacted space numbers]

We, the Homeowners at Nomad Village Mobil Home do request an Appeal of the Decision of the Award of Arbitration dated December 20, 2011. We approve and have full knowledge of the Substitution of Attorney and wish to move forward at this time.

Signature:

Space No.

_____ Pedro Segovia	_____
_____ Wilson Mena	_____
_____ Fernando Cobian	_____
_____ Martin Gomez Leon	_____
_____ Luis N Ayala	_____
_____ Benici Paghano	_____
_____ Miguel Garcia	_____
_____ Ernest W	_____
_____ David Lopez; Mitchell	_____
_____ [Signature]	_____
_____ Alfonso Contreras	_____
_____ Griez	_____
_____ Juan C Chavez	_____
_____ Rodrigo Herrera	_____
_____ Raul Jimenez	_____
_____ Mark Okirake	_____
_____ Jonathan M	_____
_____ Arnold and Abel	_____
_____ Enrique	_____

We, the Homeowners at Nomad Village Mobil Home do request an Appeal of the Decision of the Award of Arbitration dated December 20, 2011. We approve and have full knowledge of the Substitution of Attorney and wish to move forward at this time.

Signature:

Space No.

~~McCondo~~

~~1~~

~~Paul~~

~~2~~

Gabriel Mejia

~~3~~

~~Mar~~

~~4~~

Aurelia Espiritu

~~5~~

Otilia Cobian

~~6~~

Regina Hamilton

~~7~~

Carol Schmitter

~~8~~

Marbella Jimenez

~~9~~

Alice H. Wilshusen

~~10~~

Martha Ayala

~~11~~

Marty Gomez

~~12~~

Elia Jimenez

~~13~~

~~Jesus~~ Monroe

~~14~~

Samantira Monaco

~~15~~

Arline Fizon

~~16~~

Joan McSany

~~17~~

Juan Cesura

~~18~~

Donnie Jimenez

~~19~~

We, the Homeowners at Nomad Village Mobil Home do request an Appeal of the Decision of the Award of Arbitration dated December 20, 2011. We approve and have full knowledge of the Substitution of Attorney and wish to move forward at this time.

Signature:

Space No.

Wibrat Hamrick

[Redacted]

[Signature]

[Redacted]

[Signature]

[Redacted]

[Signature]

[Redacted]

Geraldo Esoto

[Redacted]

Kristin Kuchmaier

[Redacted]

ANGEL RODRIGUEZ VALLE.

[Redacted]

Lindse L. Davis

[Redacted]

[Signature]

[Redacted]

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[Signature]

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[Redacted]

Dorced B Brand

[Redacted]

Carole Johnson

[Redacted]

[Signature]

[Redacted]

We, the Homeowners at Nomad Village Mobil Home do request an Appeal of the Decision of the Award of Arbitration dated December 20, 2011. We approve and have full knowledge of the Substitution of Attorney and wish to move forward at this time.

Signature:

Space No.

Dolores Gutierrez

Anna Jones

Salomon Suarez

Pablo Landeros

Rosalinda Rio Almaguer

Stephanie Muir

Margie Bolstad

Mary Grace

Conrado Reynoso

Chit M Weir

Luis Enrique

Olga Williams

Debra Callagher

Luis Cobian

CESAR RODRIGUEZ

Paula Ruiz

Rafael Dominguez

Elizabeth

CA Mata

JAM

[Redacted Space Numbers]

We, the Homeowners at Nomad Village Mobil Home do request an Appeal of the Decision of the Award of Arbitration dated December 20, 2011. We approve and have full knowledge of the Substitution of Attorney and wish to move forward at this time.

Signature:

Edna Cortez

Marina Jimenez

MARTHA ISAIS

Mary Lopez

Juan Lopez

Space No.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]