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

BETWEEN:

CAPREIT Apartments Inc. and CAPREIT Limited Partnership, collectively, the Landlord

APPLICANT

AND:

Tenants of 1204 Yates Street, Victoria, British Columbia, Tenants

RESPONDENTS

LANDLORD'S WRITTEN SUBMISSIONS

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Dated: June 12, 2026

Michael L. Drouillard, Counsel to the Landlord

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

1. CAPREIT Apartments Inc. 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:

Apartment Building	
Address of Building	1204 Yates Street, Victoria (the "**Building**")
Age of Building	50 years old (constructed in 1976) (see BC Assessment Information for Building **[Tab 1b]**)
Landlord	The Building is legally owned by CAPREIT Apartments Inc. and beneficially owned by CAPREIT Limited Partnership. Collectively, CAPREIT Apartments Inc. and CAPREIT Limited Partnership are the Landlord as defined in section 1 the *Residential Tenancy Act*, SBC 2002, c 78 (the "**Act**").
Landlord's Purchase of Building	The Landlord took over ownership and operation of the Building on December 17, 2015.
Number of Units	62 **[Tab 1b]**
Total Capital Expenditures	$381,910.73
Monthly Additional Rent Increase per Unit	$51.33

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 62 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 $51.33 per month, was calculated using the following formula:

   ARI per Unit = (Total Capital Expenditures/Total Number of Units)/120
   ARI per Unit = ($381,910.73/62)/120
   ARI per Unit = $51.33

4. In the event $51.33 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
The Landlord has not applied for an additional rent increase in the 18 months preceding this application (section 23.1(2) of the Regulation)	The Landlord has not applied for an additional rent increase in the 18-months preceding this application.
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 (sections 23.1(1) and (3) of the Regulation)	The Landlord has made this single application to increase the rent for all rental units (62 units total) in the Building on which the Landlord intends to impose the ARI if approved.
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	The roof of the Building was approximately 19 years old when it was replaced in 2024 (estimated installation date was 2005). The roof of the Building was in poor condition and was recommended for replacement within 1-2 years of the date of the report [**Tab 6 – Roof Condition Report, dated November 9, 2022, page 3**]. Residential Tenancy Policy Guideline 40 **[Tab 4]** estimates that the original modified-bitumen roof had an anticipated useful life of approximately 20 years. As a result, it had likely met the end of its estimated useful life. The roof is a major system or major component of the Building (see Residential Tenancy Policy Guideline 37C at page 4 **[Tab 3]**).[1] The roof was replaced in order to replace a major system that was at or close to 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, 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.

[1] 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 Regulatioin (see *Li v Virk,* 2023 BCSC 83 [**Tab 7**]).

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 December 17, 2024. As a result, the Landlord had until June 17, 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 labour, a 10-year warranty on roofing membranes, and a 5 to 10-year warranty on the different roofing products used (see **Tab 12 – Warranty Certificate (Roof Replacement)** and **Tab 13 – Warranty Letter (Roof Replacement)**). This capital expenditure will not recur in the five years following the roof replacement. The requirement of section 23.1(4)(c) of the Regulation is met.
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 Landlord provided evidence of past maintenance and repairs for the roof (see **Tab 14)** and the contractor who completed the work confirmed that the work was not due to inadequate maintenance or repair (see **Tab 16**).
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 $381,910.73. 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)

<u>Reason for Work</u>: Tri-Tech Pinnacle Group Inc. ("**Tri-Tech"**) inspected the roof at the Building on November 9, 2022 [**Tab 6, page 2**]. Tri-Tech estimated that the roof was likely installed in 2005 [**Tab 6**, **page 3**]. Tri-Tech rated the roof condition as poor, noting blisters, wrinkling, cracking, and deterioration of the roof membranes throughout all roof levels, with several areas of ponding observed [**Tab 6**, **pages 6-13**]. Tri-Tech also observed corrosion on the soil stacks [**Tab 6, pages 11-12**].

Before pictures of the roof are included at **Tab 6**, pages 3-14. Photographs of the roof taken after the roof replacement work was completed are included at **Tab 17.**

Tri-Tech recommended that the entire roof be replaced within 1-2 years of the report, noting the roof's age and poor condition as the reason for the recommended replacement [**Tab 6**, **pages 3, 14, 17, 19, 30, and 33**]. The roof replacement work was completed on October 28, 2024 [**Tab 12 – Warranty Certificate (Roof Replacement)** and **Tab 13 – Warranty Letter (Roof Replacement)**]. The roof was approximately 19 years old at the time it was replaced.

The existing roof was a 2-ply modified bitumen roof membrane over ½ inch fibreboard, 2.5" polyisocyanurate insulation, and a wood deck [**Tab 6, pages 3-5**]. A bitumen roof has an estimated useful life of 20 years [**Tab 4 – Residential Tenancy Policy Guideline 40 – Useful Life, page 7**]. The roof was therefore within one year of its estimated useful life when it was replaced.

The roof replacement work was done to repair or replace a major system or major component that had failed or was close to 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).

<u>Scope of Work</u>: The Landlord retained Triumph Roofing and Sheet Metal Inc. ("**Triumph**") to replace the roof of the Building [**Tab 5 – Specifications for Roof Replacement Project (Bid Package)** and **Tab 15 - Contract for Roof Replacement Project**]. Triumph completed the following work [**Tab 5, pages 15 and 20-22**]:

- 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 thermoplastic polyolefin ("**TPO**") conventional roofing assembly and all associated components. To replace the roof, the existing roof materials were removed down to the roof deck, the wood roof deck was prepared and primed, and one ply of vapour retarder was installed over the roof deck. Base insulation was then installed over the vapour retarder and an overlay/cover board was installed over the base insulation. The TPO roofing membrane was then installed over the overlay/cover board;

- all roof accessories were replaced including the roof drains, stack jackets, vent cones, pitch pockets, prefabricated flashings at all curbs, penetrations, pipings, etc., duct/pipe/gas-line/cable tray supports, walkway pavers, metal flashing, metal counterflashing, metal cap flashing, and sealant. New retrofit roof drains with new control flows were installed at all existing drain locations on the roof, new carpentry was installed at the roof parapets and curbs as required to replace any damaged or deteriorated wood, new expansion joint was installed as required, new 26-guage prefinished metal cap flashing and counter flashing was installed at upturn locations, curbs, and roof parapets, and TPO coated metal flashing was used where membrane overlap was required. Metal flashing was installed at all roof penetrations;

- 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. The existing gas line supports were removed and replaced with new gas line supports and all gas pipelines were cleaned, primed, and painted with new yellow corrosion inhibiting paint; and

- built roof curbs as required to accommodate the new roofing system with a thickness of 8” clear height above the roof finish level.

Building Maintenance: 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 nearly reaches) the end of its estimated useful life, it is eligible for an additional rent increase even if it was not adequately repaired or maintained.

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.

In this case, the roof was approximately 19 years old at the time it was replaced [**Tab 6**, **page 3**]. The estimated useful life for this roof was approximately 20 years [**Tab 4 – Residential Tenancy Policy Guideline 40 at page 7**]. The roof reached its estimated useful life and was due to be replaced. As a result, maintenance and repair concerns are irrelevant.

However, the Landlord has provided evidence to show that the roof was not replaced due to inadequate maintenance or repair. Triumph 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 16 – Letter from Triumph Roofing and Sheet Metal Inc. re Roof Replacement Project**]. The Landlord also provided a quote from Unique Restoration (quote #138-2017) for work to replace the roof cap flashing at the Building, showing proactive maintenance and repairs of the roof as necessary [**Tab 14 – Roof Cap Flashing Replacement Quote for Work dated April 25, 2017**].

Timing of Last Repair/Upgrade: The roof was estimated to have last been replaced in 2005, approximately 19 years prior to the roof replacement work by Triumph [**Tab 6**, **page 3**]. The roof was at the end of its anticipated useful life and was in poor condition when it was replaced [**Tab 4, page 7** and **Tab 6**, **page 3**].

Anticipated Useful Life of Repair/Upgrade: The roof replacement project included a 20-year warranty on labour, a 10-year warranty on roofing membranes, and a 5 to 10-year warranty on the different roofing products used. The warranty included confirmation that the roof materials and related sheet metal flashings were in good condition at completion of the roof replacement work [**Tab 5 – Specifications for Roof Replacement Project (Bid Package), pages 89-90**, **Tab 12 – Warranty Certificate (Roof Replacement),** and **Tab 13 – Warranty Letter (Roof Replacement)**]. Residential Tenancy Policy Guideline 40 estimates that a membrane roof has an estimated useful life of approximately 25 years [**Tab 4**, page 7].

The Landlord does not anticipate doing any similar work in the next 20 years. These capital expenditures will not recur 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 December 17, 2024. This means that the Landlord has until June 17, 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): $381,910.73
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).

Description of All Work Done, Dates Costs Incurred, and Method of Payment by Landlord

Contractor	Invoice No.	Tab 2a Pg.#	Cost	Date Paid	Method of Payment	Tab 2b Pg.#
Triumph Roofing and Sheet Metal Inc.	50945*	1	$54,455.01	August 20, 2024	EFT	1-2
Triumph Roofing and Sheet Metal Inc.	51163	2	$229,831.57	September 24, 2024	EFT	3-4
Triumph Roofing and Sheet Metal Inc.	53449	4	$23,092.93	November 11, 2024	EFT	7-8
Triumph Roofing and Sheet Metal Inc.	53108	3	$36,340.15	October 22, 2024	EFT	9
Holdback Payments (10%)	50945, 51163, 53440, 53108**	1-4	$38,191.09	December 17, 2024	EFT	5-6
		Total Cost	**$381,910.73**			

* Invoice 50945 shows a total payment of $58,603.96. However, this was due to an error on the invoice, with the HST/GST calculated at 13% rather than 5%. The Landlord only paid the correct amount, assessed at 5% GST, or $54,455.01. The amount actually paid by the Landlord is shown by the proof of payment documents at pages 1-2 of Tab 2b. Only the $54,455.01 incurred by the Landlord has been included in this application.

** The 10% holdback payments (before taxes) are shown on each invoice (holdback payments are highlighted in green, see Tab 2a). The 10% holdback payments were paid at the end of the project, on December 17, 2024 (see payment on page 5 at Tab 2b. The four holdback payments are highlighted in green). The total holdback for the project was $38,191.09, calculated as follows:

- Invoice 50945: $5,762.44 + 5% GST = $6,050.56
- Invoice 51163: $24,320.80 + 5% GST = $25,536.84
- Invoice 53449: $3,845.52 + 5% GST = $4,037.80
- Invoice 53108: $2,443.70 + 5% GST = $2,565.89