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COUNTY OF SONOMA/CITY OF PETALUMA
MOBILEHOME PARK SPACE RENT STABILIZATION PROGRAM
ARBITRATION

In the matter of:	)	
	)	
Youngstown Mobile Home Park, Applicant	)	**Interim Arbitration Award**
	)	
and	)	
	)	
Affected Tenants	)	

I. INTRODUCTION AND PROCEDURAL STATEMENT

This matter was heard on January 17, 18, 24, and February 2, 2024, via video conference before Frances C. Fort, arbitrator for California Hearing Officers, LLP (Arbitrator).

This arbitration was commenced pursuant to Chapter 6.50 of the Petaluma Municipal Code, Mobilehome Park Rent Stabilization Program (Ordinance) by the owner of Youngstown Mobile Home Park, Youngstown MHP LLC (Park Owner or Youngstown). Youngstown Mobile Home Park is a mobile home[1] park with 103 spaces, 74 of which are subject to the Ordinance. Park Owner seeks a space rent increase of $923.41 for each of these 74 spaces, an amount that triggered automatic arbitration under Section 6.50.040[2] of the Ordinance.[3]

On or about August 1, 2023, Park Owner sent a notice to all Affected Tenants[4] of its proposed rent increase. Included with Park Owner's notice was its Brief and Supporting Evidence in Support of Proposed Rent Increase and other information outlined in Section

[1] "Mobilehome" and "mobile home" are used interchangeably herein.

[2] All references to "Section" herein, unless otherwise indicated, are to Sections of the Ordinance or Amended Ordinance as the context provides.

[3] The Parties to this arbitration dispute whether the Ordinance that was effective on August 1, 2023, when Youngstown's Petition was filed, applies in this proceeding, or whether the *amended* Ordinance that was effective August 17, 2023 (Amended Ordinance), is applicable. That issue is discussed *infra.* Under Section 6.50.040 of either the Ordinance or the Amended Ordinance, arbitration is triggered by the rent increase sought by Youngstown.

[4] "Affected Tenants" is defined in Section 6.50.020(A); in both the Ordinance and the Amended Ordinance, this includes those tenants whose space is subject to the rent control ordinance. There is no dispute in this proceeding that 74 of the 103 spaces at Youngstown are subject to the Ordinance.

6.50.050 of the Ordinance (OWNER 1-789).[5] On August 9, 2023, the Sonoma County Community Development Commission of the Sonoma County Housing Authority issued a notice of automatic arbitration scheduled for October 10 and 11, 2023.

On September 28, 2023, the Parties[6] submitted a Joint Stipulation to Continue Arbitration (Stipulation). In the Stipulation, the Parties agreed (1) to continue the arbitration to January 2024, and proposed dates they were available in January; (2) to exchange all "evidence, exhibits, briefs, expert reports, etc." on or before 5 p.m. on November 17, 2023; and (3) that any rent increase granted would be retroactive to December 1, 2023.

On September 29, 2023, and pursuant to the Stipulation, the Arbitrator issued an email order (1) continuing the arbitration to January 17 and 18, 2024; (2) ordering all exhibits, expert reports, and briefing bate stamped[7] and submitted to the Arbitrator on or before November 17, 2023, and (3) setting a pre-arbitration hearing for January 4, 2024, at 10 a.m.

Following the pre-arbitration hearing on January 4, 2024, and pursuant to the Parties' requests, the Arbitrator issued "Order #1 Re Scheduling," which set forth deadlines for submission of the Park Owner's "Opening Brief" in response to Affected Tenants' Pre-Hearing Brief, the submission of preliminary motions, a list of disputed discovery, and the exchange of witness lists. Said submissions were received on January 13, 2024, and included three Motions in Limine by Park Owner, and a list of disputed discovery issues by Affected Tenants.[8]

The hearing in this matter commenced via Zoom at 9:00 a.m. on January 17, 2024, and continued at 9 a.m. on January 18, 2024. The Parties subsequently agreed to a third hearing day that was held on January 24, 2024, starting at 9 a.m., and a fourth hearing day held on February 2, 2024, again starting at 9 a.m. At the end of the hearing day on February 2, 2024, the Parties agreed to submit post-hearing closing briefs on or before February 16, 2024. As of February 16, 2024, the record was deemed closed with the exception of potential supplemental submissions

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[5] Affected Tenants do not dispute that Park Owner included all information required by Section 6.50.050 with its August 1, 2023, notice.

[6] Affected Tenants and the Park Owner are herein referred to collectively as the "Parties."

[7] In this proceeding, Park Owner submitted documents with Bate Stamps from OWNER 000001 to OWNER 001837, and Affected Tenants submitted documents with Bate Stamps from RESIDENTS 0001 to RESIDENTS 0324. These documents will be referred to herein as "OWNER ___" and "RESIDENTS ___", respectively.

[8] Youngstown's Motion in Limine No. 1 sought to exclude all evidence and testimony regarding resident's ability to pay. Affected Tenants did not oppose Motion No. 1, stating that they had no intent to offer such evidence or testimony. Youngstown's Motion in Limine No. 2 sought to exclude all evidence and testimony regarding affiliated persons and entities and the business model of Park Owner, Youngstown MHP, LLC. Youngstown's Motion in Limine No. 2 was granted. Youngstown's Motion in Limine No. 3 sought to exclude all evidence and testimony of Terry Bell. In their response to Motion No. 3, Affected Tenants agreed to limit the testimony of Ms. Bell, and Motion No. 3 was denied pursuant to those limitations. The Amended Ordinance provides that the arbitration proceeding need not be "conducted according to the technical rules relating to evidence and witnesses," and that the rules set forth under the Administrative Procedures Act, California Government Code (Govt Code) section 11513 apply, but may be "relaxed at the discretion of the arbitrator in the interests of justice." (Section 6.50.060(G)(2)).

relating to Youngstown's request for an award of attorneys' fees and costs incurred in bringing its application for a rent increase.

II. APPEARANCES AND ADMITTED EVIDENCE

Larissa A. Branes and Daniel T. Rudderow, of the Rudderow Law Group, appeared on behalf of Park Owner. Bruce Stanton, of the Law Office of Bruce Stanton, and Richard L. Reynolds, of the Law Office of Richard Reynolds, appeared on behalf of Affected Tenants.[9]

At the hearing, Park Owner submitted the following documents that were admitted into evidence:

1. Petition for rent increase and statement of supporting evidence (OWNER 1-789), which included, but was not limited to, the following:
    a. Report of Brian Eid, CPA, MAFF, dated July 25, 2023 (OWNER 289-620);
    b. Appraisal Report of John P. Neet, MAI, dated July 7, 2023 (OWNER 622-653);
    c. Rate of Return Report of John P. Neet, MAI, dated July 20, 2023 (OWNER 657-681);
    d. Report of Dr. Babek Somekh, Economics Professor, dated July 26, 2023 (OWNER 683-689);
    e. Report of Brad Johnson, MBA, dated July 25, 2023 (OWNER 691-695);
2. Youngstown rent rolls, receipts breakdown, general ledgers, and profit & loss statements (OWNER 821-1300);
3. Supplemental documents of John P. Neet (OWNER 1319-1322);
4. Youngstown loan documents (OWNER 1397-1544);
5. Youngstown insurance documents (OWNER 1545-1567);
6. Property management documents (OWNER 1568-1573);
7. Park improvement documents (OWNER 1574-1580);
8. Payroll documents (OWNER 1590-1597);
9. Youngstown maintenance documents (OWNER 1598-1673);
10. Report of Andrew Chapman, Certified General Real Estate Appraiser, dated November 14, 2023 (OWNER 1674-1703);
11. Report of Dr. N. Edward Coulson, Economics Professor, dated November 15, 2023 (OWNER 1704-1726);

[9] Mr. Stanton and Mr. Reynolds represent all 74 Affected Tenants (*See* RESIDENTS 0020-0023 for an initial list of 70 represented Affected Tenants; statements on the record on January 17, 2024, indicating additional Affected Tenants represented by Mr. Stanton and Mr. Reynolds, and Exhibit A to Affected Tenants' Post-Hearing Brief, showing that the last previously unrepresented space is now represented by Mr. Stanton and Mr. Reynolds).

12. Legal invoices (OWNER 1727-1751);
13. Document printing fees (OWNER 1752-1754);
14. Professional fee invoices (OWNER 1755-1790);
15. Fair Return Rent Increase Calculation Summary – No depreciation (OWNER 1792); and
16. Discount Rate Sensitivity Table (OWNER 1836-1837).

At the hearing, Affected Tenants submitted the following documents that were admitted into evidence:

1. Affected Tenants' Pre-Hearing Brief (RESIDENTS 1-18)[10];
2. List of represented Affected Tenants (RESIDENTS 19-23);
3. Ordinance No. 2847 N.C.S. (RESIDENTS 24-30);
4. *Colony Cove Properties, LLC v. City of Carson* (2013) 220 Cal.App.4th 840 (RESIDENTS 31-54);
5. List of published opinions citing articles or opinions of Dr. Kenneth Baar (RESIDENTS 55-59);
6. Summons and excerpts from a complaint for violation of federal civil rights filed in U.S. District Court, Northern District of California by Little Woods Mobile Villa, LLC and Youngstown MHP, LLC against the City of Petaluma (RESIDENTS 60-65);
7. Affected Tenants Request for Documents from Applicant, dated September 20, 2023 (RESIDENTS 66-72);
8. Report of Deane F. Sargent, California Commercial Real Estate Broker, November 2023 (RESIDENTS 73-98);
9. Report of Dr. Kenneth K. Baar, dated November 17, 2023 (RESIDENTS 99-228);
10. Report of Terry Bell, Realtor, HomeSmart Advantage Realty, dated November 15, 2023 (RESIDENTS 229-251);
11. Report of Patricia L. Brabant Haskins, Certified General Real Estate Appraiser, dated November 17, 2023 (RESIDENTS 252-284);
12. Affected Tenants' Statement of Physical Condition of the Mobilehome Park and Increases/Decreases in Park Maintenance (RESIDENTS 285-306);
13. Photographs of Youngstown (RESIDENTS 307-311);
14. Supplemental exhibits Report of Patricia L. Brabant Haskins, dated January 23, 2024 (RESIDENTS 312-317);
15. Supplemental exhibits from Dr. Kenneth K. Baar (RESIDENTS 318-320);

[10] All briefing submitted by the Parties is part of the record, whether or not Bates stamped and listed in this award.

16. Letter from Brian Eid to Chris Chapman, at Rudderow Law Group, dated October 10, 2022 (RESIDENTS 321-324);

17. Amended Ordinance (RESIDENTS 325-352); and

18. Amber Homes document (RESIDENTS 353).

In total, nearly 2,500 pages of exhibits, not including briefing, were admitted into evidence.

Near the close of the hearing on February 2, 2024, Affected Tenants asked that Youngstown's discovery responses be submitted with Youngstown's post-hearing brief. Youngstown subsequently submitted its Response to Affected Tenants' Requests for Documents and they were made part of the record.

In addition to witnesses who prepared reports and are named above, the following witnesses also testified for Youngstown: Daniel Weisfield, Owner of Youngstown MHP, LLC, Ronald Ubaldi, Mobilehome Park Owner, Brochton Kaveny, Mobilehome Park Owner, and Matthew Davies, Mobilehome Park Owner.

In addition to the witnesses who prepared reports and are named above, the following witnesses also testified for Affected Tenants: Mary Ruppenthal, Affected Tenant, Kay Poland, Affected Tenant, Linda Tortora, long-term lease Youngstown Tenant, and Deborah Roberts, long-term lease Youngstown Tenant, and Richard Lemos, Affected Tenant.

Having been appointed as the Arbitrator in this matter, having considered the testimony of the witnesses at the arbitration proceedings on January 17, 18, 24, and February 2, 2024, having considered the presentation of evidence by counsel and all arguments made, having reviewed the recording of the proceedings, and for good cause appearing, the Arbitrator hereby issues this Interim Arbitration Award[11] as follows.

III. APPLICABLE ORDINANCE

The City of Petaluma originally enacted Municipal Code Chapter 6.50 in 1994 (Ordinance). In 2023, various provisions of the Ordinance were amended (Amended Ordinance) (RESIDENTS 325-352). Those amended provisions were the subject of a public workshop on June 5, 2023, were published on July 10, and adopted on July 17, 2023, pursuant to ordinance 2857 (*See* RESIDENTS 0025-0030). Ordinance 2857 expressly provides that the "effective date" of the Amended Ordinance will be "thirty (30) days after the date of its adoption by the City Council . . . ." The Amended Ordinance became effective on August 17, 2023.

At issue in this arbitration is whether the Ordinance as it existed prior to August 17, 2023, is applicable, or whether the provisions of the Amended Ordinance govern. Youngstown argues

[11] This arbitration award is captioned as "Interim" not because it is tentative, but because the record is being left open for submissions related to Youngstown's attorneys' fees and costs. This is the only issue that will be considered after issuance of this Interim Arbitration Award.

that the pre-August 17, 2023, Ordinance applies, and Affected Tenants argue that the Amended Ordinance applies. It is undisputed that Youngstown filed its application for a rent increase on August 1, 2023—before the Amended Ordinance went into effect.

In California, a statute is presumed to operate prospectively unless the legislature has clearly indicated that it intends the statute to operate retroactively. *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 307; see also *Western Security Bank v. Superior Court* (1997) 15 Cal. 4th 232, 243 (stating the legislature must "plainly" intend a statute to operate retroactively); *People v. Hayes* (1989) 49 Cal.3d 1260, 1274 (stating there must be a "clear and compelling implication" the legislature intended a statute to operate retroactively). Absent clear legislative intent to the contrary, a statute is presumed to operate prospectively. *McHugh v. Protective Life Ins. Co.* (2021) 12 Cal.5th 213, 227-228.

But as stated by the court in *McHugh*, "[t]he presumption against retroactivity is, at core, a canon to facilitate interpretation rather than an inexorable command." *McHugh, supra,* at 228. *McHugh* found that a court must answer the "threshold question . . . before even applying the presumption against retroactivity: Is the statutory change in question 'retroactive' or 'prospective'?" McHugh, *supra*, at 229. A statutory change is retroactive, within the meaning of the presumption, when it "significantly alters settled expectations: by changing the legal consequences of past events, or vitiating substantial rights established by prior law." *McHugh, supra*, at 230; see also *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 690-691 (a statute operates retroactively when it "substantially affects existing rights and obligations."); *Landgraf v. Usi Film Prods* (1993) 511 U.S. 244, 270 (a statute operates retroactively when it attaches "new legal consequences to events completed before its enactment.") If a particular statutory change does not meet this standard, then a court considers its application to be "prospective" regardless of whether it is applied to past conduct. *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 286-291; *see also Elsner v. Uveges* (2004) 34 Cal.4th 915, 936 ("[h]owever, this rule does not preclude the application of new procedural or evidentiary statutes to trials occurring after enactment, even though such trials may involve the evaluation of civil or criminal conduct occurring before enactment"); *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 573 (statutes that clarify existing law are considered "prospective"—even if applied to prior conduct—because clarifying statutes, by definition, did not actually change existing law). A statute is considered "prospective" in nature if it "relates to a procedure to be followed in the future." *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 287, *citing Strauch v. Superior Court* (1980) 107 Cal. App. 3d 45, 49. Courts must look at "the nature and extent of the change in the law and the degree of connection between the operation of the new rule and a relevant past event. Any test of retroactivity will leave room for disagreement in hard cases, and is unlikely to classify the enormous variety of legal changes with perfect philosophical clarity. However, retroactivity is a matter on which judges tend to have 'sound . . . instinct[s],' [citation] and familiar considerations of fair notice, reasonable reliance, and settled expectations offer sound guidance." *Landgraf, supra,* at 271; see also *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 230-231.

Here, there is nothing in the Amended Ordinance or the record wherein the City stated an express intent or even an implied intent that the Amended Ordinance apply retroactively, and

thus, the Amended Ordinance is presumed to operate prospectively. But under the above-cited authority, the issue is whether the Amended Ordinance is actually "retroactive."

Perhaps aware of this issue, Youngstown identifies two changes to the original Ordinance that it deems significant, stating that: (1) "Beneficial increases in maintenance and operating expenses," has been revised to "Increases in maintenance and operating expenses directly benefitting the tenants" (Section 6.50.100(A)); and (2) debt service expenses resulting from the park owner's purchase of the park are now expressly allowable only if the loan proceeds are used for park improvements or similar park-related uses that are of direct benefit to the tenants (Section 6.50.100(A)).[12] Youngstown asserts that allowing or disallowing these expenses in a fair return analysis that is the subject of this Arbitration "would result in a recurring annual revenue differential for the Park in excess of $170,000, which is a substantial sum." (Park Owner, Youngstown MHP, LLC's Arbitration Closing Brief (Youngstown Closing Brief) at 8).

In their closing brief, Affected Tenants do not address this issue in any depth, arguing that Youngstown "had full knowledge of the amended provisions well before submission of its Petition, and all proceedings herein have occurred long after the August 17th effective date" (Affected Tenants' Post Hearing Brief (AT Closing Brief) at 5). Affected Tenants also argue that "[t]here is no prejudice to Applicant if the new provisions are applied," and that "[a]ny hearings which occur after August 17th are to be conducted pursuant to the Ordinance in effect going forward" (*Id.*) Affected Tenants do not cite any case law in support of their arguments.[13]

Here, the Arbitrator finds that the application of the Amended Ordinance does not "significantly alter settled expectations: by changing the legal consequences of past events" or by "vitiating substantial rights established by prior law." *McHugh*, *supra*, at 230. Nor does it attach "new legal consequences to events completed before its enactment," *Landgraf supra,* at 270. Youngstown does not have a right to, nor does it argue that it is entitled to, a static application of Petaluma's rent control ordinance. There does not seem to be a dispute that had Youngstown filed its petition on August 18, 2023, the Amended Ordinance would apply. As stated by the U.S. Supreme Court in *Landgraf*:

> Even uncontroversially prospective statutes may unsettle expectations and impose burdens on past conduct: a new property tax or zoning regulation may upset the reasonable expectations that prompted those affected to acquire property; a new law banning gambling harms the person who had begun to construct a casino before the law's enactment or spent his life learning to count cards. See Fuller 60 ("If every time a man relied on existing law in arranging his affairs, he were made secure against any change in legal rules, the whole body of our law would be ossified forever").

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[12] The Arbitrator notes that most of the relevant sections of the Amended Ordinance, found applicable here, are identical, or substantively identical to those in the original Ordinance, with the notable exception of the provisions of Section 6.50.100(A) highlighted by Youngstown.

[13] In his Report, Dr. Baar states that Petaluma's City Attorney rendered an opinion that the Amended Ordinance applies (RESIDENTS 116). That opinion was not submitted into evidence.

Landgraf, supra, at 260, FN 21. In this case, the changes in the Ordinance identified by Youngstown are more akin to a new property tax or regulation, rather than a change affecting the legal consequences of past events. Youngstown's expectations may be unsettled, but that is not a reason to find the Amended Ordinance retroactive.

Moreover, seeking a rent increase is entirely prospective. In *Estate of Patterson* (1909) 155 Cal. 626, the court considered whether a statute changing the requirements for proof of a Will was retroactive. Holding that it was not, the court found that the new law "relate[d] wholly to what shall be done upon the trial of the application for probate, the proof that must be furnished and the facts which must be established. It applies only to trials which take place after its enactment. It can have no effect whatever on previous trials or enactments. It is prospective only in its nature." *Estate of Patterson, supra*, at 638; see also *Andrus v. Municipal Court* (1983) 143 Cal. App. 3d 1041 (the court immediately applied a new statute eliminating the right to appeal from certain orders of the superior court denying extraordinary relief); *Republic Corp. v. Superior Court* (1984) 160 Cal. App. 3d 1253, 1257 (court immediately applied a new, mandatory statute requiring dismissal for prolonged failure to prosecute and making the plaintiff's diligence irrelevant, and observing that the application of the new statute to a case filed before its enactment was not "retroactive" because the statute's effect was "'actually prospective in nature . . . .'") Here, too, Youngstown's application for a rent increase is wholly prospective in nature. There are no "new legal consequences to events completed before . . . enactment" of the Amended Ordinance. *Landsgraf, supra*, at 260.

The Arbitrator finds that the Amended Ordinance operates prospectively, and does not significantly alter settled expectations by changing the legal consequences of past events, or by vitiating substantial rights established by prior law. As stated by the U.S. Supreme Court in *Landgraf, supra,* at 260, Youngstown cannot expect the law to ossify, even if changes create additional burdens on past conduct. For these reasons, the Arbitrator will apply the Amended Ordinance in this proceeding. But even if the old Ordinance applied in this proceeding, the outcome would be the same.[14]

IV. BURDEN OF PROOF

Section 6.50.060(G)(1) of the Amended Ordinance provides that "Mobilehome park owners shall bear the burden to prove to the arbitrator based upon the preponderance of the evidence the reasonable necessity of any rent increase sought in addition to that permitted pursuant to Section 6.50.040(A) to earn a reasonable return." Under this provision, Park Owner has the burden of proof.

V. PURPOSES OF THE ORDINANCE

Section 6.50.010 of the Amended Ordinance is titled "Findings and purpose." This section sets forth multiple findings, including subsection G, referencing the importance of programs for "promoting the long term affordability of mobile home units in [Petaluma]"; subsection H, referencing the fixed and low income of a majority of mobilehome park residents; subsection I, referencing the substantial investment of park residents in their homes; subsections

[14] See in particular "Consideration of Debt Service," discussed *infra.*

J and O, both citing the lack of mobility of mobilehomes; subsection K, referencing limited housing alternatives for low-income persons in Petaluma; and subsection L, referencing Petaluma's commitment to "assisting in the preservation of decent, safe and sanitary housing affordable to all economic segments of the community." Section 6.50.010 culminates in subsection (X) which states as follows:

> X. The purposes of this Chapter include:
>
> 1. Preventing the imposition of exploitive, excessive and unreasonable mobilehome space rent increases;
> 2. Assisting in alleviating the unequal bargaining power which exists between mobilehome park residents and mobilehome park owners;
> 3. Providing mobilehome park owners with a guaranteed rate of annual space rent increase which over time adequately adjusts mobile home space rents to account for the impact of inflation on park owner rates of return;
> 4. Providing an efficient and speedy process to ensure mobilehome park owners receive a fair, just and reasonable rate of return in cases where the guaranteed annual space rent increases provided by this chapter prove insufficient to realize a reasonable rate of return;
> 5. In the absence of a lawful vacancy, preventing excessive or exploitive rent increases upon the transfer of a mobilehome-on-site (i.e., on the mobilehome pad) to a new mobile-home owner while at the same time providing a process whereby mobile-home park owners are assured of receiving a fair and reasonable return.

Section 6.50.010(F) of the Amended Ordinance states:

> the city recognizes the right of the park owners to obtain a fair and reasonable rate of return and for their property to generate income to cover costs of operation and servicing of reasonable financing and to have under the auspices of the city an administrative procedure which will operate effectively and expeditiously to approve rent increases as are reasonable to meet said ends. At the same time there is a need to establish a means which if followed can provide protection to tenants from unreasonable rent increases resulting in loss of value to their property.

And finally, Section 6.50.010(W) of the Amended Ordinance states:

> The city council intends that this chapter be interpreted and enforced fairly and equitably, in a nondiscriminatory manner, and in accordance with constitutional requirements. For these reasons it is intended that the respective provisions of this chapter be liberally construed and be considered severable, and that if any portion of it is declared unconstitutional or unenforceable, the remaining portions shall remain valid and in effect.

Any fair return analysis must be guided by all of the above findings in the Amended Ordinance.

VI. STANDARDS OF REVIEW AND DEFINITIONS UNDER THE ORDINANCE

Section 6.50.100 of the Amended Ordinance sets forth "Standards of Review" that may be used "[i]n evaluating a space rent increase proposed by an owner." It provides in relevant part as follows:

> In evaluating a space rent increase proposed by an owner that is in excess of the rent permitted in accordance with Section 6.50.040(A) of this chapter, the arbitrator may consider the following factors or any other factors deemed relevant by the arbitrator in determining whether the proposed space rent increase is reasonably necessary based on the preponderance of the evidence to provide the owner a reasonable return in accordance with Section 6.50.060 and other applicable provisions of this chapter:
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> A. Increases in maintenance and operating expenses directly benefitting the tenants, including but not limited to the reasonable value of the owner's labor and any increased costs for services provided by a public agency, public utility, or quasi-public agency or utility, provided, however, that any increased costs in rent stabilization administration fees shall be subject to the provisions of Section 6.50.040(C) and 6.50.160 of this chapter. . . . [¶]
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> C. Increased costs of debt service due to a sale or refinancing of the park within twelve months of the increases provided that:
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> 1. The sale or refinancing is found to have been an arm's length transaction;
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> 2. The proceeds of such purchase money loan or refinancing are found to have been used for park improvements or similar park related uses that are of direct benefit to the tenants, and not merely incurred to fund the owner's purchase or refinancing of the park;
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> 3. The aggregate amount from which total debt service costs arise constitutes no more than seventy percent of the value of the property as established by a lender's appraisal.
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> D. The rental history of the space or the park of which it is a part, including:
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> 1. The presence or absence of past increases;
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> 2. The frequency of past rent increases;
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> 3. The occupancy rate of the park in comparison to comparable parks in the same general area.
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> E. The physical condition of the mobilehome space or park of which it is a part, including the quantity and quality of maintenance and repairs performed during the preceding twelve months.
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> F. Any increase or reduction of housing services since the last rent increase.

G. Existing space rents for comparable spaces in comparable parks.

H. A decrease in "net operating income" as defined in Section 6.50.110(A).

I. A fair return on the property prorated among the spaces of the park.

J. Other financial information which the owner is willing to provide. . . . [¶]

L. Notwithstanding any other provision to the contrary, no provision of this section or this chapter shall be applied to prohibit the granting of a rent increase that is demonstrated to be necessary to provide an owner with a fair and reasonable return.

In addition, and relevant to these proceedings, Section 6.50.110 of the Amended Ordinance states in relevant part:

> For purposes of the arbitrator's evaluation of a space rent increase proposed by an owner in excess of the increase permitted in accordance with Section 6.50.040(A) of this chapter, the following shall apply:
>
> A. "Net operating income" of a mobilehome park means the gross income of the park less the operating expenses of the park.
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> B. "Gross income" means the sum of the following:
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> 1. Gross space rents, computed as gross space rental income at 100% occupancy; plus
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> 2. Other income generated as a result of the operating of the park, including, but not limited to, fees for services actually rendered; plus
>
> 3. Revenue received by the park owner from the sale of gas and electricity to park residents where such utilities are billed individually to the park residents by the park owner. . . ; minus
>
> 4. Uncollected space rents due to vacancy and bad debts to the extent that the same are beyond the park owner's control. Uncollected space rents in excess of three percent of gross space rent shall be presumed to be unreasonable unless established otherwise to the reasonable satisfaction of the arbitrator based on the preponderance of the evidence, and shall not be included in computing gross income. Where uncollected space rents must be estimated, the average of the preceding three years experience shall be used.
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> C. "Operating Expenses" means:
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> 1. Real property taxes and assessments.
>
> 2. Utility costs to the extent that they are included in space rent.
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> 3. Management expenses including the compensation of administrative personnel, including the value of any mobilehome space offered as part of compensation for such services, reasonable and necessary advertising to ensure occupancy only, legal and accounting services as permitted herein, and other managerial expenses. Management expenses are

presumed to be not more than five percent of gross income, unless established otherwise to the reasonable satisfaction of the arbitrator based on the preponderance of the evidence.

4. Normal repair and maintenance expenses for the grounds and common facilities including but not limited to landscaping, cleaning and repair of equipment and facilities.
5. Owner-performed labor in operating and maintaining the park. . . .
6. Operating supplies . . . .
7. Insurance premiums . . . .
8. Other taxes, fees, and permits . . . .
9. Reserves for replacement of long-term improvements or facilities; provided, that accumulated reserves shall not exceed five percent of gross income.
10. Necessary capital improvement costs exceeding existing reserves for replacement. . . . [¶¶]
11. Involuntary refinancing of mortgage or debt principal. A park owner may, under the provision of this subsection, be able to include certain debt service costs as an operating expense. . . . [¶¶]

D. Operating expenses shall not include the following:

1. Debt service expenses, except as provided in subsection C,11 above.
2. Depreciation.
3. Any expense for which the park owner is reimbursed.
4. Attorneys' fees and costs, except printing costs and documentation as required by Section 6.50.050 only, incurred in proceedings before an arbitrator or in connection with the legal proceedings challenging the decision of an arbitrator or the validity of applicability of this chapter.
5. The fees and costs incurred by a mobilehome park owner to prepare, file or pursue a petition for space rent increase in excess of the increase permitted in accordance with Section 6.50.040(A).

E. All operating expenses must be reasonable. Whenever a particular expense exceeds the normal industry or other comparable standard, the park owner shall bear the burden of proving the reasonableness of the expense to the reasonable satisfaction of the arbitrator based upon the preponderance of the evidence. To the extent that an arbitrator finds any such expense to be unreasonable, the arbitrator shall adjust the expense to reflect the normal industry or other comparable standard.

VII. SUMMARY OF RELIEF SOUGHT BY PARK OWNER

Youngstown seeks a rent increase of $923.41 per month, per space for Affected Tenants, claiming that this rent increase is required for Youngstown to earn a fair and reasonable return. Youngstown argues that such a rent increase conforms with the relevant decision factors of the Ordinance and conforms with the stated purpose of the Ordinance, including the purpose of preventing "exploitive, excessive and unreasonable mobilehome space rent increases;" (Section 6.50.010(X)(1)).

The $923.41 rent increase would result in a $1,735.97 average monthly rent—more than double the average rent today. To get to this number, Youngstown uses a "return on investment methodology" (OWNER 298). Youngstown asserts that a rent increase of $923.41 would result in a 7.8% annual unlevered return on investment (discount rate), a 13.8% annual cash-on-cash return (equity dividend rate), and a 15.3% internal rate of return (IRR) (Youngstown Closing Brief at 4).

Youngstown offers the following alternative methodologies to justify smaller, yet still substantial rent increases that it claims are necessary for it to get a fair and reasonable return (OWNER 298, 1792, and associated exhibits):

1. A Net Operating Income (NOI) analysis based on a 2020 base year, which includes the Vega Adjustment,[15] which results in a rent increase of $634.12, plus the mortgage interest expense of $103.56, for a total increase of $737.68 per space per month;

2. A Maintenance of Net Operating Income (MNOI) analysis based on a 1993 base year since the Ordinance was established in 1994, which includes the Vega Adjustment, but not inflated, which results in a rent increase of $536.61, plus the mortgage interest expense of $103.56, for a total increase of $640.17 per space per month;

3. A market rent adjustment, based on rents at comparable mobilehome properties, which results in a rent increase of $428.17 per space per month;

4. A Net Operating Income (NOI) analysis based on a 2020 base year, which includes the Vega Adjustment but excludes depreciation and instead includes 5% maintenance reserves, which results in a rent increase of $297.21, plus the mortgage interest expense of $103.56, for a total increase of $400.77 per space per month; and

5. A Net Operating Income (NOI) analysis based on a 2020 base year, which includes the Vega Adjustment but excludes depreciation and instead includes 5% maintenance reserves, which results in a rent increase of $297.21 per space per month. This amount would exclude all mortgage interest expenses.

[15] The so-called Vega Adjustment is rooted in the case of *Vega v. City of West Hollywood* (1990) 223 Cal.App.3d 1342, and is discussed *infra*.

Through these alternatives, the Park Owner seeks to show that it is not getting a fair return no matter which methodology is used (Hearing, Jan. 17, 2024, Weisfield Testimony and Eid Testimony).

The Park Owner provided evidence and argument under subsections A, C, D, E, F, G, H, I, J, and L of Section 6.50.100 of the Amended Ordinance, "Standards of Review," that may be used "[i]n evaluating a space rent increase proposed by an owner." Those are discussed below.

The Park Owner also seeks a Retroactive Rent Increase of $31.17 per space, per day from January 1, 2023, through the decision date (Youngstown Closing Brief at 66; OWNER 298), arguing that such an increase is necessary for Youngstown to earn a fair rate of return.

Finally, the Park Owner seeks attorneys' fees and costs in pursuing its application for a rent increase. As the Parties agreed on the record on February 2, 2024, this issue will be briefed and decided subsequent to the issuance of this Interim Arbitration Award.

VIII. SUMMARY OF AFFECTED RESIDENTS' ARGUMENTS

Affected Tenants dispute Park Owner's entitlement to a rent increase, and argue that no rent increase should be granted based on Park Owner's application. Affected Tenants argue that a $923.41 monthly rent increase would "eviscerate the Ordinance's protections." (AT Closing Brief at 2). Affected Tenants argue that the fair return on investment methodology used by Youngstown has been rejected by appellate courts as "contorted" and that Youngstown has offered no evidence that its proposed fair return methodology has been accepted by guiding precedent (*Id.* at 3).

Affected Tenants argue that the proper methodology to evaluate fair return is the MNOI standard. Affected Tenants cite to Youngstown's alternative claim, using the MNOI standard, but claim that it erroneously uses a depreciation allowance not permitted under the Amended Ordinance. Affected tenants also dispute the $60 per space per month Vega Adjustment used by Youngstown in its MNOI analysis, arguing that it is inappropriate under guiding case law.

Affected Tenants also argue that Youngstown's "comparable rent" analysis is flawed because it uses market rents of spaces not subject to rent control in contravention of the terms of the Amended Ordinance. Affected Tenants also dispute that a retroactive rent increase is allowed under the Amended Ordinance.

Affected Tenants argue that Youngstown has failed to meet its burden of proving the requested rent increase, stating that the Park Owner "has undertaken an effort to turn the petition mechanism into a roadway out of rent regulation" (AT Closing Brief at 5).

Finally, Affected Tenants state that they dispute Park Owner's claimed entitlement to recoup attorneys' fees and costs incurred in this proceeding, and like Youngstown, agreed to brief this following issuance of this decision (Hearing, Feb. 2, 2024).

IX. ANALYSIS

A. The Ordinance's Multi-Factor Test

Section 6.50.040(A) of the Amended Ordinance allows for annual rent increases equal to the lesser of "1. Seventy percent of the percent change in the CPI; or 2. Four percent."[16] When a mobile home park owner seeks a rent increase in excess of the change allowed under Section 6.50.040(A), the arbitration process is automatically triggered (Section 6.50.060(E)).

Section 6.50.040(E) states that for the arbitration, "the procedures set forth in Section 6.50.050 and 6.50.060 shall be followed to establish why such an increase is necessary." Additionally, "[t]he arbitrator may reduce the proposed increase to a figure (which may be zero) determined based upon the preponderance of the evidence submitted to be reasonably necessary to result in the park owner receiving a fair return upon investment."

As set forth above, the provisions of Section 6.50.100 of the Amended Ordinance, "Standards of Review," provide multiple factors that can be used to determine whether a rent increase in excess of the increase in the CPI should be allowed. It is not disputed that the Amended Ordinance makes no attempt to weigh the different factors in importance, nor does it set forth any particular formula for determining when a rent increase might be justified (*See* Hearing, Jan. 17, 2024, Eid Testimony ("there's no specifically adopted methodology" under the Petaluma Ordinance)). As stated by Dr. Baar, this was an outcome of diametrically opposite precedents in the 1980s about what fair return standard was constitutional, leading to fear that any specific fair return methodology could be struck down (Hearing, Jan. 24, 2024, Baar Testimony). As stated by Dr. Baar in his 2006 article in the CEB Real Property Law Reporter:

> The approach of adopting a list of factors without a formula insulates an ordinance from facial challenges on the ground that its specific fair return formula does not permit a fair return because it gives the adjudicating body the latitude to choose virtually any approach. However, at the same time, it turns the adjudication of fair return petitions into "legislative" hearings over how fair return should be measured–with full-scale debate over the pros and cons of alternate formulas . . . . (RESIDENTS 169).

Dr. Baar's insight is borne out in this proceeding.

B. Fair Return Overview

The right of cities and counties to regulate mobile home space rent increases is subject to the constitutional requirement that park owners must be permitted a "fair return." (RESIDENTS 0184, Baar Report, Appendix G, "Fair Return under Mobilehome Park Space Rent Controls: Conceptual and Practical Approaches," 29 Real Property Law Reporter 333 (Sept. 2006, CEB) (cases cited therein)); see also *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 165 (holding

[16] In the Ordinance as it existed before August 17, 2023, park owners could increase rent by the lesser of "(1) One hundred percent of the percent change in the CPI; or (2) Six percent." This section is not at issue in this arbitration.

that local governments may enact rent control if it "provide[s] landlords with a just and reasonable return on their property.") "[T]o be 'just and reasonable' a rate of return must be high enough to encourage good management including adequate maintenance of services, to furnish a reward for efficiency, to discourage the flight of capital from the rental housing market, and to enable operators to maintain and support their credit." *Concord Communities v City of Concord* (2001) 91 Cal.App.4th 1407, 1415 (quoting *Oceanside Mobilehome Park Owners' Ass'n v. City of Oceanside* (1984) 157 Cal.App.3d 887, 907); see also *Kavanau v. Santa Monica Rent Control Board* (1997) 16 Cal.4th 761, 771 (in determining fair return, the court focuses on whether the regulatory agency took relevant investor interests into account). In a fair return analysis, net operating income must be allowed to grow; indefinitely freezing net operating income is considered confiscatory (*Fisher v. Berkeley* (1984) 37 Cal.3d 644, 683). But as warned by the court in *Oceanside Mobilehome Park Owners' Ass'n, supra,* at 907, "on the other hand, [a fair return] is one which is not so high as to defeat the purposes of rent control nor permit landlords to demand of tenants more than the fair value of the property and services, which are provided" (citations omitted). The *Oceanside* Court went on to say "thus, the rate of return permitted may not be as high as prevailed in the industry prior to regulation, nor as much as the investor might obtain by placing his capital elsewhere." (*Id.*) (*See also Galland v. City of Clovis* 24 Cal. 4th 1003, 1027 (2001)) ("comparison of the rate of return of rent controlled mobile home parks with those of non-rent-controlled parks . . . is of limited utility in establishing the constitutional minimum rate of return"); and *Fisher v. City of Berkeley, supra,* at 685-686 (it is obviously not the case that a rent-controlled investment must earn the same as a non-rent controlled one).[17]

There is no particular method required to meet the constitutional requirement of "fair return." "Rent control agencies are not obliged by either the state or federal Constitution to fix rents by application of any particular method or formula." *Carson Mobilehome Park Owners' Ass'n v. City of Carson* (1983) 35 Cal.3d 184, 191. The California Supreme Court has held that rent control ordinances may incorporate "any of a variety of formulas" for calculating rent increases and satisfy the fair return standard, *Colony Cove, supra,* at 867, citing *Kavanau, supra,* at 768; see also *Fisher v. City of Berkeley, supra,* at 679-680 ("rent control agencies throughout this state and the nation have employed a veritable smorgasbord of administrative standards by which to determine rent ceilings. . . . Rent control agencies are not obliged by either the state or federal Constitution to fix rents by application of any particular method or formula.") Determining whether a particular rent control determination or scheme is confiscatory depends on "the overall result of the rent-setting process not the method employed or any particular exemption legislated." *Galland, supra,* at 1028; see also *Carson Mobilehome Park Owners' Ass'n, supra,* at 290, citing *Pennell v. City of San Jose* (1986) 42 Cal. 3d 365, 370-372 (holding that "the actual method utilized to regulate rents is immaterial so long as the result achieved is constitutionally acceptable"); *Birkenfeld, supra,* at 165 (rejecting the notion that any particular formula must be used in determining a just and reasonable return).

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[17] At least one of Youngstown's witnesses testified that they get lower returns on properties subject to rent-control (*See* Hearing, Jan. 17, 2024, Kaveny Testimony (testifying that he gets a lower rate of return for mobilehome parks he owns in rent-controlled jurisdictions); see also Hearing, Jan. 18, 2024, Chapman Testimony (testifying that rent control is a "huge factor" when deciding on a mobilehome park investment).

Mr. Eid testified that "fair return" is not a defined term in economics or accounting or by the American Institute of Certified Public Accountants (AICPA) (Hearing, Jan. 17, 2024, Eid Testimony). Mr. Neet testified that "fair return" is not defined as an appraisal standard (Hearing, Jan. 18, 2024, Neet Testimony). Dr. Baar was the only witness that testified who has published on the issue of fair rate of return in the rent control context (*See* Hearing, Jan. 24, 2024, Baar Testimony).

Here, "fair return" is listed as a factor under Section 6.50.100(I). But all of the factors and the entire analysis here seeks to answer the question of whether Youngstown is getting a fair return, and if not, what rent increase would provide them with a fair return. The Amended Ordinance recognizes this by providing: "[n]otwithstanding any other provision to the contrary, no provision of this section or this chapter shall be applied to prohibit the granting of a rent increase that is demonstrated to be necessary to provide owner with a fair and reasonable return." (Section 6.50.100(L)).

C. Return on Investment Methodology

Youngstown offered multiple witnesses and experts in support of its return on investment methodology for calculating a fair return. Youngstown offered the testimony and report prepared by Mr. Neet related to appropriate rates of return (OWNER 657-681), and the testimony and report of Brian Eid, applying those rates of return to Youngstown (OWNER 289-323, and 1792; Hearing, Jan. 17, 2024, Eid Testimony and Hearing, Jan. 18, 2024, Neet Testimony).[18] In his study, Mr. Neet determines both average discount rates and average equity dividend rates, ultimately concluding that a discount rate of return of 10-11% and an equity dividend rate of 10-12% are appropriate rates of return for Youngstown—a single mobile home park (OWNER 660-665). Given the current rate of return of just 4% testified to by Youngstown's witness, Mr. Eid, a 12% rate of return would triple the rate of return (Hearing, Feb. 2, 2024, Sargent Testimony).

Mr. Neet used source data from a RealtyRates.com survey published by R.G. Watts and Company that is published quarterly. He testified that this survey is the result of polling 312 appraisers, brokerage firms, developers, investors, and lenders nationwide, and is specific to mobilehome parks (Hearing, Jan. 18, 2024, Neet Testimony; OWNER 660, citing RealtyRates.com-Investor Survey, 1st Quarter 2023, published by R.G. Watts). The RealtyRates data reproduced in Mr. Neet's report shows that discount rates for investments in mobilehome parks ranged from a low of 3.49% in 2020, to a high of 14.34% in 2020. Using this data, he determines that the average discount rate is in the 10-11% range (OWNER 662). Similarly, the RealtyRates data shows that equity dividend rates ranged from a low of 7.55% in 2021 to a high of 18.14% in 2019 (OWNER 664). Using this data, he determines that the average equity dividend rate is in the 11-12% range (OWNER 664).

[18] Dr. Coulson and Mr. Johnson also both testified regarding the three types of yield rates used by Youngstown in its return on investment methodology, including: (1) Discount Rates, (2) equity dividend rates or "cash-on-cash" rate of return; and (3) Internal Rates of Return (IRR) (Hearing, Jan. 18, 2024, Coulson Testimony and Johnson Testimony). Both testified that a discount rate is an unlevered rate of return, an equity dividend rate includes leverage, and an IRR includes the ultimate sale of the property (*Id.*)

In his report, Mr. Neet also compares Youngstown's rate of return with rates of return on other investments. He starts by citing what he captions as low-risk investments, including investments such as 3-month insured Certificates of Deposit (CDs), yielding 5.25% to 5.50%, 5-year CDs yielding between 4.3% and 4.5%, 2-year Treasury Bills (T-Bills), yielding 4.87%, and 10-year T-Bills yielding 3.81% (OWNER 659). He also includes in his low-risk investment list a JP Morgan MBS fund yielding 4.74% (*Id.*) Mr. Neet, like other Youngstown witnesses, questioned why any investor would invest in a mobilehome park returning 4% when they could buy a CD or T-Bill earning the same (*See* Hearing, Jan. 18, 2024, Neet Testimony).

Mr. Neet's second category of investments are mobile home park REITs. A REIT is a Real Estate Investment Trust that provides individuals with the ability to invest in real estate by taking a percentage interest in the REIT. Mr. Neet explains that there are three publicly traded mobilehome park-specific REITs, including ELS, SUI, and UMH. In his report, he states that because these rates of return are mobilehome specific, they share characteristics with the investment in a mobile home park such as Youngstown. In his report, he states that REITs are considered to have a low overall risk due to geographical dispersal, the number of sites under ownership, and the high liquidity for the shareholder (OWNER 659). The average return on REITs as reported by Mr. Neet is 12.78% (*See also* Hearing, Jan. 18, 2024, Johnson Testimony (Mobilehome REITs targeting a 15-20% IRR)). Mr. Neet testified that REITs have an overall lower risk than individual mobile home park ownership such as Youngstown, opining that the rate of return for single mobilehome park ownership should be higher than for REITs (OWNER 659).[19]

In his report, Mr. Eid used the discount rates of return[20] developed by Mr. Neet—both 11 and 12%—to calculate the rent increase he believes is necessary for Youngstown to achieve these rates of return (See OWNER 298). His calculations start with the total invested in the property of $14,280,054 (*Id.*) Using Mr. Neet's 11% rate of return, Mr. Eid calculates that Youngstown needs Net Operating Income (NOI) of $1,570,806 ($14,280,054 x 0.11 =

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[19] Other Youngstown witnesses also testified that an investment in a single mobilehome park was riskier than investments in low-risk CDs and T-Bills, and riskier than mobilehome-specific REITs, therefore they should yield a higher rate or return (*See* Hearing, Jan. 18, 2024, Johnson Testimony). In contrast, Affected Tenants' witnesses Deane Sargent, Dr. Baar, and Ms. Haskins testified that mobilehome parks are low risk because of the 100% occupancy rate (Hearing, Jan. 24, 2024, Sargent Testimony; RESIDENTS 80; *see also* Hearing, Jan. 24, 2024, Baar Testimony that Mobilehome investors rave about mobilehome investments because of captive tenants; Hearing, Jan. 24, 2024, Haskins Testimony that mobilehomes are less risky because 100% occupied, and mobilehome owners sell their own homes and find replacement tenants). Mr. Sargent colorfully likened mobilehome residents to a "coyote with their foot in a trap," stating, "[t]hey can't leave the park because they can't leave their house, and there's no place to take their house, so they can only gnaw off their leg if they want to go." (Hearing, Feb. 2, 2024, Sargent Testimony). Mr. Sargent then cited the "secure revenue stream" for mobilehome park owners (Hearing, Feb. 2, 2024, Sargent Testimony). In addition, Ms. Haskins disagreed that REITs are less risky, citing their recent volatility (Hearing, Jan. 24, 2024, Haskins Testimony). This testimony was challenged by Mr. Neet on rebuttal (Hearing, Feb. 2, 2024, Neet Testimony).

[20] Mr. Eid testified that he used discount rates, not equity dividend rates, because an equity dividend rate is a rate specific to an investor (Hearing, Jan. 17, 2024, Eid Testimony). Mr. Eid also did not use an IRR in his report dated July 25, 2023, testifying that an IRR includes the projected sale of the property (Hearing, Jan. 17, 2024, Eid Testimony). But in a subsequent submission, Mr. Eid augmented his report, including a scenario using a 16% IRR, which would result in a $990.38 per space per month increase (OWNER 1836; Hearing, Jan. 17, 2024, Eid Testimony).

$1,570,806) to earn 11% rate of return on their investment and $1,713,607 ($14,280,054 x 0.12 = $1,713,607) to earn a 12% rate of return (*Id.*) Mr. Eid has calculated Youngstown's current NOI as $572,266, leaving a shortfall of $998,540 if Youngstown is to earn an 11% return on investment, and a $1,141,341 shortfall if Youngstown is to earn a 12% return on investment (*Id.*) He then divides these two shortfalls by 103 (the number of spaces at Youngstown) to get an annual rent increase per space of $9,694.56 and $11,080.98 for 11 and 12% returns on investment, respectively, and then further divides these numbers by 12 to get the monthly rent increase it seeks: $923.41 for a 12% return on investment and $807.88 to get an 11% return on investment (*Id.*)

Youngstown offered multiple other witnesses, all of whom testified as to appropriate rates of return. Ronald Ubaldi, Matthew Davies, and Brochton Kaveny, all mobilehome park investors in California, testified that they expected returns of between 12 and 20%. (Hearing, Jan. 17, 2024, Ubaldi and Kaveny Testimony). Specifically, Mr. Ubaldi testified that he expects an Internal Rate of Return (IRR) of between 12 and 20% and that his mobilehome parks have generated returns in the 10 and 20% range (*Id.*) Mr. Davies testified that he would not invest in a mobilehome park without a minimum cash-on-cash return (equity dividend rate of return) of 20%, and that his California mobilehome parks have produced returns in the 20-25% range (Hearing, Jan. 17, 2024, Davies Testimony). Mr. Kaveny testified that he expects an annual return of 12-20% and that, generally, he has received a return in this range (Hearing, Jan. 17, 2024, Kaveny Testimony). Youngstown's owner, Daniel Weisfield, testified that he expects an annual IRR of between 14 and 18% (Hearing, Jan. 17, 2024, Weisfield Testimony).[21] Two other experts offered by Youngstown, Dr. Babek Somekh and Dr. Edward Coulson, both economics professors, testified that a return on investment should be in the 12-20% range (Dr. Somekh), and an IRR should be between 14 and 16% (Dr. Coulson) (Hearing, Jan. 18, 2024, Somekh Testimony and Coulson Testimony).

Youngstown argues that all this testimony combined shows that "determining a required rate of return for the Youngstown investment is not hypothetical or speculative." (Youngstown Closing Brief at 24).

Youngstown cites two cases in support of the use of a fair return on investment methodology: *Duquesne Light Co. v. Barasch* (1989) 488 U.S. 299 (*Duquesne Light*) and *Palomar Mobilehome Park Assn. v. Mobile Home Rent Review Comm'n* (1993) 16 Cal.App.4th 483 (*Palomar*).[22] While both discuss return on investment as a valid methodology generally, neither mandates the use of this approach.

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[21] Mr. Weisfield testified that Youngstown made projections regarding its expected rate of return prior to its purchase of Youngstown, but that there are no formal documents regarding those projections (Hearing, Jan. 17, 2024, Weisfield Testimony; *see also* Hearing, Jan. 18, 2024, Johnson Testimony (Weisfield would "certainly" have a model at time of purchase to determine discount rate, equity dividend rate and IRR); and Hearing, Jan. 17, 2024, Eid Testimony (he was not provided with any projections or stated expected rate of return by Mr. Weisfield)).

[22] Other courts have also approved a return on investment methodology. See *Cotati Alliance for Better Housing v. City of Cotati* (1983) 148 Cal.App.3d 280, 286-288 (approving return on investment approach, where "investment" was defined an initial cash outlay plus payments toward principal and value of any subsequent improvements); *Palos Verdes Shores Mobile Estates, Ltd. v. City of Los Angeles* (1983) 142 Cal.App.3d 362, 371 (upholding a maintenance of profit approach enabling the landlord to maintain same net profit as obtained in the last unregulated

Duquesne Light is a utility rate-making case. As in the California cases dealing with fair rate of return in the rent control context, the case focuses on the result and not the methodology used. Citing *FPC v. Hope Natural Gas Co.* (1944) 320 U. S. 591, the court in *Duquesne Light* states, "[i]t is not theory, but the impact, of the rate order which counts. If the total effect of the rate order cannot be said to be unreasonable, judicial inquiry . . . is at an end. The fact that the method employed to reach that result may contain infirmities is not then important." 488 U.S. 299 at 310, citing *Hope Natural Gas, supra,* at 602. In *Palomar*, the court reviewed the City and lower court's rejection of the park owner's sought after rent increase, and rejected a "return on value" standard, but found that a return on investment approach was acceptable, but did not mandate its use (*Palomar*, 16 Cal.App.4th at 485).

In *Colony Cove Properties, LLC v. City of Carson, supra,* the court rejected the use of an investment rate of return methodology similar to that set forth by Park Owner in this case. Like Petaluma, the city of Carson had a multi-factor test to evaluate a park owner's request for a rent increase in excess of the CPI. *Colony Cove, supra*, at 847. And like in this case, the park owner's experts put forth a return on investment methodology to determine a fair rate of return;[23] the rent control board rejected the return on investment methodology and adopted the MNOI methodology. This was upheld first by the trial court and then by the court of appeal. The court in *Colony Cove* rejected the rate of return developed by Mr. Neet in that case, stating that his reliance on the investor survey from RealtyRates.com "represented an attempt to manufacture a required rate of return using questionable assumptions," and finding that the higher rate of return in the survey was not applicable "because it included a component for anticipated appreciation and was not limited to rent-controlled parks." (*Id.* at 872). The court rejected Mr. Neet's application of the higher rate of return to the ratio of the NOI to purchase price (the capitalization rate), finding that comparing rates of return that include appreciation with capitalization rates was "like comparing apples and oranges." *Id.* at 872, quoting *Los Altos El Granada Investors v. City of Capitola* (2006) 139 Cal.app.4th 629, 640. The court noted that rent-controlled mobilehome parks cannot be expected to return more than non-rent controlled parks—noting that the "opposite should be expected to occur." *Colony Cove, supra,* at 872, citing *Galland, supra,* at 1026-27. In rejecting the analysis by the Park Owner, the court in *Colony Cove* found as follows:

> The end result of Neet's calculations was a figure for a rate of return that represented a ratio between the Park's net operating income and its purchase price– in other words, its capitalization rate. But the Board had no reason to rely on Neet's

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year); *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 686 (in a facial challenge to the Berkeley rent control ordinance, the Court held that an investment-based standard can be applied constitutionally even though it results in lower revenues than a value-based standard). Youngstown did not discuss these cases in support of its return on investment methodology.

[23] As in this case, Mr. Neet prepared an expert report in the *Colony Cove* case. In it, he used the RealtyRates.com investor survey, which indicated discount rate requirements in the range of 8.52% to 12.44%, with an average of 9.87% in his report. Mr. Neet asserted that based on the RealtyRates.com survey, the park owner of Colony Cove was entitled to a 9% per year return on its investment. He then applied that rate to the circumstances of the park owner in that case (what Mr. Eid did in this case), determining that the park owner had an income shortfall of $1.769 million, requiring an increase in rents of $365 per space per month. As in this case, Mr. Neet also determined that an equity return rate of 11.5% was appropriate, and when debt was taken into account, determined that the owner needed to raise rents by $327 per month per space. *Colony Cove, supra,* at 851). The court identified Mr. Neet's analysis as a "return on investment analysis." (*Id.* at 852, FN 11).

> contorted analysis when it had before it evidence, based on actual sales, showing that a capitalization rate of 4.75 percent was acceptable to investors and about average for comparable mobilehome parks.
> *Colony Cove, supra,* at 872.

In his report, Dr. Baar cites the *Colony Cove* case, and states that "[t]he problem with selecting a rate of return on investment is that acceptable rates of return on mobilehome park investments are largely dependent on interest rates, the rates of return available from alternate investments and expectations about appreciation, all of which are in constant flux." (RESIDENTS 173; *see also* RESIDENTS 170, and Hearing, Jan. 24, 2024, Baar Testimony (return on investment methodology is circular); see also *Palomar, supra,* at 489 (stating that appreciation is variable, and "the greater the anticipated appreciation, the lower the rate of return which investors will demand.")). As stated by Dr. Baar, "[i]n the face of these realities, the selection of a rate becomes a highly discretionary undertaking." (RESIDENTS 173).[24]

The discretionary nature of this undertaking is borne out by the testimony of Youngstown's other witnesses. Mr. Ubaldi, Mr. Davies, and Mr. Kaveny, all mobilehome park investors in California, generally testified that they expected returns of between 10 and 20% (Hearing, Jan. 17, 2024, Ubaldi, Davies, and Kaveny Testimony). However, it is unknown what kind of leverage these investors usually have, what interest rates they have on any loans, or whether they are including appreciation, all of which affect both the expected and actual rates of return. This was illustrated by Mr. Davies' testimony. He testified that he purchased the Twin Oaks Mobile Home Park for about $6.2 million and was getting about a 15% rate of return on his investment. He testified that after about 15 months, he pulled out $5.2 million from the investment, and is now earning a 28% equity or cash-on-cash rate of return (Hearing, Jan. 17, 2024, Davies Testimony). This testimony supports Mr. Eid's testimony that he would not use a cash-on-cash rate of return because it is "investor specific." (Hearing, Jan. 17, 2024, Eid Testimony).

Dr. Somekh and Dr. Coulson testified that rates of return should be in the 12-20% range (Hearing, Jan. 18, 2024, Somekh Testimony and Coulson Testimony). But like Mr. Eid, Dr. Coulson testified that the rate of return is a "psychological metric," and that every investor will have a different risk tolerance when making an investment (Hearing, Jan. 18, 2024, Coulson Testimony).[25] Mr. Neet also testified that a return on investment rate can vary from investor to investor because of differences in investments (Hearing, Feb. 2, 2024, Neet Rebuttal Testimony). Dr. Somekh testified that expected rates of return are directly related to interest rates, and when interest rates go up, expected rates of return go up (Hearing, Jan. 18, 2024, Somekh Testimony).

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[24] Here, Youngstown argues that *Colony Cove* and other cases cited by Affected Tenants do not apply here because none were decided under the Petaluma Ordinance. While this is of course true, the Arbitrator must be guided by applicable precedent and industry standards, and finds *Colony Cove* instructive. Youngstown does not cite any precedent that embraces the use of the return on investment methodology that Youngstown has applied in this case.

[25] Mr. Coulson testified that he was not that familiar with mobilehome parks and that this was his first testimony in a hearing related to mobilehome parks. He testified that he "would imagine" that mobilehome parks are a more risky investment than real estate generally (Hearing, Jan. 18, 2024, Coulson Testimony).

Moreover, there was no testimony that the opinions of Youngstown's witnesses related to the appropriate rate of return were limited to rent-controlled investments (*See Colony Cove, supra,* at 872, *citing Galland, supra,* at 1026-27 (rent-controlled mobilehome parks cannot be expected to return more than non-rent-controlled parks—noting that the "opposite should be expected to occur")). Rather than make the required rate of return for the Youngstown investment less "hypothetical or speculative," as Youngstown argues, the testimony of Mr. Ubaldi, Mr. Davies, Mr. Kaveny, Dr. Somekh, and Dr. Coulson adds ambiguity and creates unanswered questions. Which percentage should you choose? What seems fair? What do different investors want or demand?

The Arbitrator finds that Youngstown's return on investment methodology suffers from similar problems to that rejected in *Colony Cove* and is not supported by case law. For these reasons, the Arbitrator will not adopt a return on investment methodology urged by Youngstown here.

D. Income Related Analysis Using 2020 Base Year and Maintenance of Net Operating Income, "MNOI" using 1993 Base Year[26]

In contrast to the return on investment approach, multiple courts have adopted a Maintenance of Net Operating Income (MNOI) approach, finding it a reasonable method of determining "fair return." See *Rainbow Disposal v. Mobilehome Park Rental Review Board* (1998) 64 Cal.App.4th 1159, 1172 (concluding the MNOI formula is a "fairly constructed formula" which provides a "just and reasonable return"); *Oceanside Mobilehome Park Owners' Ass'n v. City of Oceanside, supra,* at 902-905 (finding MNOI standard reasonable because it allowed an owner to maintain prior levels of profit); *Palomar Mobilehome Park Ass'n, supra,* at 486 ("the [MNOI] approach has been praised by commentators for both its fairness and ease of administration.") As stated by the court in *Colony Cove, supra,* at 870 "the MNOI approach has been upheld by every court to have considered it."

Perhaps recognizing the unestablished nature of its favored return on investment methodology, Youngstown offers alternative income related analyses using both 2020 as a base year and 1993[27] as a base year, both prepared by Mr. Eid (*See* OWNER 298, 1792). Mr. Eid testified that he prepared these income related analyses to show that under any methodology, Youngstown is not earning a fair return (Hearing, Jan. 17, 2024, Eid Testimony; *see also* Hearing, Jan.17, 2024, Weisfield Testimony). A decrease in "net operating income" is one of the factors set forth in Section 6.50.100(H) of the Amended Ordinance.

In his income related analysis using 2020 as a base year, Mr. Eid concludes that Youngstown is entitled to a monthly increase per space of $634.12 (OWNER 298). In this analysis, Mr. Eid starts with 2020 NOI at $584,276, adds a Vega Adjustment of $60 per space

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[26] Youngstown's MNOI analysis, using a 1993 base year, and its Income Analysis using a 2020 base year are collectively referred to as "Income Related Analyses."

[27] Choosing 1993 as a base year is a true MNOI analysis since the income netted by the prior park owner was *before* the imposition of rent control in 1994. Choosing 2020 as a base year is simply an income-based analysis and not a MNOI analysis.

per month, for a total 2020 NOI of $730,102 (*Id.*) Adjusting the 2020 NOI for inflation for the years 2021 and 2022 (CPI of 3.2% in 2021 and 6.8% in 2022), Mr. Eid reports that Youngstown should be earning a NOI in 2022 of $804,701. Using income and expense calculations, including deductions for appreciation, Mr. Eid reports that Youngstown's actual NOI in 2022 was just $20,934 (OWNER 298, 301 (Ex. 2 to Eid Report)). Thus, he reports a shortfall of $783,766 ($804,701 - $20,934 = $783,766), divides this shortfall by 103 (the number of spaces) to get an annual shortfall per space of $7,609.38, and then divides that annual per space shortfall by 12 to get the monthly per space shortfall of $634.12 (OWNER 298, 301). [28]

In his MNOI analysis, using 1993 as a base year, Mr. Eid concludes that Youngstown is entitled to a monthly increase per space of $536.61 (OWNER 298).[29] In this analysis, Mr. Eid starts with the 1993 NOI at $261,866, less deprecation of $9,846 (2.5% of revenue), adds back in $41,902 for the 1993 property tax expense, and adds a Vega Adjustment of $60 per space per month totaling $73,440, for a total 1993 NOI of $367,362 (OWNER 318). Adjusting the 1993 NOI for inflation for the years from 1993 to 2022 (CPI percent increase of 126.2%) of $463,764, Mr. Eid reports that Youngstown should be earning a NOI in 2022 of $684,186 ($367,362 + $463,764 = $831,127, less property taxes of $146,941 = $684,186) (OWNER 318). Using income and expense calculations, including deductions for appreciation, Mr. Eid reports that Youngstown's actual NOI in 2022 was just $20,934 (OWNER 298, 301 (Ex. 2 to Eid Report), 318). Thus, he reports a shortfall of $663,251 ($684,186 - $20,934 = $663,251), divides this shortfall by 103 (the number of spaces), and again by 12 (months in a year) to get the monthly per-space shortfall of $536.61[30] (OWNER 298, 318).

Mr. Eid also does a NOI analysis using 2020 as a base year, without accounting for depreciation and adding back in reserves, concluding that Youngstown is entitled to a monthly increase per space of $297.21 (OWNER 1792; Hearing, Jan. 17, 2024, Eid Testimony). His calculations for this exhibit are similar to those in his original report. He starts with a 2020 NOI at $661,420, adds a Vega Adjustment of $145,826 for an adjusted 2020 base year NOI of $807,246 (OWNER 1792). Adjusting the 2020 NOI for inflation for the years of 2021 and 2022 (CPI of 3.2% in 2021 and 6.8% in 2022), Mr. Eid reports that Youngstown should be earning a NOI in 2022 of $889,728 (*Id.*) Using income and expense calculations, without depreciation, Mr. Eid reports that Youngstown's actual NOI in 2022 was $522,373 (OWNER 1792). Thus, he reports a shortfall of $367,355 ($889,728 - $522,373 = $367,355), divides this shortfall by 103 (the number of spaces) to get an annual shortfall per space of $3,566.55, and then divides that

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[28] Youngstown argues that debt service costs of $103.56 per space per month should be added to the $634.12 per space per month amount, for a total increase of $737.68 per space per month under its NOI analysis with the 2020 base year. Consideration of debt service is discussed *infra.*

[29] Mr. Eid testified that 1993 is the "traditional base year" in a MNOI analysis since 1993 was the last year before mobilehome parks in Petaluma were subject to rent control (Hearing, Jan. 17, 2024, Eid Testimony). He used Dr. Kenneth's Baar's numbers for 1993, but testified that the operating expenses and NOI in 1993 are speculative (Hearing, Jan. 17, 2024, Eid Testimony).

[30] Youngstown argues that debt service costs of $103.56 per space per month should be added to the $536.61 per space per month amount, for a total increase of $640.17 per space per month under its MNOI analysis. Consideration of debt service is discussed *infra.*

annual per space shortfall by 12 to get the monthly per space shortfall of $297.21 (OWNER 1792).

1. Consideration of Depreciation in Income Related Analyses

In its income related analyses, Youngstown includes depreciation as a factor for 2020, 2021, and 2022 (OWNER 299, 300, 301; and Eid Report, EX 10, OWNER 322-323). In Youngstown's calculations, depreciation decreases Youngstown's NOI by $74,811 in 2020, $598,780 in 2021, and $532,665 in 2022 (OWNER 299, 300, 301). The inclusion of depreciation caused Youngstown's NOI to drop from $584,276 in 2020 to $20,934 in 2022 (Compare OWNERS 299 and 301).

Youngstown's experts maintained that good accounting practices, governed by Generally Accepted Accounting Principles, or GAAP, mandate that depreciation be considered. Mr. Eid testified that depreciation is defined as an operating expense under GAAP, and Mr. Eid, Mr. Johnson, Mr. Chapman, and Dr. Coulson all testified that depreciation should be included in an NOI analysis because it is a real cost of doing business (Hearing, Jan. 17, 2024, Eid Testimony; Jan. 18, 2024, Coulson Testimony and Chapman Testimony).[31]

But the Amended Ordinance expressly excludes depreciation as an operating expense, and it will not be considered by the Arbitrator (Section 6.50.110(D)(2) ("Operating expenses shall not include . . . depreciation").[32] Youngstown did not cite any case authority for the inclusion of depreciation as an operating expense in a rent control context that would support including it here. While it may make sense to include book depreciation in business projections in order to anticipate future expenses, it is not sensible to include such an allowance in a calculation of what rent should be permitted before the expenditure to replace a depreciated asset is actually undertaken.

The Amended Ordinance does allow a park owner to include capital improvements actually undertaken as an operating expense in NOI calculations (Section 6.50.110(C)(10)). Pursuant to Section 6.50.110(C)(10), capital improvements that are actually undertaken, rather than a book entry in anticipation of a future need, are allowable expenses and may be amortized over time. The Amended Ordinance also allows for reserves as an operating expense, "provided that accumulated reserves shall not exceed five percent of gross income" (Section 6.50.110(C)(9)). Mr. Eid testified that in his MNOI calculation, he did not include replacement reserves, which are permitted under the Amended Ordinance, because replacement reserves are a substitute for depreciation, testifying that you need to choose one or the other, and you "wouldn't include both." (Hearing, Jan. 17, 2024, Eid Testimony).

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[31] Affected Tenants' witnesses testified that they have never seen depreciation included in a fair return analysis and Dr. Baar warned that depreciation can be manipulated (Hearing, Jan. 24, 2024, Baar Testimony; Hearing, Feb. 2, 2024, Sargent Testimony).

[32] Mr. Eid admitted that depreciation is excluded as an operating expense under Petaluma's rent control ordinance, stating, "[a]n accountant didn't write this ordinance." (Hearing, Feb. 2, 2024, Eid Rebuttal Testimony).

In his alternate calculation where he includes reserves, Mr. Eid excluded depreciation (OWNER 1792). Mr. Eid testified as to a spreadsheet he created that calculated a fair return based on the change in NOI between 2020 and 2022, without depreciation (Hearing, January 17, 2024, Eid Testimony; OWNER 1792).

Based on the clear language of the Amended Ordinance, the Arbitrator will not consider depreciation in calculating a fair return rent increase.

2. Consideration of Vega Adjustment in Income Related Analyses

Also in its income related analyses, Youngstown includes a "Vega Adjustment." Youngstown argues that the $325 base rent for Youngstown in 1993 was $60 below market. Youngstown increases the base rent from $325 per month to $385, resulting in a gain of $73,440 in NOI for the base year of 1993 (OWNER 318, line D), and $145,826 if 2020 is used as a base year (OWNER 298, 321). An increase in the NOI in the base year results in a corresponding increase in the NOI for the current year necessary to maintain the NOI. Affected Tenants argue that a so-called Vega Adjustment is not warranted here.

In *Vega v. City of West Hollywood* (1990) 223 Cal.App.3d 1342, the Court considered an MNOI fair return analysis starting with a base year rent and stated the "question was whether the base date rents can 'reasonably be deemed to reflect general market conditions.'" *Id.* at 1351, citing *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 169. In *Vega,* the park owner's appraiser "established that on the base rent date the fair market rents for [the subject park] were approximately three times greater than the rents actually charged by the [park owner]." *Id.* at 1347. The record in *Vega* showed that the park owner's last rent increase for some of the units was 15 to 20 years earlier. *Id.* at 1344. The Court concluded that "a property owner must be permitted, pursuant to the principles discussed in *Birkenfeld v. City of Berkeley, supra,* at 169, to start rent calculations with a base date rent similar to other comparable properties." 223 Cal.App.3d at 1352; see also *Kavanau v. Santa Monica Rent Control Board* (1997) 16 Cal.4th 761, 772 (holding same). Thus, the so-called "Vega Adjustment" was born.

In *Concord Communities v. City of Concord* (2001) 91 Cal.App.4th 1410, the court considered a park owner's request for a base year "Vega Adjustment" in an NOI analysis and found one justified. In that case, the ordinance at issue expressly allowed a park owner to rebut the presumption of a fair and reasonable return based on the base year NOI if "the rents charged by the park owner in the Base Year were significantly below the rents for mobilehome spaces in the City with comparable amenities, because of unique or extraordinary circumstances." *Id.* at 1411. In *Concord Communities,* both the expert for the park owner and the expert for the City of Concord agreed that the base year rents were below market based on a comparison with all parks in the city of Concord. *Id.* at 1415. The City's expert had surveyed all of the parks in the City in reaching his opinion. *Id.* at 1410, 1412. The Court concluded that similar to the "peculiar situation" in *Vega,* there were "unique or extraordinary circumstances" that led to the below-market rents, and found a base year adjustment warranted.

Here, Youngstown offered the testimony of MAI Appraiser John Neet in support of a Vega Adjustment. In his analysis, Mr. Neet used data from the Connerly & Associates, Inc.[33] report done in 1993, the year prior to the effective date of the Ordinance. Mr. Neet testified that he started by considering all seven parks in Petaluma, but ultimately only looked at the three parks considered comparable to Youngstown in the "current date analysis": Cottages, Petaluma Estates, and Royal Oaks. Mr. Neet then rejected the Cottages in his base year adjustment analysis, stating that "[r]ental rates in Candlewood [now known as the Cottages] were very low relative to the other mobile home parks in the City in 1993 and were lower than the reported rental rates in Capri Villa and Leisure Lake and similar to Little Woods, all of which are rated as inferior to the 4 parks currently considered as comparable in the current date analysis." (OWNER at 649).

The Connerly Report shows that in 1993, the average monthly rents were $325 month at Youngstown, $345 at Royal Oaks, and $397 at Petaluma Estates (when adjusted for utilities) (OWNER 649). Mr. Neet states that because Petaluma Estates is located adjacent to Youngstown, he gave "greatest consideration" to the monthly rent at Petaluma Estates (*Id.*) He then concludes that a $60 adjustment to Youngstown's base rent is appropriate (*Id.*)

Mr. Neet's testimony and report do not support the Vega Adjustment sought by Youngstown. As argued by Affected Tenants, Mr. Neet essentially relied upon one comparable, Petaluma Estates, to support the $60 Vega Adjustment sought. Unlike the experts in *Concord* and *Vega,* he did not report on the average rents at all parks in Petaluma; instead, he adjusted Youngstown's base rent to make it comparable to one other park, Petaluma Estates. Moreover, his report states that the average rent in 1993 at Royal Oaks of $345 was "21.5% higher than average for the City." (OWNER 649). This suggests that the average space rent at a mobile home park in Petaluma in 1993 was about $283. Youngstown's rent in 1993 was $325—well above that average. Youngstown has failed to establish that Youngstown's rent in 1993 was "substantially below" market rent.

"[T]here is no general constitutional entitlement to base date rents adjusted to market levels." *Apartment Assn. of Great L.A. v. Santa Monica Rent Control Board* (1994) 24 Cal.App.4th 1730, 1736. As stated by the Court in *Apartment Assn. of Greater L.A. v. Santa Monica Rent Control Board, supra,* the courts in *Vega, supra,* and *Birkenfield, supra,* the "landlord's entitlement to an increase in the base rent depended on the existence of circumstances that prevented the base rent from reflecting market conditions." *Apartment Assn. of Greater L.A. v. Santa Monica Rent Control Bd., supra,* at 1736-37.

Here, Youngstown has not established that the base rent of $325 does not "reflect general market conditions," and there is evidence suggesting that Youngstown's 1993 rent does, in fact, reflect market conditions. See *Vega, supra,* at 1351, quoting *Birkenfeld, supra*, at 169; *Apartment Assn. of Greater L.A. v. Santa Monica Rent Control Bd., supra,* at 1735 (quoting same).

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[33] Results of the 1993 Mobile Home Park Survey, Connerly & Associates, Inc., Sacramento, CA November 1993 (Connerly Report).

Therefore, the Arbitrator will not apply a Vega Adjustment in calculating a fair return rent increase.

3. Consideration of Other Operating Expenses[34]

As set forth above, the Amended Ordinance defines Net Operating Income as the gross income of the park less the operating expenses (Section 6.50.110(A)). "Gross Income" is the gross space rents at 100% occupancy, plus "[o]ther income generated as a result of the operation of the park," plus utility revenue (Section 6.50.110(B)(1-3)). Important here, subtracted from Gross Income are:

> Uncollected space rents due to vacancy and bad debts to the extent that the same are beyond the park owner's control. Uncollected space rents in excess of three percent of gross space rent shall be presumed to be unreasonable unless established otherwise to the reasonable satisfaction of the arbitrator based upon the preponderance of the evidence, and shall not be included in computing gross income. Where uncollected space rents must be estimated, the average of the preceding three years experience shall be used.
> (Section 6.50.110(B)(4))

The Amended Ordinance defines "Operating expenses" in Section 6.50.110(C), as including:

1. Real property taxes and assessments.
2. Utility costs to the extent that they are included in space rent.
3. Management expenses including the compensation of administrative personnel, including the value of any mobilehome space offered as part of compensation for such services, reasonable and necessary advertising to ensure occupancy only, legal and accounting services as permitted herein, and other managerial expenses. Management expenses are presumed to be not more than five percent of gross income, unless established otherwise to the reasonable satisfaction of the arbitrator based on the preponderance of the evidence.
4. Normal repair and maintenance expenses for the grounds and common facilities including but not limited to landscaping, cleaning and repair of equipment and facilities.
5. Owner-performed labor in operating and maintaining the park . . . .
6. Operating supplies . . . .
7. Insurance premiums . . . .
8. Other taxes, fees, and permits . . . .

[34] Youngstown calculates its net operating income for both its return on investment methodology and its income related analyses (*See* OWNER 298). The operating expenses discussed in this section are factors in both, but are discussed here because the Arbitrator is not adopting Youngstown's return on investment methodology.

9. Reserves for replacement of long-term improvements or facilities; provided, that accumulated reserves shall not exceed five percent of gross income.

10. Necessary capital improvement costs exceeding existing reserves for replacement. . . . [¶¶]

11. Involuntary refinancing of mortgage or debt principal. A park owner may, under the provision of this subsection, be able to include certain debt service costs as an operating expense. . . . [¶¶]

Excluded from Operating expenses are the following (Section 6.50.110(D)):

1. Debt service expenses, except as provided in subsection C,11 above.
2. Depreciation.
3. Any expense for which the park owner is reimbursed.
4. Attorneys' fees and costs, except printing costs and documentation as required by Section 6.50.050 only, incurred in proceedings before an arbitrator or in connection with the legal proceedings challenging the decision of an arbitrator or the validity of applicability of this chapter.
5. The fees and costs incurred by a mobilehome park owner to prepare, file or pursue a petition for space rent increase in excess of the increase permitted in accordance with Section 6.50.040(A).

The Amended Ordinance also provides that "[a]ll operating expenses must be reasonable," stating:

> Whenever a particular expense exceeds the normal industry or other comparable standard, the park owner shall bear the burden of proving the reasonableness of the expense to the reasonable satisfaction of the arbitrator based upon the preponderance of the evidence. To the extent that an arbitrator finds any such expense to be unreasonable, the arbitrator shall adjust the expense to reflect the normal industry or other comparable standard.
> (Section 6.50.110(E))

Youngstown provided evidence that its operating expenses for 2020 were $359,115, including depreciation in the amount of $74,811 and amortization in the amount of $2,333 (OWNER 299), in 2021 its operating expenses were $987,411, including depreciation in the amount of $598,780, and amortization in the amount of $18,677 (OWNER 300), and in 2022 its operating expenses were $976,928, including depreciation in the amount of $532,665, and amortization in the amount of $18,677 (OWNER 301). Removing depreciation and amortization from Youngstown's claimed operating expenses results in operating expenses of $281,971 in 2020, $369,954 in 2021, and $425,586 in 2022.

a. Vacancy Losses and Uncollected Rent

Affected Tenants dispute[35] some of the claimed operating expenses.[36] Specifically, Affected Tenants argue that the claim for vacancy losses of $49,507 in 2022 should be excluded and not offset gross rents (*See* Section 6.50.110(B)(4)). Affected Tenants do not dispute that the vacancies occurred, but argue that they are unreasonable under Section 6.50.110(E) (AT Closing Brief at 17). Affected Tenants suggest that the vacancies were, in fact, deliberate, and that by choosing to replace one mobile home at 37 Pamela Drive, Youngstown was able to raise the rent from $693 to $1,400 per month (AT Closing Brief at 18). Affected Tenants also argue that by removing the old mobile home, Youngstown was able to benefit from the sale of a new mobile home in that same space. Affected Tenants argue that the outcomes of other vacancies now claimed by Youngstown similarly benefitted Youngstown financially, stating that when vacancies occurred, "new mobile homes were marketed for a substantial profit." (AT Closing Brief at 18). Affected Tenants offered a chart prepared by Dr. Baar purporting to show the increase in rents for all vacancies claimed by Youngstown (RESIDENTS 319). Dr. Baar's chart does not invalidate losses due to vacancies.

The Ordinance provides that "[u]ncollected space rents in excess of three percent of gross space rent shall be presumed to be unreasonable . . . ." (Section 6.50.110(B)(4)). Youngstown admits that it had a 5% vacancy rate in 2022, but explains that "one space (7BD) was not existing in the Park until 2023, and it constitutes 1.4% of the 5% in 2022," arguing that both gross rent from that space, as well as the vacancy—uncollected rent—should be removed and thus not count as part of the 5% (Hearing, Jan. 17, 2024, Eid Testimony and Weisfield Testimony; *see also* Hearing, Feb. 2, 2024, Eid Rebuttal Testimony). Youngstown argues that another space (37 PD) constitutes 1.3% of the 5% and should similarly be removed (Youngstown Closing Brief at 55). Mr. Eid and Mr. Weisfield both testified that the resident of this space passed away in July 2021 and that Youngstown bought the unit in August 2021 (Hearing, Jan. 17, 2024, Eid Testimony and Weisfield Testimony). Youngstown explains that "[t]his was an obsolete mobile home, was in disrepair, and was removed. The Park could not obtain a new home due to COVID-era shortages and supply chain issues. The new unit was finally delivered in June 2022. Assembly, installation, and certificate of occupancy were not completed until December 2022." (Youngstown Closing Brief at 55; Hearing, Jan. 17, 2024, Eid Testimony and Weisfield Testimony). This testimony was not disputed.

Affected Tenants also argue that Youngstown's claim for $26,741 in uncollected rents in 2022 is unsupported (OWNER 301), arguing that there was no evidence as to whether or not the uncollected rents could have been recouped by other means (AT Closing Brief at 19). Dr. Baar testified that it is not reasonable to state that these losses are from involuntary vacancies when

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[35] Affected Tenants did not dispute all of Youngstown's claimed operating costs, including increased taxes, increased insurance costs, and management fees (*See* AT Closing Brief at 17-21).

[36] The documents used by Youngstown to support its claim of operating expenses were the subject of discovery requests by Affected Tenants. Affected Tenants raised this issue at the pre-Arbitration meeting on January 4, 2024, subsequently creating a list of "Disputed Discovery Issues." Affected Tenants never brought a motion to compel or anything similar, and thus no further specificity regarding which documents supported which operating expenses was provided prior to the hearing. Affected Tenants' discovery requests and Youngstown's responses are part of the record here.

Park Owner is able to convert the spaces and reap much higher rents (Hearing, Jan. 24, 2024, Baar Testimony; RESIDENTS 319). Mr. Eid testified that there was no data regarding uncollected rents from the prior owner, and that "bottom line, revenue is what it is for each year [2020 and 2022]." (Hearing, Jan. 17. 2024, Eid Testimony).

The Arbitrator finds that based upon the preponderance of the evidence, the uncollected space rents based on vacancies claimed by Youngstown were reasonable, and that the uncollected rents and vacancies are an appropriate offset to gross rental income. The Arbitrator further finds that the weight of the evidence established that the mobile home dealer is a separate business from Youngstown MHP, LLC—the owner of Youngstown. Both Mr. Eid and Mr. Weisfield testified that Youngstown MHP, LLC is not in the business of selling mobile home units (Hearing, Jan. 17, 2024, Eid Testimony and Weisfield Testimony). Therefore, proceeds from the sale(s) of mobile homes are not part of Youngstown's gross income.

b. Utilities

Youngstown claims as a 2022 operating expense $24,699 in uncollected "Utilities – Elec/Gas – Park" expenses (OWNER 301). Affected Tenants argue that this $24,699 is a consequence of Youngstown electing *not* to collect all of the utility reimbursement to which it was entitled from the tenants, and contrast this 2022 amount with the $1,229 uncollected utilities reported in 2020 and $4,612 in 2021 (OWNER 300). Mr. Eid testified that "the park properly records utility income that it gets from the residents as a separate line item from utility costs that are charged to it by the utility companies. The ordinance requires that . . . the costs be netted against the income." (Hearing, Jan. 17, 2024, Eid Testimony).

Mr. Eid's testimony supports the operating expenses claimed for utilities in 2022 and there was nothing presented by Affected Tenants to cast doubt on these 2022 expenses. The Arbitrator finds that the utility expense claimed for 2022 is supported by the testimony of Mr. Eid.

c. Maintenance and Repair Costs

Affected Tenants argue that in discovery responses, Youngstown referred Affected Tenants to 470 pages when asked for documents supporting its claimed maintenance and repair costs claimed as operating expenses (AT Closing Brief at 20). Affected Tenants state that Youngstown "bur[ied] 75 pages of receipts, without any calculations, among 470 pages in its document submission and then wait[ed] until just prior to the hearing to reveal which 75 pages were relevant." (AT Closing Brief at 21). As stated *supra,* FN 36, Affected Tenants brought no motion to compel discovery responses.

Affected Tenants argued that the $64,372 claimed by Youngstown in 2022 for repairs and maintenance must be inflated, and Dr. Baar reduced it to the $37,710 claimed by Youngstown in 2021 (*see* RESIDENTS 318; Hearing, Jan. 24, 2024, Baar Testimony). This reduction is not supported by any evidence.

The Arbitrator finds that the claimed maintenance and repair costs are supported by the record.

4. Consideration Of Debt Service

Youngstown also seeks a rent adjustment of $103.56 per space per month for the cost of its debt service that it argues should be added to the rent increase sought based on both the NOI and MNOI analyses (OWNER 298; Youngstown Closing Brief at 44). Youngstown explains that because the original Ordinance is ambiguous regarding whether debt service may be considered in a fair return analysis, its expert, Mr. Eid, did a separate calculation for debt service (*Id.*)

The original Ordinance was ambiguous as to whether the costs of debt service could or should be considered in a fair return analysis. Section 6.50.050(B) required (and still requires in the Amended Ordinance) that in any notice of a rent increase, the park owner include "a summary of the increased cost of the owner's debt service and the date and nature of the sale or refinancing transaction." As stated by Mr. Eid, this provision suggests that debt service may be a part of operating expenses. But Section 6.50.110(C)(11) stated (and still states in the Amended Ordinance) that debt service costs are excluded from operating expenses unless they are the result of an involuntary refinancing or the acquisition of a park prior to April 30, 1994. The Standards of Review in the original Ordinance provided that an arbitrator may consider debt service for purchase money loans if certain conditions are met (including that the transaction was arm's length and debt does not exceed 70% of the total value of the property). (Original Ordinance, Section. 6.50.100(C)). Further, Section 6.50.100(J) of the Standards of Review, provides that the arbitrator may consider any "[o]ther financial information which the owner is willing to provide."

But Section 6.50.100(C) of the Amended Ordinance expressly removed consideration of increased debt costs based on a purchase money loan as a Standard of Review in a fair return analysis unless that increased debt service cost was "used for park improvements or similar park-related uses that are of direct benefit to the tenants, and not merely incurred to fund the owner's purchase or refinancing of the park."[37] This amended section removes debt service costs from consideration as a Standard of Review under the Amended Ordinance.

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[37] The Amended Ordinance changed Section 6.50.100(C)(2), not 6.50.100(C)(1) or (3). Section 6.50.100(C) of the Amended Ordinance now states in its entirety as follows:

> Increased costs of debt service due to a sale or refinancing of the park within twelve months of the increases; provided, that:
>
> 1. The sale or refinancing is found to have been an arm's length transaction;
> 2. The proceeds of such purchase money loan or refinancing are found to have been used for park improvements or similar park-related uses that are of direct benefit to the tenants, and not merely incurred to fund the owner's purchase or refinancing of the park;
> 3. The aggregate amount from which total debt service costs arise constitutes no more than seventy percent of the value of the property as established by a lender's appraisal.

Assuming arguendo that the original Ordinance did apply to this proceeding, the Arbitrator would not consider debt service as a factor to determine the appropriate rate of return. Multiple courts have rejected debt service as a factor that can determine rental rates. The stated rationale behind this is that consideration of debt service would result in an unfair variance in rents depending on the owner's individual financing arrangements. See *Palomar, supra,* at 488; see also *Westwinds Mobile Home Park v. Mobilehome Park Rental Review Bd.* (1994) 30 Cal.App.4th 84, 94 ("reject[ing] the notion that permissible rental rates . . . can vary depending solely on the fortuity of how the acquisition was financed.") The court in *Palomar* provided a useful example, stating:

> Palomar's version of the "historic cost" formula means that an owner's fair return will vary depending on the financing arrangements. Assume two identical parks both purchased at the same time for $1 million each. Park A is purchased for cash; Park B is heavily financed. Under Palomar's approach, calculating return based on total historic cost and treating interest payments as typical business expenses would mean that Park A would show a considerably higher operating income than Park B. Assuming a constant rate of return, the owners of Park B would be entitled to charge higher rents than the owners of Park A. We see no reason why this should be the case.
> (*Palomar, supra,* at 488).

Finally, the report of Youngstown's own expert, Mr. Eid, casts doubt on whether debt service could be considered under the old Ordinance. As stated by Mr. Eid in reviewing the old Ordinance, "these sections [6.50.050(B), 6.50.110(C)(11), and 6.50.100(C)] make it unclear how interest expense is handled in a fair return analysis." (OWNER 293). Nonetheless, Mr. Eid opines that the "arbitrary exclusion" of consideration of debt service costs is flawed, and that "[i]nterest expense represents a real, cash cost of an investment and cannot be ignored." (OWNER 293; *see also* Hearing, Jan. 17, 2024, Eid Testimony).

Based on the pitfalls inherent in the consideration of debt service costs in a fair return analysis, the Arbitrator would not consider debt service as a factor even if the old Ordinance applied. The amendments to Section 6.50.100(C) make it clear that under the facts related to Youngstown's purchase money loan, debt service should not be considered under the Amended Ordinance.

E. Comparable Space Rents in Comparable Parks

Section 6.50.100(G) states that "[e]xisting space rents for comparable spaces in comparable parks" may be considered in evaluating a requested rent increase. As an alternative to its other calculations, Youngstown seeks a rent increase of $482.17 per space per month based

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It was not disputed that the factors set forth in Section 6.50.100(C)(1) or (3) were met by Youngstown financing when it purchased the park in 2020. But Youngstown does not argue that its purchase money loan meets the criteria set forth in the new Section 6.50.100(C)(2).

on this factor (Hearing, Jan. 17, 2024, Eid Testimony, OWNER 294, 298). Both Park Owner and Affected Tenants presented evidence on this factor.

Park Owner submitted the report and testimony of John Neet, MAI. Mr. Neet has expertise in the appraisal of mobile home parks, testifying that over his career he has appraised more than 7,000 mobile home parks (Hearing, Jan. 18, 2024, Neet Testimony). Mr. Neet testified that he surveyed all the mobile home parks in Petaluma, including Youngstown, Petaluma Estates, Capri Mobile Villa, Leisure Lake, Littlewoods Mobile Villa, Royal Oaks, and the Cottages of Petaluma, and found that three of the six other mobile home parks in Petaluma were comparable to Youngstown: Petaluma Estates, Royal Oaks, and the Cottages (Hearing, Jan. 18, 2024, Neet Testimony; Neet Report, OWNER 622-653).

Mr. Neet's Report shows that the average rents are $812 per space per month at Youngstown, $900 per space per month at Petaluma Estates, $850 per space per month at Royal Oaks, and $1,250 per space per month at the Cottages of Petaluma (Neet Report, OWNER 642). At the three parks not considered comparable by Mr. Neet (Capri Mobile Villa, Leisure Lake, Littlewoods Mobile Villa), the average rents were significantly lower, ranging from $575 to $700 per space per month (*Id.*)

In his report, Mr. Neet concludes that the market rental rate for Youngstown is $1,400 per space per month (OWNER 645). Mr. Neet testified that subsequent to the preparation of his report, two new residents moved into non-rent-controlled lots at Youngstown, both with a starting rent of $1,600 per month, and that during the arbitration, a third new resident moved into the park with a rent of $1,863 per month (Hearing, Jan. 18, 2024, Neet Testimony). Mr. Weisfield also testified to the recent rentals at Youngstown for $1,600 and $1,863 of non-rent-controlled spaces, stating that the fair market space rent is "at least $1,600," and that Youngstown does not yet know what the market will bear (Hearing, Jan. 17, 2024, Weisfield Testimony). During the arbitration, and because of the two new rentals in Youngstown, Mr. Neet adjusted his opinion, concluding that a market rental rate for Youngstown of $1,600 per space per month is reasonable (Neet Testimony, Jan. 18, 2024). Mr. Neet testified that he did not consider the latest rental at $1,863 per month in determining the market rent of $1,600 per space per month (Neet Testimony, Jan. 18, 2024). Youngstown also generally cites the testimony of Mr. Johnson and Mr. Coulson in support of an average rent of $1,600 per month per space (Hearing, Jan. 18, 2024, Johnson Testimony). Mr. Johnson testified that he had not visited Youngstown, and was not familiar with Petaluma's rent control ordinance, but that it was "pretty obvious" that Youngstown is an above average park, and if similar parks are getting $1,800 per space per month, then Youngstown should get the same (Hearing, Jan. 18, 2024, Johnson Testimony; *see also* Hearing, Jan. 18, 2024, Chapman (Youngstown is a Class A Park, and he does not need to visit to determine that—no "boots on the ground" are necessary)).

Youngstown argues that Mr. Neet's appraisal and his analysis of comparable space rents at three other parks support the conclusion that rents in the range of $1,600 and $1,863 are reasonable and would provide Youngstown with a fair return. Youngstown argues that Mr. Neet's appraisal report supports the $923.41 rent increase sought by the Park Owner, noting that this increase would make average rents at Youngstown $1,735.97—within the $1,600-$1,863 range (Youngstown Closing Brief at 49). Mr. Eid also did a market rent adjustment calculation

under this factor of the Ordinance, taking the average rents at Youngstown as of July 1, 2023, and subtracting that from the $1,400 market rent according to Mr. Neet's report, and finding a difference of $482.17 per space per month (Hearing, Jan. 17, 2024, Eid Testimony, OWNER 294, 298). Youngstown offers this $482.17 per space per month as an alternative to the other rent increases.

Affected Tenants offered testimony from Ms. Bell, Mr. Sargent, and various Youngstown tenants to support their argument that the Cottages is not comparable to Youngstown, and that Youngstown's rent is appropriate when compared to truly comparable parks in Petaluma.

Mr. Sargent,[38] a commercial real estate broker specializing in mobilehome parks, testified that he last inspected Youngstown in September 2023 (Hearing, Feb. 2, 2024, Sargent Testimony). He agreed that Petaluma Estates and Royal Oaks were comparable to Youngstown (Hearing, Sargent Testimony, Feb. 2, 2024, and RESIDENTS 78). However, he testified that the Cottages was not comparable, opining that its physical condition is "clearly superior" to Youngstown with larger home sites, superior amenities (including the clubhouse), newer homes, and more attractive and spacious landscaping" (RESIDENTS 78; Hearing, Feb. 2, 2024, Sargent Testimony). He testified that Youngstown is next to a livestock auction barn, a PG&E facility, and a railroad track; thus, residents experience smells from the livestock and noise from freight trains and the PG&E facility (Hearing, Sargent Testimony, Feb. 2, 2024, RESIDENTS 78).

Other witnesses provided similar testimony regarding the location and conditions at Youngstown. Mary Ruppenthal is a longtime resident of Youngstown, having lived there since 1987 (Hearing, Feb. 2, 2024, Ruppenthal Testimony). She testified that Youngstown is bordered on three sides by non-residential development (Hearing, Feb. 2, 2024, Ruppenthal Testimony). She testified that Youngstown is bordered on one side by the highway, on two other sides by a PG&E plant and auto repair shop, and that across the freeway is a livestock auction house (*Id.*) She testified regarding the loud noises from the PG&E plant and the freeway, and the smell from the auction house, especially during the summer (*Id.*) Kay Poland provided similar testimony regarding the property surrounding Youngstown, the noise, and the odor (Hearing, Feb. 2, 2024, Poland Testimony; *see also* Hearing, Feb. 2, 2024, Lemos testimony regarding storage of dead animals at auction house). An aerial photograph of Youngstown confirms that the park is bordered by non-residential development (OWNER 374). Mr. Neet also confirmed that Youngstown is bordered by non-residential uses and that a livestock auction house is across the freeway (Hearing, Jan. 18, 2024, Neet Testimony).

Terry Bell,[39] a licensed real estate salesperson, testified that 80% of her business has been showing and selling mobilehomes in Sonoma County (Hearing, Feb. 2, 2024, Bell Testimony).

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[38] Youngstown argues that Mr. Sargent's testimony is not credible because he is not a licensed appraiser "and clearly has a conflict of interest" as lower park values are highly desirable to his resident park purchasers (Youngstown Closing Brief at 51). Mr. Sargent's testimony is not that of a licensed appraiser, but a commercial real estate broker and will be considered to the extent relevant (*See* Section 6.50.060(G)(2), giving the arbitrator discretion to relax rules set forth under the Administrative Procedures Act, Govt Code section 11513 "in the interests of justice.")

[39] Ms. Bell's testimony and report were the subject of a Motion in Limine by Youngstown. In response to that motion, Affected Tenants clarified that they did not intend to offer Ms. Bell's testimony as an appraiser, "but rather as an experienced realtor who is familiar with the Petaluma mobilehome parks and market." Affected Tenants

Unlike Youngstown's witnesses who testified regarding comparability, Ms. Bell testified that she has physically been in the Cottages five times and at Youngstown seven to ten times (Hearing, Feb. 2, 2024, Bell Testimony). She testified that the Cottages is an outlier and in a class of its own, and more of an "upscale retirement community with newer homes," and not comparable to Youngstown (*Id.* and RESIDENTS 232).

Section 6.50.100(G) of the Amended Ordinance (like the original Ordinance) provides that the arbitrator may consider "[e]xisting space rents for comparable spaces in comparable parks." Under this section, it is the existing spaces, subject to rent regulation, which are the proper subject of comparison, and not market rents that could be charged in the absence of regulation. Mr. Neet's analysis and conclusion are based on "market rents," which he defined as rates people are willing to negotiate and pay with the ability to walk away, "completely unrestricted" (Hearing, Jan. 18, 2024, Neet Testimony). He defined "prevailing rents" as "existing rents" and said that prevailing rents are not a particularly useful measure (*Id.*) Distinguishing rent-controlled spaces from non-rent-controlled spaces, he testified that "rent control is the very antithesis of market rent" (*Id.*) While the $1,600 and $1,863 per space per month may be market rents, they are not *comparable* to rent-controlled spaces under the Amended Ordinance and will not be considered.[40]

All witnesses agreed that Petaluma Estates and Royal Oaks were comparable to Youngstown. Existing rents at Petaluma Estates and Royal Oaks are $900 and $850 per space per month, respectively, while the average per space per month rent at Youngstown is $812 (Neet Report, OWNER 642). The weight of the evidence shows that the Cottages is not comparable to Youngstown, and it will not be considered.

The rents at Petaluma Estates and Royal Oaks support a relatively modest increase in monthly rent at Youngstown as discussed below.

F. Physical Condition of the Park and Quantity and Quality of Maintenance and Repairs Performed During the Preceding Twelve Months and Beneficial Increases in Maintenance and Operating Expenses

As set forth above, the Amended Ordinance states that the arbitrator may consider "[t]he physical condition of the mobilehome space or park of which it is a part, including the quantity

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offered her testimony on (1) the qualitative differences between the mobilehome parks within Petaluma with which she is familiar, and which parks are most comparable to Youngstown based upon location and surrounding area, physical condition, density, amenities, age and type of homes, age restrictions for residents, and the market being targeted in park advertising; (2) the qualitative differences between the Cottages and Youngstown, and (3) Mobilehome Sales listings in Petaluma parks during 2023, showing average space rents for active listings during that time (Affected Tenants' Response to Applicant's Motion in Limine No. 3, at p. 2). The motion was denied, and Ms. Bell's testimony was allowed but limited to the purposes articulated by Affected Tenants. She was not offered as a licensed appraiser, but as a realtor with extensive experience in the mobilehome market in Sonoma County (*See* Section 6.50.060(G)(2), giving the arbitrator discretion to relax rules set forth under the Administrative Procedures Act, Govt Code section 11513 "in the interests of justice.")

[40] Affected Tenants presented witness testimony suggesting that the $1,600 and $1,863 rents were not freely negotiated (*see, e.g.,* Hearing, Jan. 24, 2024, Tortora Testimony). The Arbitrator is not considering this testimony as these rents are not "comparable," even if freely negotiated.

and quality of maintenance and repairs performed during the preceding twelve months." (Section 6.50.100(E)) .

Mr. Weisfield testified regarding beneficial improvements to park maintenance since Youngstown purchased the park in 2020 (Hearing, Jan. 17, 2024, Weisfield Testimony). He testified that since owning the park, Youngstown has improved the landscaping, the pool, paving, and performed tree trimming, weed abatement, and pest control, and installed decorative fencing (*Id.*) He testified that costs for these improvements were more than $50,000 (*Id., citing* OWNERS 1574-1580 and 1598-1673).

Affected Tenants provided the testimony of Ms. Ruppenthal and Ms. Poland in response. They testified that the park is not well maintained, there are lots of cracks in the paving, and crumbling roadways near the gutters (Hearing, Feb. 2, 2024, Ruppenthal Testimony and Poland Testimony). Ms. Ruppenthal testified that the guest parking area is in a state of disrepair, and Ms. Poland and Ms. Ruppenthal testified that the landscaping is not well maintained (Hearing, Feb. 2, 2024, Ruppenthal Testimony and Poland Testimony). Ms. Ruppenthal and Ms. Poland also testified to stumps left after tree removal, and a greenbelt with broken sprinklers (Hearing, Feb. 2, 2024, Ruppenthal Testimony and Poland Testimony). Ms. Ruppenthal testified that the walkways are in a state of disrepair, and both stated they are a tripping hazard (*Id.*) Both residents also testified that the speed bumps installed by Youngstown are uneven, are starting to disintegrate, and are hard to maneuver with a wheelchair (*Id.*) They also testified to a feral cat problem, poor maintenance of the pool, and a "musty" smelling clubhouse (*Id.*) Both admitted on cross-examination that they have never put their complaints in writing and did not know when the trees were removed, leaving tree stumps (*Id.*)

Affected Tenants offered photographs taken by Ms. Poland of the uneven and cracked walkways, dead grass, and stumps, as well as the businesses that surround the park on three sides, including the auction house, PG&E yard, and auto repair shop (RESIDENTS 289-306). Ms. Poland testified that Youngstown resurfaced the RV parking area at the park and repaired the pool, but testified that the RV parking area does not benefit Affected Tenants (Hearing, Feb. 2, 2024, Poland Testimony).

The Arbitrator has considered Affected Tenants' evidence, but finds that it does not negate the operating expenses claimed by Youngstown.

G. Rental History of Youngstown

The Standards of Review set forth in the Amended Ordinance include "[t]he rental history of the space or the park of which it is a part, including: (1) The presence or absence of past increases; (2) The frequency of past rent increases; [and] (3) The occupancy rate of the park in comparison to comparable parks in the same general area." (Section 6.50.100(D)).

The evidence showed that the prior owner of Youngstown never sought a fair return hearing, but instead increased rents based on the CPI throughout its years of ownership (Hearing, Jan. 17, 2024, Weisfield Testimony). Youngstown argues here, as they did regarding the Vega Adjustment, that the rents at Youngstown are below market

and need to be increased. They note that Youngstown is 100% occupied, which is evidence of its desirability, and state that unless rents are increased, the park will not be maintained, and will become less desirable (Youngstown Closing Brief at 46, 47).

The Arbitrator has considered this factor in this award.

H. What Rent Increase Should Be Granted?

So, in accordance with the above, what increase, if any, is necessary to give Youngstown a fair rate of return under the purposes of the Amended Ordinance and the law?

Using factors set forth in Mr. Eid's report, and as adjusted by the above findings, the Arbitrator has conducted an income analysis using both 2020 as a base year and 1993 as a base year.

Income Analysis Using 1993 as Base Year with Reserves	
1993 NOI: [41]	$261,866
(Without depreciation, amortization, Vega Adjustment, or added property taxes)	
1993 NOI adjusted for inflation:	$592,341
(Inflation factor – 126.2%)	
2022 Actual NOI (without depreciation and amortization): [42]	$572,266
Reserves[43]:	($49,893)
2022 Actual NOI with reserves:	$522,373
Shortfall[44]:	$69,968
Annual rent increase per space (divided by 103):	$679
Per month per space increase (divided by 12):	$ 57
Income Analysis Using 1993 as Base Year without Reserves	
1993 NOI:	$261,866
(without depreciation, amortization, Vega Adjustment, or added property taxes)[45]	

[41] 1993 NOI from Baar Report dated 12/29/21 (OWNER 318). The Arbitrator is unaware of the gross rents for the Youngstown property in 1993 and therefore cannot compute reserves at 5% of that number.

[42] $20,934 + $532,665 (depreciation) + $18,667 (amortization) = $572,266 (*See* OWNER 298, 301).

[43] $20,934 + $532,665 (depreciation) + $18,667 (amortization) - $49,893 (reserves) = $522,373 (*See* OWNER 298, 301; Hearing, Jan. 17, 2024, Eid Testimony). Reserves are calculated as 5% of rents ($997,862 x 0.05 = $49,893) (OWNER 301, Hearing, Jan. 17, 2024, Eid Testimony).

Affected Tenants do not dispute that reserves are allowed under the Amended Ordinance (Section 6.50.110(C)(9)), but argue that there is no evidence that any funds have been placed in a reserve account. Because the Ordinance allows for reserves and depreciation, and amortization is not being included here, the Arbitrator calculated the numbers using the 5% reserve where possible.

[44] $592,341 - $522,373 = $69,968

[45] Mr. Eid added $41,902 to 1993 income for property taxes (OWNER 318). This adjustment is not adopted by the Arbitrator. NOI, as defined by the ordinance, is gross rent, minus expenses, including property taxes, and makes no

1993 NOI adjusted for inflation: (Inflation factor – 126.2%)	$592,341
2022 NOI adjusted for inflation:	$592,341
2022 Actual NOI: (without depreciation and amortization)	$572,266
Shortfall[46]:	$20,075
Annual rent increase per space (divided by 103):	$ 195
Per month per space increase (divided by 12):	$ 16
Income Analysis Using 2020 as Base Year with Reserves	
2020 NOI (without depreciation, amortization, or Vega Adjustment)[47]:	$661,420
Reserves[48]:	($47,170)
2020 NOI with reserves:	$614,251
2020 NOI adjusted for inflation: (2021 3.2% CPI, 2022 6.8% CPI)	$677,012
2022 Actual NOI (without depreciation and amortization)[49]:	$572,266
Reserves:	($49,893)
2022 Actual NOI with reserves:	$522,373
Shortfall[50]:	$154,639
Annual rent increase per space (divided by 103):	$1,501
Per month per space increase (divided by 12):	$125
Income Analysis Using 2020 as Base Year without Reserves	
2020 NOI (without depreciation, amortization or Vega Adjustment):	$661,420
2020 NOI adjusted for inflation: (2021 3.2% CPI, 2022 6.8% CPI)	$729,001
2022 Actual NOI (without depreciation and amortization)[51]:	$572,266
Shortfall:	$156,735
Annual rent increase per space (divided by 103):	$1,522
Per month per space increase (divided by 12):	$127

provision for adding property taxes back in (Section 6.50.110(A) and (C); *see also* Hearing, Jan. 24, 2024, Baar Testimony regarding 1993 property tax).

[46] $592,341 - $572,266 = $20,075

[47] $584,276 + $74,811 (depreciation) + $2,333 (amortization) = $661,420 (*See* OWNER 298, 299).

[48] Reserves are calculated as 5% of rents ($943,390 x 0.05 = $47,170) (*See* OWNER 299).

[49] $20,934 + $532,665 (depreciation) + $18,667 (amortization) - = $572,266 (*See* OWNER 298, 301).

[50] $677,012 - $522,373 = $154,639.

[51] $20,934 + $532,665 (depreciation) + $18,667 (amortization) = $572,266 (*See* OWNER 298, 301).

This analysis, using numbers in Mr. Eid's report as adjusted, suggests a rent increase between $16 per space per month and $127 per space per month is appropriate for Youngstown to maintain net operating income. But if the 2022 actual NOI is $522,373 (including reserves), then the capitalization rate is just 3.7% (522,373/14,280,054 = 0.0366). If the 2022 actual NOI is $572,266 (with no reserves), then the capitalization rate is 4.0% (572,266/14,280,054 = 0.0401).

Testimony and documents presented by Affected Tenants' witnesses showed that capitalization rates (Cap Rates) on recent sales of mobile home parks in California average 5.03%, not 4% or less (RESIDENTS 317).[52] Multiple witnesses testified that the "Cap Rate" is defined as the NOI divided by the purchase price (*See, e.g.,* Hearing, Jan. 24, 2024, Haskins Testimony; RESIDENTS 315). Affected Tenants urged the Arbitrator to use a Cap Rate in the fair return analysis (*See* Hearing, Jan. 24, 2024, Baar Testimony (testifying that if a percentage return on investment is used, it should be the Cap Rate); Testimony, Jan. 24, 2024, Haskins Testimony (testifying that Cap Rates are essential to determining a fair rate of return)). Ms. Haskins testified that, in contrast to other yield rates relied upon by Youngstown, Cap Rates are not easy to manipulate, do not depend on interest rates, and are not investor-specific (*Id.*) She also testified that Cap Rates illustrate "the rate of return that the buyer was willing to accept when he purchased the property." (*Id.*)

Multiple witnesses for Youngstown testified that they do not rely on Cap Rates as a rate of return, and Youngstown's experts testified that a capitalization rate is not a yield rate, so Cap Rates should not be used in a fair return analysis (*See* Hearing, Jan. 17, 2024, Ubaldi Testimony; Kaveny Testimony; Davies Testimony; and Hearing, Jan. 18, 2024, Chapman Testimony). Mr. Davies testified that he uses the Cap Rate as a comparison, but not as an expected rate of return (Hearing, Jan. 17, 2024, Davies Testimony (cap rate is "pretty useful" as a "snapshot . . . a point in time" telling you "how much income the park is generating relative to the purchase price")).

But as set forth above, the Arbitrator will not adopt Youngstown's return on investment methodology using discount rates, equity dividend rates, or Internal Rates of Return for the same reasons as stated by the court in *Colony Cove, supra,* at 872:

> the [Rent Review] Board had no reason to rely on Neet's contorted analysis [regarding appropriate rates of return] when it had before it evidence, based on actual sales, showing that a capitalization rate of 4.75 percent was acceptable to investors and about average for comparable mobilehome parks.

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[52] Youngstown objected to this document. It was a redo of a page from Ms. Haskins report (RESIDENTS 272). But this document is useful in showing capitalization rates and incorporates numbers testified to by Youngstown's own witnesses (Hearing, Jan. 17, 2024, Ubaldi Testimony, Davies Testimony, and Kaveny Testimony). Ms. Haskins testified that after the testimony of Mr. Ubaldi, Mr. Davis, and Mr. Kaveny, she went back, verified, and corrected the sales prices of mobilehome parks and the Cap Rates; the average Cap Rate in her report changed from 5.01% to 5.03% (Hearing, Jan. 24, 2024, Haskins Testimony; Compare RESIDENTS 272 and 317). By verifying the data, Ms. Haskins used the CoStar data in the way recommended by several of Youngstown's witnesses (*See, e.g.*, Hearing, Jan. 18, 2024, Chapman Testimony (testifying that CoStar data is a good starting point, but needs to be reconfirmed)).

Rent control should not "discourage the flight of capital from the rental housing market" *Concord Communities, supra*, at 1415, and must consider the interests of relevant investors, *Kavanau, supra*, at 771, and net operating income must be allowed to grow. *Fisher, supra*, at 683. Here, investors are buying mobilehome parks with an average Cap Rate of 5.03% (RESIDENTS 317). That is the most solid evidence presented of what investors will bear.

When Youngstown purchased the property in 2020, the indicated Cap Rate published in the Collier's Report was 4.75% (OWNER 459). Mr. Eid testified that the Cap Rate was between 4.1 and 4.6% when the property was sold (Hearing, Feb. 2, 2024, Eid Rebuttal Testimony). Mr. Eid also testified that the current return on investment is just 4% in 2022 ($572,266/$14,280,854 = 0.04) (Hearing, Jan. 17, 2024, Eid Testimony; OWNER 298).

As stated, evidence by Affected Tenants shows that the average Cap Rates for recent sales of mobilehome parks is just over 5%. If this rate of return were used as a "check" against the MNOI and NOI analyses set forth above, Youngstown would be entitled to a rent increase of between $118 and $158 per space per month, depending on whether reserves are backed out.

<u>5.03% Capitalization rate with Reserves</u>	
Purchase Price:	$14,280,054
5.03% of purchase price:	$718,287
2022 NOI with reserves:	$522,373
Shortfall:	$195,914
Annual Rent increase per space (divided by 103):	$1,902
Per Month per space increase (divided by 12):	$158
<u>5.03% Capitalization rate without Reserves</u>	
Purchase Price:	$14,280,054
5.03% of purchase price:	$718,287
2022 NOI without reserves:	$572,266
Shortfall:	$146,021
Annual Rent increase per space (divided by 103):	$1,418
Per Month per space increase (divided by 12):	$118

Based on the foregoing, the Arbitrator will award a rent increase of $118 per space per month, effective December 1, 2023, per the Parties' stipulation.

This rent increase represents a 14.5% increase, which is far beyond the annual CPI increases allowed by the Amended Ordinance, and increases the average rent at Youngstown to $930 per space per month ($812 + $118 = $930), well above the most comparable, Petaluma Estates (with average rent at $900). Based on the above analysis,

this rent increase would give Youngstown a fair rate of return while also "[p]reventing the imposition of exploitive, excessive and unreasonable mobilehome space rent increases." (Section 6.50.010(X)).

I. Retroactive Rent Increase

Youngstown also seeks a retroactive rent increase of $31.17 per day per space from January 1, 2023 (Youngstown Closing Brief at 65-66). This request is denied. California Civil Code section 798.30 requires that a 90-day notice of a rent increase be provided to mobilehome residents as a pre-condition of collecting any rent increase. The notices given by Youngstown on August 1, 2023, did not include this request. Youngstown argues that the Arbitrator may award any rent increase necessary for a fair return (Section 6.50.100(L)). However, the Amended Ordinance makes no provision for a retroactive rent increase. Here, the parties stipulated that any rent increase would be effective December 1, 2023, not January 1, 2023.

X. ORDER

In accordance with the foregoing, the arbitrator hereby orders as follows:

(1) Park Owner is GRANTED a rent increase of $118 per space per month retroactive to December 1, 2023, pursuant to the Parties' Stipulation dated September 28, 2023. All other rent increases sought by Park Owner are DENIED.

(2) Park Owner's request for a retroactive rent increase back to January 1, 2023, is DENIED.

(3) The Parties may submit written briefing on Park Owner's request for an award of attorneys' fees and costs incurred in pursuing its application for a rent increase on the following briefing schedule:

   a. Park Owner shall submit a brief and any supporting exhibits on or before April 1, 2024.

   b. Affected Tenants shall submit a brief and documents in opposition to the Park Owner's brief on or before April 8, 2024.

   c. Park Owner may submit a reply brief on or before April 12, 2024

(4) The record will be left open only for the submissions outlined in paragraph (3) related to attorneys' fees and costs, and once they are submitted, the record shall be closed.

(5) The final decision of the Arbitrator, which will include this Interim Arbitration Award and a ruling on attorneys' fees and costs which will incorporate this Interim Arbitration Award, shall be final and binding upon the Park Owner and Affected

(6) Tenants. The decision of the Arbitrator will be subject to the provisions of California Code of Civil Procedure section 1094.5 (Section 6.50.060(G)(5)).

IT IS SO ORDERED.

Date: March 22, 2024

Frances C. Fort, Arbitrator
California Hearing Officers, LLP

Ca Civil Procedure § 1094.5. Inquiry into validity of administrative order or decision

(a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board, or officer may be filed with the petition, may be filed with respondent's points and authorities, or may be ordered to be filed by the court. Except when otherwise prescribed by statute, the cost of preparing the record shall be borne by the petitioner. Where the petitioner has proceeded pursuant to Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the Government Code and the Rules of Court implementing that section and where the transcript is necessary to a proper review of the administrative proceedings, the cost of preparing the transcript shall be borne by the respondent. Where the party seeking the writ has proceeded pursuant to Section 1088.5, the administrative record shall be filed as expeditiously as possible, and may be filed with the petition, or by the respondent after payment of the costs by the petitioner, where required, or as otherwise directed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, the expense shall be taxable as costs.

(b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) Notwithstanding subdivision (c), in cases arising from private hospital boards or boards of directors of districts organized pursuant to the Local Health Care District Law (Chapter 1 (commencing with Section 32000) of Division 23 of the Health and Safety Code) or governing bodies of municipal hospitals formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of Division 3 of Title 4 of the Government Code, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. However, in all cases in which the petition alleges discriminatory actions prohibited by Section 1316 of the Health and Safety Code, and the plaintiff makes a preliminary showing of substantial evidence in support of that allegation, the court shall exercise its independent judgment on the evidence and abuse of discretion shall be established if the court determines that the findings are not supported by the weight of the evidence.

(e) Where the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.

(f) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

(g) Except as provided in subdivision (h), the court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, no such stay shall be imposed or continued if the court is satisfied that it is against the public interest. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the

manner provided by Title 4.5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2. If an appeal is taken from a denial of the writ, the order or decision of the agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(h)

(1) The court in which proceedings under this section are instituted may stay the operation of the administrative order or decision of any licensed hospital or any state agency made after a hearing required by statute to be conducted under the Administrative Procedure Act, as set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, conducted by the agency itself or an administrative law judge on the staff of the Office of Administrative Hearings pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, the stay shall not be imposed or continued unless the court is satisfied that the public interest will not suffer and that the licensed hospital or agency is unlikely to prevail ultimately on the merits. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 4.5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(2) The standard set forth in this subdivision for obtaining a stay shall apply to any administrative order or decision of an agency that issues licenses pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act. With respect to orders or decisions of other state agencies, the standard in this subdivision shall apply only when the agency has adopted the proposed decision of the administrative law judge in its entirety or has adopted the proposed decision but reduced the proposed penalty pursuant to subdivision (c) of Section 11517 of the Government Code; otherwise the standard in subdivision (g) shall apply.

(3) If an appeal is taken from a denial of the writ, the order or decision of the hospital or agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the hospital or agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(i) Any administrative record received for filing by the clerk of the court may be disposed of as provided in Sections 1952, 1952.2, and 1952.3.

(j) Effective January 1, 1996, this subdivision shall apply to state employees in State Bargaining Unit 5. For purposes of this section, the court is not authorized to review any disciplinary decisions reached pursuant to Section 19576.1 of the Government Code.

Proof of Service

I, Lynette McPherson, am over 18 years of age and not a party to this action. I am employed in the county where the emailing took place.

My business address is 101 Parkshore Drive, Folsom, California, 95630, which is located in the County of Sacramento.

On **March 22, 2024**, I served the following document(s) via email:

Document Title: Interim Arbitration Award
Applicant: Youngstown MHP, LLC
Park Location: Petaluma, California

Emailed To:

Clerk of the City of Petaluma cityclerk@cityofpetaluma.org

Larissa Branes l.branes@rudderowlaw.com

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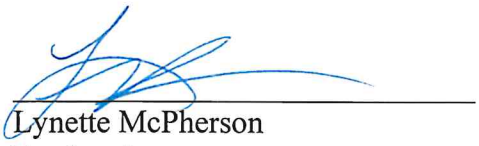
Dan Rudderow dan@rudderowlaw.com

Frances C. Fort, Arbitrator filings@cahearingofficers.com

Ray Tovar, Sonoma County Ray.Tovar@sonomacounty.org

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



Lynette McPherson
Paralegal