B|L Bernick Lifson, P.A.
Business Law

Malcolm P. Terry
Labor and Employment Law Specialist
Certified by the Minnesota State Bar Association
mterry@bernicklifson.com
Direct No. 763-746-7975

August 18, 2022

Mai Vang
City of St. Paul
310 City Hall
15 West Kellogg Blvd.
Saint Paul, MN 55102
Mai.vang@ci.stpaul.mn.us

Re: Appeal Response - Cushman Wakefield / Bradbury Apartment Limited Partnership – 261 5th St. East, St. Paul, MN 55101 / Angela Wilhight
Hearing Date/Time: September 8, 2022, 9:00 a.m., Room 330

Dear Hearing Officer[s]:

I represent Cushman Wakefield ("CW") and Rayette Lofts, and I submit this letter in response to the Legislative Appeal brought by attorney John Cann on behalf of Angela Wilhight.

To begin with, Ms. Wilhight's appeal is improper. Ms. Wilhight is not appealing a City determination, she is bringing an appeal "to challenge her landlord's violation of the City's Rent Stabilization Ordinance …" which is **not appealable** under this administrative appeal process. To resolve this lack of jurisdiction issue, what Ms. Wilhight tries to then do is bootstrap the non-appealable issue to the exception to the 3% increase granted by the City to the Owner/Landlord. However, Ms. Wilhight **only** addresses the issues of utilities versus rent which is not an appealable issue under this process. Ms. Wilhight simply has raised her issue in the wrong manner and in the wrong forum and the appeal should be dismissed for this reason alone.

CW is not in violation of the St. Paul Rent Stabilization Ordinance ("Ordinance"). The Ordinance defines rent as "All monetary consideration charged or received by a landlord concerning the use or occupancy of a rental unit pursuant to a rental agreement." The utility payments are not consideration received by the Landlord. That is money received by a third-party provider, the utility company and all money for utilities is paid to the utility company for the utilities consumed by the tenant. None of the money paid for utilities is retained by CW. Further, as is common knowledge, the utility services are not provided by the Landlord, but by the third-party provider utility company. The payments for utilities are simply not consideration for the use and occupancy of the unit. It is payment for utilities provided by an entirely different third-party company, the utility company, and used and consumed by the tenant. Nothing in the Ordinance defines rent to include utilities nor requires the landlord to pay for the utilities for a tenant.

In addition, Ms. Wilhight's current lease does not include utilities in the tenant payment as Mr. Cann had originally asserted to me by letter and suggests in the appeal. As explained to Mr. Cann previously, the current lease at paragraph 7 had the utilities paid for by the Landlord as overhead, that lease does **not** say the utilities are included in the existing rent payment. (Wilhight Ex. 1). The landlord simply now chooses to not pay utilities as part of its overhead. Nothing in the ordinance, or Minn. Stat. § 504B.01 et seq., stops the landlord from making that choice and, in fact, it is specifically permitted by Minn. Stat. § 504B.215. Further, Ms. Wilhight's lease ends as of August 31, 2022, ending the existing terms between the parties and requiring a new lease contract. (Wilhight Ex. 1). Mr. Cann complains that there was no notice of the shift of utility payment to Ms. Wilhight. First, nothing in either the existing or renewal lease requires such notice and nothing in the Ordinance or Minn. Stat. § 504B.01 et seq requires such notice. Second, as Mr. Cann points out, the notice of lease renewal was presented to Ms. Wilhight on June 10, 2022, and provided notice of the tenant responsibility for utilities, thus giving Ms. Wilhight three months' notice of the change. Further, the new lease itself with tenant responsibility for utilities was presented on July 26, 2022 and included the Utilities Addendum (which is also part of the current existing lease and not something newly presented to Ms. Wilhight for the first time as stated by Mr. Cann).

As stated above, the third-party provider is the utility company. The fact that Conserve is used to handle and split the billing is not a fabricated third party as Mr. Cann misunderstands, or perhaps uses to try and create an issue where none exists. Conserve is a company that splits out and tracks the utilities by apartment for single metered buildings for property management companies and sends a statement to the residents who then pays the statement, and that payment then goes to the utility company to pay for the utilities consumed by the resident. Whether Conserve is used or not, Ms. Wilhight is still paying the utility company for the utilities she uses, not paying revenue to CW and thus the payment is not rent.

Mr. Cann also makes a confusing statement in his appeal that appears to state I had told him in my July 28, 2022 letter that the City had approved separation of utilities. No such statement is in my July 28, 2022 letter and I am not sure what Mr. Cann is talking about or trying to convey related to this appeal. Once again, Mr. Cann confuses my letter to him as well as appears to confuse himself. My letter to Mr. Cann points out that the City has approved an upward deviation from the 3% increase for this property. (Ex. 1 attached). Something Mr. Cann still does not seem to understand as he continues to claim the cap for this property is 3% in his appeal letter to the City. Further, to the extent Mr. Cann complains that there was no notice that an exception to the 3% was granted to the CW by the City, there is no requirement that such notice be given rendering Mr. Cann's complaint meritless.

The Utility Addendum is part of the new lease given to Ms. Wilhight on July 26, 2022. However, the utility addendum is also part of the current lease Ms. Wilhight has. Moreover, Mr. Cann further confuses the issue citing Minn. Stat. § 504B.215 Subd. 2., which requires the owner to be the responsible party, as somehow evidence that payment for utilities is rent. Mr. Cann then claims that there are "only two options" under the statute to apportion rent. That is not what the statute says. The statute says, "[t]his subdivision does not prohibit a landlord from apportioning utility service payments among residential units **and** either including utility costs in a unit's rent or billing

for utility charges separate from rent." The statute is not limited to two options and allows the apportionment as the landlord chooses, in this case, using Conserve.

Additionally, how does the Ordinance then evaluate utilities that are separately metered to an apartment complex or rental home? It cannot be determined that separately metered utilities are rent as the payment is direct to the utility company. So, the city then has to make a distinction not based on the character of service provided (utilities) or even the payment, but whether the utility is singled metered or separately metered. In either case, the payment is still for the utility consumed by the tenant, not revenue to the landlord for rent. The argument of Mr. Cann simply does not make sense.

In addition, Minnesota case law supports the conclusion that utilities are not "rent". The Minnesota Court of Appeals held that a manufactured home park's landlord's attempt to justify separately billed utilities as an allowable rent increase under Minn. Stat. § 327C.01 et seq. failed as utilities are not rent. Sargent v. Bethel Properties, Inc., 653 N.W.2d 800, 802-804 (Minn. Ct. App. 2002). This is also consistent with Minn. Stat. § 504B.177(a) that only allows the 8% late fee to be applied to rent and not utilities.

Finally, as conclusive support that utilities are **not rent**, passthrough and sub metered utilities are specifically **excluded** from calculating Gross Rent Income when determining an exception to the 3% rental increase limit. Maintenance of Net Operating Income (MNOI) Reasonable Return Standard § A(5)(a)(ii). (Exhibit 2 attached).

CW is not in violation of the Ordinance; utilities are not rent, and this appeal should be dismissed.

As a final note, I will be appearing at the in person hearing on September 8, 2022, at 9:00 a.m. in Room 330.

Sincerely,

BERNICK LIFSON, PA

Malcolm P. Terry
Attorney

MPT/mas

cc: Client
John Cann
jcann@hjcmn.org

SAINT PAUL
SAFETY & INSPECTIONS

DEPARTMENT OF SAFETY & INSPECTIONS
ANGIE WIESE, INTERIM DIRECTOR

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

REQUEST FOR EXCEPTION TO 3% CAP
NOTICE OF APPROVAL THROUGH SELF-CERTIFICATION

Dear Property Representative:

You applied for an exception to the 3% cap on rent increases per Chapter 193A of Saint Paul's Legislative Code. Approval for the exception has been granted through the self-certification process provided by the City.

There are no further steps you need to take at this time. Retain your supporting documentation for at least 3 years in case it is needed for other requests in the future or for a city-initiated audit.

Tenants have the right to appeal this determination. Appeals must be in writing and delivered to the City Clerk no later than 21 calendar days from the date of their written notification of the rent increase approved under Saint Paul Legislative Code Chapter 193A. Applications for appeals may be obtained at the Office of the City Clerk, 310 City Hall, City/County Courthouse, 15 W Kellogg Blvd, Saint Paul MN 55102, Phone: 651-266-8585

If you have any questions, please reach out to the Rent Stabilization Workgroup using the email address below.

Sincerely,

Rent Stabilization Workgroup
Rent Stabilization | Saint Paul Minnesota (stpaul.gov)
Rent-Stabilization@ci.stpaul.mn.us
651-266-8553

EXHIBIT 1

SAINT PAUL
SAFETY & INSPECTIONS

DEPARTMENT OF SAFETY & INSPECTIONS
ANGIE WIESE, DIRECTOR

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

April 29, 2022

Notice of Final Rules

WHEREAS, on November 2, 2021, Saint Paul voters approved a Rent Stabilization Ordinance for the City of Saint Paul; and

WHEREAS, the Ordinance limits residential rent increases to no more than 3% in a 12-month period, regardless of whether there is a change of occupancy; and

WHEREAS, the Ordinance also directs the City to create a process for landlords to request an exception to the 3% limit based on the right to a reasonable return on investment; and

WHEREAS, after the Rent Stabilization Ordinance became law, the Department of Safety and Inspections ("DSI") was tasked with working toward a May 1, 2022 implementation date; and

WHEREAS, on March 31, 2022, DSI posted rules to clarify and implement Saint Paul's Rent Stabilization Ordinance; and

WHEREAS, the rules were posted and open for public comment from April 7 to April 22, 2022, along with proposed processes and definitions by which landlords would request an exception to the 3% limit; and

WHEREAS, DSI fielded over two hundred comments during the public comment period; and

WHEREAS, upon careful review of all of the comments, DSI found it necessary and reasonable to amend the proposed rules, as described in its *Summary of Comments and DSI Responses* document, which is published concurrently with this Notice of Final Rules and hereby incorporated by reference; and

WHEREAS, the Department found it necessary to make other amendments to the Rules, as further indicated below; now, therefore, DSI does hereby issues notice of the following final rules, which are effective immediately.

FINAL RULES

Maintenance of Net Operating Income (MNOI) Reasonable Return Standard

A. Reasonable Return Standard

(1) Presumption of Fair Base Year Net Operating Income. It shall be presumed that the net operating income received by the Landlord in the Base Year provided a reasonable return.

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

(2) Reasonable Return. A Landlord has the right to obtain a net operating income equal to the BaseYear net operating income adjusted by 100% of the percentage increase in the Consumer Price Index (CPI), since the Base Year. It shall be presumed this standard provides a reasonable return.

(3) Base Year.

a. For the purposes of making reasonable return determinations pursuant to this section, the calendar year 2019 is the Base Year. The Base Year CPI shall be 2019, unless subsection (b) or (c) is applicable.

b. In the event that a determination of the allowable Rent is made pursuant to this section, if a subsequent petition is filed, the Base Year shall be the year that was considered as the "current year" in the prior petition.

c. Unless otherwise exempted from the limitation on rent increases by local, state or federal laws or regulations, if a Rental Unit enters the marketplace for the first time after 2019, the Base Year shall be the year the Unit entered the marketplace.

(4) Adjustment of Base Year Net Operating Income.

Landlords or Tenants may present evidence to rebut the presumption that the Base Year net operating income provided a Reasonable return. Grounds for rebuttal of the presumption shall be based on at least one of the following findings:

a. Exceptional Expenses in the Base Year. The Landlord's operating expenses in the Base Year were unusually high or low in comparisonto other years. In such instances, adjustments may be made in calculating operating expenses in order that the Base Year operating expenses reflect average expenses for the property over a reasonableperiod of time. The following factors shall be considered in making such a finding:

i. Extraordinary amounts were expended for necessary maintenance and repairs.

ii. Maintenance and repair expenditures were exceptionally low so asto cause inadequate maintenance or significant deterioration in the

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

quality of services provided.

iii. Other expenses were unreasonably high or low notwithstanding the application of prudent business practices.

b. Exceptional Circumstances in the Base Year. The gross income during the Base Year was disproportionately low due to exceptional circumstances. In such instances, adjustments may be made in calculating Base Year gross rental income consistent with the purposes of this chapter. The following factors shall be considered in making such a finding:

i. The gross income during the Base Year was lower than it might have been because some residents were charged reducedrent.

ii. The gross income during the Base Year was significantly lowerthan normal because of the destruction of the premises and/or temporary eviction for construction or repairs.

iii. The pattern of rent increases in the years prior to the Base Year and whether those increases reflected increases in the CPI.

iv. Other exceptional circumstances.

(5) Calculation of Net Operating Income. Net operating income shall be calculated by subtracting operating expenses from gross rental income.

a. Gross Rental Income.

i. Gross rental income shall include:

Gross rents calculated as gross scheduled rental income at one hundred percent occupancy and all other income or consideration received or receivable in connection with the use or occupancy of the Rental Unit, except as provided in Subparagraph (B) of this section.

If there is a difference in the number of rental units between the Base Year and the current year, in making calculations of net operating income in the

EXHIBIT 2

DEPARTMENT OF SAFETY & INSPECTIONS
ANGIE WIESE, INTERIM DIRECTOR

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

Base Year and the current year, the rental income and expenses for the same number of units shall be used in calculating the net operating income for both periods.

The purpose of this provision is to ensure that a petitioner is not requesting that the current fair net operating income reach a level which was providedin the Base Year by a larger number of units or is limited to a net operating income which was formerly provided by a smaller number ofunits.

If there are units that are vacant or owner-occupied at the time a petition is filed which were rented in the Base Year, for the purposes of the MNOI analysis a rental income for the unit shall be calculated on the basis of average rents for comparable units in the building. If there are no comparable units in the property rental income for the vacant or owner-occupied units, the rent shall be calculated on the basis of recently established initial rents for comparable units in the City. If there are units that were rented in the current year, which were vacant or owner-occupiedin the Base Year, for the purposes of the MNOI analysis a rental income for the unit for the Base Year shall be calculated on the basis of average rents for comparable units in the building in the Base Year. If there are no comparable units in the property, rental income for the vacant or owner-occupied units in the Base Year shall be calculated on the basis of Base Year rents for comparable units in the City. If a staff determination is appealed to the City Council, a Legislative, HearingOfficer may use another reasonable methodology to ensure compliance with the purposes of this subsection.

ii. Gross rental income shall not include:

Utility Charges for sub-metered gas, electricity or water which are paid directly by the tenant; or

Charges for refuse disposal, sewer service, and, or other services which are either provided solely on a cost pass-through basis and/or are regulated by state or local law.

b. Operating Expenses**.** Operating expenses include the following:

i. Reasonable costs of operation and maintenance of the Rental Unit.

ii. Management expenses. It must be presumed that management expenses have increased between the Base Year and the current year by the percentage increase in rents or CPI, whichever is greater, unless the level of management services has either increased or decreased significantly

DEPARTMENT OF SAFETY & INSPECTIONS
ANGIE WIESE, INTERIM DIRECTOR

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

between the Base Year and the current year. This presumption must also be applied in the event that management expenseschanged from owner managed to managed by a third party or vice versa.

iii. Utility costs except a utility where the consideration of the income associated with the provision of the utility service is regulated by state law and consideration of the costs associated with the provision of the utility service is preempted by state law or the income associated with the provision of the utility is not considered because it is recouped from the Tenants on a cost pass-through basis.

iv. Real property taxes and insurance, subject to the limitation that property taxes attributable to an assessment in a year other than the Base Year or current year may not be considered in calculating Base Year and/or current year operating expenses.

v. Property taxes assessed and paid.

vi. License, registration and other public fees required by law to the extent these expenses are not otherwise paid or reimbursed by Tenants.

vii. Landlord-performed labor compensated at reasonable hourly rates. However, no Landlord-performed labor shall be included as an operating expense unless the Landlord submits documentation showing the date, time, and nature of the work performed. There shall be a maximum allowed under this provision of five percent (5%) of gross income unless the Landlord shows greater services were performed for the benefit of the residents.

viii. Legal expenses. Reasonable attorneys' fees and costs incurred in connection with successful good faith attempts to recover rents owing, successful good faith unlawful detainer actions not in derogation of applicable law, legal expenses necessarily incurred in dealings with respect to the normal operation of the Property, and reasonable costs incurred in obtaining a rent increase pursuant to SPLC 193A.

To the extent allowable legal expenses are not annually reoccurring and are substantial they shall be amortized over a five-year period, unless the City concludes that a different period is more reasonable. At the end of the amortization period, the allowable monthly rent shall be decreased by any

DEPARTMENT OF SAFETY & INSPECTIONS
ANGIE WIESE, INTERIM DIRECTOR

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

amount it was increased because of the application of this provision.

ix. Adjustments to Operating Expenses**.** Base Year and/or current year operating expenses may be averaged with other expense levels for other years or amortizedor adjusted by the CPI or to reflect levels that are normal for residential Rental Units or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of Base Year and current year expenses and providing a reasonable return.If the claimed operating expense levels are exceptionally high compared to prior expense levels and/or industry standards the Landlord shall have the burden of proof of demonstrating that they are reasonable and/or reflect recurring expenselevels. Expenses which are exceptional and reasonable must be amortized in order to achieve the objectives of this section.

c. Projections of Base Year Operating Expenses in the Absence of Actual Data

If the Landlord does not have Base Year operating expense data, it shall be presumed that operating expenses increased by the percentage increase in the CPI between the Base Year and the current year. This presumption is subject to the exception that specific operating expenses must be adjusted by other amounts when alternate percentage adjustments are supported by a preponderance of evidence (such as data on changes in the rates of particular utilities or limitations on increases in property taxes.)

(6) Allocation of Rent Increases

Rent increases authorized pursuant to this section must be allocated as follows:

a. Rent increases for unit-specific capital improvements must be allocated to that unit;

b. Rent increases for building-wide or common area capital improvements must be allocated equally among all units;

c. Rent increases resulting from the Net Operating Income analysis must be allocated equally among all units;

d. Notwithstanding the subsections above, the City, in theinterests of justice, shall have the discretion to apportion the rent increases in a manner and to the degree

DEPARTMENT OF SAFETY & INSPECTIONS
ANGIE WIESE, INTERIM DIRECTOR

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

necessary to ensure fairness. Such circumstances include, but are not limited to, units that are vacant or owner occupied.

(7) Relationship of Individual Rent Adjustment to Annual General Adjustment

Any Individual Increase Adjustment established pursuant to this Section must take into account the extent of any Annual General Adjustments the Landlord may be implementing,or otherwise be entitled to, at and during the time for which the Individual Adjustment is sought regarding the petitioning year, and the Individual Adjustment may be limited or conditioned accordingly.

If it is determined that the Landlord is not entitled to an Individual Adjustment, the Landlord may implement the full upcoming General Adjustment.

(8) Limits to Annual Rent Adjustments Based on Maintenance of Net Operating Income Standard

a. Purpose. The purpose of this subsection (a) is to protect Tenants from substantial rent increases which are not affordable, and which may force such Tenants to vacate their homes and result in consequences contrary to the stated purposes of the Ordinance, namely, to maintain the diversity of the Saint Paul community, to preserve the public peace, health and safety, and advance the housing policies of the City.

b. Rent Increase Limit

Notwithstanding any other provision of this regulation, the implementation of a Maximum Allowable Rent increase must be limited each year to fifteen percent (15%) of the Maximum Allowable Rent on the date the petition is filed.

If the amount of any rent increase granted under these regulations exceeds this limit, any portion in excess of the annual must be deferred.

In subsequent years deferred amounts of the allowable rent increase may be implemented.

At the end of each year the deferred amount of the increase must be calculated and an interest allowance shall be calculated based on the standard set forth in this regulation. One twelfth (1/12) of the interest allowance must be added on to full monthly increase authorized under the MNOIstandard.

DEPARTMENT OF SAFETY & INSPECTIONS
ANGIE WIESE, INTERIM DIRECTOR

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

(9) Constitutional Right to a Reasonable Return.

No provision of this regulation shall be applied so as to prohibit the Rent Administrator or Hearing Officer from granting anindividual rent adjustment that is demonstrated by the Landlord to be necessary to meet therequirements of this ordinance and/or constitutional reasonable return requirements.

Planned or Completed Capital Improvements

B. Capital Improvement Standard

(1) The Amortized Costs of Capital Improvements.

Operating expenses include the amortized costs of capital improvements plus an interest allowance to cover the amortization of those costs. For purposes of this section a capital improvement shall be any improvement to a unit or property which materially adds to the value of the property, appreciably prolongs its useful life or adapts it to new use and has a useful life of more than one year and a direct cost of $250.00 or more per unit affected.

Allowances for capital improvements shall be subject to the followingconditions:

The costs are amortized over the period set forth in this regulation and in no event over a period ofless than thirty-six (36) months.

The costs do not include costs incurred to bring the Rental Unitinto compliance with a provision of the Saint Paul Legislative Code or state law where the original installation of the improvement was not in compliance with code or state law.

At the end of the amortization period, the allowable monthly rentshall be decreased by any amount it has increased due to the application of this provision.

The improvement is not an ordinary repair, replacement, and/or maintenance, and is necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety in accordance with Saint Paul Legislative Code Chapter 34.

The amortization period shall be in conformance with the following schedule adopted by the City unless it is determined that an alternate period is justified based on theevidence presented in appeal hearing.

SAINT PAUL
SAFETY & INSPECTIONS

DEPARTMENT OF SAFETY & INSPECTIONS
ANGIE WIESE, INTERIM DIRECTOR

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

Amortization of Capital Improvements and Expenses	
In amortizing capital improvements, and/or expenses, the following schedule shall be used to determine the amortization period of the capital improvements and/or expenses	Years
Appliances	
Air Conditioners	10
Refrigerator	5
Stove	5
Garbage Disposal	5
Water Heater	5
Dishwasher	5
Microwave Oven	5
Washer/Dryer	5
Fans	5

Cabinets	10
Carpentry	10
Counters	10
Doors	10
Knobs	5
Screen Doors	5
Fencing and Security	5
Management	5
Tenant Assistance	5
Structural Repair and Retrofitting	
Foundation Repair	10
Foundation Replacement	20
Foundation Bolting	20
Iron or Steel Work	20
Masonry-Chimney Repair	20
Shear Wall Installation	10
Electrical Wiring	10
Elevator	20
Fencing	

EXHIBIT 2

DEPARTMENT OF SAFETY & INSPECTIONS
ANGIE WIESE, INTERIM DIRECTOR

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

Chain	10
Block	10
Wood	10
Fire Systems	
Fire Alarm System	10
Fire Sprinkler System	20
Fire Escape	10
Flooring/Floor Covering	
Hardwood	10
Tile and Linoleum	5
Carpet	5
Carpet Pad	5
Subfloor	10
Fumigation Tenting	5
Furniture	5
Automatic Garage Door Openers	10

Gates	
Chain Link	10
Wrought Iron	10
Wood	10
Glass	
Windows	5
Doors	5
Mirrors	5
Heating	
Central	10
Gas	10
Electric	10
Solar	10
Insulation	10
Landscaping	

EXHIBIT 2

DEPARTMENT OF SAFETY & INSPECTIONS
ANGIE WIESE, INTERIM DIRECTOR

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

Planting	10
Sprinklers	10
Tree Replacement	10
Lighting	
Interior	10
Exterior	5
Locks	10
Mailboxes	10
Meters	10
Plumbing	
Fixtures	10
Pipe Replacement	10
Re-Pipe Entire Building	20
Shower Doors	5
Painting	
Interior	5
Exterior	5
Paving	

Asphalt	10
Cement	10
Decking	10
Plastering	10
Sump Pumps	10
Railings	10
Roofing	
Shingle/Asphalt	10
Built-up, Tar and Gravel	10
Tile	10
Gutters/Downspouts	10
Security	
Entry Telephone Intercom	10

EXHIBIT 2

DEPARTMENT OF SAFETY & INSPECTIONS
ANGIE WIESE, INTERIM DIRECTOR

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

Gates/Doors	10
Fencing	10
Alarms	10
Sidewalks/Walkways	10
Stairs	10
Stucco	10
Tilework	10
Wallpaper	5
Window Coverings	
Drapes	5
Shades	5
Screens	5
Awnings	5
Blinds/Miniblinds	5
Shutters	5

(2) Interest Allowance for Expenses that Are Amortized.

An interest allowance shall be allowed on the cost of amortized expenses. The allowance shall be the interest rate on the cost of the amortized expense equal to the "average rate" for thirty-year fixed rate on home mortgages plus two percent. The "average rate" shall be the rate Freddie Mac last published in its weekly Primary Mortgage Market Survey (PMMS) as ofthe date of the initial submission of the petition. In the event that this rateis no longer published, the Rent Administrator shall designate by regulation an index which is most comparable to the PMMS index.

a. Exclusions from Operating Expenses. Operating expenses shall not include thefollowing:

i. Mortgage principal or interest payments or other debt service costs and costsof obtaining financing.

ii. Any penalties, fees or interest assessed or awarded for violation of anyprovision of this chapter or of any other provision of law.

iii. Land lease expenses.

iv. Political contributions and payments to organizations or individuals whichare

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

substantially devoted to legislative lobbying purposes.

v. Depreciation.

vi. Any expenses for which the Landlord has been reimbursed by any utilityrebate or discount, Security Deposit, insurance settlement, judgment for damages, settlement or any other method or device.

vii. Unreasonable increases in expenses since the Base Year.

viii. Expenses associated with the provision of master-metered gas and electricityservices.

ix. Expenses which are attributable to unreasonable delays in performing necessary maintenance or repair work or the failure to complete necessary replacements, which are not Tenant caused. (For example, if a roof replacement is unreasonably delayed,the full cost of the roof replacement would be allowed; however, if interiorwater damage occurred as a result of the unreasonable delay.

b. Adjustments to Operating Expenses**.** Base Year and/or current year operating expenses may be averaged with other expense levels for other years or amortizedor adjusted by CPI or to reflect levels that are normal for residential Rental Units or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of Base Year and current year expenses and providing a reasonable return.If the claimed operating expense levels are exceptionally high compared to prior expense levels and/or industry standards the Landlord shall have the burden of proof of demonstrating that they are reasonable and/or reflect recurring expenselevels. Expenses which are exceptional and reasonable shall be amortized in order to achieve the objectives of this section.

c. Projections of Base Year Operating Expenses in the Absence of Actual Data

If the Landlord does not have Base Year operating expense data, it shall be presumed that operating expenses increased by the percentage increase of CPI between the Base Year and the current year. This presumption is subject to the exception that specific operating expenses shall be adjusted by other amounts when alternate percentage adjustments are supported by a preponderance of evidence (such as data on changes in the rates of particular utilities or limitations on increases in property taxes.)

(3) Allocation of Rent Increases

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

Rent increases authorized pursuant to this section shall be allocated as follows:

a. Rent increases for unit-specific capital improvements shall be allocated to that unit;

b. Rent increases for building-wide or common area capital improvements shall beallocated equally among all units;

c. Rent increases resulting from the Net Operating Income analysis shall beallocated equally among all units;

d. Notwithstanding the subsections above, the Rent Administrator or Hearing Officer, in the interests of justice, shall have the discretion to apportion the rent increases in a manner and to the degree necessary to ensure fairness. Such circumstances include, but are not limited to, units that are vacant or owner occupied.

(4) Conditional Rent Adjustments for Proposed Capital Improvements

a. In order to encourage necessary capital improvements, the Rent Administrator allows a Landlord to petition for an upward rent adjustment based upon anticipated future expenses for capital improvements. The purpose of this procedure is to permit Landlords to seek advanced authorization for future rent adjustments based upon anticipated capital improvements. A petition under this Section should only be made for anticipated expenses that the Landlord intends to incur during the twelve-month period following the date of final Rent Administrator or Hearing Officer decision. This procedure should not be used for anticipated expenses for ordinary repairs and maintenance.

b. If the petition is granted in whole or in part, the rent increase shall be postponeduntil such time as the capital improvements are made and an Addendum authorizing the increases is issued.

c. No addendum shall be issued for such proposed capital improvements unless theyare completed within twenty-four (24) months from the date of final decision granting the conditional rent adjustment, unless the Landlord obtains an additional addenda authorizing an extension of the time period to complete the capital improvement. Extensions may be granted due to reasonable delays in the completion of capital improvements as determined by the Hearing Officer.

Changes in the Number of Tenants

Nothing in this section is intended to direct or alter the screening methods of landlords.

C. Changes in the Number of Tenants

DEPARTMENT OF SAFETY & INSPECTIONS
ANGIE WIESE, INTERIM DIRECTOR

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

(1) Base Occupancy Level: The Base Occupancy Level for a Rental Unit, as used in this Chapter, shall be the number of Tenants allowed by the Rental Agreement as defined in 193A of the Ordinance for the unit effective May 1, 2022, or at the beginning of any tenancy established after May 1, 2022 (ie a new rental unit).

(2) Increase in Tenants:

a. If the number of Tenants allowed by the Rental Agreement actually occupying aunit as the Tenants' principal residence has increased above the Base Occupancy Level for that unit, then the Maximum Allowable Rent for the unit may be increased by up to fifteen percent (15%) for each additional tenant above the base occupancy level, in addition to any Maximum Allowable Rent adjustment to which the Landlord is otherwiseentitled.

b. Notwithstanding Regulation (2) a., no increase in the Maximum Allowable Rent for additional Tenants shall be granted for any additional Tenant who is a spouse, domestic partner, child, grandchild, parent, grandparent, legal guardian of a child, parent of any of the Tenants, other resident children, or caretaker/attendant as required for a reasonable accommodationfor a person with a disability, unless the Tenants agree in writing to the specific Maximum Allowable Rent increase.

c. If the number of Tenants actually occupying a Rental Unit as a principal residence decreases subsequent to any Maximum Allowable Rent increase for additional Tenants granted pursuant to subsection (2) a., then the Maximum Allowable Rent increase for that Rental Unit shall automatically decrease by the amount of the Maximum AllowableRent increase that is no longer justified, as a result in the decrease in the number of Tenants, unless the Tenant and Landlord agree in writing to permanently increase the Base Occupancy Level.

d. Increases in the Maximum Allowable Rent due to an increase in the Base Occupancy Level shall remain permanent. As such, if the number of Tenants actually occupying aRental Unit as the Tenants' principal residence decreases subsequent to any MaximumAllowable Rent increase for additional Tenants granted pursuant to subsection (2) a., then the Tenants may replace the departing Tenant with another Tenant (subject to theLandlord's standard screening methods).

(3) Decrease in Number of Tenants Allowed:

If any policy or policies imposed by the Landlord unreasonably prevent the Tenant from maintaining the Base Occupancy Level for that unit, then the Maximum Allowable Rent for thatunit shall be decreased by an amount equal to the percentage by which the number of allowable Tenants has been reduced. As used in this regulation, "policy" or "policies" means any rule, course of conduct, act or actions by a Landlord.

a. A policy shall be deemed unreasonable if it is different from and more restrictive thanthe policies originally used to screen the current Tenant(s).

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

b. Refusal based on the proposed additional occupant's lack of creditworthiness shall be deemed unreasonable if that person will not be legally obligated to pay some or all of therent to the Landlord.

c. Refusal shall be deemed reasonable if the increase would bring the total number of occupants above the maximum allowable under SPLC Chapter 34, Chapter 60, Minnesota State Building Code or Minnesota State Fire Code.

(4) Grounds for Objections:

Tenants responding to petitions under subsection (B) (l) may file objections with the Hearing Officer on one or more of the following grounds:

a. The base occupancy level alleged by the landlord is incorrect; however, a tenant may notcontest a base occupancy level that was established in a prior decision;

b. The number of tenants alleged by the landlord as being currently allowed by the lease and actually occupying the unit as a principal residence is incorrect;

c. An additional tenant claimed by the landlord as justifying a rent increase is a spouse, registered domestic partner, child, grandchild, parent, grandparent, legal guardian of achild or caretaker/attendant as required for a reasonable accommodation for a person with a disability and the original tenant(s) did not agree in writing to an increase for such person(s);

d. The unit is not eligible to receive annual general adjustments for any period since its rent was last certified or individually adjusted by the City. Any such objection shall identify each challenged annual general adjustment and the reason for the alleged ineligibility; or

e. The landlord is collecting rent in excess of the Maximum Allowable Rent.

Changes in Space or Services

D. Changes in Space or Services

(1) Increase in Space:

The Maximum Allowable Rent may be adjusted upward when, with the written agreement of the Tenant(s), there is an increase in the usable space or in the Housing Services beyond that which was provided to a unit on May 1, 2022, or when the Base Rent was first established.

a. Additional or reconfigured space: Where a Landlord adds habitable living space to a unitor reconfigures it, the Maximum Allowable Rent for such unit must be permanently increased as provided under Capital Improvements.

DEPARTMENT OF SAFETY & INSPECTIONS
ANGIE WIESE, INTERIM DIRECTOR

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

b. Additional services: Where a Landlord adds non-habitable space or increases the services provided to a unit, the Maximum Allowable Rent for such unit may be increased by an amount representing the commercially reasonable value of the additional space or increased services. If the additional or reconfigured space or the services are subsequently reduced or eliminated, the rent increase authorized herein must be reduced or terminated. Any increase for an additional bedroom may result in an increase to the Base Occupancy Level for an additional occupant.

c. Increases may be denied if the added or reconfigured space or services do not clearly benefit a majority of the affected Tenants and a Tenant objects.

d. If the added or reconfigured space or services clearly benefit a majority of the affected Tenants, then increases may be denied if a majority of the affected Tenants object.

(2) Decrease in Space or Services; Substantial Deterioration; Failure to Provide Adequate Services; Failure to Comply with Codes, the Warranty of Habitability or the Rental Agreement:

It is not the Department's intent to enforce rent decreases to the provisions below. The rules below are to be considered wholistically with the other factors justifying an increase in Rent.

Decreases in Space or Services. The Maximum Allowable Rent must be adjusted downward where a Landlord is aware of and causes a Tenant to suffer a decrease in housing services or living space from the services and space that were provided on May 1, 2022, or from any services or space provided at the beginning of the tenancy. The amount of the rent decrease must be calculated by multiplying the percentage of impairment of the Tenant's use of and benefit from the unit (as a result of the reduction in living space or housing services) by the Maximum Allowable Rent in effect at the time ofthe impairment, and for past decreases, multiplied by the period of time the impairment existed. In determining the amount of the downward rent adjustment by the percentage ofimpairment of use/benefit method, the City may consider the reasonable replacement cost of the space or service in question. Decreases in the Maximum Allowable Rent must not be granted due to a decrease in space or services that is a direct result of intentional actions on the part of the Tenant to purposefully cause a decrease in space or services.

a. Denial of Petitions for Unilateral Removal: The City will not accept petitions from Landlords who seek a Maximum Allowable Rent decrease for the unilateral removal or reduction of space or services from a Tenant's base level space or services. Landlord petitions shall be accepted only when a Tenant has expressly agreed in writing to the removal of such space or services. "Base level space or services" are the housing servicesor living space that was provided at the unit on May 1, 2022, or at the beginning of the tenancy.

DEPARTMENT OF SAFETY & INSPECTIONS
ANGIE WIESE, INTERIM DIRECTOR

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

b. Inadequate Services & Substantial Deterioration: The Maximum Allowable Rent must be adjusted downward for any substantial deterioration in a Rental Unit and/or for any failure to provide adequate Housing Services occurring during the petitioner's tenancy. For purposes of this subsection, a substantial deterioration means a noticeable decline in the physical quality of the Rental Unit resulting from a failure to perform reasonable or timely maintenance and adequate Housing Services means all services necessary to operate and maintain a Rental Unit in compliance with all applicable state and local laws and with the terms of the Rental Housing Agreement. The amount of the rent decrease must be calculated by multiplying the percentage of impairment of the Tenant's use of and benefit from the unit (as a result of the deterioration or failure to provide adequate service, violation, breach or failure to comply) by the Maximum Allowable Rent in effectat the time of the impairment.

c. Code Violations & Breach of the Warranty of Habitability:

i. Where a condition at the Rental Unit threatens the health or safety of the occupants but does not actually impair the use of the unit, the Maximum Allowable Rent decrease shall be in an amount that reflects the reduction in value of the Rental Unitdue to the unsafe or unhealthy condition.

ii. The rent decrease authorized under this subsection for a violation of the warranty ofhabitability or for a code violation that poses a significant threat to the health or safety of Tenants (e.g., dangerous window bars, missing smoke detector) shall be automatically doubled prospectively if proof of correction of the violation is not submitted to the Rent Administrator within thirty-five (35) calendar days of mailing of the City’s decision unless the Landlord establishes that the violation cannotbe corrected within that time due to circumstances beyond the Landlord 's control.

iii. For purposes of this subsection, a breach of the warranty of habitability occurs whenthe Rental Unit is not in substantial compliance with applicable building and housingcode standards, which materially affect health and safety. Minor housing code violations which do not interfere with normal living requirements do not constitute abreach of the warranty of habitability.

d. Maximum Allowable Rent reductions pursuant to this Section shall be effective from the date the Landlord first had notice of the space or service reduction, deteriorated condition, service inadequacy, or code or habitability violation in question and shall terminate on the date of the first rent payment due after adequate proof has been submitted to the Rent

DEPARTMENT OF SAFETY & INSPECTIONS
ANGIE WIESE, INTERIM DIRECTOR

375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
Tel: 651-266-8953 | Fax: 651-266-9124

Administrator that the condition for which the reduction was granted no longer exists.

e. A Tenant who files a petition pursuant to this regulation must be able to establish the basis for the reduction and when the Landlord first received notice of the decreased service, deterioration, code violation or habitability violation. Notice may be actual or constructive. A Landlord is deemed to have notice of any condition existing at the inception of a tenancy that would have been disclosed by a reasonable inspection of the Rental Unit. A copy of a housing code inspection report from the City of Saint Paul should be submitted with the petition.

Pattern of Recent Increases or Decreases in Rent

For the purposes of determining reasonable return on investment, the pattern of recent rent increases or decreases will be determined by the annual Consumer Price Index (CPI) of the current year for All Urban Consumers for the Minneapolis-St. Paul-Bloomington area (All Items) provided by the U.S. Bureau of Labor Statistics.