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

BETWEEN:

Westport Apartments Ltd. and CAPREIT Limited Partnership, collectively, the Landlord

APPLICANT

AND:

Tenants of 1021 Fourth Avenue, New Westminster, British Columbia, Tenants

RESPONDENTS

LANDLORD'S WRITTEN SUBMISSIONS

Counsel for the Applicant

Michael Drouillard
Drouillard Lawyers
1910-777 Hornby Street
Vancouver, BC V6Z 1S4

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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. Westport 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 repair the balconies at the following building:

Apartment Building	
Address of Building	1021 Fourth Avenue, New Westminster (the "**Building**")
Age of Building	57 years old (constructed in 1969) **[Tab 1b– BC Assessment Information for Building** and **Tab 12 – Building Condition Assessment Report (November 25, 2022),** page ii**]**
Landlord	The Building is legally owned by Westport Apartments Ltd. and beneficially owned by CAPREIT Limited Partnership. Collectively, Westport Apartments Ltd. 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 September 25, 2015 **[Tab 1a – Title Summary for Property]**
Number of Units	42 **[Tab 1b – BC Assessment Information for Building** and **Tab 12 – Building Condition Assessment Report (November 25, 2022),** page ii**]**
Total Capital Expenditures	$436,201.39
Monthly Additional Rent Increase per Unit	$86.55

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 42 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 $86.55 per month, was calculated using the following formula:

   ARI per Unit = (Total Capital Expenditures/Total Number of Units)/120
   ARI per Unit = ($436,201.39/42)/120
   ARI per Unit = $86.55

4. In the event $86.55 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 (42 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 Landlord does not know exactly when the balconies were last repaired or waterproofed. However, the Landlord has not completed any waterproofing of the balconies in the 10 years prior to this work being completed and the contractor who completed the work estimated that the wood components of the balconies were at least 15 years old and the metal railings were likely original to the Building [**Tab 13 – Letter from Atlantic Pacific Construction re Balcony Repair Work**]. Residential Tenancy Policy Guideline 40 ("**RTPG 40**") estimates that wood balconies have a service life of approximately 15 years and metal railings have an estimated service life of approximately 40 years [**Tab 4 - RTPG 4**0, page 7]. RTPG 40 does not include an estimated service life for balcony waterproofing coating, but estimates that it has a useful service life of approximately 10 years [**Tab 13 – Letter from Atlantic Pacific Construction Ltd. re Balcony Repair Work**]. As a result, the various components of the balconies were at the end of their estimated useful life and were in poor condition when they were replaced. The work was done in order to repair a major system or a major component of 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 balconies needed to be repaired 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]
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 January 21, 2025. As a result, the Landlord had until July 21, 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)	Wood balconies have an estimated useful life of 15 years and metal balcony railings have an estimated useful life of 40 years [**Tab 4 – RTPG 40**, page 7]. Although balcony water proofing membranes are not included in RTPG 40, the contractor who completed the work estimated that with proper maintenance, the water proofing membranes would last approximately 10-15 years [**Tab 13 – Letter from Atlantic Pacific Construction Ltd. re Balcony Repair Work**] This capital expenditure will not recur in the five years following this work. 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 balcony repair work was not due to inadequate repair or maintenance. Sense Engineering noted that the Building had been well maintained and the contractor who completed the work confirmed that the work was not due to inadequate maintenance or repair [**Tab 12 – Building Condition Assessment Report (November 24, 2022)**, page ii and **Tab 13 – Letter from Atlantic Pacific Construction Ltd. re Balcony Repair Work**].

[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**]).

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 $436,201.39. 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.

Balcony Repair Work (Capital Expenditure 01)
<u>Reason for Work</u>: Sense Engineering Ltd. ("**Sense Engineering**") prepared a building condition assessment report, dated November 25, 2022. The report noted that the second and third floor balconies at the Building were wood framed, formed by extensions of the floor joists and supported by the exterior walls. Wood support posts were installed at the outer corners of the balconies sat the four corners of the Building. The top surface of these balconies was protected by a vinyl sheet waterproofing, and painted wood fascia was installed at the balcony edges. The undersides of the balconies were painted wood siding and vinyl clad wood-framed guard walls were installed at the perimeter of these balconies. The first floor balconies/patios were formed by the concrete garage roof slab. The surface of the concrete was either painted or unfinished, and there were either precast unit or vinyl clad wood-framed guard walls at the perimeter of the first floor balconies/patios. There were also vinyl clad wood-framed dividers between adjacent balconies [**Tab 12 - Building Condition Assessment Report (November 25, 2022)**, page A3]. Sense Engineering recommended that the balcony waterproofing be replaced. Sense Engineering noted that it was "imperative that the balcony waterproofing at the wood-framed balconies remain watertight to prevent the wood structure below from deteriorating". Pending further evaluation, Sense Engineering budgeted for phased replacement of the waterproofing, partitions, and soffits for the second and third floor balconies. For the first floor balconies, Sense Engineering noted some locations of concrete spalling and exposed steel reinforcing. Sense Engineering recommended that local concrete repairs and waterproofing, including replacement of guards where there was a potential for a significant fall, be completed for the first floor balconies [**Tab 12 - Building Condition Assessment Report (November 25, 2022),** page A4]. The balconies were part of the original construction of the Building and were approximately 55-56 years old when the balcony repair work was completed (building completed in 1969) **[Tab 1b – BC Assessment Information for Building]**. The Landlord does not know exactly when the balconies were last repaired, but no such work has been completed since the Landlord took over ownership and operation of the Building on October 3, 2015 **[Tab 1a – Title Summary for Property].**

Wood balconies, decks, and railings have an estimated useful life of approximately 15 years. Concrete balconies have an estimated useful life of approximately 25 years [**Tab 4 – RTPG 40,** page 7]. The contractor who completed the work to the balconies estimated that the balcony components that were replaced or repaired had likely exceeded their estimated service life at the time of repair/replacement **[Tab 13 – Letter from Atlantic Pacific Construction Ltd. re Balcony Replacement Project].**

The balcony repair 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 Buildings 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 Atlantic Pacific Construction Ltd. ("**Atlantic**") to repair the balconies at the Building. Atlantic completed the following work at the Building [**Tab 5 – Contract for Balcony Repair Work**, pages 44-45, items 1-9 and **Tabs 5a to 5f – Change Orders 1-6**]:

- removed the existing wood support posts at all corner balconies, installing shoring at all balconies prior to removal of the support posts;
- installed new 6"x6" pressure treated wood support posts at each corner unit balcony;
- removed and replaced deteriorated wood at balcony railings as necessary, including removing and reinstalling vinyl siding over the balcony railing structures;
- removed and replaced deteriorated wood joists/structural elements at balconies;
- installed new wood soffits at all balconies where soffits had been removed for investigations;
- installed new footings, rebar, concrete, and post bases with saddles at each ground level support post, with post base concrete footings extending a minimum of 18" below grade (frost level);
- painted new wood (posts and railing material) to match existing posts and railings;
- removed the existing vinyl clad parapets and existing balcony soffits and replaced them with new aluminum soffit assemblies;
- removed the existing vinyl membrane material on the top surface of all the balcony decks down to the underlying wood sheathing and framing, including removing all perimeter sealants and metal flashings adjoining the exterior wall assemblies;
- removed the existing sheathing board on the top surface of all balcony decks down to the underlying wood framing and replaced the sheathing board forming part of the balcony decks as necessary with new marine grade plywood (at least 5/8" thick);
- installed new waterproofing membrane over the balcony decks, including existing and newly installed sheathing, upturns, and all sealants;
- removed and replaced rim joists on the existing balcony assemblies and installed new metal drip flashing over the edge of the balcony and installed painted fascia;
- removed and replaced the deteriorated wood joist framing forming part of the balcony areas;
- installed new aluminum post and picket railing assemblies across all balconies where the existing balcony railing had been removed;
- removed the existing liquid applied membrane from the concrete surface for all first floor balconies;
- repaired concrete delamination/spalling at suspended concrete slabs forming the balconies on the first floor along the west and north elevations;
- applied a new liquid waterproofing membrane to the suspended concrete slab above the garage forming the first floor balconies;

- removed stuff cladding up to 12” and installed upturn deck membrane (12”) and Hardie siding with rainscreen system. Drip-edge flashing was installed at the top of the Hardie siding; and
- the stucco cladding at all balcony saddles was repaired.

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 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.

The balcony systems were likely original to the Buildings, making them approximately 56 years old when the balcony repair work was completed (the Buildings were constructed in 1969. See **Tab 1b – BC Assessment Information for Buildings**). The balcony systems were primarily made of wood joists and sheathing with metal balcony railings. Wood balconies have an estimated useful life of 15 years and metal balcony railings have an estimated useful life of 40 years [**Tab 4 – RTPG 40**, page 7]. Although RTPG 40 does not include an estimated service life for waterproofing membranes, the contractor who completed the work estimated that waterproofing membranes have a useful service life of approximately 10 years [**Tab 13 – Letter from Atlantic Pacific Construction re Balcony Repair Work**]. The Landlord has not replaced the waterproofing membranes in the 10 years prior to this work. In addition, the contractor also estimated that the wood components of the balconies were more than 15 years old when they were replaced and the metal railings were likely original to the Building [**Tab 13 – Letter from Atlantic Pacific Construction re Balcony Repair Work**]. All the components of the balconies had reached their estimated useful life and were due to be replaced when the work was completed. As a result, maintenance and repair concerns are irrelevant.

However, the Landlord has provided evidence to show that the work to the balconies was not due to inadequate maintenance or repair. The contractor who completed the work confirmed that the balcony repair work was not required as a result of the Landlord’s failure to maintain the Buildings or make necessary repairs [**Tab 13 – Letter from Atlantic Pacific Construction Ltd. re Balcony Repair Project**]. Sense Engineering also noted that the

Building had been well maintained [**Tab 12 – Building Condition Assessment Report (November 25, 2022)**, page ii].

Timing of Last Repair/Upgrade: Wood balconies have an estimated useful life of 15 years, metal balconies and railings have an estimated useful life of 40 years, and waterproofing membranes have an estimated useful life of 10 years [**Tab 4 – RTPG 40** at page 7 and **Tab 13 – Letter from Atlantic Pacific Construction re Balcony Repair Work**]. The contractor who completed the work estimated that the wood components of the balconies were at least 15 years old and the metal railings were likely original to the Building [**Tab 13 – Letter from Atlantic Pacific Construction re Balcony Repair Work**]. The Landlord has not completed any waterproofing to the balconies in the 10 years prior to this work. As a result, the various components of the balconies were at the end of their estimated useful life and were in poor condition when they were replaced.

Anticipated Useful Life of Repair/Upgrade: The contractor who completed this work estimated that the waterproofing membrane would last at least 10 years and the remaining balcony components would last between 15 and 30 years [**Tab 13 – Letter from Atlantic Pacific Construction Ltd. re Balcony Repair Work**]. Residential Tenancy Policy Guideline 40 estimates that a wood balcony has a useful life of 15 years and metal balcony railings have a useful life of approximately 40 years [**Tab 4 – RTPG 40**, page 7]. As a result, the replaced wooden components of the balconies have an estimated useful life of approximately 15 years while the metal components have an estimated useful life of approximately 40 years.

The Landlord does not anticipate doing any similar work in the next 10 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 January 21, 2025. This means that the Landlord has until July 21, 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): $436,201.39
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.#
CC Management Solutions	93532	35	$534.49	February 13, 2023	EFT	14-15
Atlantic Pacific Construction Ltd.	16	1-5	$8,127.00	February 14, 2023	EFT	1-2
CC Management Solutions	98602	36	$5,419.48	December 19, 2023	EFT	16-17

Atlantic Pacific Construction Ltd.	32	6-10	$82,404.00	January 30, 2024	EFT	5-6
CC Management Solutions	100936	37	$4,848.94	April 30, 2024	EFT	18-19
Atlantic Pacific Construction Ltd.	41	11-24	$73,728.90	May 7, 2024	EFT	7-8
Atlantic Pacific Construction Ltd.	42	25-29	$88,605.09	September 17, 2024	EFT	9-10
Atlantic Pacific Construction Ltd.	47	30-34	$118,597.50	September 17, 2024	EFT	9-10
CC Management Solutions	103050	38	$12,662.38	October 1, 2024	EFT	20-21
Atlantic Pacific Construction Ltd.	10% Holdback*	1	$903.00	March 7, 2023	EFT	3-4
		6, 11, 25, and 30	$40,370.61	January 21, 2025	EFT	11-13
		Total Cost	**$436,201.39**			

*The holdback amount for each Atlantic Pacific Construction Ltd. invoice (before tax) is identified as "Less: 10% Holdback" on the payment summary for each invoice prepared by McIntosh Perry (Tab 2a, pages 1, 6, 11, 25, and 30). The holdback was not incurred by the Landlord, nor was it legally responsible to pay it, until the date it was paid. The total pre-tax holdback for this project was $162,534.80. With GST, the final holdback amount was $170,661.54. The total holdback was calculated as follows:

Invoice No.	10% Holdback
16	$860
32	$8,720.00
41	$7,802.00
42	$9,376.20
47	$12,550.00
Pre-Tax Subtotal	$39,308.20
5% GST	$1,965.41
TOTAL HOLDBACK	**$41,273.61**