

IN THE MATTER OF THE *RESIDENTIAL TENANCY ACT*, SBC 2002, c 78

BETWEEN:

Kanco 1140 Hillside Apartments Ltd. and CAPREIT Limited Partnership, collectively, the Landlord

APPLICANT

AND:

Tenants of 1140 Hillside Avenue, Victoria, British Columbia, Tenants

RESPONDENTS

**LANDLORD’S WRITTEN SUBMISSIONS**

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Dated: December 17, 2025



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Michael L. Drouillard, Counsel to the Landlord

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**I. SUMMARY OF THE LANDLORD’S REQUEST FOR AN ADDITIONAL RENT INCREASE**

1. Kanco 1140 Hillside Apartments Ltd. and CAPREIT Limited Partnership (collectively, the “**Landlord**”) apply to the Director for an order approving an additional rent increase on the basis that it incurred eligible capital expenditures to replace the roof at the following building:

<b>Apartment Building Information</b>	
<b>Address of Building</b>	1140 Hillside Avenue, Victoria BC (the “ <b>Building</b> ”)
<b>Age of Building</b>	48 years old (constructed in 1977) (see BC Assessment Information for Property [ <b>Tab 1b</b> ])
<b>Landlord</b>	The Building is legally owned by Kanco 1140 Hillside Apartments Ltd. and beneficially owned by CAPREIT Limited Partnership. Collectively, Kanco 1140 Hillside Apartments Ltd. and CAPREIT Limited Partnership are the Landlord as defined in section 1 the <i>Residential Tenancy Act</i> , SBC 2002, c 78 (the “ <b>Act</b> ”).
<b>Landlord’s Purchase of Building</b>	The Landlord took over ownership and operation of the Building on August 11, 2010.
<b>Number of Units</b>	28
<b>Total Capital Expenditures</b>	\$481,976.32
<b>Monthly Additional Rent Increase per Unit</b>	\$143.45

2. The Landlord makes this single application pursuant to section 43(3) of the *Residential Tenancy Act*, SBC 2002, c 78 (the “**Act**”) to increase the rent for all 28 rental units in the Building for eligible capital expenditures incurred in the 18-month period preceding the

date of this application, pursuant to sections 23.1(1) and (3) of the Residential Tenancy Regulation, BC Reg 477/2003 (the “**Regulation**”). The Landlord has not made a previous application for an additional rent increase in the last 18-months (section 23.1(2), Regulation).

3. The total amount of the additional rent increase (“**ARI**”) sought, per unit, of \$131.07 per month, was calculated using the following formula:

$$\text{ARI per Unit} = (\text{Total Capital Expenditures}/\text{Total Number of Units})/120$$

$$\text{ARI per Unit} = (\$481,976.32/28)/120$$

$$\text{ARI per Unit} = \$143.45$$

4. In the event \$143.45 is more than 3% of the current monthly rent for a rental unit, then the remaining portion of the approved increase in excess of 3% must be applied in a later year and cannot be imposed all at once upon a tenant.

*Residential Tenancy Policy Guideline 37C [Tab 3] at pages 14-16*

## **II. SUMMARY OF LAW RELATING TO ADDITIONAL RENT INCREASE APPLICATIONS**

5. The Director must grant an application for an additional rent increase for capital expenditures when the criteria set out in section 23.1, *Residential Tenancy Regulation*, BC Reg 477/2003 (the “**Regulation**”) are met.
6. The following section includes a detailed description of how the Landlord has established all the necessary requirements for the Director to grant this application, including a detailed description of the work that was done, why the work was done, and past maintenance and repairs at the building.
7. In addition to providing a detailed analysis in the next section, the Landlord has also provided the following summary table explaining the requirements set out in the

Regulation that the Landlord must meet for the Director to grant this application and a brief explanation of how each requirement is established by the Landlord:

ARI Requirements Established by Regulation	How Requirement Met by Landlord for the Building
<p>The Landlord has not applied for an additional rent increase in the 18 months preceding this application</p> <p>(section 23.1(2) of the Regulation)</p>	<p>The Landlord has not applied for an additional rent increase in the 18-months preceding this application.</p>
<p>The Landlord must make a single application to increase the rent for all units on which the Landlord intends to impose the ARI if approved</p> <p>(sections 23.1(1) and (3) of the Regulation)</p>	<p>The Landlord has made this single application to increase the rent for all rental units (28 units total) in the Building on which the Landlord intends to impose the ARI if approved.</p>
<p>The capital expenditures must have been incurred for one (or more) of the reasons set out in section 23.1(4)(a)(i), (ii), or (iii) of the Regulation</p>	<p>The roof of the Building was approximately 22 years old when it was replaced.</p> <p>Residential Tenancy Policy Guideline 40 [Tab 4] estimates that the original roof had an anticipated useful life of approximately 20 years. At 22 years old, the roof had exceeded the end of its estimated useful life and was due for replacement.</p> <p>Parts of the roof were also in poor condition, necessitating replacement. The roof is a major system or major component of the Building (see Residential Tenancy Policy Guideline 37C at page 4 [Tab 3]).<sup>1</sup></p> <p>The roof was replaced in order to replace a major system or major component of a major system that was at the end of its useful life and had failed, was malfunctioning, or inoperative pursuant to section 23.1(4)(a)(ii) of the Regulation. In addition,</p>

<sup>1</sup> Residential Tenancy Policy Guidelines do not have the force of law. However, these policy guidelines are important interpretive aids and are frequently relied on by RTB Arbitrators to interpret the Act and Regulation (see ARI Decisions of Arbitrators R. Yee [Tab 8], M. Fox [Tab 9], and K. Want [Tab 10]. Although prior RTB decisions are not precedential or binding on future arbitrators the way court decisions are, an arbitrator’s decision can be set aside as unreasonable on judicial review if it deviates from prior tribunal decisions without a very good reason (see *Communications, Energy and Paperworks Union of Canada, Local 30 v Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at page 6 [Tab 11]). Courts in British Columbia routinely refer to policy guidelines when interpreting the Act and Regulation (see *Li v Virk*, 2023 BCSC 83 [Tab 7]).

	the roof (a major system) needed to be replaced in order to maintain the Building in a state of repair that complies with the health, safety and housing standards required by law in accordance with section 32(1)(a) of the Act, as set out in section 23.1(4)(a)(i) of the Regulation.
The capital expenditures must have been incurred in the 18 months preceding this application  (section 23.1(4)(b) of the Regulation)	The Landlord paid the final invoice for this project by electronic funds transfer (EFT) on July 9, 2024. As a result, the Landlord had until January 9, 2026 to make this additional rent increase application.
The capital expenditures cannot be expected to recur in the five years following this application  (section 23.1(4)(c) of the Regulation)	The roof replacement project included a 20-year warranty on materials and labour (see <b>Tab 16 – Warranty Letter from Tectra re Roof Replacement</b> and <b>Tab 17 – Warranty Certificate (Roof Replacement)</b> ). This capital expenditure will not recur in the five years following the roof replacement.
Capital expenditures cannot be required due to inadequate repair or maintenance  (section 23.1(5)(a) of the Regulation)	The roof was not replaced due to inadequate repair or maintenance. The roof had exceeded its expected useful life at the time it was replaced (see <b>Tab 6</b> , page 2 and <b>Tab 4</b> , page 7), the Landlord provided a roof condition report which noted evidence of past work to repair leaks in the roof (see <b>Tab 6</b> , page 2), and the contractor who completed the work confirmed that the work was not due to inadequate maintenance or repair (see <b>Tab 15</b> ).
Landlord cannot apply for an additional rent increase for capital expenditures that are not paid by it  (section 23.1(5)(b) of the Regulation)	The Landlord incurred the total capital expenditure of \$481,976.32. The Landlord has not been paid, and is not entitled to be paid, from another source.

### III. DESCRIPTION OF ELIGIBLE CAPITAL EXPENDITURE

8. The following table provides a detailed explanation as to how each of the above-noted requirements have been established by the Landlord and why the Director must therefore grant this additional rent increase.

## Roof Replacement (Capital Expenditure 01)

**Reason for Work:** Tri-Tech Pinnacle Group Inc. (“**Tri-Tech**”) inspected the roof at the Building on November 9, 2022 (the “**Inspection**”). The results of Tri-Tech’s inspection are enclosed in the Roof Condition Report at **Tab 6**. Tri-Tech estimated that the roof was installed in approximately 2002 and was over 20 years old at the time of the Inspection. Tri-Tech noted that the roof was in poor condition with blisters, damaged membrane, damaged and corroded metal and stacks, and deteriorating wood at the perimeter. Tri-Tech recommended that a roof replacement be scheduled within 1-2 years of the date of the report [**Tab 6 – Roof Condition Report (Tri-Tech)**, pages 4, 14, 15, 18, 19, and 26]. Before pictures of the roof are included at **Tab 6**, pages 3-17 and 19-26 and at **Tab 13**, page 2. Photos taken of the roof after the roof replacement work was completed are included at **Tab 13**, pages 3-5.

The existing roof was a 2-ply modified bitumen roof membrane over a wood deck [**Tab 6**, pages 4-5]. A bitumen roof has an estimated useful life of 20 years [**Tab 4 – Residential Tenancy Policy Guideline 40 – Useful Life**, at page 7]. As a result, the roof reached its estimated 20-year life expectancy in or about 2022, two years before the roof replacement work.

The roof replacement work was done to repair or replace a major system or major component that had failed and had exceeded the end of its useful life and to maintain the Building in a state of repair that complies with the health, safety and housing standards required by law, pursuant to section 32(1)(a) of the Act (sections 23.1(4)(a)(i) and (ii) of the Regulation).

**Scope of Work:** The Landlord retained Tectra Group Inc. (“**Tectra**”) to replace the roof of the Building [**Tab 5 - Contract for Roof Replacement**]. Tectra completed the following work at the Building (the “**Scope of Work**”) [see **Tab 12 – Form of Tender for Roof Replacement** at pages 6-7, and **Tab 14 – Documents Amending Scope of Work for Roof Replacement (Change Order #1)**, pages 9-10]:

- supplied all materials, labour, and equipment to remove and dispose of existing roof components and assembly down to the existing roof deck and installed a new 2-ply modified bitumen conventional roofing assembly and all associated components. The entire roofing system was replaced with a 2-ply modified bitumen conventional roofing assembly with the exception of the #200 section of the roof, which was replaced with a metal roof, and the sloped wood sections of the roof, which were replaced with corrugated metal sheets;
  - the roof condition assessment report identifies three separate roof areas: (1) #100 section; (2) #200 section; and (3) #300 section on page 3 (see **Tab 6**). The #200 section is a small section of the roof (approximately 80 square feet) that is raised above sections #100 and #300, in the approximate centre of the roof. Sections #100 and #300 are approximately 7,200 square feet (see **Tab 6**, page 3);
  - the #200 section of the roof was replaced with a metal roofing system and a 2% slope towards section #100 was created to allow water to drain from the #200 section. Metal roofing systems are a better option compared to modified bitumen when creating a slope, as was done with the #200 section [**Tab 15 – Letter from Robin Connelly at Tectra Group Inc.**];
- all roof accessories were replaced including roof drains, stack jackets, vent cones, pitch pockets, duct/pipe/gas-line/cable tray supports, walkway pavers, metal flashing, metal counterflashing, metal cap flashing, and sealant;

- supplied all materials, labour, and equipment to disconnect and reconnect all mechanical and electrical equipment, including lifting of equipment as required to complete the roofing work and testing of all equipment;
- supplied all labour, materials, and equipment to remove and replace damaged and deteriorated wood decking with new exterior grade plywood sheathing;
- supplied all labour, materials, and equipment necessary to replace the existing roof hatch, including building the required curb to have the opening a minimum height of 12” from the finished roof level and installing pre-formed railings with a gate around the new hatch;
- built roof curbs as required to accommodate the new roofing system with 8 “ clear height above the roof finish level; and
- covered the raised stucco curbs along the perimeter of the roof.

**Building Maintenance:** Concerns about inadequate maintenance and repair do not preclude an additional rent increase if the work done was to replace a major system or major component of a major system that had met or exceeded its estimated useful life.

The policy rationale for making capital expenditures ineligible for an additional rent increase if they are due to improper maintenance or failure to adequately repair building components (section 23.1(5)(a), Regulation) is to incentivize landlords to take care of the rental property and to ensure that major building systems and components are in use for their approximate expected useful life.

When a major system, such as a roof, is replaced at or near the end of its estimated useful life, this capital expenditure is eligible for an additional rent increase even if that system was not adequately maintained. This is made clear by this Tribunal in its policy guideline regarding additional rent increases for capital expenditures [**Tab 3 - Residential Tenancy Policy Guideline 37C at page 9**]:

An example of an ineligible capital expenditure due to the inadequate repair or maintenance of a landlord would be if a landlord knew or ought to have known that the roof was leaking but did not act promptly to fix the leak adequately and, as a result, had to repair structural damage, remediate mould, and replace drywall. The roof expenditures would be eligible because the roof was at the end of its service life. However, if the extent of the repairs or replacement necessary is due to a landlord’s inaction, the full amount may not be eligible. For example, if the leaking roof was not at the end of its useful life and could have been repaired instead of being fully replaced had a landlord acted sooner, then only the amount that reflects what the repairs would have cost would be eligible.

It is only when a major system of a major component is replaced before it has reached the end of its estimated useful life that maintenance and repair concerns are relevant. If the major system or major component reaches (or exceeds) the end of its estimated useful life, it is eligible for an additional rent increase even if it was not adequately repaired or maintained.

In this case, the roof was over 20 years old (approximately 22 years old) at the time it was replaced [**Tab 6 – Roof Condition Report (Tri-Tech)**, pages 4, 14, 15, 18, 19, and 26]. The estimated useful life for this roof was approximately 20 years [**Tab 4 – Residential Tenancy Policy Guideline 40** at page 7]. The roof had exceeded its estimated useful life and was due to be replaced. As a result, even if inadequate maintenance and/or repairs could be

proven (which is denied), this would not make the roof replacement work ineligible for an additional rent increase application.

Even though maintenance and repair concerns could not preclude an additional rent increase application for this work, the Landlord has provided evidence to show that the roof was not replaced due to inadequate maintenance or repair. Tectra provided a letter confirming that the roof replacement work was not required as a result of the Landlord’s failure to maintain the Building or make necessary repairs [**Tab 15 – Letter from Robin Connelly at Tectra Group Inc.**].

The Landlord also provided the roof condition report from Tri-Tech, which noted that past reported leaks in the roof had been addressed, showing evidence of repairs in an effort to extend the useful life of the roof [**Tab 6 – Roof Condition Report (Tri-Tech)**, page 2].

**Timing of Last Repair/Upgrade:** The roof was estimated to have last been replaced in or about 2002, or approximately 22 years prior to the roof replacement work by Tectra [**Tab 6**, pages 2-3].

**Anticipated Useful Life of Repair/Upgrade:** The work done by Tectra is covered by a 20-year warranty for all labour and materials used in the roof replacement project. The warranty included confirmation that the roof work completed was watertight, in good maintenance condition, and free of defects [**Tab 16 – Warranty Letter from Tectra re Roof Replacement** and **Tab 17 – Warranty Certificate (Roof Replacement)**].

Residential Tenancy Policy Guideline 40 estimates that a bitumen roof has an estimated useful life of 20 years [**Tab 4**, page 7].

The Landlord does not anticipate doing any similar work in the next 20 years. These capital expenditures will not be incurred for at least 5 years (section 23.1(4)(c), Regulation).

**Expenditures Incurred in Past 18 Months:** The date on which a capital expenditure is considered to be incurred is the date the final payment related to the capital expenditure was made. For example, if a landlord pays for the capital expenditure by cheque, the date the capital expenditure is considered to be incurred is the date the landlord issued the final cheque [**Tab 3 – RTPG 37C Additional Rent Increase for Capital Expenditures at page 7 item 3 and footnote 1**]. The final payment for this capital expenditure is dated July 9, 2024. This means that the Landlord has until January 9, 2026 to apply for an additional rent increase with respect to this capital expenditure. This application was therefore incurred within the 18 months prior to this application (section 23.1(4)(b), Regulation).

**Total Cost of Work Completed (Capital Expenditures):** \$481,197.63

The Landlord incurred these expenses in full and is not entitled to be paid from another source for this capital expenditure (section 23.1(5)(b), Regulation).

<b>Description of All Work Done, Dates Costs Incurred, and Method of Payment by Landlord</b>						
<b>Contractor</b>	<b>Invoice No.</b>	<b>Tab 2 Pg.#</b>	<b>Cost</b>	<b>Date Paid</b>	<b>Method of Payment</b>	<b>Tab 2 Pg.#</b>
<b>Tectra Group Inc.</b>	1496-R1	1-2	\$433,778.69	July 2, 2024	EFT	4

<b>Tectra Group Inc. (10% holdback payment)</b>	1755	3	\$48,197.63	July 9, 2024	EFT	5
<b>Total Cost</b>			<b>\$481,976.32</b>			