

Attachment H
Opening Post-Hearing Brief by Nomad Village Mobile
Home Park

1 JAMES P. BALLANTINE
2 Attorney at Law
3 329 East Anapamu Street
4 Santa Barbara, California 93101
5 (805) 962-2201
6 State Bar No. 152015

7
8
9 Attorney for NOMAD VILLAGE MOBILE HOME PARK

10 ARBITRATION PROCEEDINGS UNDER THE SANTA BARBARA COUNTY
11 MOBILEHOME RENT CONTROL ORDINANCE

12)
13)
14 IN RE NOMAD VILLAGE MOBILE HOME PARK) OPENING POST-HEARING
15) ARBITRATION BRIEF
16) BY NOMAD VILLAGE
17) MOBILE HOME PARK
18)
19)
20) Before
21) Stephen Biersmith, Esq.
22) Arbitrator
23)
24) Date: September 19-20 2011
25) Time: 9:00 A.M.
26) Location: Board of
27) Supervisors Hearing Rm
28)

TABLE OF CONTENTS

1

2

3 INTRODUCTION 1

4 I. THE HOMEOWNERS ASSERT NO CHALLENGE TO THE PERMANENT

5 INCREASE BASED UPON THE CPI 3

6 II. THE HOMEOWNERS HAVE FAILED TO ESTABLISH THAT ANY PART OF THE

7 RENT INCREASE IS NOT PROPER UNDER THE ORDINANCE 4

8 A. THE PERMANENT RENT INCREASE FOR INCREASED OPERATING

9 COSTS IS PROPER UNDER THE ORDINANCE 4

10 1. INCREASED PROPERTY TAXES SUPPORT THE RENT INCREASE 5

11 2. INCREASED GROUND LEASE COSTS SUPPORT THE RENT INCREASE . 9

12 3. THE SOLE MNOI ANALYSIS SUBMITTED IN THESE PROCEEDINGS

13 SUPPORTS THE RENT INCREASE 12

14 i. 2007 Is The Appropriate Base Year to Utilize 14

15 ii. 100% Indexing is properly employed 15

16 B. AMORTIZED TEMPORARY RENT INCREASE FOR INCREASED ONE-TIME

17 COSTS IS PROPER UNDER THE ORDINANCE 16

18 1. AMORTIZATION OF COSTS DUE TO REGULATORY LAG FOR

19 INCREASED PROPERTY TAX AND GROUND LEASE COSTS 16

20 2. AMORTIZATION OF COSTS OF PROFESSIONAL FEES IS PROPER .. 18

21 3. THE CHARGES AND AMORTIZATION OF COSTS OF CAPITAL

22 IMPROVEMENTS IS PROPER 21

23 4. THE INTEREST RATE AND AMORTIZATION PERIOD IS PROPER ... 23

24 5. THE ORDINANCE PROVIDES FOR PROSPECTIVE COSTS 24

25

26

27

28 III. THE PARK MANAGEMENT'S RENT INCREASE NUMBERS SHOULD BE FULLY

ACCEPTED AND ALLOWED AS THE ONLY NUMBERS PRESENTED IN THESE

PROCEEDINGS 27

1 Nomad Village Mobile Home Park Management hereby submits
2 its Opening Post-Hearing Arbitration Hearing Brief for the
3 arbitration proceedings held on September 19 and 20, 2011.
4

5 **INTRODUCTION**
6

7 This is a proceeding under the Santa Barbara County Rent
8 Control Ordinance (referred to as "Ordinance" herein).

9 The case involve a rent increase by Nomad Village Mobile
10 Home Park, a 150-space mobilehome park on Calle Real, built over
11 50 years ago, to recover expenses incurred in the operation of
12 the Park. The rent increase is based upon a notice given by
13 management of Nomad Village that space rents would be increased
14 above the rents last changed in May, 2008, in the categories set
15 out on Exhibit D, Table 1, "Space Rent Increase Breakdown".

16 The first category is the "automatic" or "CPI" increase
17 that is calculated for each space individually, and is no longer
18 an issue in these proceedings.

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

1 The third category, Capital Expenses, include
2 architectural, engineering, and professional fees and
3 construction costs associated with infrastructure improvements
4 planned for the park. Cost estimates and amortization
5 calculations appear in Exhibit D, Table 4 - Temporary
6 (Amortized) Space Rent Increases.

7 The fourth category, Uncompensated Increases, cover
8 reimbursement of the property tax increase and the lease fee
9 increase from the time in which they were effectively incurred
10 (when the new operator took over) through the effective date of
11 the noticed rent increase of May, 2011. Calculations appear in
12 Exhibit D, Table 4 - Temporary (Amortized) Space Rent Increases.

13 The fifth category, Anticipated Professional Fees -
14 Property Tax Appeal, covers the expected cost of the property
15 tax appeal process, with the Park to begin incurring the costs
16 following approval of the rent increase for this purpose. Cost
17 estimate and amortization calculation appear in Exhibit D, Table
18 4 - Temporary (Amortized) Space Rent Increases.

19 The sixth and final category, Anticipated Professional Fees
20 - Rent Increase Arbitration, covers the professional fees
21 expected to be incurred over the course of the rent increase
22 arbitration process now underway. Cost estimate and
23 amortization calculation appear in Exhibit D, Table 4 -
24 Temporary (Amortized) Space Rent Increases.

25 In response to the rent increase notice, the homeowners
26 filed a petition objecting to it in its entirety.

27 All of the components of the rent increase were well
28 supported by extensive evidence presented at the arbitration

1 hearing. The homeowners did not dispute a single factual basis
2 for the rent increase. Moreover, the homeowners ultimately
3 conceded the legal bases for all aspects of the rent increase.

4 Significantly, the homeowners never presented a single
5 number for a rent increase that they contended would be
6 factually and legally appropriate. Essentially, the homeowners
7 adopted an approach of "just say no" to everything. Their paid
8 consultant "Dr. No." was not an economist, and demonstrated
9 virtually no understanding of the Santa Barbara County Ordinance
10 being applied in this case. Park management has presented the
11 only valid rent increase numbers, which should be approved in
12 these proceedings.

13 I

14 **THE HOMEOWNERS ASSERT NO CHALLENGE TO THE PERMANENT INCREASE**
15 **BASED UPON THE CPI**

16
17 The homeowners confirmed at the hearing that they are no
18 longer asserting any objection to the Park's notice of automatic
19 permanent increase based upon the CPI.

20 The first category of the noticed rent increase is for the
21 "automatic" or "CPI" increase that is calculated for each space
22 individually. The Ordinance (Section 11A-5) establishes as an
23 "automatic" annual increase of the Base Rent in an amount equal
24 to 75% of the CPI for the immediately preceding 12 months. The
25 "automatic increase" in this case therefore covers the three-
26 year period 2008 to 2011, since there had been no rent increase
27 at Nomad Village since May 2008.
28

1 The homeowners stipulated at the hearing that they made no
2 objection to rent increase for the annual 75% of CPI adjustments
3 for the three-year period of 2008-2011, and that they stipulated
4 to the correctness of the CPI multiplier that Park management
5 used. (RT1 116:20-117:25 (References to the Reporter's
6 Transcript for the arbitration hearings held on September 19 and
7 20, 2011, are cited at RT1 and RT2, respectively, as the page
8 numbering from both days both start at 1.))

9 Accordingly, this is no longer an issue for the Arbitrator
10 to determine.

11 II

12 THE HOMEOWNERS HAVE FAILED TO ESTABLISH THAT ANY PART OF THE 13 RENT INCREASE IS NOT PROPER UNDER THE ORDINANCE 14

15 The rent increase to the homeowners was properly noticed by
16 the management of Nomad Village Mobilehome Park. (Exhibits
17 A,B,C.) The rent increase notice included a permanent increase
18 in the base rent of \$58.16 per month, and a temporary increase
19 in the amount of \$102.84 per month. At the arbitration hearing,
20 Park management presented evidence to support this rent
21 increase. The homeowners failed to present evidence sufficient
22 to challenge the evidence in support of the rent increase, and
23 did not present any evidence establishing that the rent increase
24 should properly be any other number.
25

26 ///

27 ///

28 ///

1 **A. THE PERMANENT RENT INCREASE FOR INCREASED OPERATING COSTS**
2 **IS PROPER UNDER THE ORDINANCE**

3
4 The Ordinance provides for rent increases for increased
5 Park operating costs. As set forth in the Notice of Rent
6 Increase and the evidence presented at the arbitration hearing,
7 the permanent component of the rent increase is for recoupment
8 of expenses incurred by Park management for increased operating
9 expenses by park management for increased property taxes and
10 increased ground lease payments. Property taxes for the Park
11 were nearly tripled effective August 1, 2008. In addition, at
12 that time, lease payments for the ground lease for the Park also
13 doubled.
14

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

18 **(f) [T]he arbitrator shall consider all relevant**
19 **factors to the extent evidence thereof is introduced**
20 by either party or produced by either party on request
 of the arbitrator.

21 (1) Such relevant factors may include, but are not
22 limited to, **increases in management's ordinary and**
23 **necessary maintenance and operating expenses,**
24 insurance and repairs; **increases in property taxes and**
25 **fees and expenses in connection with operating the**
26 **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.

1 Accordingly, the rent increase based upon increased
2 operating costs due to the property tax increases and ground
3 lease increases are properly the bases for the rent increase.
4

5 **1. INCREASED PROPERTY TAXES SUPPORT THE RENT INCREASE**

6 The evidence was uncontroverted that the Park experienced a
7 significant property tax increase, by which the property taxes
8 nearly tripled. Essentially, the assessed value of the property
9 went from \$1.94 million in 2008 to \$6.35 million the following
10 year. (Exhibit G; RT1 126: 16-25.) The County indicated that
11 the tax increase resulted from a reassessment upon the
12 conclusion of the long-term lease of the prior operator, which
13 the County contended was a change of ownership. (RT2 139:12-
14 21.)

15 The homeowners do not challenge the fact of the property
16 tax increase, or the amount of the property tax increase on
17 which the rent increase is based. The tax increase was
18 effective August 1, 2008, although Park management was not
19 notified of even the possibility of the increase until the
20 following year. (RT2 153:13-8.) Thereafter, Park management
21 questioned the rent increase, with no success with the County,
22 and reached the conclusion that they had no choice. (RT2 134:9-
23 140:5.) Then, in the process of preparing for the rent increase
24 notice, Park management determined that there may in fact be a
25 legitimate basis for challenging the property tax increase. (RT2
26 134:22-23, 140:6-10.)

27 Regardless, at this point, there is no factual dispute that
28 the property taxes for the Park property have been effectively

1 nearly tripled effective August 1, 2008, and that this property
2 tax increase is an actual expense incurred and paid by the Park
3 operator since that time. (RT2 140:10-16.)

4 Clearly under the express terms of the Ordinance, increased
5 property taxes are a basis for a rent increase, as section 11A-
6 5(f)(1) of the ordinance specifically provides that "increases
7 in property taxes" is the type of increased operating expense
8 that the Arbitrator "shall consider" in determining a rent
9 increase.

10 The evidence presented at the hearing clearly established
11 the basis for a rent increase under the Ordinance due to the
12 increase in property taxes. Dr. St. John confirmed that in
13 preparing his analysis he reviewed the property tax bills and
14 confirmed that the amounts for property taxes listed in his
15 analysis on which the rent increase is based (Exhibit C) were
16 accurate (RT1 62:1-63:12), and that the listed property tax
17 amounts had been paid by both operators (RT1 64:13-15). Dr. St.
18 John testified that, based upon his thorough review of the
19 Ordinance, a property tax increase is properly considered by the
20 arbitrator in determining an appropriate amount for a rent
21 increase under the Ordinance. (RT1 54:24-55:3.)

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

27 Inexplicably, however, the homeowners appear to challenge
28 any rent increase resulting from the tripling of the property

1 taxes. It appears that their position is based in part upon
2 their claim that if the tax increase is successfully challenged
3 (a challenge for which they do not want to pay, as discussed
4 infra), they will not enjoy the benefit of the property tax
5 reduction. However, the homeowners ignore the fact that the
6 Park's rent increase notice clearly stated that if the property
7 tax increase was successfully challenged, then the rents would
8 be decreased to reflect that reduction. (Exhibit A.)

9 The homeowners' representative conceded that all homeowners in
10 the Park were provided this information. (RT2 201:14-22; 196:9-
11 197:11; 198:25-200:16.) Both Mr. Waterhouse and Mr. Garcia
12 pointed out that they reiterated to the homeowners that in the
13 event that Park management was able to obtain a property tax
14 reduction, the homeowners would receive a rent reduction. (RT2
15 141:10-143:4; 186:7-19.)

16 The homeowners' sole remaining basis for the challenge to
17 the rent increase based upon the near tripling of the property
18 taxes appears to be their claim that an MNOI analysis does not
19 support the rent increase. However, such a challenge is
20 unmeritorious as the homeowners have failed to present any MNOI
21 analysis whatsoever, as discussed in section 1.3 below. In
22 contrast, as also discussed infra, Park management presented an
23 MNOI analysis performed in accordance with the terms of the
24 Ordinance, which support the rent increase on the basis of the
25 increased property taxes.

26 Accordingly, the homeowners have failed entirely to
27 challenge the rent increase based upon the operating cost
28 increase resulting from the property tax increase.

1 **2. INCREASED GROUND LEASE COSTS SUPPORT THE RENT INCREASE**

2 There is no factual dispute that the ground lease fees for
3 operating Nomad Village Mobilehome Park doubled in 2008, from
4 10% to 20% of gross rents (Exhibit H; RT1 67:10-21). Further,
5 there is no factual dispute that the typical market rents for
6 mobilehome parks operating under ground leases operating on
7 long-term ground leases is 10-20% (RT2 136:1-6), nor is there
8 any factual dispute that the Ground Lease was the product of
9 arms length negotiations by Mr. Waterhouse and the property
10 owner (RT2 134:10-135:16). The homeowners' consultant does not
11 dispute that the increased ground lease fee is a market price
12 that was the product of an arms length negotiation. (RT1
13 216:25-217:8.)

14 There is no dispute that the increased ground lease fees
15 have been paid. The payment of the increased ground lease fees
16 was testified to by Mr. Waterhouse. (RT2 136:17-19.) Dr. St.
17 John confirmed from the books of account that in fact this rent
18 increase had occurred, and that the increased rent payments had
19 been made by the current operator. (RT1 67:10-21, 121:20-
20 122:1.)

21 In addition to establishing the undisputed fact that the
22 Park operator had been subjected to doubled ground lease fees,
23 which were market amounts arrived at through arms-length
24 negotiations, the evidence was further undisputed that the
25 increases were properly the basis of a rent increase under the
26 Santa Barbara County Ordinance.

27 Dr. St. John, an economist who is an expert in preparing
28 MNOI analyses for rent control proceedings, confirmed that

1 ground lease fees are properly included in MNOI analyses, as
2 they deal with expenses and in his experience are typically
3 included in MNOI analyses. (RT1 51:10-52:7.) ("Yes, in my
4 experience they [ground lease expenses] typically would be...when
5 they exist then they do appear in the MNOI analysis.")

6 Based upon his thorough review of the Ordinance, he noted that a
7 ground lease expense is an expense properly considered by the
8 arbitrator in determining an appropriate rent increase amount.
9 (RT1 55:7-11.)

10 In this case in particular, Dr. St. John testified that he
11 performed an analysis and determined that the ground lease fees
12 had in fact doubled, that the fees had in fact been paid as
13 listed in this analysis, and determined that this increase in
14 ground lease fees was an appropriate expense to pass through to
15 the homeowners through a rent increase, under the terms of the
16 Santa Barbara County Ordinance. (RT1 66:10-67:8.)

17 Although conceding the fact that the Park operator had been
18 subject to a doubling of the ground lease rent, the homeowners
19 nevertheless challenged the Park's right to recover these
20 increased costs. The homeowners did not base their opposition
21 on the Santa Barbara County Ordinance. Instead, the homeowners
22 proffered an exhibit lacking foundation that referred to certain
23 mobilehome rent control ordinances from other municipalities
24 that by their terms expressly allowed increased ground lease
25 costs as a cost on which a rent increase may properly be based.
26 (Exhibit 3) Such alleged ordinances from other jurisdictions
27 are irrelevant here, other than they demonstrate that there is
28 no general rule that would preclude increased ground lease costs

1 from being considered as a basis for a rent increase if not
2 prohibited by the governing ordinance.

3 The homeowners' consultant had to concede that there is no
4 rule that says that under no circumstances is a park operator
5 allowed to recover increased costs of a ground lease. (RT1
6 208:12-17.) He conceded that under the Santa Barbara County
7 Ordinance, since it provides that the relevant factors on which
8 the arbitrator may grant a rent increase can include but are not
9 limited to the specifically enumerated operating cost increases,
10 that the arbitrator could consider the increase ground lease
11 cost as a basis for a rent increase under the Ordinance. (RT1
12 213:6-23.)

13 Indeed, the Ordinance here very clearly provides guidance
14 that all legitimate operating expenses should be considered by
15 the arbitrator in determining the proper amount of a rent
16 increase. Section 11A-5(f) of the Ordinance provides: [T]he
17 arbitrator shall consider all relevant factors to the extent
18 evidence thereof is introduced by either party or produced by
19 either party on request of the arbitrator. (1) Such relevant
20 factors may include, but are not limited to, **increases in**
21 **management's ordinary and necessary maintenance and operating**
22 **expenses...."**

23 Clearly, as conceded by the homeowners, the Arbitrator
24 should consider the increased ground lease costs in this case,
25 which the undisputed evidence demonstrated have been reasonably
26 and actually incurred in a market amount as a product of arms
27 length negotiations.

28 ///

1 **3. THE SOLE MNOI ANALYSIS SUBMITTED IN THESE PROCEEDINGS**
2 **SUPPORTS THE RENT INCREASE**

3
4 As Dr. St. John, the Park's consulting economist,
5 explained, the Maintenance of Net Operating Income (MNOI)
6 analysis is a system employed under some rent control schemes to
7 determine whether increased operating expenses support a rent
8 increase. (RT1 49-51.) The MNOI analysis focuses solely on
9 income and expenses, and compares a base year to a subject year
10 in which the increased expenses have been incurred. (RT1 50:6-
11 13.) Dr. St. John testified in some detail that the Santa
12 Barbara County Ordinance specifies an analytical approach to a
13 permanent rent increase that was not a classic MNOI analysis but
14 was a variation on it. (RT1 52-54.)

15 Dr. St. John presented the MNOI analysis that he prepared
16 analyzing the income and expenses, showing that a rent increase
17 was justified resulting from the increased ground lease and
18 property tax expenses incurred by Park management. (Exhibit D,
19 Tables 3-A and 3-B.) Dr. St. John's MNOI analysis was based
20 upon the financial statements of the Park management. (Exhibit
21 N.) Both Mr. Waterhouse and Mr. Garcia testified as to the
22 accuracy of these financial statements, including that they were
23 properly kept in the normal course of business, reviewed by an
24 outside accountant, and used as the basis for filing tax
25 returns. (RT2 130:23-131:17, 183:3-23.)

26 Dr. St. John testified that he prepared his analysis as
27 what he called a Santa Barbara type of MNOI analysis in
28 conformity with the requirements of the Ordinance. (RT1 88.)

1 Dr. St. John testified that in preparing his analysis, (Exhibit
2 D, Tables 3-A and 3-B, particularly p. 4 of each table) he
3 followed the Ordinance "precisely." (RT1 102:13-24.)

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

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

12 The homeowners' consultant conceded that he had not
13 prepared any MNOI analysis for Nomad Village Mobilehome Park.
14 (RT1 193:6-16.) Regardless, he is not an economist and had no
15 training in economics and would be of dubious qualifications to
16 submit one even if he had.

17 Accordingly, the sole MNOI-type analysis performed pursuant
18 to the specific terms of the Ordinance (Exhibits D, Tables 3A &
19 B), should properly be relied upon in determining the
20 appropriate rent increase under the Ordinance.

21 Without presenting any MNOI analysis, the homeowners'
22 consultant contended that with respect to Dr. St. John's
23 analysis, 1994, as opposed to 2007, should be used as the base
24 year of the analysis, and that a discounted 75%, as opposed to
25 100%, indexing should be employed. As was made clear at the
26 arbitration hearing, neither contention is persuasive for the
27 circumstances present here.

1 **i. 2007 Is The Appropriate Base Year to Utilize**

2 Dr. St. John pointed out that the Ordinance does not
3 prescribe the use of any particular base year for performing an
4 MNOI analysis, but essentially leaves it open to the
5 professional judgment of the analyst. (RT1 112:1-10.) The
6 homeowners' consultant did not claim otherwise.

7 The homeowners' consultant asserted that 1994 should be
8 used as the base year for an MNOI analysis primarily because
9 "1994 is about the year that the rent control ordinance came in
10 effect, and so [he] was presuming that the park owners was
11 getting a fair return because there were market forces that were
12 in play that would have led to the numbers in their financials."
13 (RT1 195: 12-19.) The basis for his assertion was that for the
14 base year to be useful, it had to presume that the park owner
15 was getting a fair return, since the rents would have been close
16 to the rent selected by the park owner, and the rent control
17 regulation had barely impacted it or had not impacted it." (RT1
18 194:12-195:3.) For the base year to be valid, it should reflect
19 the market. (RT1 196:1-8.) But ultimately the homeowners'
20 consultant had to concede that this basis for his opinion was
21 entirely invalid, since in fact the ordinance was enacted in
22 1979 and not 1994, a fact of which he was not aware until he was
23 cross examined at the hearing. (RT1 198 1-22.) Confronted with
24 the true facts, the homeowners' consultant conceded that the
25 "there is some question as to whether or not the 1994 numbers
26 were truly reflective of market conditions." (RT1 198:18-22.)
27 The homeowners' consultant also testified that he had assumed
28 that the park owner was receiving a fair return in 1994, but

1 that was again solely based upon his assumption that 1994 was
2 about the time that the Ordinance had been enacted (RT1 194: 19-
3 3), which assumption was, of course, incorrect.

4 Ultimately, the homeowners' consultant conceded that he had
5 no knowledge of any factors that would make 1994 a better base
6 year than 2007 for an MNOI analysis. (RT1 201:4-8.)
7

8 **ii. 100% Indexing is properly employed**

9 As to the amount of indexing, Dr. St. John testified as to
10 why 100% indexing was appropriate, and why a lesser amount was
11 not. (RT1 107-109.) Although the homeowners' consultant
12 claimed that 75% and not 100% indexing should be used, he
13 conceded that the Ordinance did not specifically require 100%
14 indexing. (RT1 201: 9-16.) "There's no magic number." (RT1
15 155: 16-17.) He conceded that "there's rationale for 100
16 percent indexing and there's rationale for less than 100 percent
17 indexing." (RT1 154:1-3.)

18 He testified that there were 2 justifications for using
19 less than 100% indexing under rent control in general. First,
20 that in real estate investment there was equity growth to
21 compensate the owner as equity "can grow faster than the rents".
22 (RT1: 202:16-203:10.) But he was forced to concede that this
23 justification was inapplicable here as the Park operator does
24 not own the land and will not receive any compensation for
25 equity growth in the land. (RT1 205:24-206:5.) Mr. Waterhouse
26 confirmed this, pointing out that the operator was not building
27 equity in the property, but in fact it was a "diminishing
28

1 asset," pointing out: "It's a land lease; at the end of 34
2 years we have nothing." (RT2 137:2-8.)

3 The homeowners' consultant's second justification for
4 partial indexing was that the operation of a Park was a "risk
5 free investment." (RT1 204:18-24, 206:6-9). Again, he was
6 forced to concede that this assumption was not valid, and that
7 in fact the Park operator does in fact have risk (206:10-13;
8 "Yes. It's not zero risk" (207:13.) Mr. Waterhouse, well
9 qualified as a mobilehome park operator pointed out: "There's a
10 lot of risk" and extrapolated on some of the risks of operating
11 a mobilehome park. (RT2 137:9-138.)
12

13 **B. AMORTIZED TEMPORARY RENT INCREASE FOR INCREASED ONE-TIME**
14 **COSTS IS PROPER UNDER THE ORDINANCE**
15

16 In addition to the permanent rent increase, the notice also
17 included a temporary increase for several unusual expenses
18 incurred by the Park for necessary capital improvements or other
19 non-recurring expenses, and provided evidence for all of these
20 expenses. These expenses were amortized over a 7-year period.
21 The homeowners did not dispute that any of these items were not
22 properly treated as temporary and amortized, but did raise a
23 number of other unmeritorious objections.
24

25 **1. Amortization of Costs due to Regulatory Lag For Increased**
26 **Property Tax and Ground Lease Costs**

27 The rent increase includes a factor for "uncompensated
28 increases" essentially to deal with "regulatory lag" to

1 compensate the Park operator for the increased costs of the
2 ground lease and the property tax, from the time incurred until
3 the rent increase becomes effective. The rent increase is based
4 upon the amount of time for which the Park operator is forced to
5 pay for these two increased operating expenses until it receives
6 the rent increase compensating for these costs. (RT1 75:14-22.)
7 As discussed in the preceding section, the Park owner is clearly
8 entitled to a rent increase to recover its additional costs for
9 the property tax and ground lease increases.

10 The homeowners do not contend that the Ordinance precludes
11 any recovery for regulatory lag; to the contrary, they must
12 concede it.

13 Although the homeowners' consultant complained about the
14 "lag," he conceded that he did not know when the Park operator
15 first became aware that the County was taking the position that
16 there was a reassessment. (RT1 222:15-21.) He acknowledged
17 that there were "no absolute lines" as to when a park operator
18 had to notice a rent increase for expenses incurred in the past.
19 (RT1 223:16.) He certainly could cite absolutely nothing in the
20 Ordinance that precluded the Park operator's recovery for past
21 expenses for regulatory lag.

22 Dr. St. John pointed out that it did not make good sense
23 effectively to require the park operator to be subject to
24 frequent fair return proceedings. (RT1 73:3-20.)

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

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

3 Ironically, in their "just say no" objection to every
4 single thing in these proceedings, the homeowners complain both
5 that the rent increase for the regulatory lag should be denied
6 as being somehow too late (although conceding that they could
7 cite no rule for such) while at the same time complaining about
8 the rest of the temporary rent increase as being premature for
9 known future expenses because their costs have not been fully
10 incurred. Such an obstructionist position not only has no legal
11 support, but is inconsistent with the express provisions of the
12 Ordinance.

13
14 **2. Amortization of Costs of Professional Fees is Proper**

15
16 An element of the rent increase is to compensate Park
17 management for anticipated professional fees in connection with
18 a proposed challenge to the property tax assessment and the
19 process arising out of the rent increase. The rent increase
20 treats both items as unusual expenses that are amortized as a
21 temporary rent increase, rather than treating them as a usual
22 operating expense for the basis of a permanent rent increase.
23 Park management's economist testified that this treatment was
24 appropriate for these types of expenses and in fact the
25 treatment was favorable to the homeowners. The homeowners'
26 consultant agreed both that these types of professional fees
27 could properly serve as the basis of a rent increase, and were
28

1 properly treated as a temporary increase, as it was more
2 favorable for the homeowners.

3 Dr. St. John testified that in his professional opinion,
4 these expenses were completely appropriately included as a basis
5 for a rent increase, and that they were properly treated as
6 being amortized over a period of years. (RT17-25.) He further
7 testified that in his professional opinion, this treatment was
8 proper under the ordinance. (RT1 84:18-23.) He also pointed it
9 out that these expenses could properly be included as operating
10 expenses in an MNOI analysis, but doing so would be using an
11 extraordinary expense as the basis for a permanent increase, so
12 that his approach of treating the expense as temporary and
13 amortizing it over a period of time was favorable to the
14 homeowners. (RT1 86:1-20.)

15 The homeowners' consultant testified that he agreed with
16 Dr. St. John's approach of amortizing the expenses for these
17 types of fees. (RT1 174:21-175:4.)

18 As to the professional fees for challenging the property
19 tax increase, the homeowners' consultant conceded that he did
20 not disagree that a park operator was entitled to recover the
21 costs of challenging a property tax increase through a rent
22 increase. (RT1 225:16-226:1.) Notwithstanding that clear
23 admission that the type of cost was appropriate, and even that
24 the cost "looks like it's reasonable" he nevertheless
25 equivocated in this case and noted that the homeowners had
26 challenged the cost, but he could not identify any basis for any
27 challenge. (RT1 227:2-22.) He also conceded that he was not
28

1 familiar with the cost of a property tax contest. (RT1 228:1-
2 3.)

3 The homeowners' consultant agreed that the Park operator
4 was entitled to recover professional fees relating to the rent
5 control proceedings, and that he agreed with the methodology
6 employed here by making it the basis of a temporary rent
7 increase amortized over a period of years. (RT1 235:19-236:8.)
8 He raised concerns about the amount of the fees in general,
9 based solely upon information that he suggested that he had
10 heard about in other cases, that fees for rent control
11 proceedings ranged from \$36,000.00 to \$122,000.00. (Exhibit 5.)
12 Such evidence from other alleged cases from other jurisdictions
13 should be disregarded as irrelevant and lacking foundation,
14 although they do demonstrate that rent control proceedings are
15 expensive and their costs are properly the basis for a rent
16 increase.

17 Both Mr. Waterhouse and Mr. Garcia pointed out that they
18 reiterated to the homeowners that in the event that the cost of
19 challenging the property tax was less than the amount on which
20 the rent increase was calculated, the homeowners would receive a
21 rent reduction. (RT2 141:10-143:4; 186:7-19.)

22 Inexplicably, the homeowners objected even to paying any of
23 the costs for challenging the property tax increase. Mr.
24 Waterhouse and Mr. Garcia pointed out that in their meetings
25 with them, the homeowners' representatives expressly stated that
26 they refused to agree to any rent increase to cover the cost of
27 a challenge to the property tax increase. (RT2 156:2-15;
28 186:20-187:6) Mr. Garcia testified that the homeowners'

1 representatives gave a "very definitive no...they did not have
2 any interest in paying for it." (186:20-187:6.) Curiously, the
3 sole park representative to testify attempted to some degree to
4 deny that the park residents had objected to paying for the
5 costs of a property tax appeal through a rent increase, although
6 ultimately had to concede that the residents had never agreed
7 pay in any way for the property tax appeal, nor did the
8 residents agree to any other basis for the rent increase. (RT2
9 205:7-17.)

10 As to the amounts set forth in the rent increase notice,
11 the amounts are reasonable, and actual amounts relating to the
12 specific facts in this particular case at issue at this
13 arbitration hearing. Mr. Waterhouse confirmed that the \$50,000
14 on which the rent increase was based was the retainer fee quoted
15 to him for a property tax appeal and that as an experienced
16 mobilehome park operator, he understood it to be a very
17 legitimate number under the circumstances. (RT2 142:13-23.)
18 Similarly, he confirmed as an experienced mobilehome park
19 operator that the amount on which the rent increase for rent
20 control proceedings was also a very legitimate number, and that
21 the Park had already been incurring professional fees for legal
22 and economic consulting relating to the rent increase. (RT2
23 177:3-18.)

24 **3. The Charges and Amortization of Costs of Capital**

25 **Improvements is proper**

26 The park management established that the amounts and the
27 treatment of the temporary rent increase conformed to the terms
28 of the Ordinance.

1 An element of the temporary rent increase is for \$50,000 of
2 extraordinary professional fees. Mr. Waterhouse confirmed that
3 the \$50,000 in professional fees were amounts actually paid.
4 (RT2 145: 6-15.) As discussed in more detail above, the
5 homeowners representative agreed that the treatment of
6 professional fees as a temporary expense is a legitimate
7 approach and favorable for the homeowners, instead of making it
8 the basis for a permanent rent increase.

9 Another element of the temporary rent increase includes an
10 item for \$90,000 already paid by the Park operator for detailed
11 plans for the park for capital improvements. Mr. Waterhouse
12 testified that he made an agreement with the prior operator to
13 pay their expenses for the plans in order to obtain the plans
14 for capital improvements to the park, and confirmed that these
15 plans were very valuable to the current operator. (RT2 144:1-
16 142:5.)

17 The capital expense component also includes an item for
18 \$320,000 for capital improvement projects. The evidence showed
19 that this money has actually been paid, into an escrow fund, to
20 be used for various capital improvement projects planned for the
21 Park.

22 Mr. Waterhouse confirmed that the \$320,000 was for funds
23 that he caused to be paid into an escrow account or sinking fund
24 account, and that it was funds solely dedicated for capital
25 improvements for the park. (Exhibit K; RT2 145:15-147:1.) He
26 confirmed that these funds will all in fact be spent on capital
27 improvements to the Park. (RT2 166:7-22.) He further confirmed
28 that the amounts to be spent on capital improvements to the Park

1 will certainly exceed \$320,000. (RT2 179:1-13.) He pointed out
2 that one of the challenges in determining the exact scope of
3 work to be done was Park management's ongoing dialogue with the
4 County and their ever-shifting positions regarding work that
5 they claimed needed to be done at the Park. (RT2 166:11-22.)
6 Regardless, he confirmed with certainty that work far in excess
7 of \$320,000 had to, and would, be done at the Park: "We know
8 the dollars will be spent." (Id.)

9 Indeed, the undisputed evidence shows that the Park has
10 received bids for work, including for \$482,800 for resurfacing
11 the streets of the Park. (Exhibit M.) In addition, the Park
12 has recently obtained bids for the resurfacing of the swimming
13 pool area, a clear capital expense, a copy of which latest bid
14 is submitted herewith as Exhibit P.

15 Park management has already begun to incur a variety of
16 expenses for capital improvements at the Park; \$62,145.55 worth
17 of invoices for capital expenses already incurred were presented
18 in evidence and confirmed by Mr. Garcia without challenge.
19 (Exhibits J & K; RT2 189:2-14.)

20
21 **4. The interest rate and amortization period is proper**

22 Dr. St. John pointed out that the Ordinance does not
23 specify either a rate of interest or the number of years over
24 which the expense is to be amortized, and that the amounts set
25 forth in the rent increase notice (9% interest over a 7 year
26 amortization period) is based upon his professional judgment.
27 (RT1 70:3-13.) Similarly, Mr. Waterhouse, as an experienced
28 mobilehome park operator, also testified that the 7 year

1 amortization period was a reasonable period. (RT2 147:2-9.)
2 The homeowners' consultant conceded that using the interest rate
3 of 7% or 9% "has very little difference on the outcome." (RT1
4 181:20-22.) His objections to the amortization period were
5 based upon rent control ordinances from other jurisdictions
6 (Exhibits 6 & 7), that, again, are wholly irrelevant.
7

8 **5. The Ordinance Provides for Prospective Costs**

9 The gravamen of the homeowners' objections to the temporary
10 rent increase is that the costs have not all been incurred, in
11 fact that the majority have not yet been incurred. Factually,
12 that is correct. Legally, the homeowners position is again
13 directly contradicted by the express provisions of the
14 Ordinance.

15 The homeowners' consultant acknowledged that the Ordinance
16 does allow a park owner to recover a rent increase prospectively
17 for costs to be incurred for work done after the rent increase
18 is noticed. (RT1 166:1-9.)

19 The homeowners' consultant conceded that the Ordinance
20 provided that the park operator can notice a rent increase for
21 an expense that it has not yet incurred, and that the only way
22 that the Park operator can find out in advance if they will be
23 allowed to have a rent increase for a particular expense is to
24 notice the rent increase for the expense in advance of incurring
25 it and then determine through the outcome of any arbitration
26 proceeding if one is initiated by the homeowners. (RT1 231:23-
27 233:1.)
28

1 The Ordinance expressly provides that the costs of capital
2 improvements and capital expenses may properly be passed on to
3 homeowners in the form of a rent increase, including for work to
4 be performed in the future.

5 Section 11A-2 of the Ordinance defines Capital Improvements
6 and Capital Expenses as follows:

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

12 (b) "Capital expense" is a repair or replacement
13 of existing facilities or improvements which has an
14 expected life of more than one year.

15 Section 11A-6 of the Ordinance, which deals with Capital
16 Improvements and Capital Expenses, provides as follows:

17 (a) Capital Improvements

18

19 (3) Notwithstanding any other provision to the
20 contrary, the cost of capital improvements required by
21 a change in governmental law or regulation may be
22 **automatically passed on to homeowners** at the time of
23 an annual increase. Any hearing on such costs shall
24 be **solely** for the purpose of determining whether
25 management's plan for compliance or for recoupment of
26 costs is unreasonable if so alleged by homeowners.

27 Subsection (b) Section 11A-6 of the Ordinance, is entitled
28 "Capital Expenses," and has the same provisions for Capital
Improvements.

 The Ordinance also makes clear that these expenses may
include those to be incurred in the future.

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

(b) Capital Expenses.

(1) The cost of capital Expenses **incurred or
proposed**, including reasonable financing costs, may be

1 passed on to homeowners at the time of an annual
2 increase.

3 As noted above, Capital Expenses, or Capital Improvements,
4 set forth in a rent increase notice may be "incurred or
5 proposed". The Park then has a six-month window to **begin**
6 **construction** with the money after the rent increase is approved:

7 (5) If management fails to begin construction of
8 a capital expense item within six months after
9 approval of the cost of the capital expense, then
10 management shall discontinue the increase for the
11 capital expense and shall credit any amount collected
12 to each homeowner. If management fails to
13 automatically discontinue such increase, then such
14 increase shall be considered an increase in the
15 maximum rent schedule and shall be subject to all the
16 provisions of this chapter, including, but not limited
17 to, amount and frequency of increase.

18 Park management has demonstrated that there are a multitude
19 of legitimate costs to which as a matter of law it is entitled
20 to base a rent increase. The homeowners' response of just
21 saying no to everything is not a response that is countenanced
22 by the Ordinance. Park management has no interest in receiving a
23 rent increase for anything than what it is entitled to under the
24 Ordinance. Park management has been fully transparent, and
25 provided a plethora of documentation and financial information,
26 far more than is required under the Ordinance.

27 Park management is willing to stipulate that this
28 arbitration proceeding may have ongoing jurisdiction to review
the costs of the capital improvements, to ensure that they are
incurred and comply with the terms of the Ordinance.

In addition, pursuant to the Stipulation of the Parties,
Park management will be submitting invoices for the professional

1 fees actually incurred with respect to the rent control
2 proceedings. Park management will be submitting revised
3 amortization number at the conclusion of the Reply Briefing,
4 based on figures actually incurred.
5

6
7 **III**

8 **THE PARK MANAGEMENT'S RENT INCREASE NUMBERS SHOULD BE FULLY**
9 **ACCEPTED AND ALLOWED AS THE ONLY NUMBERS PRESENTED IN THESE**
10 **PROCEEDINGS**

11 As noted herein, the homeowners' paid consultant conceded
12 that he had not prepared any MNOI analysis for Nomad Village
13 Mobilehome Park. (RT1 193:6-16.) He further conceded that he
14 had not prepared any number that he would claim was an
15 appropriate number for a rent increase, (RT1 193:17-21), nor had
16 he prepared any number that he would claim was a fair return for
17 the park management (RT1 194:4-9).

18 Q: ... So I'm very clear, you can't point us to a single
19 number here today in which you would say this is the
20 correct number for a rent increase for Nomad Village Mobile
21 Home Park in accordance with the requirements of the Santa
22 Barbara County rent control Ordinance, is that correct?

23 A: I have not come with a specific number."

24 (RT1 243:3-9.)


25 ///

26 ///

27 ///

1 In contrast, Park Management has prepared a detailed
2 analysis outlining all of the elements of its rent increase,
3 supported by a large volume of undisputed evidence. In the face
4 of utterly no valid competing number, the proposed rent increase
5 should be accepted.

6
7 Dated: October 19, 2011

8 
9 JAMES P. BALLANTINE
10 Attorney for NOMAD VILLAGE
11 MOBILE HOME PARK
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF SERVICE BY E- MAIL & 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 19, 2011, I served the foregoing document described as OPENING POST-HEARING ARBITRATION BRIEF BY NOMAD VILLAGE MOBILE HOME PARK on the interested parties in this action by e-mailing a true and correct copy thereof as follows and by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows

Bruce E. Stanton **E-mail: brucestantonlaw@yahoo.com**
Law Offices of Bruce E. Stanton
6940 Santa Teresa Blvd., Suite 3
San Jose, California 95119

I caused such document to be e-mailed to the addressee.

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, for the delivery the next day.

 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.

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

Executed on October 19, 2011, at Santa Barbara, California.