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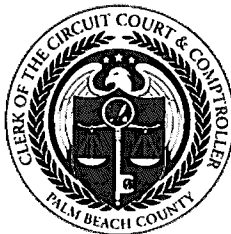
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DOCUMENT COVER PAGE

DOCUMENT TITLE:

**AGREED FINAL JUDGMENT CONFIRMING
RENT ARBITRATION AWARD**

(certified copy)



Electronically Certified Court Record

This is to certify that this is a true and correct copy of the original document, which may have redactions as required by law.

DOCUMENT INFORMATION

Agency Name:	Clerk of the Circuit Court & Comptroller, Palm Beach County
Clerk of the Circuit Court:	The Honorable Joseph Abruzzo
Date Issued:	1/25/2023 11:02:10 AM
Unique Reference Number:	CAA-FBH-BCAJJ-CABICEJDC-FFDEGJ-I
Case Number:	502022CA010965XXXXMB
Case Docket:	FINAL JUDGMENT
Requesting Party Code:	517

CERTIFICATION

Pursuant to Sections 90.955(1) and 90.902(1), Florida Statutes, and Federal Rules of Evidence 901(a), 901(b)(7), and 902(1), the attached document is electronically certified by The Honorable Joseph Abruzzo, Clerk of the Circuit Court & Comptroller, Palm Beach County, to be a true and correct copy of an official record or document authorized by law to be recorded or filed and actually recorded or filed in the office of the Clerk of the Circuit Court & Comptroller, Palm Beach County. The document may have redactions as required by law.

HOW TO VERIFY THIS DOCUMENT

This electronically certified document contains a unique electronic reference number for identification printed on each page. This document is delivered in PDF format and contains a digital signature identifying the certifier and tamper-evident seal validating this document as a true and accurate copy of the original recorded. To view the tamper-evident seal and verify the certifier's digital signature, open this document with Adobe Reader software. Instructions for verifying this instrument are available [for customers in the USA and Canada](#) and [for customers in other countries](#).

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Filing # 163869334 E-Filed 12/30/2022 10:10:09 AM

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

THE BENENSON CAPITAL COMPANY LLC,
a Delaware limited liability company, and
W.P.R.F., INC., a Delaware corporation,

CASE NO: 50-2022-CA-010965
CIVIL DIVISION

Petitioner,

v.

UNITED CIVIC ORGANIZATION, INC.,
a Florida not-for-profit corporation,

Respondent.

AGREED FINAL JUDGMENT CONFIRMING RENT ARBITRATION AWARD

On November 8, 2022, Petitioners The Benenson Capital Company LLC (“Benenson”) and W.P.R.F., Inc. (“WPRF”) (collectively, “Petitioner” and/or “Lessor”), in accordance with Federal Arbitration Act (the “FAA”), 9 U.S.C. § 9 and section 682.12, Florida Statutes, filed a Petition to Confirm Rent Arbitration Award to confirm the award entered in the arbitration proceeding between Petitioner and Respondent United Civic Organization, Inc. (“Respondent” and/or “UCO”) regarding the yearly rental amount to be paid by unit owners to access and use the Recreational Facilities at Century Village West Palm Beach (the “Rent Arbitration Award”).

Having considered the parties Joint Stipulation for Entry of Final Judgment Confirming the Rent Arbitration Award, this Court finds as follows:

1. Petitioner’s Petition to Confirm Rent Arbitration Award is **GRANTED**.
2. The Arbitration Panel’s determination of the rent amount to be paid by unit owners at Century Village West Palm Beach for access and use of the Recreational Facilities for the ten



Unique Code : CAA-FBH-BCAUJ-CABICEJDC-FFDEGJ-I Page 1 of 2

Agreed Final Judgment Confirming Rent Arbitration Award

(10) year period commencing on January 1, 2022 is **CONFIRMED** as provided for in the Rent Arbitration Award attached hereto as **Exhibit A**.

3. The Arbitration Panel's findings of fact and conclusions of law contained in the Rent Arbitration Award are **CONFIRMED**.

4. The Rent Arbitration Award dated November 12, 2021 is **CONFIRMED**.

5. The parties shall bear their own attorneys' fees and costs.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida.

FINAL DISPOSITION FORM
(Fla.R.Civ.P. Form 1.998)

THE CLERK IS DIRECTED TO CLOSE THIS
FILE MEANS OF FINAL DISPOSITION

Disposed by Judge

502022CA010965XXXXMB 12/30/2022
SCOTT KERNER Circuit Judge

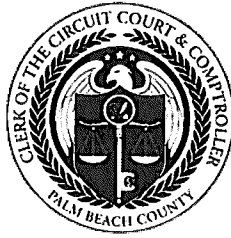
502022CA010965XXXXMB 12/30/2022
Scott Kerner
Circuit Judge

cc: Beth-Ann Krinsky, Esq.
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Unique Code : CAA-FBH-BCAJJ-CABICEJDC-FFDEGJ-I Page 2 of 2



Electronically Certified Court Record

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DOCUMENT INFORMATION

Agency Name:	Clerk of the Circuit Court & Comptroller, Palm Beach County
Clerk of the Circuit Court:	The Honorable Joseph Abruzzo
Date Issued:	1/25/2023 11:01:27 AM
Unique Reference Number:	CAA-FBH-BCAJJ-CABICEJDB-FFDEGI-C
Case Number:	502022CA010965XXXXMB
Case Docket:	EXHIBIT
Requesting Party Code:	517

CERTIFICATION

Pursuant to Sections 90.955(1) and 90.902(1), Florida Statutes, and Federal Rules of Evidence 901(a), 901(b)(7), and 902(1), the attached document is electronically certified by The Honorable Joseph Abruzzo, Clerk of the Circuit Court & Comptroller, Palm Beach County, to be a true and correct copy of an official record or document authorized by law to be recorded or filed and actually recorded or filed in the office of the Clerk of the Circuit Court & Comptroller, Palm Beach County. The document may have redactions as required by law.

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EXHIBIT A

Unique Code : CAA-FBH-BCAJJ-CABICEJDB-FFDEGI-C Page 1 of 14

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FILED: PALM BEACH COUNTY, FL, JOSEPH ABRUZZO, CLERK, 12/30/2022 10:10:09 AM



In the Matter of the Arbitration between

THE BENENSON CAPITAL COMPANY LLC and
W.P.R.F., INC.,

Lessor,

and

UNITED CIVIC ORGANIZATION, INC.,

Authorized Representative of the Lessee.

FINAL ARBITRATION AWARD

We, THE UNDERSIGNED ARBITRATORS (the "Panel"), having been designated and appointed in accordance with the Parties' arbitration agreement, having been duly sworn, and having heard the proofs, arguments and allegations of and from the above-named Parties, hereby enter our Final Arbitration Award, and find as follows.

A two day final arbitration hearing was conducted on November 2 and 3, 2021 (the "Arbitration Hearing"). All Parties appeared and were represented by counsel. The Benenson Capital Company LLC ("Benenson") and W.P.R.F. Inc., ("WPRF") (Benenson and WPRF collectively "Lessor") were represented by Beth-Ann E. Krimsky, Esq., and the Law Firm of Greenspoon Marder, LLP. Lessee, United Civic Organization, Inc. ("UCO" or "Lessee"), was represented by Bruce H. Kaplan, Esq., (authorized house counsel) and Steve Zakharyayev, Esq.¹ Extensive testimony (fact

¹ Mr. Zakharyayev appeared as local counsel for Lessee in the matter but did not attend the Arbitration Hearing.

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and expert) and documentary evidence was presented during and admitted at the Arbitration Hearing.

The Panel, having considered the testimony of all fact and expert witnesses presented by the Parties, the extensive documentary evidence presented and admitted at the Final Hearing, including the Stipulated Facts and Joint Exhibits, the Parties' substantial pre-hearing briefs and detailed arguments, and after conferring, herein enters this Final Arbitration Award, and find as follows:

Analysis and Findings

Scope of the Arbitration

1. This Final Arbitration Award is intended to resolve the dispute between Lessor and Lessee regarding rent to be paid by the unit owners at Century Village, West Palm Beach ("WPB"), for use of the Recreational Facilities (defined supra) for the ten (10) year period commencing January 1, 2022.

2. In 1999, the Parties negotiated and executed the Millennium UCO Amendment to Long Term Lease (the "Amendment"). In relevant part, the Amendment provides:

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Section 4. During 2021 and each tenth year thereafter throughout the balance of the term of the Lease, the parties shall negotiate the rent for the ensuing ten (10) year period. It is the intent of the parties that at such negotiation or at the arbitration provided in Section 9 below, the objective of the negotiation or arbitration shall be the maintenance of a rental structure that at the time of negotiation or arbitration is equivalent to that at the time of the effective date of this Amendment, but stated in terms as of the date of the negotiation or arbitration. Without limiting the generality of the foregoing, it is understood that because of the long term of the Lease and the inability of the parties to anticipate conditions that may exist at the time of any negotiation or arbitration, that the parties should take into account in determining a fair rental such factors as the cost of maintaining and operating the facilities and the anticipated cost of maintaining and operating the facilities over the succeeding period, the general economic conditions that exist, the specific economic conditions that exist in the area of the demised premises, and a reasonable estimate of what they anticipate will occur economically over the succeeding period.

Section 9. Lessor and Lessee agree to submit to binding arbitration under Section 10 below any issues that are subject to negotiations under Section 4 above, in the event the parties cannot reach agreement through negotiation. All other disputes hereunder shall be resolved pursuant to paragraph 7, "Dispute Resolution," of Schedule 2, "Operating Agreement."

Section 10. If the negotiations have not terminated in an agreement on or before May 30th, 2021 or May 30th of each tenth year thereafter as the case may be, then the Lessor shall notify the Lessees of such fact. The Lessees not reaching agreement shall have the right to one (1) vote per Association to jointly select one (1) arbitrator within sixty (60) days from the date of such notice. The majority voting shall elect the arbitrator. After selection, the Lessees shall notify the Lessor as to the identity of the Lessees' arbitrator not later than August 1st of the relevant year. Lessor shall notify the arbitrator appointed by the Lessee as to the identity of the Lessor's one (1) arbitrator by August 15th of the relevant year. The two (2) arbitrators shall select the third (3rd) arbitrator by September 1st of the relevant year. The arbitration shall commence by September 10th of the relevant year and must be terminated by November 15th of the relevant year and the arbitrators shall notify the parties as to the results of the arbitration. The Lessor shall notify by mail each Condominium Association and publish in a newspaper of wide circulation the results of the arbitration within fifteen (15) days from receipt of the conclusions of the arbitration panel.

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3. The Panel finds that the above quoted Sections define and limit the scope of the Panel's jurisdiction. Accordingly, the Panel's Order dated October 21, 2021, previously determined that it lacked jurisdiction to address Lessee's motion and contention that the Amendment is unconscionable and should be revoked.

Background Facts and The Community

4. Century Village WPB is a gated adult community, consisting of 7,854 residential condominium units. Residents must be fifty-five (55) years of age or older. Units range from one (1) to two (2) bedrooms. Unit owners pay different rents for the Recreational Facilities depending on unit size and age.

5. Century Village WPB occupies 1.1 square miles. It has 309 buildings, each being governed by a separate condominium association. UCO represents all associations in this Arbitration.

6. Benenson purchased the Recreational Facilities ("Facilities") in 1982. WPRF manages the Facilities and is Benenson's agent in this regard.

7. The Facilities² include:

a. A main Clubhouse consisting of 82,737 square feet and a 1,221 seat theater for hosting live entertainment (updated after 2006). The Clubhouse includes general-purpose meeting and activity rooms, a billiards room, a large party

² Per Party agreement, the Panel conducted a site inspection on October 21, 2021. All Facilities were inspected. Counsel for the Parties were present throughout.

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room, a game room, wood working shop, a stained glass room, arts and crafts rooms, a computer room, a sewing room, two (2) outdoor pools (one heated), one (1) indoor pool (heated), 21 shuffleboard courts, four (4) bocce ball courts, a petanque court, one (1) handball court, and four (4) pickleball courts.

b. A separate 17,045 square foot fitness center (the "Hastings Clubhouse") containing a weight and fitness center with exercise equipment, a yoga/aerobic and dance studio, saunas and massage rooms, and billiards, ping pong and activity rooms (updated in 1999). Exterior amenities at the Hastings Clubhouse include a heated swimming pool and a wave walking resistance pool.

c. Five (5) heated satellite pools with bathrooms, several tennis courts throughout the community, a fishing dock and a beach area for sailing activities (with sailboats for resident use without charge). In addition, there is a Picnic Island for outdoor grilling and social gatherings.

d. The community has extensive landscaping, irrigation and lighting and interconnected lakes which contain aerators.

8. In connection with development of Century Village WPB, Century Village, Inc., retained ownership of the Facilities. Century Village WPB was turned over to the condominium unit owners in approximately 1974.

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9. Extensive testimony was presented which demonstrated the Facilities are well maintained. Several residents testified they were satisfied with the condition of the Facilities. It was noted that unit sales and values have been strong. Facility maintenance was noted as a contributing factor in this regard.

10. Before this Arbitration, the Parties negotiated under Section 4 to determine rent for the 10 year period starting January 1, 2022 (the "Succeeding Period"). When such negotiations failed, the right to Arbitration was invoked.

The Amendment

11. Per testimony from Mark Levy, President of WPRF, unit owners have paid rent for use of the Recreational Facilities from inception. In 1999, the Amendment (paragraph 2 infra) was negotiated to amend governing Leases regarding rent for the Recreational Facilities. The Amendment was executed by UCO, Benenson, and WPRF. Each had counsel. Unit owners are subject to the Amendment and charged monthly rent for the Facilities thereunder.

12. The Amendment constitutes a Triple Net Lease. Thereunder, the Lessee has agreed to pay all expenses of the property including real estate taxes, building insurance and maintenance. The Amendment includes Section 4, quoted above, which specifies provisions governing this Arbitration.

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13. The Amendment presents a uniform approach for determining per unit rent for the Facilities. In particular, Schedule 1 to the Amendment reflects rent increases for the period of January 2000 through December 2021. It delineates monthly “per unit rental increases in addition to rent levels in existence in December, 1999.” The schedule reflects a structure showing monthly increases becoming effective in January of a particular year and representing an increase over the prior year. The increases apply to each month of the subject year. Under the structure, in the following January, a new monthly rent is specified in the schedule.³

14. Schedule 2 to the Amendment contains a negotiated Operating Agreement dated November 30, 1999. It contains provisions regarding an annual determination of costs to operate the Facilities. The Operating Agreement defines Operating Expenses to include “[e]ach, every and all costs, whether direct or indirect, of the operation, maintenance, refurbishment, replacement, repair and supervision of the CV-WPB Facility and all personalty, fixtures and equipment therein, including without limitation insurance deductibles, ad valorem real estate taxes, and sales taxes, if any, on rents paid under the Long Term Leases.”

³ Monthly increases in Schedule 1 start with an increase of \$7.00 in year one (2000). Thereafter, monthly increases for each year range from \$.75 to \$1.50. (In year 10 of the 20 year schedule (2010), there is an agreed increase of \$6.00.)

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15. Notably, the Operating Agreement, negotiated between the Parties, establishes a Resident Committee responsible for annually reviewing operating costs and conferring with the Lessor in this regard. Under the Operating Agreement, UCO determines and approves the Operating Budget each year which sets the Operating Expenses actually paid. Testimony of UCO representatives confirmed this practice. Further, the Amendment (Section 12) addresses the Operating Agreement under which Operating Expenses are annually addressed. It provides that “[p]ursuant to the Operating Agreement, UCO shall make policy for, and control expenditures of, the ‘Operational Budget.’”

Rental Determination and Evidence

16. As noted above, Section 4 of the Amendment delineates the Panel’s role in this Arbitration. Given the specificity of Section 4 and Schedule 1 to the Amendment, the Panel’s sole jurisdiction is to determine “a rental structure” for the Succeeding Period.

17. Further, Section 4 is clear and unambiguous in mandating that “... the objective of the negotiation or arbitration shall be the maintenance of a rental structure that at the time of negotiation or arbitration is equivalent to that at the time of the effective date of this Amendment, but stated in terms as of the date of the negotiation or arbitration.” Schedule 1 provides a clear rent structure which

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contemplates that changes in monthly rent will occur on an annual basis. Given that Schedule 2 specifies procedures for determining annual operational costs and has been followed since November 1999, the Panel concludes that its role is to determine what has been described as “base rent” or “access rent” for the Succeeding Period, to be paid in addition to Operating Expenses and Reserves.

18. Regarding the rental determination, expert testimony was presented by Robert B. Banting (on behalf of the Lessee) and from Steven L. Marshall (on behalf of the Lessor). Lessee also presented testimony from the current UCO Treasurer, David Grossman, CPA, who expressed opinions that the current rent includes operational expenses which are actually capital expenditures.⁴

19. The Panel has determined that Mr. Marshall’s expert opinion represents substantial competent evidence for determining a rental structure in keeping with the provisions of Section 4.⁵ Both Mr. Marshall’s testimony and expert report presented substantial detail that supported his opinions. Moreover, Mr. Marshall provided specific opinions that addressed the illustrative factors to “be taken into account” under Section 4 of the Amendment.

⁴ Lessee presented several residents (including President of UCO Mr. David Israel). Each essentially testified that in their view monthly rent was too high. Though the Panel appreciated the views of each, none provided expert testimony addressing the requirements of Section 4.

⁵ The Panel notes that the directions given to Mr. Banting did not comport with Section 4. Thus his testimony did not provide an evidentiary basis that specifically addressed Section 4 and the agreed scope of the Arbitration.

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20. Mr. Marshall's analysis addresses the requirements of Section 4. Specifically, Mr. Marshall's rent calculation and schedule were determined following his review of similar and competing developments and included consideration of other development types where amenities add substantial value. Mr. Marshall, after examining the Recreational Facilities, reviewed typical lease terms and lease rental rate increases for recreational facilities, for similar properties and for the subject Recreational Facilities, and used applicable appraisal methods in his conclusions. Mr. Marshall made reasonable adjustments in his analysis to account for property differences.

21. Likewise, the analysis by Mr. Marshall addresses general economic conditions and specific economic conditions that exist in the area around CV-WPB. His analysis also presents a reasonable estimate of what is anticipated over the Succeeding Period. As opined by Mr. Marshall, the Panel finds that fair market "access rent" shall be Ninety One and 00/100 Dollars (\$91.00) per unit per month commencing January 1, 2022, with annual increases thereafter at the rate of 2.25% per year. Such access rent shall be due in addition to Operating Expenses and Reserves as contemplated by the Amendment and the Operating Agreement.

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Therefore, the Panel FINALLY AWARDS and CONCLUDES that:

A. The following schedule represents the "... rental structure that at the time of negotiation or arbitration is equivalent to that at the time of the effective date of this Amendment, but stated in terms as of the date of the negotiation or arbitration:"

SCHEDULE OF RENT INCREASES

MONTHLY PER UNIT RENTAL INCREASE IN ADDITION TO RENT LEVELS IN EXISTENCE AS OF DECEMBER 31, 2021	
PAYMENT PERIOD	(Rent increase over prior period)
January 1, 2022, and monthly until December 31, 2022	\$2.02 (+\$2.02)
January 1, 2023, and monthly until until December 31, 2023	\$4.09 (+\$2.07)
January 1, 2024, and monthly until until December 31, 2024.	\$6.21 (+\$2.12)
January 1, 2025, and monthly until until December 31, 2025	\$8.37 (+\$2.16)
January 1, 2026, and monthly until until December 31, 2026	\$10.58 (+\$2.21)
January 1, 2027, and monthly until until December 31, 2027	\$12.84 (+\$2.26)
January 1, 2028, and monthly until until December 31, 2028	\$15.15 (+\$2.31)
January 1, 2029, and monthly until until December 31, 2029	\$17.52 (+\$2.37)

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IN RE THE BENENSON CAPITAL COMPANY LLC and W.P.R.F., INC., Lessor, and
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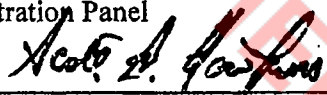
January 1, 2030, and monthly until until December 31, 2030	\$19.94 (+\$2.42)
January 1, 2031, and monthly until December 31, 2031	\$22.41 (+\$2.47)

B. This Final Award fully resolves and determines all issues, claims, and defenses submitted in the above-styled proceeding on their merits, except as expressly set forth herein. All claims not expressly granted herein are hereby denied, including, without limitation, all demands for recovery of attorneys' fees, costs and expenses of arbitration.

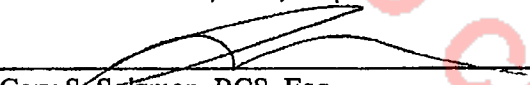
WE, THE UNDERSIGNED ARBITRATORS, do hereby affirm upon our oaths as Arbitrators that we are the individuals described herein and who executed this instrument, which is our Final Arbitration Award.

DONE AND AWARDED in Palm Beach County, Florida, this 12th day of November, 2021.

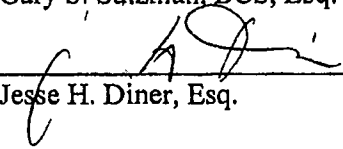
Arbitration Panel



Scott G. Hawkins, BCS, Esq.



Gary S. Salzman, BCS, Esq.

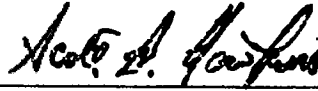


Jesse H. Diner, Esq.

FINAL ARBITRATION AWARD
IN RE THE BENENSON CAPITAL COMPANY LLC and W.P.R.F., INC., Lessor, and
UNITED CIVIC ORGANIZATION, INC., Authorized Representative of the Lessee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been furnished by Electronic Mailing and UPS Delivery to **Beth-Ann E. Krinsky, Esq.** and **Jessica Sander, Esq.**, Greenspoon Marder, LLP, 200 E. Broward Blvd., Ste. 1800, Ft. Lauderdale, FL 33301 (beth-ann.krinsky@gmlaw.com and jessica.sander@gmlaw.com) and **Bruce Kaplan, Esq.** and **Steven Zakharyayev, Esq.**, 2102 West Drive, West Palm Beach, FL 33417 (ucocounsel@unitedcivic.org and steven.esq@outlook.com), this 12th day of November, 2021.



Scott G. Hawkins, Arbitrator Chair

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