

No. S-1510418
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

0790482 B.C. LTD.

PLAINTIFF

AND:

**KBK NO. 11 VENTURES LTD.,
1100 GEORGIA PARTNERSHIP, PETERSON INVESTMENT
(GEORGIA) LIMITED PARTNERSHIP, ABBEY ADELAIDE HOLDINGS INC.,
LJV GEORGIA INVESTMENTS INC. and NO. 274 CATHEDRAL VENTURES LTD.**

DEFENDANTS

AND:

**IGA/AGS JOINT VENTURE INC.,
GARIBALDI GLASS INDUSTRIES INC.,
DOW SILICONES CORPORATION, GUARDIAN GLASS LLC,
GUARDIAN INDUSTRIES CORP., GUARDIAN GLASS COMPANY, ALLSTAR
HOLDINGS INCORPORATED, FENZI NORTH AMERICA INC. and AZON USA INC.**

THIRD PARTIES

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**IMPLEMENTING CLASS ACTION SETTLEMENT AGREEMENT
IN THE SHANGRI-LA LITIGATION**

Dated as of March 13, 2023

This Implementing Class Action Settlement Agreement (“**Agreement**”) is entered into as of March 13, 2023 (the “**Execution Date**”), by and among the Representative Plaintiff, Developer and Third-Parties, as those terms are defined herein.

RECITALS

WHEREAS, the Representative Actions and Class Action have been case managed together as related actions alleging dangerous and non-dangerous construction defects in certain of the common property owned by strata lot owners of the Strata Corporations in the Shangri-La building in downtown Vancouver;

WHEREAS, in particular, the Representative Actions, which were brought by the Strata Corporations in a representative capacity, pursuant to s. 171 of the *SPA*, on behalf of all current constituent owners, have been seeking recovery in tort law to abate alleged dangerous defects in the IGUs through repair, as well as the recovery of alleged common property losses covered by the home warranty insurance certificate;

WHEREAS, in particular, the Class Action has been seeking relief under contract and implied warranty claims for alleged IGU defects, whether dangerous or non-dangerous, on behalf of those current and former strata lot owners who entered into, or took an assignment of, a Pre-Sale Contract with the Developer;

WHEREAS, on February 1, 2022, the Class Action was certified by the Court pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50;

WHEREAS, the Representative Actions, and the liability common issues in the Class Action, were to be tried together in a trial scheduled for at least 130 days and beginning as early as October 31, 2022;

WHEREAS, effective October 25, 2022, all parties to the Class Action and Representative Actions entered into the Final Settlement Agreement, attached hereto as Schedule “A”, to globally settle all claims and third-parties claims asserted in these actions;

WHEREAS, the parties to the Representative Actions have effectuated the Final Settlement Agreement’s terms by entering into the Implementing Representative Actions Settlement as of March 13, 2023, which is attached hereto as Schedule “B” and is subject to ratification by both Strata Corporations pursuant to s. 82(3) of the *SPA*;

WHEREAS, the Parties to the Class Action have effectuated the Final Settlement Agreement’s terms by entering into this Agreement, which is subject to approval of the Court and the occurrence of the Effective Date;

WHEREAS, this Agreement is intended to facilitate the Final Settlement Agreement by supplementing, but not superseding, the Final Settlement Agreement, which remains in effect. Nothing in this Agreement is intended to be or shall be construed to alter the Final Settlement Agreement, and, in the event of inconsistency, the terms of the Final Settlement Agreement shall control;

WHEREAS, the Parties intend for Class Members to receive the benefits provided herein, consisting of a cash payment; and

WHEREAS, this Agreement and the related agreements and schedules referred to herein, including the Final Settlement Agreement and Implementing Representative Actions Settlement, set forth the sole and entire agreement for settlement of the Plaintiffs' claims and supersede all prior agreements and understandings, both written and oral, with respect to the subject matter hereof;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration as set out in the Final Settlement Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties stipulate and agree as follows:

TERMS AND CONDITIONS

1. DEFINITIONS

The capitalized terms in this Agreement have the following meanings, unless the Agreement specifically provides otherwise. Other capitalized terms used in this Agreement that are not defined in this section shall have the meanings ascribed to them elsewhere in the Agreement.

1.1 “**Administrative Expenses**” means the reasonable costs, plus applicable taxes, incurred to administer the Claims Program, including the Administrator’s fees, the costs to administer the Notice Program, the costs to host the Settlement Website, any translation costs, and any other expenses incurred to administer the Agreement or Settlement Fund.

1.2 “**Administrator**” means Epiq Class Action Services Canada, Inc., which has been appointed by the Representative Plaintiff, subject to approval by the Court, to administer and oversee the Claims Program and Notice Program.

1.3 “**Building**” means the Shangri-La building, a residential tower in Vancouver, British Columbia, bounded by the West Georgia, Thurlow and Alberni Streets, and having a civic address of 1111 Alberni Street or 1128 West Georgia Street.

1.4 “**Claim**” means the claim of a Claimant, which must be submitted on a Claim Form by the Claims Submission Deadline.

1.5 “**Claimant**” means a potential Class Member, or his or her or its representative, who submits a Claim.

1.6 “**Claim Form**” means the paper or electronic form that must be completed and submitted in order to make a Claim, including any required supporting documentation.

1.7 “**Claims Period**” means the period during which Claims can be submitted.

1.8 “**Claims Program**” means a reasonable program that the Administrator shall use to develop and disseminate the Claim Form, including notice of any required supporting

documentation, to receive and assess the eligibility of Claims, and to determine and distribute payments to Eligible Claimants.

1.9 “**Claims Submission Deadline**” means the deadline by which all Claimants must submit their Claim to the Administrator. The Claims Submission Deadline will be one-hundred and twenty (120) days from the start of the Claims Period. By agreement between the Administrator and Class Counsel, the Claims Submission Deadline may be extended. Class Counsel and the Administrator shall agree to extend the Claims Submission Deadline if, in their opinions, there are reasonable and material grounds for doing so, doing so will not adversely affect the fair and efficient administration of the Settlement Fund, and it is in the best interests of the Class to do so.

1.10 “**Class**” means a class of all persons (including individuals and entities), except for Excluded Persons, who purchased a residential strata unit in either of the Strata Corporations by entering into a Pre-Sale Contract, or by taking an assignment of a Pre-Sale Contract with the written consent of the Developer.

1.11 “**Class Action**” means the certified class action brought by the Representative Plaintiff on behalf of Class Members, which action was filed in the Court and is captioned *0790482 B.C. Ltd. v. KBK No. 11 Ventures Ltd. et al.*, BCSC Action No. S-1510418, Vancouver Registry. References to the Class Action include the related Class Action Appeals.

1.12 “**Class Action Appeals**” means, collectively, the two appeals pending before the British Columbia Court of Appeal, bearing file numbers CA48119 and CA48381, brought by the Developer from certain orders in the Class Action, which appeals were previously scheduled to be heard together on February 16 and 17, 2023, and have been rescheduled for hearing on May 25 and 26, 2023, unless otherwise changed.

1.13 “**Class Counsel**” means McEwan Cooper Dennis LLP.

1.14 “**Class Members**” means the members of the Class, collectively, and “**Class Member**” means one of them.

1.15 “**Counsel Fees**” means such amount as may be approved or awarded by the Court to Class Counsel as reasonable compensation for the legal fees, including disbursements and applicable taxes, incurred by Class Counsel in respect of the Class Action or the settlement thereof.

1.16 “**Court**” means the Supreme Court of British Columbia.

1.17 “**Developer**” means, collectively, KBK No. 11 Ventures Ltd., 1100 Georgia Partnership, Peterson Investment (Georgia) Limited Partnership, Abbey Adelaide Holdings Inc., LJV Georgia Investments Inc., and No. 274 Cathedral Ventures Ltd.

1.18 “**Effective Date**” means the date of the latest of the following two approval events for the Implementing Representative Actions Settlement and this Agreement, although both approval events must occur in order for there to be an Effective Date:

- (a) The date by which the Implementing Representative Actions Settlement is ratified by both Strata Corporations pursuant to s. 82(3) of the *SPA*; and
- (b) In respect of this Agreement, (i) if there are no objectors, the date of entry of the Final Approval Order; (ii) if there are one or more objectors, the date upon which the time expires for noticing any appeal from the Final Approval Order; or (iii) if an appeal is noticed from the Final Approval Order, the date that the appeal is resolved in a manner that finally affirms the Final Approval Order without any material modification.

1.19 “**Eligible Claimant**” means a Class Member who has submitted a Claim and has been determined by the Administrator to be eligible to receive a payment under this Agreement.

1.20 “**Excluded Persons**” means the following entities and individuals who are excluded as Class Members:

- (a) The Developer and its senior officers and directors;
- (b) Those persons who entered into a Pre-Sale Contract and then assigned that Pre-Sale Contract to a purchaser who is a Class Member; and
- (c) Those persons who are otherwise Class Members and validly opted out from the Class Action, namely (but not necessarily exclusively) the Identified Opt-Outs.

1.21 “**Final Approval Hearing**” means the hearing before the Court for the purpose of determining whether to issue the Final Approval Order.

1.22 “**Final Approval Order**” means an order by the Court, following the Final Approval Hearing, granting final approval of this Agreement.

1.23 “**Final Settlement Agreement**” means the Final Settlement Agreement, entered into effective October 25, 2022, which is attached hereto as Schedule “A”.

1.24 “**Identified Opt-Outs**” means, collectively, the five (5) former Class Members, as named in the Final Settlement Agreement, who submitted an opt-out request by the June 29, 2022 deadline for exclusion from the Class Action.

1.25 “**IGUs**” means Insulated Glazing Units, which are common property owned by strata lot owners of the Strata Corporations.

1.26 “**Implementing Representative Actions Settlement**” means the agreement effectuating the settlement of the Representative Actions, which is attached hereto as Schedule “B”.

1.27 “**Maximum Per Strata Lot Payments**” means the maximum amount of Claim payments available per strata lot for which an Eligible Claimant entered into, or took an assignment of, a Pre-Sale Contract. The Maximum Per Strata Lot Payments are determined by dividing the Unit Entitlement of each strata lot by the total of the Unit Entitlements of all strata lots in the Strata Corporations, and then multiplying the result by the Settlement Fund amount.

1.28 “**NOCCs**” means, collectively, the original notice of civil claim filed in the Class Action on December 15, 2015, and the amended notice of civil claim filed in the Class Action on December 17, 2021. The NOCCs are attached hereto as Schedules “C-1” and “C-2”.

1.29 “**Notice Program**” means a reasonable notice program for distributing Settlement Notices in English, which program reflects the availability of direct notice to Class Members.

1.30 “**Objection/Support Deadline**” means the deadline by which a Class Member’s submission objecting to or supporting the Agreement must be received by Class Counsel in order to be timely and valid. The Objection/Support Deadline shall be thirty (30) days after the Pre-Approval Notice Date.

1.31 “**Parties**” means the Representative Plaintiff, Developer and Third-Parties, collectively, and “**Party**” means one of them.

1.32 “**Plaintiffs**” means, collectively, the Representative Plaintiff and Strata Corporations.

1.33 “**Pre-Approval Notice**” means the English short- and long-form versions of the notice to the Class of this Agreement, the Objection/Support Deadline, and the date(s) of the Final Approval Hearing.

1.34 “**Pre-Approval Notice Date**” means the date on which the Pre-Approval Notice is first distributed by direct notice to Class Members.

1.35 “**Preliminary Approval Hearing**” means the hearing before the Court on March 28, 2023, or as otherwise scheduled.

1.36 “**Preliminary Approval Order**” means an order by the Court, following the Preliminary Approval Hearing, approving the distribution of the Pre-Approval Notice.

1.37 “**Pre-Sale Contract**” means a contract of purchase and sale with the Developer for a strata lot in either of the Strata Corporations, which contract was entered into by, or assigned to, a Class Member prior to the completion of construction.

1.38 “**Representative Actions**” means, collectively, the four actions brought by the Strata Corporations in a representative capacity, pursuant to s. 171 of the *SPA*, on behalf of all current constituent owners, which actions were filed in the Court and are captioned:

- (a) *The Owners, Strata Plan BCS 3206 v. KBK No. 11 Ventures Ltd. et al.*, BCSC Action No. S-1510419, Vancouver Registry;

- (b) *The Owners, Strata Plan BCS 3206 v. National Home Warranty Group Inc. et al.*, BCSC Action No. S-117461, Vancouver Registry;
- (c) *The Owners, Strata Plan BCS 3165 v. KBK No. 11 Ventures Ltd. et al.*, BCSC Action No. S-1510431, Vancouver Registry; and
- (d) *The Owners, Strata Plan BCS 3165 v. National Home Warranty Group Inc. et al.*, BCSC Action No. S-117480, Vancouver Registry.

1.39 “**Representative Plaintiff**” means 0790482 B.C. Ltd.

1.40 “**Settlement Fund**” means the amount of \$6,644,000.00. Subject to the provisions of this Agreement, the Settlement Fund, plus any interest earned thereon, shall be held in the Trust Account for the benefit of the Class. The Settlement Fund shall be all-inclusive of all Claims by Eligible Claimants, Administrative Expenses, Counsel Fees, and any other costs related to the Agreement that are incurred on behalf of the Class. There will be no reversion of any portion of the Settlement Fund to the Developer, Third-Parties, or any other Released Parties.

1.41 “**Settlement Notices**” means the Pre-Approval Notice and any other notice provided for in the Notice Program.

1.42 “**Settlement Website**” means the website at <https://shangrilawindowsclassaction.com/> maintained by the Administrator for the purpose of providing Class Members with information regarding the Agreement, Settlement Notices, and Claims Program.

1.43 “**SP 3165**” means the strata corporation in the Building under the name The Owners, Strata Plan BCS 3165.

1.44 “**SP 3206**” means the strata corporation in the Building under the name The Owners, Strata Plan BCS 3206.

1.45 “**SPA**” means the *Strata Property Act*, S.B.C. 1998, c. 43.

1.46 “**Strata Corporations**” means, collectively, SP 3165 and SP 3206.

1.47 “**Third-Parties**” means, collectively, IGA/AGS Joint Venture Inc., Garibaldi Glass Industries Inc., Dow Silicones Corporation, Guardian Glass LLC, Guardian Industries Corp., Guardian Glass Company, Allstar Holdings Incorporated, Fenzi North America Inc., and Azon USA Inc.

1.48 “**Trust Account**” means an interest-bearing trust account at a Canadian Schedule 1 bank, which account will be under the control of the Administrator for the benefit of Class Members.

1.49 “**Unit Entitlement**” means the unit entitlement of a strata lot in either of the Strata Corporations, which was calculated using the habitable area, in square metres, of the strata lot, rounded to the nearest whole number. The Unit Entitlements are as set out in the “Schedules of

Unit Entitlement” for SP 3165 and SP 3206 deposited with the Land Title Office, which are attached hereto as Schedules “D-1” and “D-2”, respectively.

2. EFFECT OF THE AGREEMENT

2.1 **No Admission of Liability.** The Agreement and Final Settlement Agreement, and all negotiations, statements, communications, or proceedings relating to them, and the fact that the Agreement and Final Settlement Agreement were agreed to, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability, or of the truth of any of the claims and third-party claims alleged or pleaded in the Class Action. The Developer and Third-Parties have denied and continue to deny the allegations made in the Class Action and any wrongdoing or liability whatsoever with respect thereto.

2.2 **Agreement Not Evidence.** The Agreement and Final Settlement Agreement, and all negotiations, statements, communications, or proceedings relating to them, and the fact that the Agreement and Final Settlement Agreement were agreed to, shall not be referred to, offered as evidence, or received in evidence in any pending or future action or proceeding, except in a proceeding to approve and/or enforce the Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

3. APPROVAL OF THE AGREEMENT

3.1 The Parties agree to cooperate fully and to use their reasonable best efforts to obtain approval of this Agreement by the Court, and any appellate court reviewing the Agreement. They further agree to execute all such additional documents as shall be reasonably necessary to carry out the provisions of this Agreement. To the extent that a proposed Preliminary Approval Order and/or Final Approval Order are submitted to the Court, the Parties agree to collaborate and cooperate on the form.

3.2 This Agreement shall only become final if and when the Effective Date occurs. The obligations of the Parties under this Agreement shall not become effective until, and are expressly conditioned upon, the occurrence of the Effective Date.

4. COMPENSATION FOR CLASS MEMBERS

4.1 This Agreement provides cash compensation to an Eligible Claimant calculated based on the Unit Entitlement of the strata lot for which the Eligible Claimant entered into, or took an assignment of, a Pre-Sale Contract. The Maximum Per Strata Lot Payments are set out in Schedule “E” to this Agreement. If an Eligible Claimant entered into, or took an assignment of, Pre-Sale Contracts for multiple strata lots, the Eligible Claimant is entitled to the compensation calculated for each of those strata lots.

4.2 Limitations on Settlement Compensation

- (a) Claim payments from the Settlement Fund will be paid out to Class Members based on the number of participating Eligible Claimants up to the amount of the Maximum Per Strata Lot Payments.

- (b) If the total amount of Claims to be paid out to Eligible Claimants exceeds the funds available in the Settlement Fund after deducting Counsel Fees and all costs, including with respect to Administrative Expenses, then all payments to Eligible Claimants will be reduced *pro rata* to the total amount that is available. Under this *pro rata* distribution, the portions of the Maximum Per Strata Lot Payments of all Eligible Claimants will be aggregated, and Eligible Claimants will each be entitled to a payment based on the relative share of their portion of the Maximum Per Strata Lot Payment for their strata lot(s).

4.3 **Eligibility for Settlement Compensation.** As part of the Claims Program, a Class Member shall be eligible for a payment pursuant to this Agreement provided that such Class Member: (1) submits to the Administrator a completed Claim Form by the Claims Submission Deadline, and (2) has a Claim that is eligible for payment.

4.4 **Payment to Eligible Claimants.** If accepted for payment, the Administrator shall pay a Claim via issuance of a cheque sent by regular mail to the mailing address provided by the Eligible Claimant. Cheques not cashed by an Eligible Claimant within one-hundred and eighty (180) days of issuance will become stale-dated and not eligible for redemption. There will be no obligation to reissue stale-dated cheques.

4.5 **Remainder Funds.** It may be the case that funds will remain in the Settlement Fund after deducting Counsel Fees and all costs, including with respect to Administrative Expenses and payments to Eligible Claimants. An assessment of any remainder in the Settlement Fund will be determined after the expiry of at least one-hundred and eighty (180) days following payment distributions to Eligible Claimants to capture any uncashed stale-dated cheques. To the extent that there are remainder funds, those funds shall be paid to the Strata Corporations, with SP 3165 and SP 3206 each receiving fifty percent (50%) of the remainder funds, to support the costs of replacing permanently damaged IGUs.

4.6 **Canadian Dollars.** All dollar amounts referred to in this Agreement are in Canadian dollars. All payments made to Eligible Claimants will be paid in Canadian dollars.

4.7 **Tax Implications.** While there is no intended tax effect to Eligible Claimants from payments made pursuant to this Agreement, Class Members are encouraged to consult a tax advisor for assistance regarding any tax ramifications of the Agreement. For clarity, neither the Representative Plaintiff nor Class Counsel offer any advice on any tax effect for any Eligible Claimant.

5. RELEASES

5.1 The Parties agree to the following release (the “**Class Release**”), which shall take effect if and when the Effective Date occurs.

5.2 **Released Parties.** “**Released Parties**” means (1) KBK No. 11 Ventures Ltd., 1100 Georgia Partnership, Peterson Investment (Georgia) Limited Partnership, Peterson Investment (Georgia) Inc., Abbey Adelaide Holdings Inc., LJV Georgia Investments LP, LJV Georgia Investments Inc., No. 274 Cathedral Ventures Ltd., Ledcor Construction Limited, Ledcor Properties Inc., Tidball Projects (2005) Ltd., IGA/AGS Joint Venture Inc., Garibaldi Glass

Industries Inc., Guardian Glass LLC, Guardian Industries Corp., Guardian Glass Company, Fenzi North America Inc., James KM Cheng Architects Inc., National Home Warranty Group Inc., Aviva Insurance Company of Canada, RDH Building Science Inc. (formerly known as RDH Building Engineering Ltd.), RDH Engineering Ltd., Dow Silicones Corporation, Allstar Holdings Incorporated, and Azon USA Inc.; and (2) for each of the foregoing, their respective officers, directors, shareholders, employees, and any affiliates, parent companies, subsidiaries, predecessors, and successors.

5.3 **Class Release.** Class Members, including the Representative Plaintiff, on behalf of themselves and their agents, heirs, executors and administrators, successors, shareholders, and any other legal or natural persons who may claim by, through, or under them (the “**Releasing Parties**”), shall be conclusively deemed to have released and forever discharged any and all claims that they may have, purport to have, or may have hereafter against any of the Released Parties for matters in any way related to or connected with the claims in the NOCCs in the Class Action (the “**Released Claims**”), including, without limitation, claims for penalties, consequential damages, punitive damages, exemplary damages, statutory damages, special damages, damages based upon a multiplication of compensatory damages, court costs, or lawyers’ fees or expenses. For greater certainty, the Released Claims include all claims that the Class Members have or may hereafter discover including, without limitation, claims, injuries, damages, or facts in addition to or different from those now known or believed to be true with respect to any matter in any way related to or connected with the claims in the NOCCs in the Class Action. By this Agreement, the Class Members have fully, finally and forever settled and released any and all such claims, injuries, damages, or facts whether known or unknown, suspected or unsuspected, contingent or non-contingent, past or future, whether or not concealed or hidden, which exist, could exist in the future, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, without regard to the subsequent discovery or existence of different or additional facts. Notwithstanding the foregoing, this Agreement does not release any claims for wrongful death or bodily injury.

5.4 Each of the Releasing Parties hereby does, and shall be deemed to, assume the risk that facts additional, different, or contrary to the facts, which each believes or understands to exist, may now exist or may be discovered after this Agreement is executed. Each of the Releasing Parties agrees that any such additional, different, or contrary facts shall in no way limit, waive, or reduce the Class Release, which shall remain in full force and effect.

5.5 **Actions or Proceedings Involving the Released Claims.** Class Members shall not now or hereafter institute, maintain, prosecute, assert and/or cooperate in the institution, commencement, filing or prosecution of any suit, action and/or other proceeding in any jurisdiction against the Released Parties with respect to the claims, causes of action and/or any other matters subject to the Class Release. To the extent that they have initiated any legal action or other proceeding not already encompassed by the Class Action, Class Members shall cause such action or proceeding to come to an end, with prejudice where available. If a Class Member initiates any new legal action or other proceeding for any Released Claim against any of the Released Parties, (1) such legal action or other proceeding shall be brought to an end, with prejudice where available, and at that Class Member’s cost; and (2) the Released Parties shall be entitled to recover any and all reasonable related costs and expenses from that Class Member arising as a result of that Class Member’s breach of his, her or its obligations under the Class Release.

5.6 Ownership of Released Claims. The Representative Plaintiff represents and warrants that it is the sole and exclusive owner of any and all claims that it personally is releasing under this Agreement. The Representative Plaintiff further acknowledges that it has not assigned, pledged, or in any matter whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Class Action, including, without limitation, any claim for benefits, proceeds or value under the Class Action, and that the Representative Plaintiff is not aware of anyone other than itself claiming any interest, in whole or in part, in any benefits, proceeds or values to which the Representative Plaintiff may be entitled as a result of the subject matter of the Agreement. Class Members submitting a Claim Form shall represent and warrant therein that they are the sole and exclusive owner of all claims that they personally are releasing under the Agreement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Class Action, including, without limitation, any claim for benefits, proceeds or value under the Class Action, and that such Class Members are not aware of anyone other than themselves claiming any interest, in whole or in part, in any benefits, proceeds or values to which those Class Members may be entitled as a result of the subject matter of the Agreement.

5.7 Total Satisfaction of Released Claims. The cash compensation made available pursuant to the Agreement is in full, complete, and total satisfaction of all of the Released Claims against the Released Parties. Such compensation is sufficient and adequate consideration for each and every term of the Class Release, and the Class Release shall be irrevocably binding upon the Representative Plaintiff and Class Members.

5.8 Class Release Not Conditioned on Claim or Payment. The Class Release shall be effective with respect to all Releasing Parties, regardless of whether the corresponding Class Member ultimately submits a Claim or receives compensation under this Agreement.

5.9 Basis for Entering Class Release. The Representative Plaintiff acknowledges that it (through Class Counsel) has conducted sufficient independent investigation to recommend the approval of this Agreement and that it executes this Agreement freely, voluntarily, and without being pressured or influenced by, or relying on any statements, representations, promises, or inducements made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Agreement and the Final Settlement Agreement. The Representative Plaintiff further acknowledges, agrees, and specifically represents and warrants that it has discussed with Class Counsel the terms of this Agreement and has received legal advice with respect to the advisability of entering into this Agreement and the Class Release, and the legal effect of this Agreement and the Class Release.

5.10 Release by Certain Released Parties. KBK No. 11 Ventures Ltd., 1100 Georgia Partnership, Peterson Investment (Georgia) Limited Partnership, Peterson Investment (Georgia) Inc., Abbey Adelaide Holdings Inc., LJV Georgia Investments LP, LJV Georgia Investments Inc., No. 274 Cathedral Ventures Ltd., Ledcor Construction Limited, Ledcor Properties Inc., Tidball Projects (2005) Ltd., IGA/AGS Joint Venture Inc., Garibaldi Glass Industries Inc., Guardian Glass LLC, Guardian Industries Corp., Guardian Glass Company, Fenzi North America Inc., James KM Cheng Architects Inc., National Home Warranty Group Inc., Aviva Insurance Company of Canada, RDH Building Science Inc. (formerly known as RDH Building Engineering Ltd.), RDH

Engineering Ltd., Dow Silicones Corporation, Allstar Holdings Incorporated, and Azon USA Inc., and, for each of the foregoing, their respective officers, directors, shareholders, employees (but not those officers, directors, shareholders, or employees, who are, have been, or become, owners of a strata lot in either of the Strata Corporations), and any affiliates, parent companies, subsidiaries, predecessors, and successors, absolutely and unconditionally release the Representative Plaintiff, Class Members, Strata Corporations, former and current council members of the Strata Corporations, and Class Counsel from any potential claims relating to the institution, prosecution or resolution of the Class Action, which release shall take effect if and when the Effective Date occurs. Nothing herein is intended to imply or concede that officers, directors, shareholders, or employees of any of the parties bound by this release, who are, have been, or become, owners of a strata lot in either of the Strata Corporations, would have any potential claims relating to the institution, prosecution or resolution of the Class Action.

5.11 In the event that any of the parties bound by the releases herein should hereafter make any claim or demand or commence or threaten to commence any action, claim or proceeding against the released parties, or any one or more of them, for or by reason of any cause, matter or thing herein released by such parties, this document may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint.

5.12 Nothing in the releases granted herein shall negate or diminish in any way the Res Judicata Indemnity or Contribution Claims Indemnity, as those terms are defined in the Final Settlement Agreement.

5.13 None of the releases granted herein restrict or impair the enforceability of the terms of the Final Settlement Agreement.

5.14 **Material Term.** The Representative Plaintiff hereby agrees and acknowledges that Section 5 of this Agreement was, in its entirety, separately bargained for and constitutes a key, material term of the Agreement.

5.15 Except to enforce rights under this Agreement and the Final Settlement Agreement, the Parties will not make or maintain any claim or take any proceedings against each other in relation to the subject matter of this Agreement or the Final Settlement Agreement and any such actions already commenced by any of the Parties shall be dismissed forthwith without costs to any Party.

5.16 **Jurisdiction.** The Court shall retain continuing jurisdiction over the Parties to interpret and enforce the terms, conditions, and obligations of this Agreement.

6. CLAIMS ADMINISTRATION

6.1 **Role of Administrator.** The Administrator will be responsible for the administration of the Notice Program and Claims Program, including maintaining the Settlement Website. These responsibilities include receiving, reviewing and, as applicable, paying Claims. The Administrator shall have the authority to determine whether a Claim is complete and timely.

6.2 **Toll-Free Number.** The Administrator shall establish a toll-free number for calls made by Class Members from Canada in order to support the Notice Program and Claims Program.

6.3 **Electronic and Hardcopy Claims.** The Settlement Website will be the main channel for Class Members to access the Claim Form for completion, which may then be submitted to the Administrator electronically or by prepaid mail or courier. Alternatively, Class Members may contact the Administrator to arrange receipt of a hardcopy Claim Form for completion, which may then be submitted to the Administrator electronically or by prepaid mail or courier. No matter the method of access, completed Claim Forms must be received by the Administrator, or postmarked to the Administrator, no later than the Claims Submission Deadline.

6.4 **Claim Deficiencies.** If the Administrator finds that deficiencies exist in a Claim, or any required supporting documentation for a Claim, the Administrator will notify the Claimant of the deficiencies and allow a reasonable period from the date of such notice to correct the deficiencies. If the deficiencies are not corrected within this period, the Administrator will deny the Claim.

6.5 **Reports.** During the Claims Period, the Administrator will provide monthly reports to Class Counsel, and the Developer and Third-Parties if requested by their counsel, on the progress of the Claims Program, as well as any other information about the Claims Program that the Parties' counsel may reasonably request. The Administrator will also provide any reports requested by the Court.

6.6 **Distribution of Payments.** As soon as practicable following the expiry of the Claims Submission Deadline plus any required cure period for deficiencies, the Administrator shall report to Class Counsel, and the Developer and Third-Parties if requested by their counsel, the particulars of the payment distribution to each Eligible Claimant.

6.7 **Personal Information.** Personal information of Claimants acquired as a result of this Agreement shall be used solely for the purpose of administering the Claims Program. All information relating to the Claims Program is confidential and shall not be disclosed, except as necessary to the Administrator, Class Counsel and the Court in accordance with the terms of this Agreement, or as required by legal process.

7. THE SETTLEMENT FUND

7.1 The Released Parties shall bear no responsibility or liability for the administration of distributing the Settlement Fund.

7.2 **Responsibility for Allocation of Global Settlement Amount.** The Settlement Fund of \$6,644,000.00 is the amount allocated by the Plaintiffs, in their sole and good faith discretion, towards the settlement of the Class Action out of the all-inclusive global amount of \$13,288,000.00 to be paid to the Plaintiffs pursuant to the Final Settlement Agreement in full and final settlement and satisfaction of all claims and third-party claims in the Class Action and Representative Actions, with the remaining balance of \$6,644,000.00 being allocated towards the separate but related settlement of the Representative Actions. The Settlement Fund shall be in total satisfaction of all of the Released Claims against the Released Parties.

7.3 **Trust Account.** Within thirty (30) days after the Effective Date, the all-inclusive global amount of \$13,288,000.00 to be paid to the Plaintiffs pursuant to the Final Settlement Agreement shall be deposited into the Trust Account. Upon receipt of this global settlement

amount, \$6,644,000.00 shall, in accordance with the terms of the Implementing Representative Actions Settlement, be immediately withdrawn for payment to the Strata Corporations (in particular, \$3,322,000.00 shall be paid to each of SP 3165 and SP 3206), such that the Trust Account shall only consist of, and be maintained for, the Settlement Fund plus any interest earned thereon.

7.4 The Administrator shall maintain the Trust Account for the benefit of Class Members. The Administrator shall not pay out any of the monies in the Settlement Fund except in accordance with the Agreement or in accordance with an order of the Court.

7.5 Taxes and Interest

- (a) All interest earned on the Settlement Fund shall accrue to the benefit of the Class and shall become and remain part of the Trust Account.
- (b) All taxes payable on any interest which accrues on the Settlement Fund shall be the responsibility of the Class. The Administrator shall be solely responsible to fulfill any tax reporting and payment requirements arising from the Settlement Fund in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including any interest and penalties) due with respect to the income earned on the Settlement Fund shall be paid from the Trust Account.
- (c) The Developer and Third-Parties, and the other Released Parties, shall have no responsibility to make any filings relating to the Trust Account and shall have no responsibility to pay tax on any income earned by the Settlement Fund, or pay any taxes on the monies in the Trust Account.

8. AMENDMENTS TO THE AGREEMENT

8.1 This Agreement may be modified or amended only by a written agreement executed by the Parties hereto, or on their behalf by counsel.

8.2 After entry of the Final Approval Order, the Parties may by written agreement, and without further notice to the Class or further order of the Court, amend, modify or expand the terms of the Agreement, including reasonably extending any time period called for under the Agreement, provided any such changes are materially consistent with the Final Approval Order and do not limit the rights of Class Members.

9. NOTICE TO THE CLASS

9.1 **Settlement Notices.** The Settlement Notices provided to the Class shall include: (1) the Pre-Approval Notice, (2) notice of the Final Approval Hearing, (3) notice of the Final Approval Order, and (4) notice of the start and end date of the Claims Period. These Settlement Notices may be combined in a single communication as appropriate. The form of the Settlement Notices shall be consistent with the Notice Program approved by the Court.

9.2 **Distribution of Settlement Notices.** Subject to approval by the Court, the Settlement Notices shall be distributed as follows:

- (a) Within ten (10) business days of the date of the Preliminary Approval Order and Final Approval Order, respectively, the Representative Plaintiff, through Class Counsel and the Administrator, shall cause any Settlement Notices to be posted on the Settlement Website;
- (b) Based on available email and mail contact information from the Court-ordered program for notice of certification carried out between May 30 and June 29, 2022, as supplemented by updated contact information provided by Class Members since that time, the Representative Plaintiff, through Class Counsel and the Administrator, shall, within ten (10) business days of the date of the Preliminary Approval Order and Final Approval Order, respectively, cause any Settlement Notices to be distributed by email and/or regular mail to Class Members, either directly or in care of their legal representative for whom a last-known email and/or mailing address has been identified, except, however, that where there are short- and long-form versions of a given Settlement Notice, only the short-form version shall be so distributed;
- (c) During the period from the Pre-Approval Notice Date until the Claims Submission Deadline, Class Counsel will forward copies of the Settlement Notices and the Claim Form, as available, to any Class Member who contacts Class Counsel and requests copies;
- (d) For the period of thirty (30) days from the date of the Preliminary Approval Order and Final Approval Order, respectively, Class Counsel will cause the latest available short-form version of a Settlement Notice to be posted in conspicuous common areas of the Building, and each such short-form Settlement Notice shall be disseminated one time via the electronic distribution list of the community managers for the Strata Corporations; and
- (e) During the period from the Pre-Approval Notice Date until the payment distributions to Eligible Claimants, the Representative Plaintiff, through Class Counsel and the Administrator, shall maintain the Settlement Website to reflect the latest information about the Agreement, including copies of all available Settlement Notices.

9.3 All of the costs of the Notice Program, including costs for printing, mailing, postage, and to update and maintain the Settlement Website, shall be paid from the Settlement Fund.

10. OBJECTIONS TO AND SUPPORT FOR THE SETTLEMENT

10.1 Class Counsel shall receive any written statements of objection to, or support for, this Agreement that Class Members wish to submit. Subject to approval of the Court, a proposed “Support/Object Form” is attached hereto as Schedule “F” for Class Members to use for submitting such statements.

10.2 Statements of objection to, or support for, this Agreement must be sent in writing by prepaid mail, courier, or email to Class Counsel. A statement of objection to, or support for, the Agreement will only be effective if:

- (a) It is sent to Class Counsel;
- (b) It is received on or before the Objection/Support Deadline; and
- (c) It is on behalf of a single Class Member, or on behalf of multiple Class Members if residing together.

10.3 All written statements of objection to, or support for, the Agreement must be personally signed by the Class Member and shall include the following:

- (a) The Class Member's name, mailing address, telephone number, and email address (if available);
- (b) The strata lot number(s) for which the Class Member entered into, or took an assignment of, a Pre-Sale Contract;
- (c) A brief statement of the nature of and reasons for the objection to, or support for, the Agreement; and
- (d) Whether the Class Member intends to appear at the Final Approval Hearing, and if appearing by counsel, the name, address, telephone number, and email address of counsel.

10.4 Class Counsel shall provide copies of all written statements of objection to, or support for, this Agreement to the other Parties' counsel as soon as practicable after receipt. Wherever reasonably possible, such copies shall be provided in electronic form.

10.5 Class Counsel shall, for purposes of the Final Approval Hearing, provide to the other Parties' counsel an affidavit compiling all of the written statements of objection to, or support for, the Agreement that were received on or before the Objection/Support Deadline.

11. COUNSEL FEES

11.1 Class Counsel will make an application to the Court for an award of Counsel Fees to be paid exclusively from the Settlement Fund. The Released Parties will not take a position on the application. Such Counsel Fees shall be deemed payable as of the Effective Date. In the event that the amount of Counsel Fees awarded by the Court is reduced on an appeal that is resolved after the Effective Date, Class Counsel shall, within thirty (30) days of such applicable order, cause any difference between the Counsel Fees amount paid to Class Counsel from the Settlement Fund, and the Counsel Fees amount awarded to Class Counsel on appeal, to be returned to the Settlement Fund.

12. TERMINATION OF THE AGREEMENT

12.1 Subject to Section 12.2, this Agreement shall be rendered null and void and of no force and effect if at least one of the following events (each a “**Termination Event**”) occur:

- (a) The Effective Date does not occur because the Court does not enter the Preliminary Approval Order;
- (b) The Effective Date does not occur because the Final Approval Hearing is not held by the Court;
- (c) The Effective Date does not occur because the Final Approval Order is not entered by the Court, or is reversed by a higher court, or is materially inconsistent with the terms of this Agreement;
- (d) The Effective Date does not occur because the Implementing Representative Actions Settlement is not ratified by both Strata Corporations pursuant to s. 82(3) of the *SPA*; or
- (e) The Effective Date does not occur because the Final Settlement Agreement is terminated under its terms (see, in particular, paragraphs 16 through 18 of the Final Settlement Agreement).

12.2 It is expressly agreed that an award of Counsel Fees in an amount less than that requested by Class Counsel, or any changes required by a court to the distribution protocols, Notice Program, Administrative Expenses, or other administrative matters of this Agreement, shall not amount to rejection or disapproval of this Agreement or a material part thereof, shall not prevent the occurrence of the Effective Date, and shall not provide any basis for the termination of this Agreement.

12.3 If there is a Termination Event, then:

- (a) This Agreement, including the Class Release, shall be null and void and shall have no force or effect, and no Party shall be bound by any of its terms except as expressly provided in Section 12.4;
- (b) Except as otherwise determined by the Court, any order(s) or judgment(s) entered in the Class Action after the Execution Date shall have no force or effect; and
- (c) The Parties shall be deemed to be in the position they were in immediately prior to the execution of the Final Settlement Agreement. In addition, all of the provisions of this Agreement and the Final Settlement Agreement, and all negotiations, statements, communications, or proceedings relating to them, and the fact that the Agreement and Final Settlement Agreement were agreed to, shall be without prejudice to any position that any of the Parties may later take on any issue in the Class Action or any other litigation.

12.4 If there is a Termination Event, the provisions of Sections 2.1-2.2 and 12.1-12.5 shall survive such termination and continue in full force and effect. The definitions and Section 13 of the Agreement shall survive only for the limited purpose of the interpretation of these surviving sections, but for no other purpose. All other provisions of this Agreement, and all other obligations pursuant to this Agreement, shall cease immediately.

12.5 If there is a Termination Event, the Parties expressly reserve all of their respective rights.

13. OTHER TERMS AND CONDITIONS

13.1 **Ongoing Jurisdiction of the Court.** The Court shall retain continuing jurisdiction over this Agreement and the Class Action, Parties, Class, Eligible Claimants, Settlement Fund, and determination of Counsel Fees.

13.2 **Dismissal of Class Action.** Upon the occurrence of the Effective Date, the Parties shall file a consent dismissal order in the Class Action, without costs to any Party. Concurrently with the filing of the consent dismissal order, the hearing dates for the Class Action Appeals shall be released by consent.

13.3 **Applications for Directions.** Class Counsel may apply to the Court for directions in respect of the distribution of the Settlement Fund. Such applications shall be on notice to the Developer and Third-Parties with the understanding that the Developer and Third-Parties shall take no position on an application dealing solely with the distribution of the Settlement Fund.

13.4 For clarification purposes, the recitals are part of this Agreement.

13.5 The Parties hereby represent and warrant that they individually and alone are entitled to give and receive the consideration in the settlement and none of them have assigned the consideration or their right of action to any: person; firm; or corporation, who may claim against any of the Parties in relation to the subject matter of this Agreement and the Final Settlement Agreement, and the Parties further represent and declare that there are no: liens; mortgages; or charges, concerning the consideration.

13.6 The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed to be a waiver of any other breach of this Agreement, whether prior, subsequent, or contemporaneous.

13.7 Any headings, subheadings, or titles herein are used for purposes of convenience only and have no other legal force, meaning, or effect.

13.8 All time periods in this Agreement shall be computed in calendar days unless expressly provided otherwise. Also, unless otherwise provided in this Agreement, in computing any period of time in this Agreement, the day of the event shall not be included, and the last day of the period shall be included, unless it is a Saturday, Sunday, or statutory holiday in British Columbia, in which case the period shall run until the end of the next day that is not one of the aforementioned days.

13.9 The Parties agree that this Agreement was reached voluntarily after consultation with competent legal counsel.

13.10 All Parties agree that this Agreement is the product of extensive arm's-length negotiations. Neither the Class, Representative Plaintiff, Developer and/or Third-Parties shall be considered to be the drafter of this Agreement or any of its provisions. No presumption shall be deemed to exist in favour of or against any Party as a result of the preparation or negotiation of this Agreement.

13.11 This Agreement will be executed by the undersigned counsel for the Parties, each of whom represents and warrants that they have the authority from their client(s) to enter into this Agreement and to bind their client(s) thereto.

13.12 This Agreement shall be binding upon and inure to the benefit of the Developer, Third-Parties, Representative Plaintiff, Class Members, Releasing Parties, Released Parties, and any other parties covered or bound by the releases herein.


13.13 This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws applicable therein, without regard to any conflict of law principles.

13.14 The Parties agree that any dispute arising out of or relating in any way to this Agreement shall not be litigated or otherwise pursued in any forum or venue other than before the courts in British Columbia.

13.15 This Agreement may be executed in any number of actual or electronically distributed counterparts and by each of the different Parties on several counterparts, each of which when so executed and delivered will be an original. The executed signature page(s) from each actual or electronically distributed counterpart may be joined together and attached and will constitute one and the same instrument.

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Agreed and accepted as of the Execution Date by:



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Emma Christian

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1100 Georgia Partnership

Peterson Investment (Georgia) Limited Partnership

Abbey Adelaide Holdings Inc.

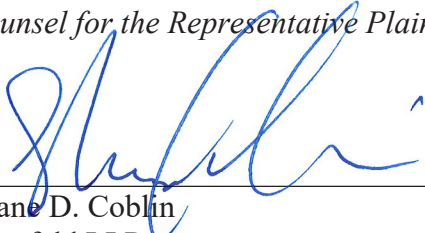
LJV Georgia Investments Inc.

No. 274 Cathedral Ventures Ltd.

Agreed and accepted as of the Execution Date by:

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Per: Jonathan Wendt
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SCHEDULE “A”

FINAL SETTLEMENT AGREEMENT

This Final Settlement Agreement (“FSA”) is entered into effective October 25, 2022, by and among the undersigned parties (collectively, the “Parties” and each, a “Party”), which are named in the four representative actions captioned *The Owners, Strata Plan BCS 3206 v. KBK No. 11 Ventures Ltd. et al.*, BCSC Action No. S-1510419, Vancouver Registry, *The Owners, Strata Plan BCS 3206 v. National Home Warranty Group Inc. et al.*, BCSC Action No. S-117461, Vancouver Registry, *The Owners, Strata Plan BCS 3165 v. KBK No. 11 Ventures Ltd. et al.*, BCSC Action No. S-1510431, Vancouver Registry, and *The Owners, Strata Plan BCS 3165 v. National Home Warranty Group Inc. et al.*, BCSC Action No. S-117480, Vancouver Registry (collectively, the “Representative Actions”), and the certified class action captioned *0790482 B.C. Ltd. v. KBK No. 11 Ventures Ltd. et al.*, BCSC Action No. S-1510418, Vancouver Registry (the “Class Action” and, together with the Representative Actions, the “Actions”), which Actions are pending before the Supreme Court of British Columbia (the “Court”). In the Class Action, two appeals, bearing file numbers CA48119 and CA48381, are scheduled to be heard together before the British Columbia Court of Appeal on February 16 and 17, 2023 (the “Class Action Appeals”). The Actions concern alleged dangerous and non-dangerous construction defects in certain common property owned by strata lot owners of The Owners, Strata Plan BCS 3206 (“SP 3206”) and The Owners, Strata Plan BCS 3165 (“SP 3165” and, together with SP 3206, the “Strata Corporations”) in the Shangri-La building in downtown Vancouver (the “Building”).

WHEREAS, the term “Plaintiffs” is used herein to refer collectively to the Strata Corporations and 0790482 B.C. Ltd.;

WHEREAS, the term “Defendants and Third-Parties” is used herein to refer to all of the Parties other than the Plaintiffs;

WHEREAS, the term “NOCC” is used herein to refer collectively to the original notice of civil claim, and any subsequent amended notice of civil claim within the meaning of Rule 6-1 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, filed and served in each of the respective Actions;

WHEREAS, the Representative Actions were brought by the Strata Corporations in a representative capacity on behalf of all of their constituent owners, pursuant to s. 171 of the *Strata Property Act*, S.B.C. 1998, c. 43 (the “SPA”);

WHEREAS, in the Class Action, the following class was certified by the Court:

Those persons, excluding the defendants named in the Class Action (collectively, the “Developer”) and their senior officers and directors, who purchased a residential unit in the Building by (a) entering into a contract of purchase and sale with the Developer (a “Pre-Sale Contract”), or (b) taking an assignment of a Pre-Sale Contract with the written consent of the Developer, but excluding those persons who assigned their Pre-Sale Contract to a purchaser who is a member of the class;

WHEREAS, in the Class Action, the representative plaintiff, through class counsel, identified the following five (5) class members who submitted an opt-out request by June 29, 2022: (1) Marie

Deitz, a former owner of a strata lot in SP 3165, (2) Edmund Hickling and Judy Wong, former owners of a strata lot in SP 3165, (3) Cecily Jaynes, a current owner of a strata lot in SP 3165, (4) Sawsan Al-Habbal, a current owner of a strata lot in SP 3165, and (5) Pearlbright Limited, a current owner of a strata lot in SP 3206 (collectively, the “**Identified Opt-Outs**”);

WHEREAS, the representative plaintiff and certain Defendants and Third-Parties filed pre-trial applications in the Actions and, prior to the hearing of those applications beginning on October 25, 2022, the Parties engaged in mediated settlement negotiations with The Honourable Mary Ellen Boyd (Ret.) as the mediator (the “**Mediation**”);

WHEREAS, after arm’s-length negotiations, including the Mediation, the Parties reached an agreement-in-principle providing for the proposed settlement of the Actions, and the Class Action Appeals, on the terms and subject to the conditions set forth in this FSA;

WHEREAS, entry into the FSA by the Plaintiffs is not an admission as to the lack of merit of any of the claims asserted in the Actions. The Plaintiffs believe that a settlement on the terms reflected in this FSA is in the best interests of owners and class members;

WHEREAS, the Defendants and Third-Parties, to avoid the costs, disruption and distraction of further litigation, and without admitting the validity of any allegations made in the Actions, or any liability with respect thereto, have concluded that it is desirable that the claims against them be settled on the terms reflected in this FSA;

AND WHEREAS, all Parties recognize the time and expense that would be incurred by further litigation and the uncertainties inherent in such litigation.

NOW, THEREFORE, the Parties have reached the following agreement-in-principle, which, when reduced to stipulated agreements following negotiations by the Parties in good faith and appropriate approval (as set out in paragraph 15 below), are intended to effect a full and final resolution of the Actions, the Class Action Appeals, and the matters giving rise thereto (the “**Settlement**”). The Parties agree to cooperate fully and to use their reasonable best efforts to effectuate the Settlement, which shall provide for and encompass the following and other terms:

Settlement Amount

1. The all-inclusive sum of \$13,288,000.00 (the “**Global Settlement Amount**”) shall be paid by or on behalf of the Defendants and Third-Parties to the Plaintiffs in full and final settlement and satisfaction of all claims and third-party claims in the Actions, and the Class Action Appeals, without costs or disbursements to any Party. In the stipulated agreements, the Global Settlement Amount shall be allocated between the Class Action and Representative Actions at the sole but good faith discretion of the Plaintiffs, subject to Court approval through the settlement approval process for the Class Action. There will be no reversion of any portion of the Global Settlement Amount to the Defendants and Third-Parties. Under no circumstances shall the Defendants and Third-Parties be required to pay more than the Global Settlement Amount. The Defendants and Third-Parties shall bear no

responsibility or liability for the administration of distributing the Global Settlement Amount.

Releases

2. The proposed settlement agreement in the Class Action shall provide for releases, the detailed terms of which are to be agreed by the Parties, but shall include:
 - a. A general release of liability by the representative plaintiff and class members of each of the Defendants and Third-Parties, and their respective officers, directors, shareholders, employees, and related entities (defined as any affiliates, parent companies, subsidiaries, predecessors, and successors), with such release to cover all claims that have been alleged in the NOCC in the Class Action. Notwithstanding the foregoing, the representative plaintiff and class members are not releasing claims for wrongful death or bodily injury.
 - b. A release by each of the Defendants and Third-Parties, and their respective officers, directors, shareholders, employees (but not those officers, directors, shareholders, or employees, who are, have been, or become, owners of a strata lot in either of the Strata Corporations), and related entities (defined as any affiliates, parent companies, subsidiaries, predecessors, and successors), of the representative plaintiff, class members, the Strata Corporations, former and current council members of the Strata Corporations, and class counsel, from any potential claims relating to the institution, prosecution or resolution of the Class Action. Nothing herein is intended to imply or concede that officers, directors, shareholders, or employees of the Defendants or Third-Parties, who are, have been, or become, owners of a strata lot in either of the Strata Corporations, have any potential claims relating to the institution, prosecution or resolution of the Class Action.
3. The settlement agreement in the Representative Actions shall provide for releases, the detailed terms of which are to be agreed by the Parties, but shall include:
 - a. General releases of liability by the Strata Corporations of each of the Defendants and Third-Parties, and their respective officers, directors, shareholders, employees, and related entities (defined as any affiliates, parent companies, subsidiaries, predecessors, and successors), with such releases to cover all claims that have been alleged in any of the NOCCs in the Representative Actions. For greater certainty:
 - i. The Parties agree that the NOCCs in the Representative Actions do not allege claims for wrongful death or bodily injury or damage to non-common property against the Defendants and Third-Parties, or any of them.
 - ii. The Parties agree that the general releases of liability referred to above include a release of the Strata Corporations' right (in their representative capacity to the extent they are permitted pursuant to the *SPA*, including under s. 171 and s. 172 of the *SPA*) to assert in any proceeding that any of the defects or deficiencies alleged in the NOCCs in the Representative Actions, including those alleged in respect of the design, manufacture and installation of the curtain-wall and the Insulated Glazing Units (IGUs), are dangerous or could result in, or have resulted in or caused, wrongful death or bodily injury, or damage to property.

- b. A release by each of the Defendants and Third-Parties, and their respective officers, directors, shareholders, employees (but not those officers, directors, shareholders, or employees, who are, have been, or become, owners of a strata lot in either of the Strata Corporations), and related entities (defined as any affiliates, parent companies, subsidiaries, predecessors, and successors), of the Strata Corporations, their counsel of record in the Representative Actions, and former and current council members of the Strata Corporations, from any potential claims relating to the institution, prosecution or resolution of the Representative Actions. Nothing herein is intended to imply or concede that officers, directors, shareholders, or employees of the Defendants or Third-Parties, who are, have been, or become, owners of a strata lot in either of the Strata Corporations, would have any potential claims relating to the institution, prosecution or resolution of the Representative Actions.
4. In addition to other typical language included in releases in British Columbia, the release documents shall include the following wording:

In the event that any of the parties bound by the releases should hereafter make any claim or demand or commence or threaten to commence any action, claim or proceeding against the released parties, or any one or more of them, for or by reason of any cause, matter or thing herein released by such parties, this document may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint.

Indemnities

5. The Parties expressly acknowledge that a portion of the Global Settlement Amount was bargained for between the Parties and given in exchange for the Strata Corporations providing the indemnities described below.
6. Subject to paragraphs 8 and 13 below, the Strata Corporations shall fully indemnify and hold harmless each of the Defendants and Third-Parties (the “**Res Judicata Indemnity**”) in respect of any claims related in any way to those alleged in any of the NOCCs in the Actions, which are made by any person or entity that is, at the time that such claims are issued, a current or former owner of a strata lot in either of the Strata Corporations (“**Future Owner Claims**”), whether such Future Owner Claims are issued directly against the Defendants and Third-Parties, or any one or more of them, or are issued against a third-party(ies) and result in claims for contribution or indemnity against the Defendants and Third-Parties, or any one or more of them.
7. For the avoidance of doubt, and without limiting the scope of the Res Judicata Indemnity, Future Owner Claims include any claims related in any way to those alleged in the NOCC in the Class Action, which are made by (a) the Identified Opt-Outs, or (b) any other class member who asserts a right to claim on account of being an opt-out from the Class Action.

8. After receiving notice of any Future Owner Claim not naming either of the Strata Corporations, one or more of the Defendants and Third-Parties named as defendant(s) or third-party(ies) in such Future Owner Claim shall promptly notify the Strata Corporations of such Future Owner Claim.
9. Neither of the Strata Corporations will make or maintain any claim or take any proceedings for matters in any way related to or connected with the claims in any of the NOCCs in the Actions against any person, corporation, partnership or other party which might result in a claim for contribution or indemnity or otherwise (“**Future Third-Party Claims**”) against the Defendants and Third-Parties, or any of them. If, in breach of this provision, any such claims are brought by either of the Strata Corporations, then that Strata Corporation will save harmless and indemnify the Defendants and Third-Parties from any and all liabilities, actions, causes of actions, suits, claims, demands, debts, dues, sums of money, damages, costs (including full actual legal fees and disbursements), expenses and compensation of whatsoever kind arising from such Future Third-Party Claims (the “**Contribution Claims Indemnity**”).
10. If the Defendants and Third-Parties, or any of them, are required to take any proceedings to enforce the Res Judicata Indemnity or Contribution Claims Indemnity, and it is finally determined that either of the Strata Corporations were in breach thereof, then such Defendants and Third-Parties will be entitled to recover from the breaching Strata Corporation(s):
 - a. their full actual legal fees and disbursements incurred on account of such proceedings to enforce the indemnity(ies);
 - b. all reasonable legal fees and disbursements incurred by the Defendants and Third-Parties, or some of them, on account of defending Future Owner Claims, and/or Future Third-Party Claims, during the currency of the breach(es); and
 - c. any other losses and damages that would have been covered by the indemnity(ies) but for the breach(es),and in respect of each Future Owner Claim where the Strata Corporation(s) have at point of first instance denied their obligation to indemnify, the Defendants and Third-Parties shall be relieved from all of the obligations set forth in paragraph 13 with respect to that Future Owner Claim, unless and until such denial is retracted and payments owing under the Res Judicata Indemnity and/or the Contribution Claims Indemnity are brought current.
11. Except as set forth in paragraph 10 above, nothing in this FSA provides an indemnity for any originating claims brought by the Defendants and Third-Parties, or any of them.
12. For greater certainty, nothing in this FSA provides an indemnity for any claims brought by any person(s) or entity(ies) who are not, at the time that such claims are issued, a current or former owner of a strata lot in either Strata Corporation.

Defence of Future Owner Claims

13. The following shall apply to the defence of Future Owner Claims:

- a. The Defendants and Third-Parties shall appoint and instruct counsel (“**Future Claims Counsel**”) to defend the Future Owner Claim(s). Unless otherwise agreed to by the Strata Corporations, Future Claims Counsel shall not be counsel who is or has been counsel of record in any of the Actions. Where all parties, acting reasonably, agree that it is appropriate, they shall appoint and instruct a single independent counsel to act as Future Claims Counsel, but if a conflict(s) arise then the parties, or any of them as required, shall be entitled to appoint separate Future Claims Counsel.
 - b. All legal fees, and disbursements, including taxes, of Future Claims Counsel shall be paid by the Strata Corporations.
 - c. In the event the Strata Corporation(s) are also party to any such Future Owner Claim(s), and as such have their own counsel defending such claim(s), it is understood and agreed that counsel appointed by the Strata Corporation(s) shall take the lead in defending the Future Owner Claim(s) and that the Defendants and Third-Parties will cooperate in good faith to make efforts to minimize any duplication of legal expenses incurred in defending the Future Owner Claim(s).
 - d. Future Claims Counsel shall (without disclosing privileged information, or information that is confidential or proprietary to the Defendants and Third-Parties), upon the request of the Strata Corporations, provide the Strata Corporations with:
 - i. detailed updates as to the status of any Future Owner Claim(s) and the opinions of Future Claims Counsel as to the merits of the positions of the parties in the litigation, and the settlement posture of the litigation;
 - ii. provide the Strata Corporations with invoices showing the detail of the work performed; and
 - iii. copies of pleadings, correspondence between the parties to the litigation, produced litigation documents, examination for discovery transcripts, and examination for discovery request responses.
 - e. The Defendants and Third-Parties shall accept all commercially reasonable directions from the Strata Corporation(s) regarding the defence and settlement of the Future Owner Claim(s).
 - f. The Strata Corporations shall pay the fees and expenses directly to Future Claims Counsel within 30 days of receipt of any invoice, without prejudice to any right under the *Legal Professions Act* that the Strata Corporations may have to review any such invoice, provided that it is agreed that such right of review will not be exercised until the Future Owner Claim has been finally disposed of.
 - g. To the extent that the Defendants and Third-Parties engage the services of counsel (“**Shadow Counsel**”) other than the Future Claims Counsel, all legal fees and disbursements, including taxes, of such Shadow Counsel shall be borne entirely by those Defendants and Third-Parties.
14. In the event of an irreconcilable disagreement as to the commercial reasonableness of the directions given by the Strata Corporation(s), such dispute shall be submitted to arbitration before a single arbitrator agreed upon by the parties, or failing such agreement appointed pursuant to the *Arbitration Act*, or any successor legislation in British Columbia, for fast-track arbitration, and:

- a. The arbitrator shall determine the scope and the extent of processes applicable to any such arbitration.
- b. The decision arising therefrom shall be binding on the parties to the arbitration and shall be deemed to be an award under the *Arbitration Act*.
- c. Until such arbitrator has rendered an award in respect of such disagreement, nothing shall enjoin Future Claims Counsel in any way from proceeding with any reasonable steps in the litigation that such counsel determines must be taken in order to protect any of the rights of the Defendants and Third-Parties that it represents, and the parties acknowledge and agree that Future Claims Counsel will not be liable to them for doing so.
- d. Unless the arbitrator orders otherwise, the prevailing party, as determined by the arbitrator, shall be awarded all of its costs and fees incurred in connection with the arbitration, and all of the arbitrator's fees, including administrative costs and any out-of-pocket costs.

Approvals

15. The Settlement is conditioned upon (a) the proposed settlement agreement in the Class Action receiving final approval from the Court, and (b) ratification of the settlement agreement in the Representative Actions by each of the Strata Corporations pursuant to s. 82(3) of the *SPA*. With respect to the approval of the proposed settlement agreement in the Class Action, if the Court requires changes to the distribution protocols, notice or fee allocations, etc., such administrative matters will not amount to rejection of the proposed settlement agreement in the Class Action and shall not result in nullification of this settlement.

Withdrawal and Termination Rights

16. On the basis that insurance coverage is a statutory obligation under the *SPA*, is intended to prevent a strata corporation from suffering a significant loss (*SPA*, s. 98(3.1)), and because owners and tenants must be informed of any material change in insurance coverage, including any increase in an insurance deductible (*SPA*, s. 154), the Plaintiffs shall have the right to withdraw, on or before February 28, 2023, from this FSA in the event that the Strata Corporations determine, after conducting due diligence, including obtaining the reinsurance rates expected to become available in January 2023, that the Res Judicata Indemnity would materially adversely impact their ability to obtain adequate insurance coverage on reasonable terms (“**Insurance Due Diligence**”). This right of the Plaintiffs to withdraw from the FSA may be exercised at the sole but good faith discretion of the Strata Corporations.
17. Consistent with paragraph 15 above, this FSA shall be rendered null and void and of no force and effect in the event that the Court fails to finally approve the proposed settlement agreement in the Class Action or in the event that either or both Strata Corporations fail to ratify the settlement agreement in the Representative Actions (each a “**Failed Approval**”).

18. In the event of a Failed Approval, or in the event any Party withdraws from the Settlement in accordance with the terms of this FSA or due to a breach thereof, the Parties shall be deemed to be in the position they were in immediately prior to the execution of this FSA, and the statements made herein shall not be deemed to prejudice in any way the positions of the Parties with respect to the Actions or the Class Action Appeals.

General

19. Nothing in the releases granted herein shall negate or diminish in any way the Res Judicata Indemnity or Contribution Claims Indemnity.
20. None of the releases granted herein restrict or impair the enforceability of the terms of this FSA.
21. The settlement agreements in the Class Action and Representative Actions shall provide that the Defendants and Third-Parties have denied and continue to deny the allegations made in the Actions and any wrongdoing or liability whatsoever with respect thereto.
22. Counsel for the Parties shall inform the Court of the terms of this FSA, shall request that the Court remove from its calendar the joint trial in the Representative Actions and of the liability common issues in the Class Action (the “**Joint Trial**”), and shall request that the Court stay the Actions and all proceedings therein pending the submission to the Court of the proposed settlement agreement in the Class Action for preliminary approval.
23. Concurrently with the request to remove the Joint Trial from the Court’s calendar, the Developer shall request that the British Columbia Court of Appeal set new dates for the hearing of the Developer’s Class Action Appeals, on the earliest dates mutually available to counsel after April 15, 2023, or as otherwise agreed, which new dates shall be released by consent in the event that the Settlement is finalized.
24. The Parties agree that ratification of the settlement agreement in the Representative Actions by each of the Strata Corporations will not occur unless and until the Court grants preliminary approval of the proposed settlement agreement in the Class Action. It is acknowledged by the Parties that, as a result of the required Insurance Due Diligence, the earliest that the hearing seeking preliminary approval can be scheduled is March 1, 2023.
25. Until such time as made public through the process for seeking preliminary approval of the proposed settlement agreement in the Class Action, the Parties shall take reasonable steps to protect the confidentiality of the terms of this FSA and the Settlement. Notwithstanding the foregoing, the Parties are entitled, prior to the hearing for preliminary approval, to disclose to owners of strata lots in the Strata Corporations, class members, etc., that the Joint Trial has been adjourned by consent while the Parties engage in ongoing negotiations, which remain confidential until a Settlement can be presented for approval. In the event that, despite reasonable efforts, the terms of this FSA or the Settlement are prematurely leaked and made public prior to the hearing for preliminary approval, then any Party shall be entitled to issue press releases or public statements in response thereto, provided that

such press releases or public statements do not contradict anything in this FSA or the settlement agreements, and provided that at least one business day's advance notice in writing is provided by that Party to all other Parties prior to the issuance of such press releases or public statements.

26. Consistent with paragraph 15 above, if (a) the proposed settlement agreement in the Class Action obtains final approval from the Court, and (b) the settlement agreement in the Representative Actions is ratified by each of the Strata Corporations, the Parties shall file a consent dismissal order in each of the Actions, and in the Class Action Appeals, without costs to any Party.
27. This FSA and the Settlement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws applicable therein, without regard to any conflict of law principles. The Parties agree that any dispute arising out of or relating in any way to this FSA shall not be litigated or otherwise pursued in any forum or venue other than before the courts in British Columbia.
28. This FSA shall be binding upon and inure to the benefit of the Parties and their respective agents, executors, heirs, successors and assigns.
29. This FSA will be executed by the undersigned counsel for the Parties, each of whom represents and warrants that they have the authority from their client(s) to enter into this FSA and bind their client(s) thereto.
30. This FSA may be executed in any number of actual or electronically distributed counterparts and by each of the different Parties on several counterparts, each of which when so executed and delivered will be an original. The executed signature page(s) from each actual or electronically distributed counterpart may be joined together and attached and will constitute one and the same instrument.

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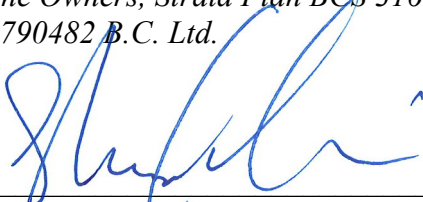
31. This FSA may be modified or amended only by a written agreement executed by the Parties hereto, or on their behalf by counsel.

Agreed and accepted as of November 4, 2022 by:



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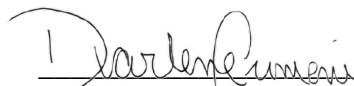
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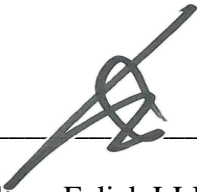
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SCHEDULE “B”

No. S-1510431
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE OWNERS, STRATA PLAN BCS 3165

PLAINTIFF

AND:

KBK NO. 11 VENTURES LTD., 1100 GEORGIA PARTNERSHIP, PETERSON INVESTMENT (GEORGIA) LIMITED PARTNERSHIP, PETERSON INVESTMENT (GEORGIA) INC., ABBEY ADELAIDE HOLDINGS INC., LJV GEORGIA INVESTMENTS LP, LJV GEORGIA INVESTMENTS INC., NO. 274 CATHEDRAL VENTURES LTD., IGA/AGS JOINT VENTURE INC., GARIBALDI GLASS INDUSTRIES INC., BROOK VAN DALEN & ASSOCIATES LIMITED, LEDCOR PROPERTIES INC., LEDCOR CONSTRUCTION LIMITED, TIDBALL PROJECTS (2005) LTD., RDH BUILDING ENGINEERING LTD. and JAMES KM CHENG ARCHITECTS INC.

DEFENDANTS

AND:

IGA/AGS JOINT VENTURES INC., GARIBALDI GLASS INDUSTRIES INC., KBK NO. 11 VENTURES LTD., 1100 GEORGIA PARTNERSHIP, PETERSON INVESTMENT (GEORGIA) LIMITED PARTNERSHIP, ABBEY ADELAIDE HOLDINGS INC., LJV GEORGIA INVESTMENTS INC., NO. 274 CATHEDRAL VENTURES LTD., BROOK VAN DALEN & ASSOCIATES LIMITED, LEDCOR CONSTRUCTION LIMITED, TIDBALL PROJECTS (2005) LTD., JAMES KM CHENG ARCHITECTS INC., RDH BUILDING SCIENCE INC., DOW SILICONES CORPORATION, GUARDIAN GLASS LLC, GUARDIAN INDUSTRIES CORP., GUARDIAN GLASS COMPANY, ALLSTAR HOLDINGS INCORPORATED, FENZI NORTH AMERICA INC. and AZON USA INC.

THIRD PARTIES

No. S-117480
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE OWNERS, STRATA PLAN BCS 3165

PLAINTIFF

AND:

**NATIONAL HOME WARRANTY GROUP INC.
and AVIVA INSURANCE COMPANY OF CANADA**

DEFENDANTS

AND:

**KBK NO. 11 VENTURES LTD., 1100 GEORGIA PARTNERSHIP,
IGA/AGS JOINT VENTURE INC. and GARIBALDI GLASS INDUSTRIES INC.**

THIRD PARTIES

No. S-1510419
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE OWNERS, STRATA PLAN BCS 3206

PLAINTIFF

AND:

**KBK NO. 11 VENTURES LTD., 1100 GEORGIA PARTNERSHIP,
PETERSON INVESTMENT (GEORGIA) LIMITED PARTNERSHIP, ABBEY ADELAIDE
HOLDINGS INC., LJV GEORGIA INVESTMENTS INC., NO. 274 CATHEDRAL VENTURES
LTD., LEDCOR CONSTRUCTION LIMITED, TIDBALL PROJECTS (2005) LTD., IGA/AGS
JOINT VENTURES INC., GARBALDI GLASS INDUSTRIES INC., JAMES KM CHENG
ARCHITECTS INC. and RDH BUILDING SCIENCE INC.**

DEFENDANTS

AND:

**IGA/AGS JOINT VENTURES INC., GARIBALDI GLASS INDUSTRIES INC., KBK NO. 11
VENTURES LTD., 1100 GEORGIA PARTNERSHIP, PETERSON INVESTMENT
(GEORGIA) LIMITED PARTNERSHIP, ABBEY ADELAIDE HOLDINGS INC., LJV
GEORGIA INVESTMENTS INC., NO. 274 CATHEDRAL VENTURES LTD., BROOK VAN
DALEN & ASSOCIATES LIMITED, LEDCOR CONSTRUCTION LIMITED, TIDBALL
PROJECTS (2005) LTD., JAMES KM CHENG ARCHITECTS INC., RDH BUILDING
SCIENCE INC., DOW SILICONES CORPORATION, GUARDIAN GLASS LLC, GUARDIAN
INDUSTRIES CORP., GUARDIAN GLASS COMPANY, ALLSTAR HOLDINGS
INCORPORATED, FENZI NORTH AMERICA INC. and AZON USA INC.**

THIRD PARTIES

No. S-117461
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE OWNERS, STRATA PLAN BCS 3206

PLAINTIFF

AND:

**NATIONAL HOME WARRANTY GROUP INC.
and AVIVA INSURANCE COMPANY OF CANADA**

DEFENDANTS

AND:

**KBK NO. 11 VENTURES LTD., 1100 GEORGIA PARTNERSHIP,
IGA/AGS JOINT VENTURE INC. and GARIBALDI GLASS INDUSTRIES INC.**

THIRD PARTIES

**IMPLEMENTING REPRESENTATIVE ACTIONS SETTLEMENT AGREEMENT
IN THE SHANGRI-LA LITIGATION**

Dated as of March 13, 2023

This Implementing Representative Actions Settlement Agreement (“**Agreement**”) is entered into as of March 13, 2023 (the “**Execution Date**”), by and among the Strata Corporations, and the Defendants and Third-Parties, as those terms are defined herein.

RECITALS

WHEREAS, the Representative Actions and Class Action have been case managed together as related actions alleging dangerous and non-dangerous construction defects in certain of the common property owned by strata lot owners of the Strata Corporations in the Shangri-La building in downtown Vancouver;

WHEREAS, in particular, the Representative Actions, which were brought by the Strata Corporations in a representative capacity, pursuant to s. 171 of the *SPA*, on behalf of all current constituent owners, have been seeking recovery in tort law to abate alleged dangerous defects in the IGUs through repair, as well as the recovery of alleged common property losses covered by the home warranty insurance certificate;

WHEREAS, in particular, the Class Action has been seeking relief under contract and implied warranty claims for alleged IGU defects, whether dangerous or non-dangerous, on behalf of those current and former strata lot owners who entered into, or took an assignment of, a pre-sale contract prior to the completion of construction;

WHEREAS, on February 1, 2022, the Class Action was certified by the Court pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50;

WHEREAS, the Representative Actions, and the liability common issues in the Class Action, were to be tried together in a trial scheduled for at least 130 days and beginning as early as October 31, 2022;

WHEREAS, effective October 25, 2022, all parties to the Class Action and Representative Actions entered into the Final Settlement Agreement, attached hereto as Schedule “A”, to globally settle all claims and third-parties claims asserted in these actions;

WHEREAS, the parties to the Class Action have effectuated the Final Settlement Agreement’s terms by entering into the Implementing Class Action Settlement as of March 13, 2023, which is attached hereto as Schedule “B” and is subject to approval of the Court;

WHEREAS, the Parties to the Representative Actions have effectuated the Final Settlement Agreement’s terms by entering into this Agreement, which is subject to ratification by both Strata Corporations pursuant to s. 82(3) of the *SPA* and the occurrence of the Effective Date;

WHEREAS, this Agreement is intended to facilitate the Final Settlement Agreement by supplementing, but not superseding, the Final Settlement Agreement, which remains in effect. Nothing in this Agreement is intended to be or shall be construed to alter the Final Settlement Agreement, and, in the event of inconsistency, the terms of the Final Settlement Agreement shall control; and

WHEREAS, this Agreement and the related agreements and schedules referred to herein, including the Final Settlement Agreement and Implementing Class Action Settlement, set forth the sole and entire agreement for settlement of the Plaintiffs' claims and supersede all prior agreements and understandings, both written and oral, with respect to the subject matter hereof;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration as set out in the Final Settlement Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties stipulate and agree as follows:

TERMS AND CONDITIONS

1. DEFINITIONS

The capitalized terms in this Agreement have the following meanings, unless the Agreement specifically provides otherwise. Other capitalized terms used in this Agreement that are not defined in this section shall have the meanings ascribed to them elsewhere in the Agreement.

1.1 **“Building”** means the Shangri-La building, a residential tower in Vancouver, British Columbia, bounded by the West Georgia, Thurlow and Alberni Streets, and having a civic address of 1111 Alberni Street or 1128 West Georgia Street.

1.2 **“Class Action”** means the certified class action on behalf of a class of current and former owners who entered into, or took an assignment of, a pre-sale contract for a strata lot in the Strata Corporations prior to the completion of construction, which action was filed in the Court and is captioned *0790482 B.C. Ltd. v. KBK No. 11 Ventures Ltd. et al.*, BCSC Action No. S-1510418, Vancouver Registry. References to the Class Action include the two appeals pending before the British Columbia Court of Appeal, bearing file numbers CA48119 and CA48381, from certain orders in the Class Action, which appeals were previously scheduled to be heard together on February 16 and 17, 2023, and have been rescheduled for hearing on May 25 and 26, 2023, unless otherwise changed.

1.3 **“Counsel Fees”** means the reasonable legal fees of Strata Counsel, within the meaning of the *Legal Profession Act*, S.B.C. 1998, c. 9, and including disbursements and applicable taxes, which fees were incurred and paid by any of the Strata Corporations in respect of the Representative Actions or the settlement thereof.

1.4 **“Court”** means the Supreme Court of British Columbia.

1.5 **“Defendants and Third-Parties”** means, collectively, KBK No. 11 Ventures Ltd., 1100 Georgia Partnership, Peterson Investment (Georgia) Limited Partnership, Abbey Adelaide Holdings Inc., LJV Georgia Investments Inc., No. 274 Cathedral Ventures Ltd., Ledcor Construction Limited, Ledcor Properties Inc., Tidball Projects (2005) Ltd., IGA/AGS Joint Venture Inc., Garibaldi Glass Industries Inc., RDH Building Science Inc. (formerly known as RDH Building Engineering Ltd.), RDH Engineering Ltd., National Home Warranty Group Inc., Aviva Insurance Company of Canada, James KM Cheng Architects Inc., Dow Silicones Corporation, Guardian Glass LLC, Guardian Industries Corp., Guardian Glass Company, Allstar Holdings Incorporated, Fenzi North America Inc., and Azon USA Inc.

1.6 “**Effective Date**” means the date of the latest of the following two approval events for the Implementing Class Action Settlement and this Agreement, although both approval events must occur in order for there to be an Effective Date:

- (a) The date by which this Agreement is ratified by both Strata Corporations pursuant to s. 82(3) of the *SPA*; and
- (b) In respect of the Implementing Class Action Settlement, (i) if there are no objectors, the date of entry of the Final Approval Order; (ii) if there are one or more objectors, the date upon which the time expires for noticing any appeal from the Final Approval Order; or (iii) if an appeal is noticed from the Final Approval Order, the date that the appeal is resolved in a manner that finally affirms the Final Approval Order without any material modification.

1.7 “**Final Approval Order**” means an order by the Court in the Class Action granting final approval of the Implementing Class Action Settlement.

1.8 “**Final Settlement Agreement**” means the Final Settlement Agreement, entered into effective October 25, 2022, which is attached hereto as Schedule “A”.

1.9 “**IGUs**” means Insulated Glazing Units, which are common property owned by strata lot owners of the Strata Corporations.

1.10 “**Implementing Class Action Settlement**” means, subject to approval of the Court, the agreement effectuating the settlement of the Class Action, which is attached hereto as Schedule “B”.

1.11 “**NOCCs**” means, collectively, the original notices of civil claim filed in the Representative Actions on either November 4, 2011 or December 15, 2015, the amended notices of civil claim filed in certain of the Representative Actions on either February 14, 2018 or August 28, 2019, and the further amended notices of civil claim filed in certain of the Representative Actions on December 17, 2021. The NOCCs are attached hereto as Schedules “C-1” through “C-8”.

1.12 “**Parties**” means the Strata Corporations, and the Defendants and Third-Parties, collectively, and “**Party**” means one of them.

1.13 “**Plaintiffs**” means, collectively, the Strata Corporations and Representative Plaintiff.

1.14 “**Representative Actions**” means, collectively, the four actions brought by the Strata Corporations in a representative capacity, pursuant to s. 171 of the *SPA*, on behalf of all current constituent owners, which actions were filed in the Court and are captioned:

- (a) *The Owners, Strata Plan BCS 3206 v. KBK No. 11 Ventures Ltd. et al.*, BCSC Action No. S-1510419, Vancouver Registry;

- (b) *The Owners, Strata Plan BCS 3206 v. National Home Warranty Group Inc. et al.*, BCSC Action No. S-117461, Vancouver Registry;
- (c) *The Owners, Strata Plan BCS 3165 v. KBK No. 11 Ventures Ltd. et al.*, BCSC Action No. S-1510431, Vancouver Registry; and
- (d) *The Owners, Strata Plan BCS 3165 v. National Home Warranty Group Inc. et al.*, BCSC Action No. S-117480, Vancouver Registry.

1.15 “**Representative Plaintiff**” means the representative plaintiff 0790482 B.C. Ltd. in the Class Action.

1.16 “**Settlement Amount**” means the total amount of \$6,644,000.00, of which \$3,322,000.00 is allocated to each of SP 3165 and SP 3206. The Settlement Amount shall be all-inclusive of all Counsel Fees and any other costs related to the Agreement that are incurred on behalf of the Strata Corporations. There will be no reversion of any portion of the Settlement Amount to the Defendants and Third-Parties, or any other Released Parties.

1.17 “**SP 3165**” means the strata corporation in the Building under the name The Owners, Strata Plan BCS 3165.

1.18 “**SP 3206**” means the strata corporation in the Building under the name The Owners, Strata Plan BCS 3206.

1.19 “**SPA**” means the *Strata Property Act*, S.B.C. 1998, c. 43.

1.20 “**Strata Corporations**” means, collectively, SP 3165 and SP 3206.

1.21 “**Strata Counsel**” means legal counsel who has served as counsel of record to both or either of the Strata Corporations in respect of the Representative Actions, including, but not limited to, McEwan Cooper Dennis LLP.

1.22 “**Trust Account**” means a trust account at a Canadian Schedule 1 bank.

2. EFFECT OF THE AGREEMENT

2.1 **No Admission of Liability.** The Agreement and Final Settlement Agreement, and all negotiations, statements, communications, or proceedings relating to them, and the fact that the Agreement and Final Settlement Agreement were agreed to, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability, or of the truth of any of the claims and third-party claims alleged or pleaded in the Representative Actions. The Defendants and Third-Parties have denied and continue to deny the allegations made in the Representative Actions and any wrongdoing or liability whatsoever with respect thereto.

2.2 **Agreement Not Evidence.** The Agreement and Final Settlement Agreement, and all negotiations, statements, communications, or proceedings relating to them, and the fact that the Agreement and Final Settlement Agreement were agreed to, shall not be referred to, offered as

evidence, or received in evidence in any pending or future action or proceeding, except in a proceeding to enforce the Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

3. APPROVAL OF THE AGREEMENT

3.1 The Parties agree to cooperate fully and to use their reasonable best efforts to effectuate this Agreement. They further agree to execute all such additional documents as shall be reasonably necessary to carry out the provisions of this Agreement.

3.2 This Agreement shall only become final if and when the Effective Date occurs. The obligations of the Parties under this Agreement shall not become effective until, and are expressly conditioned upon, the occurrence of the Effective Date.

4. INDEMNITIES BY THE STRATA CORPORATIONS

4.1 For emphasis, but without limiting the effectiveness of any other provision of the Final Settlement Agreement, paragraphs 5 through 14 of the Final Settlement Agreement, together with any definitions used, and ancillary provisions referred to, in such paragraphs, are hereby incorporated by reference as though fully set forth herein.

5. RELEASES

5.1 The Parties agree to the following release (the “**Strata Release**”), which shall take effect if and when the Effective Date occurs.

5.2 **Released Parties.** “**Released Parties**” means (1) KBK No. 11 Ventures Ltd., 1100 Georgia Partnership, Peterson Investment (Georgia) Limited Partnership, Peterson Investment (Georgia) Inc., Abbey Adelaide Holdings Inc., LJV Georgia Investments LP, LJV Georgia Investments Inc., No. 274 Cathedral Ventures Ltd., Ledcor Construction Limited, Ledcor Properties Inc., Tidball Projects (2005) Ltd., IGA/AGS Joint Venture Inc., Garibaldi Glass Industries Inc., Guardian Glass LLC, Guardian Industries Corp., Guardian Glass Company, Fenzi North America Inc., James KM Cheng Architects Inc., National Home Warranty Group Inc., Aviva Insurance Company of Canada, RDH Building Science Inc. (formerly known as RDH Building Engineering Ltd.), RDH Engineering Ltd., Dow Silicones Corporation, Allstar Holdings Incorporated, and Azon USA Inc.; and (2) for each of the foregoing, their respective officers, directors, shareholders, employees, and any affiliates, parent companies, subsidiaries, predecessors, and successors.

5.3 **Strata Release.** The Strata Corporations shall be conclusively deemed to have released and forever discharged any and all claims that they may have, purport to have, or may have hereafter against any of the Released Parties for matters in any way related to or connected with the claims in any of the NOCCs in the Representative Actions (the “**Released Claims**”), including, without limitation, claims for penalties, consequential damages, punitive damages, exemplary damages, statutory damages, special damages, damages based upon a multiplication of compensatory damages, court costs, or lawyers’ fees or expenses. For greater certainty, the Parties agree that the NOCCs in the Representative Actions do not allege claims for wrongful death or bodily injury or damage to non-common property against the Defendants and Third-Parties, or any

of them. Notwithstanding the foregoing, the Parties agree that the Released Claims include a release of the Strata Corporations' right (in their representative capacity to the extent they are permitted pursuant to the SPA, including under s. 171 and s. 172 of the SPA) to assert in any proceeding that any of the defects or deficiencies alleged in the NOCCs in the Representative Actions, including those alleged in respect of the design, manufacture and installation of the curtain-wall and the IGUs, are dangerous or could result in, or have resulted in or caused, wrongful death or bodily injury, or damage to property. For further greater certainty, the Released Claims include all claims that the Strata Corporations have or may hereafter discover including, without limitation, claims, injuries, damages, or facts in addition to or different from those now known or believed to be true with respect to any matter in any way related to or connected with the claims in any of the NOCCs in the Representative Actions. By this Agreement, the Strata Corporations have fully, finally and forever settled and released any and all such claims, injuries, damages, or facts whether known or unknown, suspected or unsuspected, contingent or non-contingent, past or future, whether or not concealed or hidden, which exist, could exist in the future, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, without regard to the subsequent discovery or existence of different or additional facts.

5.4 Each of the Strata Corporations hereby does, and shall be deemed to, assume the risk that facts additional, different, or contrary to the facts, which each believes or understands to exist, may now exist or may be discovered after this Agreement is executed. Each of the Strata Corporations agrees that any such additional, different, or contrary facts shall in no way limit, waive, or reduce the Strata Release, which shall remain in full force and effect.

5.5 **Total Satisfaction of Released Claims.** The Settlement Amount is in full, complete, and total satisfaction of all of the Released Claims against the Released Parties. Such compensation is sufficient and adequate consideration for each and every term of the Strata Release, and the Strata Release shall be irrevocably binding upon the Strata Corporations.

5.6 **Basis for Entering Strata Release.** Each of the Strata Corporations acknowledges that it (through Strata Counsel) has conducted sufficient independent investigation to enter into this Agreement and that it executes this Agreement freely, voluntarily, and without being pressured or influenced by, or relying on any statements, representations, promises, or inducements made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Agreement and the Final Settlement Agreement. Each of the Strata Corporations further acknowledges, agrees, and specifically represents and warrants that it has discussed with Strata Counsel the terms of this Agreement and has received legal advice with respect to the advisability of entering into this Agreement and the Strata Release, and the legal effect of this Agreement and the Strata Release.

5.7 **Release by Certain Released Parties.** KBK No. 11 Ventures Ltd., 1100 Georgia Partnership, Peterson Investment (Georgia) Limited Partnership, Peterson Investment (Georgia) Inc., Abbey Adelaide Holdings Inc., LJV Georgia Investments LP, LJV Georgia Investments Inc., No. 274 Cathedral Ventures Ltd., Ledcor Construction Limited, Ledcor Properties Inc., Tidball Projects (2005) Ltd., IGA/AGS Joint Venture Inc., Garibaldi Glass Industries Inc., Guardian Glass LLC, Guardian Industries Corp., Guardian Glass Company, Fenzi North America Inc., James KM Cheng Architects Inc., National Home Warranty Group Inc., Aviva Insurance Company of Canada, RDH Building Science Inc. (formerly known as RDH Building Engineering Ltd.), RDH

Engineering Ltd., Dow Silicones Corporation, Allstar Holdings Incorporated, and Azon USA Inc., and, for each of the foregoing, their respective officers, directors, shareholders, employees (but not those officers, directors, shareholders, or employees, who are, have been, or become, owners of a strata lot in either of the Strata Corporations), and any affiliates, parent companies, subsidiaries, predecessors, and successors, absolutely and unconditionally release the Strata Corporations, former and current council members of the Strata Corporations, and Strata Counsel from any potential claims relating to the institution, prosecution or resolution of the Representative Actions, which release shall take effect if and when the Effective Date occurs. Nothing herein is intended to imply or concede that officers, directors, shareholders, or employees of any of the parties bound by this release, who are, have been, or become, owners of a strata lot in either of the Strata Corporations, would have any potential claims relating to the institution, prosecution or resolution of the Representative Actions.

5.8 In the event that any of the parties bound by the releases herein should hereafter make any claim or demand or commence or threaten to commence any action, claim or proceeding against the released parties, or any one or more of them, for or by reason of any cause, matter or thing herein released by such parties, this document may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint.

5.9 Nothing in the releases granted herein shall negate or diminish in any way the Res Judicata Indemnity or Contribution Claims Indemnity, as those terms are defined in the Final Settlement Agreement, and which terms are incorporated by reference pursuant to Section 4.1 of this Agreement.

5.10 None of the releases granted herein restrict or impair the enforceability of the terms of the Final Settlement Agreement.

5.11 Except to enforce rights under this Agreement and the Final Settlement Agreement, the Parties will not make or maintain any claim or take any proceedings against each other in relation to the subject matter of this Agreement or the Final Settlement Agreement and any such actions already commenced by any of the Parties shall be dismissed forthwith without costs to any Party.

5.12 **Material Term.** The Strata Corporations hereby agree and acknowledge that Section 5 of this Agreement was, in its entirety, separately bargained for and constitutes a key, material term of the Agreement.

6. THE SETTLEMENT AMOUNT

6.1 The Released Parties shall bear no responsibility or liability for the administration of distributing the Settlement Amount.

6.2 **Responsibility for Allocation of Global Settlement Amount.** The Settlement Amount of \$6,644,000.00 is the amount allocated by the Plaintiffs, in their sole and good faith discretion, towards the settlement of the Representative Actions out of the all-inclusive global amount of \$13,288,000.00 to be paid by or on behalf of the Defendants and Third-Parties to the Plaintiffs pursuant to the Final Settlement Agreement in full and final settlement and satisfaction of all claims and third-party claims in the Class Action and Representative Actions, with the

remaining balance of \$6,644,000.00 being allocated towards the separate but related settlement of the Class Action. The Settlement Amount shall be in total satisfaction of all of the Released Claims against the Released Parties.

6.3 **Responsibility for Allocation of Settlement Amount.** As to the portions of the Settlement Amount attributable to SP 3165 and SP 3206, the Strata Corporations, in their sole and good faith discretion, stipulate that SP 3165 and SP 3206 shall each receive fifty percent (50%) of the Settlement Amount of \$6,644,000.00 (*i.e.*, each shall receive \$3,322,000.00). The Strata Corporations will use their respective portion of the Settlement Amount toward their respective costs that have been or will be incurred in connection with the Representative Actions or this Agreement, including Counsel Fees, insurance premium costs, costs to replace permanently damaged IGUs, and any costs arising from the Res Judicata Indemnity or Contribution Claims Indemnity (as those terms are defined in the Final Settlement Agreement).

6.4 **Trust Account.** Within thirty (30) days after the Effective Date, the all-inclusive global amount of \$13,288,000.00 to be paid to the Plaintiffs pursuant to the Final Settlement Agreement shall be deposited into the Trust Account. Upon receipt of this global settlement amount, the Settlement Amount of \$6,644,000.00 shall be immediately withdrawn for payment to the Strata Corporations (in particular, \$3,322,000.00 shall be paid to each of SP 3165 and SP 3206), with the balance of \$6,644,000.00 remaining in the Trust Account to be administered and distributed in accordance with the terms of the Implementing Class Action Settlement.

7. AMENDMENTS TO THE AGREEMENT

7.1 This Agreement may be modified or amended only by a written agreement executed by the Parties hereto, or on their behalf by counsel.

8. TERMINATION OF THE AGREEMENT

8.1 This Agreement shall be rendered null and void and of no force and effect if at least one of the following events (each a “**Termination Event**”) occur:

- (a) The Effective Date does not occur because this Agreement is not ratified by both Strata Corporations pursuant to s. 82(3) of the *SPA*;
- (b) The Effective Date does not occur because the Implementing Class Action Settlement is terminated under its terms (see, in particular, Section 12.1 of the Implementing Class Action Settlement); or
- (c) The Effective Date does not occur because the Final Settlement Agreement is terminated under its terms (see, in particular, paragraphs 16 through 18 of the Final Settlement Agreement).

8.2 If there is a Termination Event, then:

- (a) This Agreement, including the Strata Release, shall be null and void and shall have no force or effect, and no Party shall be bound by any of its terms except as expressly provided in Section 8.3;

- (b) Except as otherwise determined by the Court, any order(s) or judgment(s) entered in the Representative Actions after the Execution Date shall have no force or effect; and
- (c) The Parties shall be deemed to be in the position they were in immediately prior to the execution of the Final Settlement Agreement. In addition, all of the provisions of this Agreement and the Final Settlement Agreement, and all negotiations, statements, communications, or proceedings relating to them, and the fact that the Agreement and Final Settlement Agreement were agreed to, shall be without prejudice to any position that any of the Parties may later take on any issue in the Representative Actions or any other litigation.

8.3 If there is a Termination Event, the provisions of Sections 2.1-2.2 and 8.1-8.4 shall survive such termination and continue in full force and effect. The definitions and Section 9 of the Agreement shall survive only for the limited purpose of the interpretation of these surviving sections, but for no other purpose. All other provisions of this Agreement, and all other obligations pursuant to this Agreement, shall cease immediately.

8.4 If there is a Termination Event, the Parties expressly reserve all of their respective rights.

9. OTHER TERMS AND CONDITIONS

9.1 **Dismissal of Representative Actions.** Upon the occurrence of the Effective Date, the Parties shall file a consent dismissal order in the Representative Actions, without costs to any Party.

9.2 For clarification purposes, the recitals are part of this Agreement.

9.3 The Parties hereby represent and warrant that they individually and alone are entitled to give and receive the consideration in the settlement and none of them have assigned the consideration or their right of action to any: person; firm; or corporation, who may claim against any of the Parties in relation to the subject matter of this Agreement and the Final Settlement Agreement, and the Parties further represent and declare that there are no: liens; mortgages; or charges, concerning the consideration.

9.4 The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed to be a waiver of any other breach of this Agreement, whether prior, subsequent, or contemporaneous.

9.5 Any headings, subheadings, or titles herein are used for purposes of convenience only and have no other legal force, meaning, or effect.

9.6 All time periods in this Agreement shall be computed in calendar days unless expressly provided otherwise. Also, unless otherwise provided in this Agreement, in computing any period of time in this Agreement, the day of the event shall not be included, and the last day of the period shall be included, unless it is a Saturday, Sunday, or statutory holiday in

British Columbia, in which case the period shall run until the end of the next day that is not one of the aforementioned days.

9.7 The Parties agree that this Agreement was reached voluntarily after consultation with competent legal counsel.

9.8 All Parties agree that this Agreement is the product of extensive arm's-length negotiations. Neither the Strata Corporations, nor the Defendants and Third-Parties, shall be considered to be the drafter of this Agreement or any of its provisions. No presumption shall be deemed to exist in favour of or against any Party as a result of the preparation or negotiation of this Agreement.

9.9 This Agreement will be executed by the undersigned counsel for the Parties, each of whom represents and warrants that they have the authority from their client(s) to enter into this Agreement and to bind their client(s) thereto.

9.10 This Agreement shall be binding upon and inure to the benefit of the Defendants and Third-Parties, Strata Corporations, Released Parties, and any other parties covered or bound by the releases herein.

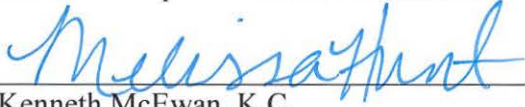
9.11 This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws applicable therein, without regard to any conflict of law principles.

9.12 The Parties agree that any dispute arising out of or relating in any way to this Agreement shall not be litigated or otherwise pursued in any forum or venue other than before the courts in British Columbia.

9.13 This Agreement may be executed in any number of actual or electronically distributed counterparts and by each of the different Parties on several counterparts, each of which when so executed and delivered will be an original. The executed signature page(s) from each actual or electronically distributed counterpart may be joined together and attached and will constitute one and the same instrument.

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Agreed and accepted as of the Execution Date by:



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Emma Christian

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Ledcor Construction Limited

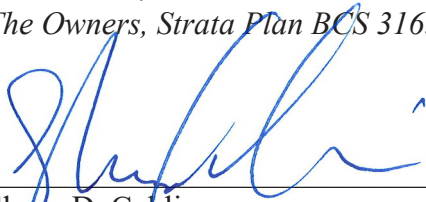
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*Counsel for RDH Building Science Inc. (formerly known as RDH Building Engineering Ltd.) and
RDH Engineering Ltd.*



Dow Silicones Corporation

Per: Jonathan Wendt
Title: Secretary
Dow Silicones Corporation

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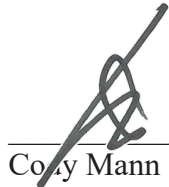
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SCHEDULE “A”

FINAL SETTLEMENT AGREEMENT

This Final Settlement Agreement (“FSA”) is entered into effective October 25, 2022, by and among the undersigned parties (collectively, the “Parties” and each, a “Party”), which are named in the four representative actions captioned *The Owners, Strata Plan BCS 3206 v. KBK No. 11 Ventures Ltd. et al.*, BCSC Action No. S-1510419, Vancouver Registry, *The Owners, Strata Plan BCS 3206 v. National Home Warranty Group Inc. et al.*, BCSC Action No. S-117461, Vancouver Registry, *The Owners, Strata Plan BCS 3165 v. KBK No. 11 Ventures Ltd. et al.*, BCSC Action No. S-1510431, Vancouver Registry, and *The Owners, Strata Plan BCS 3165 v. National Home Warranty Group Inc. et al.*, BCSC Action No. S-117480, Vancouver Registry (collectively, the “Representative Actions”), and the certified class action captioned *0790482 B.C. Ltd. v. KBK No. 11 Ventures Ltd. et al.*, BCSC Action No. S-1510418, Vancouver Registry (the “Class Action” and, together with the Representative Actions, the “Actions”), which Actions are pending before the Supreme Court of British Columbia (the “Court”). In the Class Action, two appeals, bearing file numbers CA48119 and CA48381, are scheduled to be heard together before the British Columbia Court of Appeal on February 16 and 17, 2023 (the “Class Action Appeals”). The Actions concern alleged dangerous and non-dangerous construction defects in certain common property owned by strata lot owners of The Owners, Strata Plan BCS 3206 (“SP 3206”) and The Owners, Strata Plan BCS 3165 (“SP 3165” and, together with SP 3206, the “Strata Corporations”) in the Shangri-La building in downtown Vancouver (the “Building”).

WHEREAS, the term “Plaintiffs” is used herein to refer collectively to the Strata Corporations and 0790482 B.C. Ltd.;

WHEREAS, the term “Defendants and Third-Parties” is used herein to refer to all of the Parties other than the Plaintiffs;

WHEREAS, the term “NOCC” is used herein to refer collectively to the original notice of civil claim, and any subsequent amended notice of civil claim within the meaning of Rule 6-1 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, filed and served in each of the respective Actions;

WHEREAS, the Representative Actions were brought by the Strata Corporations in a representative capacity on behalf of all of their constituent owners, pursuant to s. 171 of the *Strata Property Act*, S.B.C. 1998, c. 43 (the “SPA”);

WHEREAS, in the Class Action, the following class was certified by the Court:

Those persons, excluding the defendants named in the Class Action (collectively, the “Developer”) and their senior officers and directors, who purchased a residential unit in the Building by (a) entering into a contract of purchase and sale with the Developer (a “Pre-Sale Contract”), or (b) taking an assignment of a Pre-Sale Contract with the written consent of the Developer, but excluding those persons who assigned their Pre-Sale Contract to a purchaser who is a member of the class;

WHEREAS, in the Class Action, the representative plaintiff, through class counsel, identified the following five (5) class members who submitted an opt-out request by June 29, 2022: (1) Marie

Deitz, a former owner of a strata lot in SP 3165, (2) Edmund Hickling and Judy Wong, former owners of a strata lot in SP 3165, (3) Cecily Jaynes, a current owner of a strata lot in SP 3165, (4) Sawsan Al-Habbal, a current owner of a strata lot in SP 3165, and (5) Pearlbright Limited, a current owner of a strata lot in SP 3206 (collectively, the “**Identified Opt-Outs**”);

WHEREAS, the representative plaintiff and certain Defendants and Third-Parties filed pre-trial applications in the Actions and, prior to the hearing of those applications beginning on October 25, 2022, the Parties engaged in mediated settlement negotiations with The Honourable Mary Ellen Boyd (Ret.) as the mediator (the “**Mediation**”);

WHEREAS, after arm’s-length negotiations, including the Mediation, the Parties reached an agreement-in-principle providing for the proposed settlement of the Actions, and the Class Action Appeals, on the terms and subject to the conditions set forth in this FSA;

WHEREAS, entry into the FSA by the Plaintiffs is not an admission as to the lack of merit of any of the claims asserted in the Actions. The Plaintiffs believe that a settlement on the terms reflected in this FSA is in the best interests of owners and class members;

WHEREAS, the Defendants and Third-Parties, to avoid the costs, disruption and distraction of further litigation, and without admitting the validity of any allegations made in the Actions, or any liability with respect thereto, have concluded that it is desirable that the claims against them be settled on the terms reflected in this FSA;

AND WHEREAS, all Parties recognize the time and expense that would be incurred by further litigation and the uncertainties inherent in such litigation.

NOW, THEREFORE, the Parties have reached the following agreement-in-principle, which, when reduced to stipulated agreements following negotiations by the Parties in good faith and appropriate approval (as set out in paragraph 15 below), are intended to effect a full and final resolution of the Actions, the Class Action Appeals, and the matters giving rise thereto (the “**Settlement**”). The Parties agree to cooperate fully and to use their reasonable best efforts to effectuate the Settlement, which shall provide for and encompass the following and other terms:

Settlement Amount

1. The all-inclusive sum of \$13,288,000.00 (the “**Global Settlement Amount**”) shall be paid by or on behalf of the Defendants and Third-Parties to the Plaintiffs in full and final settlement and satisfaction of all claims and third-party claims in the Actions, and the Class Action Appeals, without costs or disbursements to any Party. In the stipulated agreements, the Global Settlement Amount shall be allocated between the Class Action and Representative Actions at the sole but good faith discretion of the Plaintiffs, subject to Court approval through the settlement approval process for the Class Action. There will be no reversion of any portion of the Global Settlement Amount to the Defendants and Third-Parties. Under no circumstances shall the Defendants and Third-Parties be required to pay more than the Global Settlement Amount. The Defendants and Third-Parties shall bear no

responsibility or liability for the administration of distributing the Global Settlement Amount.

Releases

2. The proposed settlement agreement in the Class Action shall provide for releases, the detailed terms of which are to be agreed by the Parties, but shall include:
 - a. A general release of liability by the representative plaintiff and class members of each of the Defendants and Third-Parties, and their respective officers, directors, shareholders, employees, and related entities (defined as any affiliates, parent companies, subsidiaries, predecessors, and successors), with such release to cover all claims that have been alleged in the NOCC in the Class Action. Notwithstanding the foregoing, the representative plaintiff and class members are not releasing claims for wrongful death or bodily injury.
 - b. A release by each of the Defendants and Third-Parties, and their respective officers, directors, shareholders, employees (but not those officers, directors, shareholders, or employees, who are, have been, or become, owners of a strata lot in either of the Strata Corporations), and related entities (defined as any affiliates, parent companies, subsidiaries, predecessors, and successors), of the representative plaintiff, class members, the Strata Corporations, former and current council members of the Strata Corporations, and class counsel, from any potential claims relating to the institution, prosecution or resolution of the Class Action. Nothing herein is intended to imply or concede that officers, directors, shareholders, or employees of the Defendants or Third-Parties, who are, have been, or become, owners of a strata lot in either of the Strata Corporations, have any potential claims relating to the institution, prosecution or resolution of the Class Action.
3. The settlement agreement in the Representative Actions shall provide for releases, the detailed terms of which are to be agreed by the Parties, but shall include:
 - a. General releases of liability by the Strata Corporations of each of the Defendants and Third-Parties, and their respective officers, directors, shareholders, employees, and related entities (defined as any affiliates, parent companies, subsidiaries, predecessors, and successors), with such releases to cover all claims that have been alleged in any of the NOCCs in the Representative Actions. For greater certainty:
 - i. The Parties agree that the NOCCs in the Representative Actions do not allege claims for wrongful death or bodily injury or damage to non-common property against the Defendants and Third-Parties, or any of them.
 - ii. The Parties agree that the general releases of liability referred to above include a release of the Strata Corporations' right (in their representative capacity to the extent they are permitted pursuant to the *SPA*, including under s. 171 and s. 172 of the *SPA*) to assert in any proceeding that any of the defects or deficiencies alleged in the NOCCs in the Representative Actions, including those alleged in respect of the design, manufacture and installation of the curtain-wall and the Insulated Glazing Units (IGUs), are dangerous or could result in, or have resulted in or caused, wrongful death or bodily injury, or damage to property.

- b. A release by each of the Defendants and Third-Parties, and their respective officers, directors, shareholders, employees (but not those officers, directors, shareholders, or employees, who are, have been, or become, owners of a strata lot in either of the Strata Corporations), and related entities (defined as any affiliates, parent companies, subsidiaries, predecessors, and successors), of the Strata Corporations, their counsel of record in the Representative Actions, and former and current council members of the Strata Corporations, from any potential claims relating to the institution, prosecution or resolution of the Representative Actions. Nothing herein is intended to imply or concede that officers, directors, shareholders, or employees of the Defendants or Third-Parties, who are, have been, or become, owners of a strata lot in either of the Strata Corporations, would have any potential claims relating to the institution, prosecution or resolution of the Representative Actions.
4. In addition to other typical language included in releases in British Columbia, the release documents shall include the following wording:

In the event that any of the parties bound by the releases should hereafter make any claim or demand or commence or threaten to commence any action, claim or proceeding against the released parties, or any one or more of them, for or by reason of any cause, matter or thing herein released by such parties, this document may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint.

Indemnities

5. The Parties expressly acknowledge that a portion of the Global Settlement Amount was bargained for between the Parties and given in exchange for the Strata Corporations providing the indemnities described below.
6. Subject to paragraphs 8 and 13 below, the Strata Corporations shall fully indemnify and hold harmless each of the Defendants and Third-Parties (the “**Res Judicata Indemnity**”) in respect of any claims related in any way to those alleged in any of the NOCCs in the Actions, which are made by any person or entity that is, at the time that such claims are issued, a current or former owner of a strata lot in either of the Strata Corporations (“**Future Owner Claims**”), whether such Future Owner Claims are issued directly against the Defendants and Third-Parties, or any one or more of them, or are issued against a third-party(ies) and result in claims for contribution or indemnity against the Defendants and Third-Parties, or any one or more of them.
7. For the avoidance of doubt, and without limiting the scope of the Res Judicata Indemnity, Future Owner Claims include any claims related in any way to those alleged in the NOCC in the Class Action, which are made by (a) the Identified Opt-Outs, or (b) any other class member who asserts a right to claim on account of being an opt-out from the Class Action.

8. After receiving notice of any Future Owner Claim not naming either of the Strata Corporations, one or more of the Defendants and Third-Parties named as defendant(s) or third-party(ies) in such Future Owner Claim shall promptly notify the Strata Corporations of such Future Owner Claim.
9. Neither of the Strata Corporations will make or maintain any claim or take any proceedings for matters in any way related to or connected with the claims in any of the NOCCs in the Actions against any person, corporation, partnership or other party which might result in a claim for contribution or indemnity or otherwise (“**Future Third-Party Claims**”) against the Defendants and Third-Parties, or any of them. If, in breach of this provision, any such claims are brought by either of the Strata Corporations, then that Strata Corporation will save harmless and indemnify the Defendants and Third-Parties from any and all liabilities, actions, causes of actions, suits, claims, demands, debts, dues, sums of money, damages, costs (including full actual legal fees and disbursements), expenses and compensation of whatsoever kind arising from such Future Third-Party Claims (the “**Contribution Claims Indemnity**”).
10. If the Defendants and Third-Parties, or any of them, are required to take any proceedings to enforce the Res Judicata Indemnity or Contribution Claims Indemnity, and it is finally determined that either of the Strata Corporations were in breach thereof, then such Defendants and Third-Parties will be entitled to recover from the breaching Strata Corporation(s):
 - a. their full actual legal fees and disbursements incurred on account of such proceedings to enforce the indemnity(ies);
 - b. all reasonable legal fees and disbursements incurred by the Defendants and Third-Parties, or some of them, on account of defending Future Owner Claims, and/or Future Third-Party Claims, during the currency of the breach(es); and
 - c. any other losses and damages that would have been covered by the indemnity(ies) but for the breach(es),and in respect of each Future Owner Claim where the Strata Corporation(s) have at point of first instance denied their obligation to indemnify, the Defendants and Third-Parties shall be relieved from all of the obligations set forth in paragraph 13 with respect to that Future Owner Claim, unless and until such denial is retracted and payments owing under the Res Judicata Indemnity and/or the Contribution Claims Indemnity are brought current.
11. Except as set forth in paragraph 10 above, nothing in this FSA provides an indemnity for any originating claims brought by the Defendants and Third-Parties, or any of them.
12. For greater certainty, nothing in this FSA provides an indemnity for any claims brought by any person(s) or entity(ies) who are not, at the time that such claims are issued, a current or former owner of a strata lot in either Strata Corporation.

Defence of Future Owner Claims

13. The following shall apply to the defence of Future Owner Claims:

- a. The Defendants and Third-Parties shall appoint and instruct counsel (“**Future Claims Counsel**”) to defend the Future Owner Claim(s). Unless otherwise agreed to by the Strata Corporations, Future Claims Counsel shall not be counsel who is or has been counsel of record in any of the Actions. Where all parties, acting reasonably, agree that it is appropriate, they shall appoint and instruct a single independent counsel to act as Future Claims Counsel, but if a conflict(s) arise then the parties, or any of them as required, shall be entitled to appoint separate Future Claims Counsel.
 - b. All legal fees, and disbursements, including taxes, of Future Claims Counsel shall be paid by the Strata Corporations.
 - c. In the event the Strata Corporation(s) are also party to any such Future Owner Claim(s), and as such have their own counsel defending such claim(s), it is understood and agreed that counsel appointed by the Strata Corporation(s) shall take the lead in defending the Future Owner Claim(s) and that the Defendants and Third-Parties will cooperate in good faith to make efforts to minimize any duplication of legal expenses incurred in defending the Future Owner Claim(s).
 - d. Future Claims Counsel shall (without disclosing privileged information, or information that is confidential or proprietary to the Defendants and Third-Parties), upon the request of the Strata Corporations, provide the Strata Corporations with:
 - i. detailed updates as to the status of any Future Owner Claim(s) and the opinions of Future Claims Counsel as to the merits of the positions of the parties in the litigation, and the settlement posture of the litigation;
 - ii. provide the Strata Corporations with invoices showing the detail of the work performed; and
 - iii. copies of pleadings, correspondence between the parties to the litigation, produced litigation documents, examination for discovery transcripts, and examination for discovery request responses.
 - e. The Defendants and Third-Parties shall accept all commercially reasonable directions from the Strata Corporation(s) regarding the defence and settlement of the Future Owner Claim(s).
 - f. The Strata Corporations shall pay the fees and expenses directly to Future Claims Counsel within 30 days of receipt of any invoice, without prejudice to any right under the *Legal Professions Act* that the Strata Corporations may have to review any such invoice, provided that it is agreed that such right of review will not be exercised until the Future Owner Claim has been finally disposed of.
 - g. To the extent that the Defendants and Third-Parties engage the services of counsel (“**Shadow Counsel**”) other than the Future Claims Counsel, all legal fees and disbursements, including taxes, of such Shadow Counsel shall be borne entirely by those Defendants and Third-Parties.
14. In the event of an irreconcilable disagreement as to the commercial reasonableness of the directions given by the Strata Corporation(s), such dispute shall be submitted to arbitration before a single arbitrator agreed upon by the parties, or failing such agreement appointed pursuant to the *Arbitration Act*, or any successor legislation in British Columbia, for fast-track arbitration, and:

- a. The arbitrator shall determine the scope and the extent of processes applicable to any such arbitration.
- b. The decision arising therefrom shall be binding on the parties to the arbitration and shall be deemed to be an award under the *Arbitration Act*.
- c. Until such arbitrator has rendered an award in respect of such disagreement, nothing shall enjoin Future Claims Counsel in any way from proceeding with any reasonable steps in the litigation that such counsel determines must be taken in order to protect any of the rights of the Defendants and Third-Parties that it represents, and the parties acknowledge and agree that Future Claims Counsel will not be liable to them for doing so.
- d. Unless the arbitrator orders otherwise, the prevailing party, as determined by the arbitrator, shall be awarded all of its costs and fees incurred in connection with the arbitration, and all of the arbitrator's fees, including administrative costs and any out-of-pocket costs.

Approvals

15. The Settlement is conditioned upon (a) the proposed settlement agreement in the Class Action receiving final approval from the Court, and (b) ratification of the settlement agreement in the Representative Actions by each of the Strata Corporations pursuant to s. 82(3) of the *SPA*. With respect to the approval of the proposed settlement agreement in the Class Action, if the Court requires changes to the distribution protocols, notice or fee allocations, etc., such administrative matters will not amount to rejection of the proposed settlement agreement in the Class Action and shall not result in nullification of this settlement.

Withdrawal and Termination Rights

16. On the basis that insurance coverage is a statutory obligation under the *SPA*, is intended to prevent a strata corporation from suffering a significant loss (*SPA*, s. 98(3.1)), and because owners and tenants must be informed of any material change in insurance coverage, including any increase in an insurance deductible (*SPA*, s. 154), the Plaintiffs shall have the right to withdraw, on or before February 28, 2023, from this FSA in the event that the Strata Corporations determine, after conducting due diligence, including obtaining the reinsurance rates expected to become available in January 2023, that the Res Judicata Indemnity would materially adversely impact their ability to obtain adequate insurance coverage on reasonable terms (“**Insurance Due Diligence**”). This right of the Plaintiffs to withdraw from the FSA may be exercised at the sole but good faith discretion of the Strata Corporations.
17. Consistent with paragraph 15 above, this FSA shall be rendered null and void and of no force and effect in the event that the Court fails to finally approve the proposed settlement agreement in the Class Action or in the event that either or both Strata Corporations fail to ratify the settlement agreement in the Representative Actions (each a “**Failed Approval**”).

18. In the event of a Failed Approval, or in the event any Party withdraws from the Settlement in accordance with the terms of this FSA or due to a breach thereof, the Parties shall be deemed to be in the position they were in immediately prior to the execution of this FSA, and the statements made herein shall not be deemed to prejudice in any way the positions of the Parties with respect to the Actions or the Class Action Appeals.

General

19. Nothing in the releases granted herein shall negate or diminish in any way the Res Judicata Indemnity or Contribution Claims Indemnity.
20. None of the releases granted herein restrict or impair the enforceability of the terms of this FSA.
21. The settlement agreements in the Class Action and Representative Actions shall provide that the Defendants and Third-Parties have denied and continue to deny the allegations made in the Actions and any wrongdoing or liability whatsoever with respect thereto.
22. Counsel for the Parties shall inform the Court of the terms of this FSA, shall request that the Court remove from its calendar the joint trial in the Representative Actions and of the liability common issues in the Class Action (the “**Joint Trial**”), and shall request that the Court stay the Actions and all proceedings therein pending the submission to the Court of the proposed settlement agreement in the Class Action for preliminary approval.
23. Concurrently with the request to remove the Joint Trial from the Court’s calendar, the Developer shall request that the British Columbia Court of Appeal set new dates for the hearing of the Developer’s Class Action Appeals, on the earliest dates mutually available to counsel after April 15, 2023, or as otherwise agreed, which new dates shall be released by consent in the event that the Settlement is finalized.
24. The Parties agree that ratification of the settlement agreement in the Representative Actions by each of the Strata Corporations will not occur unless and until the Court grants preliminary approval of the proposed settlement agreement in the Class Action. It is acknowledged by the Parties that, as a result of the required Insurance Due Diligence, the earliest that the hearing seeking preliminary approval can be scheduled is March 1, 2023.
25. Until such time as made public through the process for seeking preliminary approval of the proposed settlement agreement in the Class Action, the Parties shall take reasonable steps to protect the confidentiality of the terms of this FSA and the Settlement. Notwithstanding the foregoing, the Parties are entitled, prior to the hearing for preliminary approval, to disclose to owners of strata lots in the Strata Corporations, class members, etc., that the Joint Trial has been adjourned by consent while the Parties engage in ongoing negotiations, which remain confidential until a Settlement can be presented for approval. In the event that, despite reasonable efforts, the terms of this FSA or the Settlement are prematurely leaked and made public prior to the hearing for preliminary approval, then any Party shall be entitled to issue press releases or public statements in response thereto, provided that

such press releases or public statements do not contradict anything in this FSA or the settlement agreements, and provided that at least one business day's advance notice in writing is provided by that Party to all other Parties prior to the issuance of such press releases or public statements.

26. Consistent with paragraph 15 above, if (a) the proposed settlement agreement in the Class Action obtains final approval from the Court, and (b) the settlement agreement in the Representative Actions is ratified by each of the Strata Corporations, the Parties shall file a consent dismissal order in each of the Actions, and in the Class Action Appeals, without costs to any Party.
27. This FSA and the Settlement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws applicable therein, without regard to any conflict of law principles. The Parties agree that any dispute arising out of or relating in any way to this FSA shall not be litigated or otherwise pursued in any forum or venue other than before the courts in British Columbia.
28. This FSA shall be binding upon and inure to the benefit of the Parties and their respective agents, executors, heirs, successors and assigns.
29. This FSA will be executed by the undersigned counsel for the Parties, each of whom represents and warrants that they have the authority from their client(s) to enter into this FSA and bind their client(s) thereto.
30. This FSA may be executed in any number of actual or electronically distributed counterparts and by each of the different Parties on several counterparts, each of which when so executed and delivered will be an original. The executed signature page(s) from each actual or electronically distributed counterpart may be joined together and attached and will constitute one and the same instrument.

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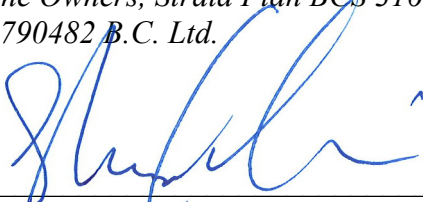
31. This FSA may be modified or amended only by a written agreement executed by the Parties hereto, or on their behalf by counsel.

Agreed and accepted as of November 4, 2022 by:



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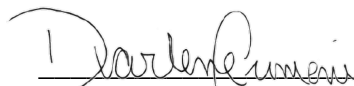
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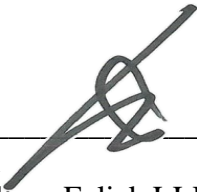
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Counsel for Azon USA Inc.

SCHEDULE “B”

[Copy of Implementing Class Action Settlement Agreement, dated as of March 13, 2023]

SCHEDULE “C-1”

NOV 4 2011

No.
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

THE OWNERS, STRATA PLAN BCS 3165

PLAINTIFF

AND

NATIONAL HOME WARRANTY GROUP INC. and
AVIVA INSURANCE COMPANY OF CANADA

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF**Part 1: STATEMENT OF FACTS**

1. The Plaintiff is a strata corporation established pursuant to section 2 of the *Strata Property Act*, S.B.C. 1998, c. 43, as amended.
2. The members of the Plaintiff (the "Owners") are owners of strata lots in Strata Plan BCS 3165 (collectively, the "Condominium").
3. The Plaintiff claims on its own behalf and on behalf of all Owners.
4. National Home Warranty Group Inc. ("National") is an extra-provincial company registered under the laws of British Columbia with an address for service in British Columbia at 1125 Howe Street, Suite 1100, Vancouver, British Columbia V6Z 2Y6.
5. Aviva Insurance Company of Canada ("Aviva") is an extra-provincial company registered under the laws of British Columbia with an address for service in British Columbia at 1125 Howe Street, Suite 1100, Vancouver, British Columbia V6Z 2Y6.
6. National and Aviva (collectively, the "Warranty Providers") have at all material times carried on business as warranty providers under the *Homeowner Protection Act*, S.B.C. 1998, c. 31, as amended (the "*Homeowner Protection Act*"), the *Insurance Act*, R.S.B.C. 1996, c. 226, as amended (the "*Insurance Act*") and the *Homeowner Protection Act Regulation*, B.C. Reg. 29/99, as amended (the "*Regulation*").

The 2-5-10 Warranty

7. The purposes of the *Homeowner Protection Act* include strengthening consumer protection for buyers of new homes and improving the quality of residential construction
8. The Warranty Providers issued common property warranty certificate No. 4106-B01 to the Plaintiff, subject to the terms of the *Homeowner Protection Act*, the *Insurance Act* and the *Regulation* (the "2-5-10 Warranty").
9. 1100 Georgia Partnership (the "Builder") is named as the builder in the 2-5-10 Warranty.
10. The commencement date for the 2-5-10 Warranty is November 6, 2008 or such later date as is prescribed by Schedule 3, section 5 of the *Regulation* (the "Commencement Date").
11. The 2-5-10 Warranty provides coverage for:
 - a. defects in materials and labour for a period of 2 years after the Commencement Date;
 - b. building envelope defects for a period of 5 years after the Commencement Date; and

c. structural defects for a period of 10 years after the Commencement Date.

12. It is an express or implied term of the 2-5-10 Warranty that:

- a. the Warranty Providers will, on receipt of a notice of a claim under the 2-5-10 Warranty, promptly make reasonable attempts to contact the Plaintiff and Owners to arrange an evaluation of the claim;
- b. the Warranty Providers will make all reasonable efforts to avoid delays in responding to a claim, evaluating and determining the claim and scheduling any required repairs;
- c. the Warranty Providers will investigate, evaluate and determine claims in an objective and impartial manner;
- d. the Warranty Providers will provide written reasons for any decision that a claim is not valid or not covered under the 2-5-10 Warranty;
- e. the Warranty Providers will repair, or cause to be repaired, all defects covered by the 2-5-10 Warranty in a timely manner;
- f. all work under the 2-5-10 Warranty will:
 - (i) comply with the *British Columbia Building Code*, as amended (the "Building Code") and all other applicable codes, bylaws, regulations and enactments;
 - (ii) comply with prudent architectural, engineering and construction standards; and
 - (iii) be completed in a reasonable manner using materials that are suitable, free of defects and fit for their purpose;
- g. the Warranty Providers will exercise all of their responsibilities under the 2-5-10 Warranty fairly and in good faith; and
- h. the Plaintiff and the Owners will enjoy peace of mind with respect to defects covered by the 2-5-10 Warranty.

13. At all material times the Plaintiff and the Owners had an interest in the Condominium with a value equal to or greater than the limits of coverage in the 2-5-10 Warranty.

The Defects

14. The Condominium has defects (the "Defects"), particulars of which include, but are not limited to:

a. **Curtain Walls**

Curtain wall defects include:

- (i) failed insulated glass units that have given rise to condensation within the units;
- (ii) damaged and etched glazing;
- (iii) missing and/or failed sealants and flashings;
- (iv) missing and/or failed mechanical fasteners;
- (v) missing and/or failed vertical joints;
- (vi) missing and/or failed sunshade attachments;
- (vii) missing or improperly installed parapet cap flashings;
- (viii) improperly secured metal panels;
- (ix) missing and/or improperly sealed gaskets;
- (x) discontinuous membrane at curtain wall sill;
- (xi) tower curtain wall and pool deck guard rail which do not join;
- (xii) missing and/or failed curtain wall beauty cap attachments;
- (xiii) damaged extrusion frames;
- (xiv) operable windows that do not close properly;
- (xv) cement drip marks on windows; and
- (xvi) missing exterior window panels.

b. **Exterior Concrete Walls**

Exterior concrete wall defects include:

- (i) cracked concrete surfaces;
- (ii) unfinished concrete walls; and
- (iii) chipped stone cladding.

c. **Roof**

Roof defects include:

- (i) missing, discontinuous, exposed and/or improperly installed membranes;
- (ii) exposed insulation;
- (iii) missing and/or improperly sealed mechanical pipes; and
- (iv) deficiencies in roof top crane.

d. **Balconies and Patios**

Balcony and patio defects include:

- (i) missing and/or failed sealants and flashings;
- (ii) incomplete and/or failed balcony soffits;
- (iii) defective and/or improperly installed drains; and
- (iv) missing and/or failed pavers.

e. **Parkade**

Parkade defects include:

- (i) cracked and chipped wall, ceiling and floor slabs that permit water ingress;
- (ii) voids in concrete walls;
- (iii) rough, deteriorated and improperly poured concrete floor;
- (iv) fasteners embedded in concrete ceilings;
- (v) cracked and chipped stone wall tiles;
- (vi) stained walls and ceilings;
- (vii) efflorescence and excess epoxy crack filler stains on walls and/or floors;
- (viii) deteriorated marble sills;
- (ix) missing floor to ceiling security fencing;
- (x) damaged and improperly sealed floor tiles;
- (xi) damaged traffic membranes;
- (xii) missing and/or defective control joints;

- (xiii) unsealed sprinklers;
- (xiv) missing and/or spray-applied ceiling insulation;
- (xv) incompletely painted metal doors and frames;
- (xvi) damaged elevator lobby walls; and
- (xvii) unsealed penetrations through concrete blocks for sprinkler heads.

f. **Common Areas**

Common area defects include:

- (i) misaligned or missing glass panes in the lobby;
- (ii) mortar residue on brick veneers in the lobby;
- (iii) deteriorating lower lobby floor;
- (iv) damaged, stained and/or unfinished walls and ceilings;
- (v) unpainted and/or improperly painted walls and ceilings;
- (vi) walls and ceilings stained with drywall filler, firestop sealant and/or paint;
- (vii) exposed drywall fasteners;
- (viii) voids in concrete walls;
- (ix) improperly glued plastic wall covers;
- (x) bulging, peeling, cracked and/or improperly finished wallpaper;
- (xi) cracked, bowed-out, inadequately sealed and/or improperly installed baseboards;
- (xii) missing corner guards;
- (xiii) missing, untrowelled and/or failed wall tile grout;
- (xiv) unlabelled ceiling access panels;
- (xv) chipped, scratched and/or stained tiles;
- (xvi) stained flooring and carpets due to drywall filler, paint overspray and/or other material;

- (xvii) stained flooring with red paint residue;
- (xviii) deteriorating wood laminate flooring in fitness centre;
- (xix) missing, damaged, stained, improperly painted or improperly sealed doors;
- (xx) deteriorating, marked and stained granite thresholds;
- (xxi) stained brick veneers;
- (xxii) improperly applied wallpaper at door frames;
- (xxiii) improperly functioning door locks;
- (xxiv) unevenly cut door frames;
- (xxv) poor light levels in interior spaces; and
- (xxvi) missing or improperly installed lighting.

g. Elevators

Elevator defects include:

- (i) malfunctioning and inoperative elevators;
- (ii) excessive noise due to air pressure imbalances;
- (iii) water ingress into elevators pits;
- (iv) damaged elevator doors; and
- (v) metal jambs of elevator door frames do not match the slope of the floor.

h. Electrical System

Electrical system defects include:

- (i) cracked electrical receptacle face plates;
- (ii) visible, improperly installed and/or exposed electrical conduits;
- (iii) unpainted electrical cover plates and conduits; and
- (iv) electrical conduits are not properly sealed.

i. **Mechanical Systems**

Mechanical system defects include:

- (i) deficient building air pressurization and ventilation system;
- (ii) noisy mechanical room;
- (iii) plumbing deficiencies that permit water egress;
- (iv) improperly installed sprinkler heads; and
- (v) failed building irrigation system.

15. The Defects are defects in materials and labour covered by the 2-5-10 Warranty.

Breach of the 2-5-10 Warranty

16. The Plaintiff has complied with all of its obligations under the 2-5-10 Warranty and has notified the Warranty Providers of the Defects in accordance with the 2-5-10 Warranty.

17. The Warranty Providers have breached the 2-5-10 Warranty. Particulars of their breaches include:

- a. failing to promptly make reasonable attempts to contact the Plaintiff to arrange an evaluation of the claim;
- b. failing to make all reasonable efforts to avoid delays in responding to a claim, evaluating and determining the claim and scheduling any required repairs;
- c. failing to investigate, evaluate and determine claims in an objective and impartial manner;
- d. failing to provide written reasons for any decision that the Plaintiff's claim is not valid or not covered under the 2-5-10 Warranty; and
- e. failing to repair, or cause to be repaired, all defects covered by the 2-5-10 Warranty in a timely manner.

Loss and Damage

18. The Plaintiff and the Owners have suffered loss and damage by reason of the Warranty Providers' breach of the 2-5-10 Warranty.

19. Particulars of the loss and damage include:

- a. the cost of investigating and repairing the Defects;

- b. increased maintenance costs;
 - c. increased property management costs;
 - d. property damage to the common property and strata lots;
 - e. depreciation in the market value of the Owners' interest in the strata lots, common property, common facilities and other assets of the Plaintiff; and
 - f. such further loss and damage as may be proven at trial.
20. The Warranty Providers are jointly and severally liable for the loss and damage suffered by the Plaintiff and Owners.

Part 2: RELIEF SOUGHT

WHEREFORE the Plaintiff and Owners claim against the Warranty Providers for:

- 1. a declaration that the Warranty Providers are obligated to pay and make good to the Plaintiff and Owners the loss and damage sustained by the Plaintiff and Owners in accordance with the 2-5-10 Warranty;
- 2. specific performance of the 2-5-10 Warranty and general and special damages;
- 3. in the alternative, general and special damages in lieu of specific performance;
- 4. in the further alternative, general and special damages for breach of the 2-5-10 Warranty;
- 5. interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- 6. costs; and
- 7. such other and further relief as this Honourable Court deems just.

Part 3: LEGAL BASIS


- 1. The Warranty Providers have breached the 2-5-10 Warranty.
- 2. The Plaintiff relies on:
 - a. *Homeowner Protection Act*, S.B.C. 1998, c. 31 and regulations;
 - b. *Insurance Act*, R.S.B.C. 1996, c. 226; and
 - c. *Court Order Interest Act*, R.S.B.C. 1996, c. 79.

Plaintiff's address for service: 410 – 900 Howe Street
Vancouver, BC V6Z 2M4
Attention: John G. Mendes

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street
Vancouver, BC V6Z 2E1

Dated November 4, 2011



Signature of lawyer for Plaintiff
John G. Mendes

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim for breach of the common property warranty issued by the defendants to the plaintiff under the *Homeowner Protection Act*.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

- a motor vehicle accident
- medical malpractice
- another cause
- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4: ENACTMENTS RELIED ON:

1. *Homeowner Protection Act*, S.B.C. 1998, c. 31, as amended.
2. *Insurance Act*, R.S.B.C. 1996, as amended.
3. *Homeowner Protection Act Regulation*, B.C. Reg. 29/99, as amended.

SCHEDULE “C-2”



Court File No. **VLC-S-S-117461**

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

THE OWNERS, STRATA PLAN BCS 3206

PLAINTIFF

AND

NATIONAL HOME WARRANTY GROUP INC. and
AVIVA INSURANCE COMPANY OF CANADA

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

1. The Plaintiff is a strata corporation established pursuant to section 2 of the *Strata Property Act*, S.B.C. 1998, c. 43, as amended.
2. The members of the Plaintiff (the "Owners") are owners of strata lots in Strata Plan BCS 3206 (collectively, the "Condominium").
3. The Plaintiff claims on its own behalf and on behalf of all Owners.
4. National Home Warranty Group Inc. ("National") is an extra-provincial company registered under the laws of British Columbia with an address for service in British Columbia at 1125 Howe Street, Suite 1100, Vancouver, British Columbia V6Z 2Y6.
5. Aviva Insurance Company of Canada ("Aviva") is an extra-provincial company registered under the laws of British Columbia with an address for service in British Columbia at 1125 Howe Street, Suite 1100, Vancouver, British Columbia V6Z 2Y6.
6. National and Aviva (collectively, the "Warranty Providers") have at all material times carried on business as warranty providers under the *Homeowner Protection Act*, S.B.C. 1998, c. 31, as amended (the "*Homeowner Protection Act*"), the *Insurance Act*, R.S.B.C. 1996, c. 226, as amended (the "*Insurance Act*") and the *Homeowner Protection Act Regulation*, B.C. Reg. 29/99, as amended (the "*Regulation*").

The 2-5-10 Warranty

7. The Warranty Providers issued common property warranty certificate No. 4106-B01 to the Plaintiff, subject to the terms of the *Homeowner Protection Act*, the *Insurance Act* and the *Regulation*.
8. 1100 Georgia Partnership (the "Builder") is named as the builder in the warranty certificate issued by the Defendants (the "2-5-10 Warranty").
9. The commencement date for the 2-5-10 Warranty is November 6th 2008 or such later date as is prescribed by Schedule 3, section 5 of the *Regulation* (the "Commencement Date").

10. The 2-5-10 Warranty provides coverage for:
 - a. defects in materials and labour for a period of two years after the Commencement Date;
 - b. building envelope defects for a period of 5 years after the Commencement Date; and
 - c. structural defects for a period of 10 years after the Commencement Date.
11. It is an express or implied term of the 2-5-10 Warranty that:
 - a. the Warranty Providers will, on receipt of a notice of a claim under the 2-5-10 Warranty, promptly make reasonable attempts to contact the Plaintiff and Owners to arrange an evaluation of the claim;
 - b. the Warranty Providers will make all reasonable efforts to avoid delays in responding to a claim, evaluating and determining the claim and scheduling any required repairs;
 - c. the Warranty Providers will investigate, evaluate and determine claims in an objective and impartial manner;
 - d. the Warranty Providers will provide written reasons for any decision that a claim is not valid or not covered under the 2-5-10 Warranty;
 - e. the Warranty Providers will repair, or cause to be repaired, all defects covered by the 2-5-10 Warranty in a timely manner;
 - f. all work under the 2-5-10 Warranty will:
 - (i) comply with the *British Columbia Building Code*, as amended (the "Building Code") and all other applicable codes, bylaws, regulations and enactments;
 - (ii) comply with prudent architectural, engineering and construction standards; and
 - (iii) be completed in a reasonable manner using materials that are suitable, free of defects and fit for their purpose;
 - g. the Warranty Providers will disclose any reports that they or the Builder have obtained in respect of:
 - (i) monitoring the Condominium or its components,
 - (ii) inspecting the Condominium for required maintenance,
 - (iii) investigating complaints or claims, and
 - (iv) undertaking repairs under the 2-5-10 Warranty;

- h. the Warranty Providers will exercise all of their responsibilities under the 2-5-10 Warranty fairly and in good faith; and
 - i. the Plaintiff and the Owners will enjoy peace of mind with respect to defects covered by the 2-5-10 Warranty.
12. At all material times the Plaintiff and the Owners had an interest in the Condominium with a value equal to or greater than the limits of coverage in the 2-5-10 Warranty.

The Defects

13. The Condominium has defects in its materials, workmanship and/or design (the "Defects"). Particulars of the Defects include, but are not limited to:
- a. defects in the glazing units (windows) which make up the bulk of the exterior cladding of the building, which has led to unacceptable levels of fogging of these window units;
 - b. deficiencies in the design and operation of the irrigation system, which have resulted in flooding and damage;
 - c. deficiencies in the design and construction of the building causing problems in the building's internal air pressurization and/or air flow causing excessive interior noise and significant air pressure imbalances; and
 - d. deficiencies and defects with the roof-top crane as well as missing ISA connections required for the use of the crane.
14. The Defects are covered by the 2-5-10 Warranty.

Breach of the 2-5-10 Warranty

15. The purposes of the *Homeowner Protection Act* include strengthening consumer protection for buyers of new homes and improving the quality of residential construction.
16. The Plaintiff has complied with all of its obligations under the 2-5-10 Warranty and has notified the Warranty Providers of the Defects in accordance with the 2-5-10 Warranty.
17. The Plaintiff reported the Defects to the Warranty Providers and to the Builder within the applicable time periods.
18. The Warranty Providers have breached the 2-5-10 Warranty. Particulars of their breaches include:
- a. failing to promptly make reasonable attempts to contact the Plaintiff and Owners to arrange an evaluation of the claim;
 - b. failing to make all reasonable efforts to avoid delays in responding to a claim, evaluating and determining the claim and scheduling any required repairs;

- c. failing to investigate, evaluate and determine claims in an objective and impartial manner;
- d. failing to provide written reasons for any decision that the Plaintiff's claim is not valid or not covered under the 2-5-10 Warranty;
- e. failing to repair, or cause to be repaired, all defects covered by the 2-5-10 Warranty in a timely manner;
- f. failing to disclose any reports that they or the Builder have obtained in respect of:
 - (i) monitoring the Condominium or its components,
 - (ii) inspecting the Condominium for required maintenance,
 - (iii) investigating complaints or claims, and
 - (iv) undertaking repairs under the 2-5-10 Warranty;
- g. failing to exercise all of their responsibilities under the 2-5-10 Warranty fairly and in good faith; and
- h. conducting themselves in a manner that has deprived the Plaintiff and the Owners of peace of mind to which they are entitled pursuant to the 2-5-10 Warranty.

Loss and Damage

- 19. The Plaintiff and the Owners have suffered loss and damage by reason of the Warranty Providers' breach of the 2-5-10 Warranty.
- 20. Particulars of the loss and damage include:
 - a. the cost of investigating and repairing the Defects;
 - b. increased maintenance costs;
 - c. increased property management costs;
 - d. property damage to the common property and strata lots;
 - e. depreciation in the market value of the Owners' interest in the strata lots, common property, common facilities and other assets of the Plaintiff; and
 - f. such further loss and damage as may be proven at trial.
- 21. The Warranty Providers are jointly and severally liable for the loss and damage suffered by the plaintiff and Owners.

Part 2: RELIEF SOUGHT

WHEREFORE the Plaintiff and the Owners claim against the Warranty Providers:

1. a declaration that the Warranty Providers are obligated to pay and make good to the Plaintiff and Owners the loss and damage sustained by the Plaintiff and Owners in accordance with the 2-5-10 Warranty;
2. specific performance of the 2-5-10 Warranty and general and special damages;
3. in the alternative, general and special damages in lieu of specific performance;
4. in the further alternative, general and special damages for breach of the 2-5-10 Warranty;
5. interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
6. costs; and
7. such other and further relief as this Honourable Court deems just.

Part 3: LEGAL BASIS

1. The Warranty Providers have breached the 2-5-10 Warranty.
2. The Plaintiff relies on:
 - a. *Homeowner Protection Act*, S.B.C. 1998, c. 31 and regulations;
 - b. *Insurance Act*, R.S.B.C. 1996, c. 226; and
 - c. *Court Order Interest Act*, R.S.B.C. 1996, c. 79.

Plaintiff's address for service: Burns, Fitzpatrick, Rogers, Schwartz & Turner LLP
Barristers and Solicitors
1400 - 510 Burrard Street
Vancouver BC, V6C 3A8

Place of trial: Vancouver, British Columbia

The address of the registry is: The Law Courts
800 Smithe Street
Vancouver BC, V6Z 2E1

Dated November 4th 2011


For Signature of Scott A. Turner,
Lawyer for Plaintiff

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

This NOTICE OF CIVIL CLAIM was prepared and delivered by Scott A. Turner of Burns, Fitzpatrick, Rogers, Schwartz & Turner LLP, 1400 - 510 Burrard Street, Vancouver BC, V6C 3A8, File 16945.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a construction liability claim brought by a strata corporation against the warranty providers for building defects, deficiencies and damage.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

- a motor vehicle accident
- medical malpractice
- another cause
- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4: ENACTMENTS RELIED ON:

1. *Homeowner Protection Act, S.B.C. 1998, c. 31, as amended.*
2. *Insurance Act, R.S.B.C. 1996, as amended.*
3. *Homeowner Protection Act Regulation, B.C. Reg. 29/99, as amended.*

SCHEDULE “C-3”

DEC 15 2015

S-1510431

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN



THE OWNERS, STRATA PLAN BCS 3165

PLAINTIFF

AND:

KBK NO. 11 VENTURES LTD; 1100 GEORGIA PARTNERSHIP;
PETERSON INVESTMENT (GEORGIA) LIMITED PARTNERSHIP;
PETERSON INVESTMENT (GEORGIA) INC.; ABBEY ADELAIDE HOLDINGS
INC.; LJV GEORGIA INVESTMENTS LP; LJV GEORGIA INVESTMENTS INC.;
NO. 274 CATHEDRAL VENTURES LTD.; IGA/AGS JOINT VENTURE INC.;
ADVANCED GLAZING SYSTEMS LTD.; GARIBALDI GLASS INDUSTRIES
INC.; GLASTECH CONTRACTING (BC) LTD.; BROOK VAN DALEN &
ASSOCIATES LIMITED; CRS CONSTRUCTION LTD.; DH GLASS SOLUTIONS
INC.; TAISHAN CITY KAM KIU ALUMINUM EXTRUSION CO. LTD.; VITRIUM
INDUSTRIES LTD.; DEKOR GLASS (1996) LIMITED; FORMGLAS INC;
INTRICATE GLASS (1996) LTD.; VICTORY GLASS AND ALUMINUM;
NATIONAL GLASS; ALUMICOR LIMITED; LEDCOR PROPERTIES INC.;
LEDCOR CONSTRUCTION LIMITED; JONES KWONG KISHI CONSULTING
ENGINEERS; TIDBALL PROJECTS (2005) LTD.; RDH ENGINEERING LTD.;
RDH BUILDING ENGINEERING LTD.; JAMES KM CHENG ARCHITECTS INC.;
PETER ROSS 2006 LTD.; WESTERN TANK AND LINING LTD.; MOI'S
WATERPROOFING INC.; WESTCOR SERVICES LTD.; COMPASS CLADDING
INC.; LIGHTMORE GLAZING LTD.; NORTHERN GLASS & ALUMINUM LTD.;
US RAILING LLC; US RAILINGS LLC; MICRO SEAL LTD.; EAST & WEST
ALUM CRAFT LTD.; TRACTEL SWINGSTAGE DIVISION LTD.; NIGHTINGALE
ELECTRICAL LTD

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

1. The Plaintiff, The Owners, Strata Plan BCS 3165, is a strata corporation incorporated pursuant to the provisions of the **Strata Property Act**, SBC 1998, c. 43 (the "Strata Corporation" or "Plaintiff") with an address for service at 958 West 8th, Vancouver, British Columbia.

2. The members of the Strata Corporation (collectively the "Individual Owners") are the registered owners of the Strata Lots in Strata Plan BCS 3165 located within the Shangri-La, a 61 storey mixed use tower (the "Shangri-La Tower") located at 1111 Alberni Street, in the City of Vancouver, Province of British Columbia and situate on lands legally described as:

Parcel Identifier: 017-483-093
Lot G Block 18 District Lot 185
Group 1 New Westminster District
Plan LMP1597 Except Air Space Plan BCP38696

The Strata Corporation occupies floors 16 through 43 of the Shangri-La Tower (hereinafter referred to as the "Strata Complex").

3. The Plaintiff claims on its own behalf and on behalf of all Individual Owners.

4. The group of Defendants who were at all material times the builder and/or owner-developer of the Shangri-La Tower and the Strata Complex are as follows:

- a. KBK No. 11 Ventures Ltd., a British Columbia company which has a registered and records office located at 19th floor – 885 West Georgia Street, Vancouver, British Columbia, V6C 3H4 who at all material times was agent and nominee for the other Defendants identified below at paragraphs 4b. through 4f. in the construction of the Shangri-La Tower and the Strata Complex;
- b. 1100 Georgia Partnership, is a general partnership established pursuant to the laws of British Columbia and has a registered and records office located at 1100 – 505 Burrard Street, Vancouver, British Columbia, V7X 1M5;
- c. Peterson Investment (Georgia) Limited Partnership, a limited partnership consisting of one General Partner, Peterson Investment (Georgia) Inc., a British

Columbia company which has a registered and records office located at 1100 – 505 Burrard Street, Vancouver, British Columbia, V7X 1M5;

- d. Abbey Adelaide Holdings Inc., formerly known as Westbank Georgia Holdings Ltd., a British Columbia company which has a registered and records office located at 1100 – 505 Burrard Street, Vancouver, British Columbia, V7X 1M5;
- e. LJV Georgia Investments LP, a limited partnership consisting of one General Partner, LJV Georgia Investments Inc., an Alberta company which is registered extra-provincially and has an Attorney Office in British Columbia located at 1200 – 1067 West Cordova, Street, British Columbia, V6C 1C7; and
- f. No. 274 Cathedral Ventures Ltd., a British Columbia company which has a registered and records office located at 990 – 1040 West Georgia Street, Vancouver, British Columbia, V6E 4H8;

[the aforementioned Defendants referred to collectively herein as the “Developer”] and the Developer and/or each of the above named Defendants is/are liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below.

5. The Developer undertook the construction of the Strata Complex and the creation of the Strata Corporation and was under a contractual obligation to the Plaintiff and/or provided to the Plaintiff an implied or express warranty at common law that:

- a. it was responsible for the design, construction, development, manufacturing and inspection services, approvals and supervision and supplied materials in connection with the construction and subsequent remedial and repair work of the Strata Complex;
- b. it was obliged pursuant to statute, contract and common law to provide the aforesaid services and work and materials in a workmanlike manner free from defect, latent or patent;
- c. it warranted that the aforesaid services, work and materials would be of superior quality;

- d. the construction of and materials supplied in the construction of the building and the strata lots would be reasonably suitable for its intended purpose of habitation and high quality residences; and
- e. it was responsible to ensure that each and every one of its consultants, managers, trades, sub-trades and suppliers provided services and work and materials as particularized in paragraph 6 of this Notice of Civil Claim in a workmanlike manner free from defect, latent or patent.

6. In addition to the Developer, the following Defendants served as the Developer's consultants, managers, trades, sub-trades or suppliers and provided services and/or work and/or materials at the Strata Complex and having regard to their specific service/work/supply function, owed a duty at common law to the Plaintiff to provide such services/work/supply with reasonable care and skill and/or in a good and workmanlike manner free from defect, latent or patent:

- a. IGA/AGS Joint Venture Inc., is a British Columbia company which has a registered and records office located at 200 – 121 St. Paul Street, Kamloops, British Columbia, V2C 3K8 and was primarily responsible for the design, construction and/or supply of the curtain-wall and IGU system as defined below in paragraph 8 such that IGA/AGS Joint Venture Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;
- b. Advanced Glazing Systems Ltd., a British Columbia company which has a registered and records office located at 2700 – 700 West Georgia Street, Vancouver, British Columbia, V7Y 1B8 and was also primarily responsible for the design, construction and/or supply of the curtain-wall and IGU system as defined below such that Advanced Glazing Systems Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;
- c. Garibaldi Glass Industries Inc., a British Columbia company which has a registered and records office located at 1200 – 200 Burrard Street, Vancouver, British Columbia, V7X 1T2 and was also primarily responsible for the design, construction and/or supply of the curtain-wall and IGU system as defined below

such that Garibaldi Glass Industries Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;

- d. Glastech Contracting (BC) Ltd., a British Columbia company which has a registered and records office located 2900 – 595 Burrard Street, Vancouver, British Columbia, V7X 1J5 and was involved in the design, construction and/or supply of the curtain-wall and IGU system as defined below such that Glastech Contracting (BC) Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;
- e. Brook Van Dalen & Associates Limited, 36 Ash Street, Uxbridge, Ontario, L9P 1E5, was involved in the design, performance and construction of the curtain-wall and IGU system as defined below such that Brook Van Dalen & Associates Limited is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;
- f. CRS Construction Ltd., a British Columbia company which has a registered and records office located at 33066 First Avenue, Mission, British Columbia, V2V 1G3 in the general construction and the construction of the curtain-wall and IGU system as defined below such that CRS Construction Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;
- g. DH Glass Solutions Inc., a British Columbia company which has a registered and records office located at 315 – 2233 Burrard Street, Vancouver, British Columbia, V6J 3H9 in the design, construction and/or supply of the curtain-wall and IGU system as defined below or in other glass systems at the Strata Complex or in other glazing systems such that DH Glass Solutions Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;
- h. Taishan City Kam Kiu Aluminum Extrusion Co. Ltd., whose address is currently unknown to the Plaintiff, was involved in the aluminum extrusion work at the Strata Complex such that Taishan City Kam Kiu Aluminum Extrusion Co. Ltd. is

liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;

- i. Vitrium Industries Ltd. also known as Vitrium Systems Inc., a British Columbia Company which has a registered and records office located at 600 – 1090 West Georgia, Vancouver, British Columbia, V6E 3V7 was involved in the construction of the curtain-wall and IGU system as defined below and/or in other glazing systems such that Vitrium Industries Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;
- j. Dekor Glass (1996) Ltd., a British Columbia company which has a registered and records office located at 3667 – 208th Street, Langley, British Columbia, V3A 4X6, was involved in the construction of the curtain-wall and IGU system as defined below and/or in other glazing systems such that Dekor Glass (1996) Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;
- k. Formglas Inc., an Ontario company which as a registered and records office located at 1420 – 99 Bank Street, Ottawa, Ontario, K1P 1H4, was involved in the construction of the curtain-wall and IGU system as defined below or in other glazing systems such that Formglas Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;
- l. Intricate Glass (1996) Ltd., a British Columbia company which has a registered and records office located at 700 – 275 Lansdowne Street, Kamloops, British Columbia, V2C 6H6 was involved in the construction of the curtain-wall and IGU system as defined below or in other glazing systems such that Intricate Glass (1996) Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;
- m. Victory Glass & Aluminum, a sole proprietorship which has a business address of 101 – 514 Thirteenth Street, New Westminster, British Columbia, V3M 5Y7 was involved in the construction of the curtain-wall and IGU system as defined below or in other glazing systems such that Victory Glass & Aluminum is liable to the

Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;

- n. National Glass Ltd., a British Columbia company which has a registered and records office located at 215 – 8171 Cook Road, Richmond, British Columbia, V6Y 3T8 was involved in the construction of the curtain-wall and IGU system as defined below or in other glazing systems such that National Glass Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;
- o. Alumicor Limited, a Ontario company which is registered extra-provincially and has an Attorney Office in British Columbia located at 2800 – 666 Burrard Street, Vancouver, British Columbia, V6C 2Z7 was involved in the construction of a number of systems at the Strata Complex including the Plaintiff's lobby entrances, windows, curtainwall and sloped glazing products such that Alumicor Limited is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. and 9f. below;
- p. Ledcor Properties Inc., an Alberta company which is registered extra-provincially and has an Attorney Office in British Columbia located at 1200 – 1067 West Cordova Street, Vancouver, British Columbia, V6C 1C7 as the construction manager of the Shangri-La Tower and the Strata Complex and owed a duty to the Plaintiff to oversee and supervise and manage the construction of the Shangri-La Tower and the Strata Complex and ensure that the Plaintiff's Strata Complex would be constructed or remediated to a deficiency free state and at the highest quality such that Ledcor Properties Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below;
- q. Ledcor Construction Limited, an Alberta company which is registered extra-provincially and has an Attorney Office in British Columbia located at 1200 – 1067 West Cordova Street, British Columbia, V6C 1C7 as the construction manager of the Shangri-La Tower and the Strata Complex and owed a duty to the Plaintiff to oversee and supervise and manage the construction of the Shangri-La Tower and the Strata Complex and ensure that the Plaintiff's Strata

Complex would be constructed or remediated to a deficiency free state and at the highest quality such that Ledcor Construction Limited is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below;

- r. Jones Kwong Kishi Consulting Engineers (now known as Jones Kwong Kishi), #109B – 949 West 3rd Avenue, North Vancouver, BC, V7P 3P7, is a general partnership which was involved in the structural design and construction of the Shangri-La Tower and the Strata Complex and owed a duty to the Plaintiff to oversee and supervise and manage the construction of the Shangri-La Tower and the Strata Complex and ensure that the Plaintiff's Strata Complex would be constructed or remediated to a deficiency free state and at the highest quality such that Jones Kwong Kishi Consulting Engineers is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below;

- r. Tidball Projects (2005) Ltd., a British Columbia company which has a registered and records office located at 1410 Palmerston Avenue, West Vancouver, British Columbia, V7T 2H7 was the consultant and development manager of the Shangri-La Tower and the Strata Complex and owed a duty to the Plaintiff to oversee and supervise and manage the construction of the Shangri-La Tower and the Strata Complex and ensure that the Plaintiff's Strata Complex would be constructed or remediated to a deficiency free state and at the highest quality such that Tidball Projects (2005) Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below;

- s. RDH Engineering Ltd. and RDH Building Engineering Ltd., are British Columbia companies which have a registered and records office located at 20th floor – 250 Howe Street, Vancouver, British Columbia, V6C 3R8 was the engineer involved in the construction of the Shangri-La Tower and the Strata Complex and owed a duty to the Plaintiff to oversee and supervise and manage the construction of the Shangri-La Tower and the Strata Complex and ensure that the Plaintiff's Strata Complex would be constructed or remediated to a deficiency free state and at the highest quality such that RDH Engineering Ltd. and RDH Building Engineering

Ltd. are liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below;

- t. James KM Cheng Architects Inc., a British Columbia company which has a registered and records office located at 2800 – 595 Burrard Street, Vancouver, British Columbia, V7X 1J5 was the architect of the Shangri-La Tower and the Strata Complex and owed a duty to the Plaintiff to oversee, supervise and manage the design of the Shangri-La Tower and the Strata Complex and ensure that all plans, drawings and specifications were free of technical or design defects such that James KM Cheng Architects Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below;
- u. Peter Ross 2006 Ltd., 1635 MacDonald Avenue, Burnaby, British Columbia, V6C 4P1, was involved in the construction of the roofing and membrane systems such that Peter Ross 2006 Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 9c. below;
- v. Western Tank and Lining Ltd., a British Columbia company which has a registered and records office located at 200 – 7565 – 132nd Street, Surrey, British Columbia, V3W 1K5 was involved in construction or supply of membrane systems such that Western Tank and Lining Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;
- w. Moi's Waterproofing Inc., a British Columbia company which has a registered and records office located at building 5, 21183 – 88th Avenue, Langley, British Columbia, V1M 2G5 was involved in construction or supply of membrane systems such that Moi's Waterproofing Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;
- x. Westcor Services Ltd., a British Columbia company which has a registered and records office located at 1000 – 595 Burrard Street, Vancouver, British Columbia, V7X 1S8 was involved in epro damproofing such that Westcor Services Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 9e. and 9f. below;

- y. Compass Cladding Inc., a British Columbia company which has a registered and records office located at 2 – 3180 262 Street, Aldergrove, British Columbia, V4W 2Z6 which provided services and work in the cladding for the Shangri-La Tower and the Strata Complex such that Compass Cladding Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;
- z. Lightmore Glazing Ltd., a British Columbia company which has a registered and records office located at 1542 Prairie Avenue, Port Coquitlam, British Columbia, V3B 1T4 such that Lightmore Glazing Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;
- aa. Northern Glass & Aluminum, a sole proprietorship at 5789 Keith Street, Burnaby, British Columbia, V5J 3C6 was involved in the manufacture, construction or supply of glass and aluminum products such that Northern Glass & Aluminum is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;
- bb. US Railing LLC, 13902 Lynmar Blvd., Tampa, Florida, was involved in the supply and construction of aluminum railings such that US Railing LLC is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below;
- cc. US Railings LLC, Suite 101 – 4660 NE Bellknap Court, Hillsboro, Oregon, was involved in the supply and construction of aluminum railings such that US Railings LLC is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below;
- dd. Micro Seal Ltd., a British Columbia company which has a registered and records office located at 1427 Columbia Avenue, Port Coquitlam, British Columbia, V3C 1C4 was involved in the supply and installation of glass handrails such that Micro Seal Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below;

- ee. East & West Alum Craft Ltd., a British Columbia company which has a registered and records office located at 901 – 1788 West Broadway, Vancouver, British Columbia, V6J 1Y1 was involved in the construction and supply of balcony railings such that East & West Alum Craft Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraph 9d. below;
- ff. Tractel Swingstage Division Ltd., whose address is unknown to the Plaintiff, supplied and installed the swing-stage such that Tractel Swingstage Division Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraph 9c.(iv) below; and
- gg. Nightingale Electrical Ltd., a British Columbia company which has a registered and records office located at 208 – 4940 No. 3 Road, Richmond, British Columbia, V6X 3A5 provided electrical contract work in the construction of the Strata Complex such that Nightingale Electrical Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraph 9h. below.

7. In breach of each of the Defendant's implied and/or express warranties and/or contractual and/or common law duties to the Plaintiff as particularized in paragraphs 5 and 6 of this Notice of Civil Claim, the Strata Complex was constructed in a deficient and substandard manner and with a number of latent or, as the case may be, patent building deficiencies and construction defects, including defects and deficiencies that have given rise to conditions which pose substantial danger to person and property and which render the strata lots and the Strata Complex much less habitable (the "Construction Deficiencies").

8. In particular, the Shangri-La Tower and the Strata Complex rely on a curtain-wall system based on a four-sided structurally glazed sealed insulating glass units ["IGUs"] which separates the exterior and the interior environments. The curtain-wall system has encountered systemic and total failures in the IGUs with, *inter alia*, moisture related cavity condensation or fogging, drooping of IGU sealants, contaminated or defective dessicant and primary sealant and spacer, cracked thermal barriers moisture and alcohols and organic acid gases from the IGU spacer bar sealed inside the IGU, failure of or deficiencies in IGU assemblies, and other deficiencies which will be particularized as and when these become ascertained. These systemic failures cause fogging, water ingress dripping and missing sealant, as well as sealant falling away from the building so as to render the strata lots within

the Strata Complex uninhabitable or unsuitable for occupation and the curtain-wall system and the IGUs require a wholesale replacement. The systemic failures in the IGUs are caused by the Defendants' breaches in design, fabrication, delivery, and installation and in particular the breach by the Defendants identified in paragraphs 5 (the Owner Developer(s)) and 6a. through 6t. inclusive.

9. Further particulars of the Construction Deficiencies are as follows:

a. **Curtain Walls**

Curtain wall defects include:

- (i) failed IGUs as particularized in paragraph 8 of this Notice of Civil Claim that have given rise to condensation within the units and other loss and damage as set out in paragraph 8 and/or which will be particularized as and when such particulars of loss and damage become ascertained;
- (ii) damaged and etched glazing;
- (iii) missing and/or failed sealants and flashings;
- (iv) missing and/or failed mechanical fasteners;
- (v) missing and/or failed vertical joints;
- (vi) missing and/or failed sunshade attachments;
- (vii) missing or improperly installed parapet cap flashings;
- (viii) improperly secured metal panels;
- (ix) missing and/or improperly sealed gaskets;
- (x) discontinuous membrane at curtain wall sill;
- (xi) tower curtain wall and pool deck guard rail which do not join;
- (xii) missing and/or failed curtain wall beauty cap attachments;
- (xiii) damaged extrusion frames;
- (xiv) "operable windows" that do not close properly;
- (xv) cement drip marks on windows; and
- (xvi) missing exterior window panels.

b. **Exterior Concrete Walls**

Exterior concrete wall defects include:

- (i) cracked concrete surfaces;
- (ii) unfinished concrete walls; and

- (iii) chipped stone cladding.

c. **Roof**

Roof defects include:

- (i) missing, discontinuous, exposed and/or improperly installed membranes;
- (ii) exposed insulation;
- (iii) missing and/or improperly sealed mechanical pipes; and
- (iv) deficiencies in roof top crane.

d. **Balconies and Patios**

Balcony and patio defects include:

- (i) missing and/or failed sealants and flashings;
- (ii) incomplete and/or failed balcony soffits;
- (iii) defective and/or improperly installed drains; and
- (iv) missing and/or failed pavers.

e. **Parkade**

Parkade defects include:

- (i) Cracked and chipped wall, ceiling and floor slabs that permit water ingress;
- (ii) voids in concrete walls;
- (iii) rough, deteriorated and improperly poured concrete floor;
- (iv) fasteners embedded in concrete ceilings;
- (v) cracked and chipped stone wall tiles;
- (vi) stained walls and ceilings;
- (vii) efflorescence and excess epoxy crack filler stains on walls and/or floors;
- (viii) deteriorated marble sills;
- (ix) missing floor to ceiling security fencing;
- (x) damaged and improperly sealed floor tiles;
- (xi) damaged traffic membranes;
- (xii) missing and/or defective control joints;
- (xiii) unsealed sprinklers;

- (xiv) missing and/or spray-applied ceiling insulation;
- (xv) incompletely painted metal doors and frames;
- (xvi) damaged elevator lobby walls; and
- (xvii) unsealed penetrations through concrete blocks for sprinkler heads.

f. **Common Areas**

Common Area defects include:

- (i) misaligned or missing glass panes in the lobby;
- (ii) mortar residue on brick veneers in the lobby;
- (iii) deteriorating lower lobby floor;
- (iv) damaged, stained and/or unfinished walls and ceilings;
- (v) unpainted and/or improperly painted walls and ceilings;
- (vi) walls and ceilings stained with drywall filler, firestop sealant and/or paint;
- (vii) exposed drywall fasteners;
- (viii) voids in concrete walls;
- (ix) improperly glued plastic wall covers;
- (x) bulging, peeling, cracked and/or improperly finished wallpaper;
- (xi) cracked, bowed-out, inadequately sealed and/or improperly installed baseboards;
- (xii) missing corner guards;
- (xiii) missing, untrowelled and/or failed wall tile grout;
- (xiv) unlabelled ceiling access panels;
- (xv) chipped, scratched and/or stained tiles;
- (xvi) stained flooring and carpets due to drywall filler, paint overspray and/or other material;
- (xvii) stained flooring with red paint residue;
- (xviii) deteriorating wood laminate flooring in fitness centre;
- (xix) missing, damaged, stained, improperly painted or improperly sealed doors;
- (xx) deteriorating, marked and stained granite thresholds;
- (xxi) stained brick veneers;
- (xxii) improperly applied wallpaper at doorframes;

- (xxiii) improperly functioning door locks;
- (xxiv) unevenly cut door frames;
- (xxv) poor light levels in interior spaces; and
- (xxvi) missing or improperly installed lighting,

g. Elevators

Elevator defects include:

- (i) malfunctioning and inoperative elevators;
- (ii) excessive noise due to air pressure imbalances;
- (iii) water ingress into elevators pits;
- (iv) damaged elevator doors; and
- (v) metal jambs of elevator doorframes do not match the slope of the floor,

h. Electrical System

Electrical system defects include:

- (i) cracked electrical receptacle face plates;
- (ii) visible, improperly installed and/or exposed electrical conduits;
- (iii) unpainted electrical cover plates and conduits; and
- (iv) electrical conduits are not properly sealed.

i. Mechanical Systems

Mechanical system defects include:

- (i) deficient building air pressurization and ventilation system;
- (ii) noisy mechanical room;
- (iii) plumbing deficiencies that permit water egress;
- (iv) improperly installed sprinkler heads; and
- (v) failed building irrigation system.

10. The Construction Deficiencies have resulted in continuous property damage and loss to the Strata Complex's strata lots, common property, common facilities and other common assets and property and include depreciation to the market value of the Individual Owners' interest in the strata lots, common property, common facilities and other common assets and property (the "Resultant Damage").

11. The Construction Deficiencies and Resultant Damage were caused or contributed to by each of the Defendants' deficient design, construction, development, manufacturing, approval, provision, and use of improper materials and inspection and supervision of construction and repairs to the Strata Complex (the "Defendants' Breaches").

12. The Defendants' breaches as aforesaid have caused and continue to cause the Plaintiff to incur and suffer loss, damage and expense arising from and in connection with the Construction Deficiencies and Resulting Damage.

13. The Plaintiff claims against each of the Defendants for the loss, damage and expense suffered by the Plaintiff as a result of the Defendants' breaches of contract, breaches of warranty, negligence, negligent failure to warn, negligent misrepresentation, and breaches of statutory duties.

14. The Defendants are jointly and severally liable for all of the loss, damage and expense suffered by the Plaintiff and the Individual Owners and the Plaintiff pleads and relies on the provisions of the **Negligence Act**, RSBC 1996, c. 333 and the applicable provisions of the Building Codes and other bylaws, codes and building regulations, as amended..

Part 2: RELIEF SOUGHT

1. general damages;
2. special damages;
3. specific performance of the express or implied warranty;
4. interest pursuant to the **Court Order Interest Act**, RSBC 1996, c. 79
5. costs; and
6. such further and other relief that this Honourable Court deems just and meet.

Part 3: LEGAL BASIS

1. The Strata Corporation claims against each and every one of the Defendants on behalf of itself and representatively on behalf of the Individual Owners pursuant to section 171(1)(b) of the **Strata Property Act** for matters relating to the common assets of the Strata Corporation.

2. The Strata Corporation claims against each of the Defendants for the loss, damage and expense suffered as a result of the Defendants' Breaches, which constitute breaches of contract, breaches of warranty, negligence, negligent failure to warn, negligent misrepresentation, and breaches of statutory duties under the **Strata Property Act**, supra, and the **Real Estate Development Marketing Act** RSBC 2004, c. 41.

3. The Defendants are jointly and severally liable for all of the Plaintiff's loss, damage and expense and the Plaintiff pleads and relies on the provisions of the **Negligence Act**, RSBC 1996, c. 333 and the applicable provisions of the **Building Codes** and other bylaws, codes and building regulations, and amendments thereto.

Plaintiff's address for service:

c/o DuMoulin Boskovich LLP
1800 – 1095 West Pender Street
Vancouver, British Columbia
V6E 2M6

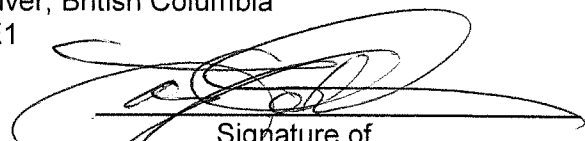
Fax number address for service (if any): (604) 688-8491

E-mail address for service (if any): N/A

Place of trial: Vancouver, B.C.

The address of the registry is: 800 Smithe Street
Vancouver, British Columbia
V6Z 2E1

Date: 14/Dec/2015


Signature of
 Plaintiff lawyer for Plaintiff
Michael D. Tatchell

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Plaintiff claims against each of the Defendants for the loss, damage and expense suffered as a result of the Defendants' breaches of contract, breaches of warranty, negligence, negligent failure to warn, negligent misrepresentation, and breaches of statutory duties under the ***Strata Property Act***, supra, and the ***Real Estate Development Marketing Act*** RSBBC 2004, c. 41 in the construction and design of a strata complex in Victoria, British Columbia.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investments losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES

- a class action
- maritime law
- aboriginal law

constitutional law

conflict of laws

none of the above

do not know

Part 4:

Strata Property Act, SBC 1998, c. 43

Building Codes

Negligence Act, RSBC 1996, c. 333

Real Estate Development Marketing Act RSBC 2004, c. 41

[B.C. Reg. 119/2010, Sch. A, s. 38]

SCHEDULE “C-4”

DEC 15 2015

No. **S-1510419**
Vancouver Registry

In the Supreme Court of British Columbia

Between 

The Owners, Strata Plan BCS 3206

Plaintiff

and

KBK No. 11 Ventures Ltd., 1100 Georgia Partnership, Peterson Investment (Georgia) Limited Partnership, Abbey Adelaide Holdings Inc., LJV Georgia Investments Inc. and No. 274 Cathedral Ventures Ltd.

Defendants

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. The plaintiff The Owners, Strata Plan BCS 3206 is a strata corporation established pursuant to s. 2 of the *Strata Property Act*, S.B.C. 1998, c. 43 ("*Strata Property Act*") with an address for service of c/o Hunter Litigation Chambers, 2100 – 1040 West Georgia Street, Vancouver, British Columbia (the "Residential Strata").
2. The plaintiff's members are owners of strata lots (the "Owners") in Strata Plan BCS 3206.
3. The plaintiff claims as the representative of the Owners pursuant to the *Strata Property Act*.
4. The defendant KBK No. 11 Ventures Ltd. ("KBK") is a company incorporated pursuant to the laws of British Columbia with a registered and records office of the 19th floor, 885 West Georgia Street, Vancouver, British Columbia.
5. The defendant 1100 Georgia Partnership (the "Developer") is a general partnership formed under the laws of British Columbia between Peterson Investment (Georgia)

Limited Partnership, West Bank Georgia Holdings Ltd., LJV Georgia Investments Inc. and No. 274 Cathedral Ventures Ltd.

6. The defendant Peterson Investment (Georgia) Limited Partnership is a limited partnership registered in British Columbia, with Peterson Investment (Georgia) Inc. as its general partner.
7. The defendant Abbey Adelaide Holdings Inc. ("Abbey") is a corporation amalgamated on December 20, 2012 under the laws of British Columbia (incorporation number BC0958325) with a registered and records office of 1100 One Bentall Centre, 505 Burrard Street, Box 11, Vancouver, British Columbia. The defendant Abbey is a corporate successor to, among other corporations, Westbank Georgia Holdings Ltd.
8. The defendant LJV Georgia Investments Inc. is a company incorporated pursuant to the laws of Alberta with a delivery address of 7008 Roper Road, Edmonton, Alberta.
9. The defendant No. 274 Cathedral Ventures Ltd. is a company incorporated pursuant to the laws of British Columbia with a registered and records office of Suite 990 – 1040 West Georgia Street, Vancouver, British Columbia.

The Shangri-La Development

10. The Shangri-La is a high-end and unique multi-use glazed tower, until recently the tallest building in Vancouver. The Residential Strata occupies floors 44 to 62.
11. The Shangri-La has a civic address of 1128 West Georgia Street, Vancouver, British Columbia and is situated on lands legally described as:

Parcel Identifier: 017-483-093
Lot G Block 18 District Lot 185 Group 1 New Westminster District
Plan LMP1597 Except Air Space Plan BCP38696

(the "Land")

12. The registered owner of the Land is KBK.
13. The Land was at all material times held by KBK as agent and nominee for the Developer.

Disclosure in respect of the Shangri-La Development

14. The Developer is subject to a number of obligations in relation to the Shangri-La development pursuant to the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41 (“*REDMA*”), including the requirement that it issue a disclosure statement containing various representations and setting out its contractual obligations as Developer.
15. On or about August 26, 2004, the Developer filed a disclosure statement with the Superintendent of Real Estate in relation to the Shangri-La development.
16. Amendments to the disclosure statement were filed on March 8, 2005, September 30, 2005 and March 10, 2006.
17. Pre-sales of strata units started in or about 2004. The Owners purchased their units at various times between 2004 and present.

The Construction of the Shangri-La

18. The Shangri-La’s exterior predominantly consists of a “curtain wall”, an external non-load-bearing wall that is intended to separate the exterior and the interior environments (the “Curtain Wall”).
19. The Curtain Wall is constructed in part of four-sided structurally glazed and sealed insulating glass units (“IGUs”).
20. The disclosure statement filed by the Developer included as Exhibit I a contract for purchase and sale, which provided under Schedule A, clause 5 that:

... The Closing Date shall be after the date that the City of Vancouver has given permission to occupy the Unit. The Seller presently anticipates that such permission will be given on or about May 15, 2008. For the purposes of this section, permission to occupy the Unit means the initial permission given by the City of Vancouver, whether such permission is temporary, conditional or final and refers to occupation of the Unit only and not to the occupation of other units in the Development, the common property in the Development or any other position of the Project. ...

21. Occupancy permits were granted by the City of Vancouver for the residential units at the Shangri-La between October 17, 2008 and February 5, 2010.
22. Construction of the Shangri-La continued throughout this period.
23. In or around November 6, 2008, Aviva Insurance Company of Canada, represented by its agent National Home Warranty Group Inc. ("National Home Warranty"), issued a common property warranty certificate No. 4106-B01 for the Shangri-La (the "Warranty").

The Defects

24. Within the first year of moving into their strata units at the Shangri-La, a limited number of strata owners noticed fogging of certain IGUs.
25. Over the course of the next several years, an increasing number of residents of the Shangri-La noticed performance issues with their windows, including fogging, water ingress, dripping and missing sealant, as well as sealant falling away from the building.
26. In or around July 2015, the plaintiff received an expert report on the IGUs. The report concluded the installed IGUs have systemic latent defects associated with their design and fabrication. Particulars of the defects include, but are not limited to, pre-existing moisture in the cavity of the IGUs, failed sealant, cracked thermal barriers and the release of organic acid gases within the IGUs at elevated temperatures.

Implied Warranty

27. The defects in the IGUs are covered by an implied warranty owed by the Developer to the Owners. The implied warranty at common law requires that:
 - (a) a residence is designed and built in a good and workmanlike manner;
 - (b) is constructed with suitable materials;
 - (c) is free from defects; and

(d) is suitable for its purpose of habitation.

28. The Developer breached this implied warranty by designing and constructing the Shangri-La with materials that were not suitable and free from defect, rendering the strata units unsuitable, including for the purpose of habitation.

Loss and Damage

29. The Owners have suffered from extensive and ongoing loss and damage by reason of the Developer's breach of the implied warranty.

30. Particulars of the loss and damage include:

- (a) the cost of investigating the problems with the IGUs;
- (b) the cost of replacing the IGUs;
- (c) damage to the common property and strata lots;
- (d) depreciation in the market value of the Owners' interest in the strata lots, common property, common facilities and other assets of the Owners;
- (e) loss of use and enjoyment of the strata units; and
- (f) such further loss and damage as may be proven at trial.

31. The defendants are jointly and severally liable for the loss and damage suffered by the Owners.

Part 2: RELIEF SOUGHT

32. The plaintiff claims against the defendants for:

- (a) Specific performance of the Developer's obligations under the implied warranty, including to provide IGUs that are suitable and free from defect, rendering the premises suitable for habitation.

- (b) In the alternative, general damages for breach of the implied warranty.
- (c) Special damages.
- (d) Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.
- (e) Costs of this action.
- (f) Such other and further relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

- 33. The Developer owed an implied warranty to the Owners that the work already done and not yet done would be done in a good and workmanlike manner, that the materials would be suitable, and that the building would be fit for its purpose, namely, habitation.
- 34. The Shangri-La development was incomplete at the time the contracts for purchase and sale were entered into and at the time those contracts completed.
- 35. The Developer was expected to do any further work required in order to make the Shangri-La development complete.
- 36. The implied warranty was not expressly excluded by the terms of the disclosure statement, the Warranty or the contracts for purchase and sale entered into between the Owners and the Developer.
- 37. By using the IGUs, the Developer failed to use proper materials for the Curtain Wall and breached the implied warranty owed to the Owners.
- 38. The IGUs have made the Shangri-La development not reasonably fit for habitation, and have breached the implied warranty owed to the Owners.
- 39. As a result of the Developer's breach of the implied warranty, the Owners have suffered and continue to suffer loss and damage as particularized above.
- 40. Further, or in the alternative, it was a term and condition of the contracts for purchase and sale entered into with the Owners that the Developer would:

- (a) ensure that the Shangri-La development was constructed in a good and workmanlike manner, free of construction deficiencies or structural defects due to faulty design, materials, equipment or workmanship;
- (b) exercise all reasonable care, skill, diligence and competence as a Developer while causing the construction of the Shangri-La development to be carried out;
- (c) ensure that the construction of the Shangri-La development would be performed in accordance with generally accepted construction and engineering standards;
- (d) ensure that the construction of the Shangri-La development would be free from defects; and
- (e) warn purchasers of any defects in the construction of the Shangri-La development.

- 41. The Developer breached the contracts for purchase and sale entered into with the Owners by failing to use proper materials for the Curtain Wall.
- 42. As a result of the Developer's breach of the contracts for purchase and sale entered into with the Owners, the Owners have suffered and continue to suffer loss and damage as particularized above.

Plaintiff's address for service: c/o Hunter Litigation Chambers, 2100 – 1040 West Georgia Street, Vancouver, British Columbia, V6E 4H1.

Fax number address for service: 604-647-4554.

E-mail address for service: kmcewan@litigationchambers.com; copy to rwhyman@litigationchambers.com.

Place of trial: Vancouver, British Columbia.

The address of the registry is: 800 Smithe Street, Vancouver, British Columbia, V6Z 2E1.

Dated: December 5, 2015



J. Kenneth McEwan, Q.C.

Signature of
 plaintiff lawyer for plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

a motor vehicle accident

medical malpractice

another cause

A dispute concerning:

contaminated sites

construction defects

real property (real estate)

personal property

the provision of goods or services or other general commercial matters

investment losses

the lending of money

an employment relationship

a will or other issues concerning the probate of an estate

a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

a class action

maritime law

aboriginal law

constitutional law

conflict of laws

none of the above

do not know

Part 4:

Court Order Interest Act, R.S.B.C. 1996, c. 79.

Strata Property Act, S.B.C. 1998, c. 43.

Real Estate Development Marketing Act, S.B.C. 2004, c. 41.

SCHEDULE “C-5”

Amended Pursuant to Rule 6-1(1)(a)
this 14th day of February 2018

**SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY**

FEB 14 2018

No. S1510431
Vancouver Registry

*original filed on
December 15, 2015*

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE OWNERS, STRATA PLAN BCS 3165

PLAINTIFF

AND:

KBK NO. 11 VENTURES LTD; 1100 GEORGIA PARTNERSHIP;
PETERSON INVESTMENT (GEORGIA) LIMITED PARTNERSHIP;
PETERSON INVESTMENT (GEORGIA) INC.; ABBEY ADELAIDE HOLDINGS INC.; LJV
GEORGIA INVESTMENTS LP; LJV GEORGIA INVESTMENTS INC.; NO. 274
CATHEDRAL VENTURES LTD.; IGA/AGS JOINT VENTURE INC.; ADVANCED
GLAZING SYSTEMS LTD.; GARIBALDI GLASS INDUSTRIES INC.; GLASTECH
CONTRACTING (BC) LTD.; BROOK VAN DALEN & ASSOCIATES LIMITED; CRS
CONSTRUCTION LTD.; DH GLASS SOLUTIONS INC.; TAISHAN CITY KAM KIU
ALUMINUM EXTRUSION CO. LTD.; VITRIUM INDUSTRIES LTD.; DEKOR GLASS
(1996) LIMITED; FORMGLAS INC; INTRICATE GLASS (1996) LTD.; VICTORY GLASS
AND ALUMINUM; NATIONAL GLASS; ALUMICOR LIMITED; LEDCOR PROPERTIES
INC.; LEDCOR CONSTRUCTION LIMITED; JONES KWONG KISHI CONSULTING
ENGINEERS; TIDBALL PROJECTS (2005) LTD.; RDH ENGINEERING LTD.; RDH
BUILDING ENGINEERING LTD.; JAMES KM CHENG ARCHITECTS INC.; PETER
ROSS 2006 LTD.; WESTERN TANK AND LINING LTD.; MOI'S WATERPROOFING
INC.; WESTCOR SERVICES LTD.; COMPASS CLADDING INC.; LIGHTMORE
GLAZING LTD.; NORTHERN GLASS & ALUMINUM LTD.; US RAILING LLC; US
RAILINGS LLC; MICRO SEAL LTD.; EAST & WEST ALUM CRAFT LTD.; TRACTEL
SWINGSTAGE DIVISION LTD.; NIGHTINGALE ELECTRICAL LTD

DEFENDANTS

AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

A. The Plaintiff:

1. The Plaintiff, The Owners, Strata Plan BCS 3165, is a strata corporation incorporated pursuant to the provisions of the *Strata Property Act*, SBC 1998, c. 43 (the "Strata Corporation" or "Plaintiff") with an address for service at 958 West 8th, Vancouver, British Columbia.

2. Control of the Strata Corporation was transferred from the Developer (defined below in Part B) to the Plaintiff's strata council for the first time when the Strata Corporation's first annual general meeting ("AGM") occurred on or about February 3, 2009, or within one week after the date of that AGM.

~~2. The members of the Strata Corporation (collectively the "Individual Owners") are the registered owners of the Strata Lots in Strata Plan BCS 3165 located within the Shangri-La, a 61 storey mixed use tower (the "Shangri-La Tower") located at 1111 Alberni Street, in the City of Vancouver, Province of British Columbia and situate on lands legally described as:~~

~~Parcel Identifier: 017-483-093
Lot G Block 18 District Lot 185
Group 1 New Westminster District
Plan LMP1597 Except Air Space Plan BCP38696~~

~~The Strata Corporation occupies floors 16 through 43 of the Shangri-La Tower (hereinafter referred to as the "Strata Complex").~~

3. The members of the Strata Corporation (collectively the "Individual Owners") are the purchasers and registered owners of the 234 Strata Lots in contained within the Strata Corporation, itself contained within Air Space Parcel 2 ("ASP2"), one of three separate air space parcels in addition to one Remainder Parcel and subdivided by subdivision plan BCP38696 (the "Shangri-La Development").

~~3. The Plaintiff claims on its own behalf and on behalf of all Individual Owners.~~

4. The Shangri-La Development is a high-end development which was constructed by the Defendant Developer Group and other Defendants as identified in Parts B. through D. of these Statement of Facts and is a single integrated structure consisting of a 3-storey podium base (the "Shangri-La Podium") and a 60 storey (61 numbered floors with the floors being numbered 1

through 3, 5 through 61) mixed use tower (the "Shangri-La Tower"), circumscribed by the eastern half of the block demarcated by West Georgia Street, Thurlow Street, and Alberni Street, Vancouver, British Columbia.

4. ~~The group of Defendants who were at all material times the builder and/or owner-developer of the Shangri-La Tower and the Strata Complex are as follows:~~

- a. ~~KBK No. 11 Ventures Ltd., a British Columbia company which has a registered and records office located at 19th floor — 885 West Georgia Street, Vancouver, British Columbia, V6C 3H4 who at all material times was agent and nominee for the other Defendants identified below at paragraphs 4b. through 4f. in the construction of the Shangri-La Tower and the Strata Complex;~~
- b. ~~1100 Georgia Partnership, is a general partnership established pursuant to the laws of British Columbia and has a registered and records office located at 1100 — 505 Burrard Street, Vancouver, British Columbia, V7X 1M5;~~
- c. ~~Peterson Investment (Georgia) Limited Partnership, a limited partnership consisting of one General Partner, Peterson Investment (Georgia) Inc., a British Columbia company which has a registered and records office located at 1100 — 505 Burrard Street, Vancouver, British Columbia, V7X 1M5;~~
- d. ~~Abbey Adelaide Holdings Inc., formerly known as Westbank Georgia Holdings Ltd., a British Columbia company which has a registered and records office located at 1100 — 505 Burrard Street, Vancouver, British Columbia, V7X 1M5;~~
- e. ~~LJV Georgia Investments LP, a limited partnership consisting of one General Partner, LJV Georgia Investments Inc., an Alberta company which is registered extra-provincially and has an Attorney Office in British Columbia located at 1200 — 1067 West Cordova, Street, British Columbia, V6C 1G7; and~~
- f. ~~No. 274 Cathedral Ventures Ltd., a British Columbia company which has a registered and records office located at 990 — 1040 West Georgia Street, Vancouver, British Columbia, V6E 4H8;~~

~~[the aforementioned Defendants referred to collectively herein as the "Developer"] and the Developer and/or each of the above named Defendants is/are liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below.~~

5. ASP2 is owned and occupied by the Strata Corporation and occupies portions of the 5th and 6th floors and the entire 16th through 43rd floors of the Shangri-La Tower, including all common property, common assets, facilities and common areas and all strata lots contained therein (the "Strata Complex"). The Strata Complex has a civic address of 1111 Alberni Street, in the City of Vancouver, Province of British Columbia and is situate above lands which until subdivision were legally described as:

Parcel Identifier: 017-483-093
 Lot G Block 18 District Lot 185
 Group 1 New Westminster District
 Plan LMP1597 Except Air Space Plan BCP38696

~~5. The Developer undertook the construction of the Strata Complex and the creation of the Strata Corporation and was under a contractual obligation to the Plaintiff and/or provided to the Plaintiff an implied or express warranty at common law that:~~

- ~~a. it was responsible for the design, construction, development, manufacturing and inspection services, approvals and supervision and supplied materials in connection with the construction and subsequent remedial and repair work of the Strata Complex;~~
- ~~b. it was obliged pursuant to statute, contract and common law to provide the aforesaid services and work and materials in a workmanlike manner free from defect, latent or patent;~~
- ~~c. it warranted that the aforesaid services, work and materials would be of superior quality;~~
- ~~d. the construction of and materials supplied in the construction of the building and the strata lots would be reasonably suitable for its intended purpose of habitation and high quality residences; and~~
- ~~e. it was responsible to ensure that each and every one of its consultants, managers, trades, sub-trades and suppliers provided services and work and materials as particularized in paragraph 6 of this Notice of Civil Claim in a workmanlike manner free from defect, latent or patent.~~

6. The Strata Corporation and/or its Individual Owners is/are the beneficiary/ies of:

- a. a homeowner policy of warranty insurance pursuant to the *Homeowners Protection Act*, with a commencement date which coincided with the date of the occupancy

permit and first conveyance on November 6, 2008. The warranty provides various coverages for construction deficiencies not to exceed \$2.5 million for 15 month/two year/five year/ten year warranty periods expiring on February 6, 2010, November 6, 2010, November 6, 2013 and November 6, 2018 respectively;

- b. numerous warranties provided by the Defendant Developer Group and/or the Defendant Consultant/Engineer/Sub-Trade Group and particularized below; and/or
- c. numerous warranties implied at law and particularized below.

~~6. In addition to the Developer, the following Defendants served as the Developer's consultants, managers, trades, sub-trades or suppliers and provided services and/or work and/or materials at the Strata Complex and having regard to their specific service/work/supply function, owed a duty at common law to the Plaintiff to provide such services/work/supply with reasonable care and skill and/or in a good and workmanlike manner free from defect, latent or patent:~~

- a. ~~IGA/AGS Joint Venture Inc., is a British Columbia company which has a registered and records office located at 200 — 121 St. Paul Street, Kamloops, British Columbia, V2C 3K8 and was primarily responsible for the design, construction and/or supply of the curtain wall and IGU system as defined below in paragraph 8 such that IGA/AGS Joint Venture Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;~~
- b. ~~Advanced Glazing Systems Ltd., a British Columbia company which has a registered and records office located at 2700 — 700 West Georgia Street, Vancouver, British Columbia, V7Y 1B8 and was also primarily responsible for the design, construction and/or supply of the curtain wall and IGU system as defined below such that Advanced Glazing Systems Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;~~
- c. ~~Garibaldi Glass Industries Inc., a British Columbia company which has a registered and records office located at 1200 — 200 Burrard Street, Vancouver, British Columbia, V7X 1T2 and was also primarily responsible for the design, construction and/or supply of the curtain wall and IGU system as defined below such that Garibaldi Glass Industries Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;~~
- d. ~~Glastech Contracting (BC) Ltd., a British Columbia company which has a registered and records office located 2900 — 595 Burrard Street, Vancouver, British Columbia,~~

~~V7X 1J5 and was involved in the design, construction and/or supply of the curtain-wall and IGU system as defined below such that Glastech Contracting (BC) Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;~~

- e. ~~Brook Van Dalen & Associates Limited, 36 Ash Street, Uxbridge, Ontario, L9P 1E5, was involved in the design, performance and construction of the curtain-wall and IGU system as defined below such that Brook Van Dalen & Associates Limited is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;~~
- f. ~~GRS Construction Ltd., a British Columbia company which has a registered and records office located at 33066 First Avenue, Mission, British Columbia, V2V 1G3 in the general construction and the construction of the curtain-wall and IGU system as defined below such that GRS Construction Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;~~
- g. ~~DH Glass Solutions Inc., a British Columbia company which has a registered and records office located at 315 — 2233 Burrard Street, Vancouver, British Columbia, V6J 3H9 in the design, construction and/or supply of the curtain-wall and IGU system as defined below or in other glass systems at the Strata Complex or in other glazing systems such that DH Glass Solutions Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;~~
- h. ~~Taishan City Kam Kiu Aluminum Extrusion Co. Ltd., whose address is currently unknown to the Plaintiff, was involved in the aluminum extrusion work at the Strata Complex such that Taishan City Kam Kiu Aluminum Extrusion Co. Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;~~
- i. ~~Vitrium Industries Ltd. also known as Vitrium Systems Inc., a British Columbia Company which has a registered and records office located at 600 — 1090 West Georgia, Vancouver, British Columbia, V6E 3V7 was involved in the construction of the curtain-wall and IGU system as defined below and/or in other glazing systems such that Vitrium Industries Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;~~
- j. ~~Dekor Glass (1996) Ltd., a British Columbia company which has a registered and records office located at 3667 — 208th Street, Langley, British Columbia, V3A 4X6,~~

~~was involved in the construction of the curtain wall and IGU system as defined below and/or in other glazing systems such that Dekor Glass (1996) Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;~~

- ~~k. Formglas Inc., an Ontario company which as a registered and records office located at 1420 — 99 Bank Street, Ottawa, Ontario, K1P 1H4, was involved in the construction of the curtain wall and IGU system as defined below or in other glazing systems such that Formglas Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;~~
- ~~l. Intricate Glass (1996) Ltd., a British Columbia company which has a registered and records office located at 700 — 275 Lansdowne Street, Kamloops, British Columbia, V2C 6H6 was involved in the construction of the curtain wall and IGU system as defined below or in other glazing systems such that Intricate Glass (1996) Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;~~
- ~~m. Victory Glass & Aluminum, a sole proprietorship which has a business address of 101 — 514 Thirteenth Street, New Westminster, British Columbia, V3M 5Y7 was involved in the construction of the curtain wall and IGU system as defined below or in other glazing systems such that Victory Glass & Aluminum is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;~~
- ~~n. National Glass Ltd., a British Columbia company which has a registered and records office located at 215 — 8171 Cook Road, Richmond, British Columbia, V6Y 3T8 was involved in the construction of the curtain wall and IGU system as defined below or in other glazing systems such that National Glass Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;~~
- ~~o. Alumicor Limited, a Ontario company which is registered extra provincially and has an Attorney Office in British Columbia located at 2800 — 666 Burrard Street, Vancouver, British Columbia, V6C 2Z7 was involved in the construction of a number of systems at the Strata Complex including the Plaintiff's lobby entrances, windows, curtainwall and sloped glazing products such that Alumicor Limited is liable to the~~

~~Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. and 9f. below;~~

- ~~p. Ledcor Properties Inc., an Alberta company which is registered extra provincially and has an Attorney Office in British Columbia located at 1200 — 1067 West Cordova Street, Vancouver, British Columbia, V6C 1C7 as the construction manager of the Shangri-La Tower and the Strata Complex and owed a duty to the Plaintiff to oversee and supervise and manage the construction of the Shangri-La Tower and the Strata Complex and ensure that the Plaintiff's Strata Complex would be constructed or remediated to a deficiency free state and at the highest quality such that Ledcor Properties Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below;~~
- ~~q. Ledcor Construction Limited, an Alberta company which is registered extra provincially and has an Attorney Office in British Columbia located at 1200 — 1067 West Cordova Street, British Columbia, V6C 1C7 as the construction manager of the Shangri-La Tower and the Strata Complex and owed a duty to the Plaintiff to oversee and supervise and manage the construction of the Shangri-La Tower and the Strata Complex and ensure that the Plaintiff's Strata Complex would be constructed or remediated to a deficiency free state and at the highest quality such that Ledcor Construction Limited is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below;~~
- ~~r. Jones Kwong Kishi Consulting Engineers (now known as Jones Kwong Kishi), #109B — 949 West 3rd Avenue, North Vancouver, BC, V7P 3P7, is a general partnership which was involved in the structural design and construction of the Shangri-La Tower and the Strata Complex and owed a duty to the Plaintiff to oversee and supervise and manage the construction of the Shangri-La Tower and the Strata Complex and ensure that the Plaintiff's Strata Complex would be constructed or remediated to a deficiency free state and at the highest quality such that Jones Kwong Kishi Consulting Engineers is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below;~~
- ~~r. Tidball Projects (2005) Ltd., a British Columbia company which has a registered and records office located at 1410 Palmerston Avenue, West Vancouver, British Columbia, V7T 2H7 was the consultant and development manager of the Shangri-La Tower and the Strata Complex and owed a duty to the Plaintiff to oversee and~~

~~supervise and manage the construction of the Shangri-La Tower and the Strata Complex and ensure that the Plaintiff's Strata Complex would be constructed or remediated to a deficiency free state and at the highest quality such that Tidball Projects (2005) Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below;~~

- ~~e. RDH Engineering Ltd. and RDH Building Engineering Ltd., are British Columbia companies which have a registered and records office located at 20th floor — 250 Howe Street, Vancouver, British Columbia, V6C 3R8 was the engineer involved in the construction of the Shangri-La Tower and the Strata Complex and owed a duty to the Plaintiff to oversee and supervise and manage the construction of the Shangri-La Tower and the Strata Complex and ensure that the Plaintiff's Strata Complex would be constructed or remediated to a deficiency free state and at the highest quality such that RDH Engineering Ltd. and RDH Building Engineering Ltd. are liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below;~~
- ~~t. James KM Cheng Architects Inc., a British Columbia company which has a registered and records office located at 2800 — 595 Burrard Street, Vancouver, British Columbia, V7X 1J5 was the architect of the Shangri-La Tower and the Strata Complex and owed a duty to the Plaintiff to oversee, supervise and manage the design of the Shangri-La Tower and the Strata Complex and ensure that all plans, drawings and specifications were free of technical or design defects such that James KM Cheng Architects Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below;~~
- ~~u. Peter Ross 2006 Ltd., 1635 MacDonald Avenue, Burnaby, British Columbia, V6C 4P1, was involved in the construction of the roofing and membrane systems such that Peter Ross 2006 Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 9c. below;~~
- ~~v. Western Tank and Lining Ltd., a British Columbia company which has a registered and records office located at 200 — 7565 — 132nd Street, Surrey, British Columbia, V3W 1K5 was involved in construction or supply of membrane systems such that Western Tank and Lining Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;~~

- w. ~~Moi's Waterproofing Inc., a British Columbia company which has a registered and records office located at building 5, 21183 88th Avenue, Langley, British Columbia, V4M 2G5 was involved in construction or supply of membrane systems such that Moi's Waterproofing Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;~~
- x. ~~Westcor Services Ltd., a British Columbia company which has a registered and records office located at 1000 595 Burrard Street, Vancouver, British Columbia, V7X 1S8 was involved in epro damproofing such that Westcor Services Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 9e. and 9f. below;~~
- y. ~~Compass Cladding Inc., a British Columbia company which has a registered and records office located at 2 3180 262 Street, Aldergrove, British Columbia, V4W 2Z6 which provided services and work in the cladding for the Shangri-La Tower and the Strata Complex such that Compass Cladding Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;~~
- z. ~~Lightmore Glazing Ltd., a British Columbia company which has a registered and records office located at 1542 Prairie Avenue, Port Coquitlam, British Columbia, V3B 4T4 such that Lightmore Glazing Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;~~
- aa. ~~Northern Glass & Aluminum, a sole proprietorship at 5789 Keith Street, Burnaby, British Columbia, V5J 3C6 was involved in the manufacture, construction or supply of glass and aluminum products such that Northern Glass & Aluminum is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9a. below;~~
- bb. ~~US Railing LLC, 13902 Lynmar Blvd., Tampa, Florida, was involved in the supply and construction of aluminum railings such that US Railing LLC is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below;~~
- cc. ~~US Railings LLC, Suite 101 4660 NE Bellknap Court, Hillsboro, Oregon, was involved in the supply and construction of aluminum railings such that US Railings LLC is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below;~~

- dd. ~~Micro Seal Ltd., a British Columbia company which has a registered and records office located at 1427 Columbia Avenue, Port Coquitlam, British Columbia, V3C 1C4 was involved in the supply and installation of glass handrails such that Micro Seal Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 7 through 9 below;~~
- ee. ~~East & West Alum Craft Ltd., a British Columbia company which has a registered and records office located at 901 — 1788 West Broadway, Vancouver, British Columbia, V6J 1Y1 was involved in the construction and supply of balcony railings such that East & West Alum Craft Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraph 9d. below;~~
- ff. ~~Tractel Swingstage Division Ltd., whose address is unknown to the Plaintiff, supplied and installed the swing stage such that Tractel Swingstage Division Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraph 9c.(iv) below; and~~
- gg. ~~Nightingale Electrical Ltd., a British Columbia company which has a registered and records office located at 208 — 4940 No. 3 Road, Richmond, British Columbia, V6X 3A5 provided electrical contract work in the construction of the Strata Complex such that Nightingale Electrical Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraph 9h. below.~~

7. The Plaintiff claims on its own behalf as a strata corporation and as representative on behalf of:

- a. all Individual Owners pursuant to s. 171 of the **Strata Property Act** -- such Individual Owners being all owners who purchased their units at various times between 2004 and the present; and/or
- b. one or more but not all of the Individual Owners, as the case may be and where expressly stated below in this Amended Notice of Civil Claim, about matters affecting only their strata lots pursuant to s. 172 of the **Strata Property Act**, and/or pursuant to Rule 20-3 of the **B.C. Supreme Court Rules**.

~~7. In breach of each of the Defendant's implied and/or express warranties and/or contractual and/or common law duties to the Plaintiff as particularized in paragraphs 5 and 6 of this Notice of Civil Claim, the Strata Complex was constructed in a deficient and substandard manner and~~

~~with a number of latent or, as the case may be, patent building deficiencies and construction defects, including defects and deficiencies that have given rise to conditions which pose substantial danger to person and property and which render the strata lots and the Strata Complex much less habitable (the "Construction Deficiencies").~~

8. Having regard to the Plaintiff's representative proceedings which are brought on behalf of a group consisting of less than all of the Individual Owners as averred in paragraph 7b. above, the Plaintiff advances additional claims on behalf of those members of the strata corporation who are original, first-time purchasers of their strata lot [which subgroup of Individual Owners is hereinafter referred to as "Original Purchasers"] and who thus were at all material times in contractual privity with the "Developer" (as that term is defined below in paragraph 9 of this Amended Notice of Civil Claim).

~~8. In particular, the Shangri-La Tower and the Strata Complex rely on a curtain-wall system based on a four-sided structurally glazed sealed insulating glass units ["IGUs"] which separates the exterior and the interior environments. The curtain-wall system has encountered systemic and total failures in the IGUs with, *inter alia*, moisture related cavity condensation or fogging, drooping of IGU sealants, contaminated or defective dessicant and primary sealant and spacer, cracked thermal barriers moisture and alcohols and organic acid-gases from the IGU spacer bar sealed inside the IGU, failure of or deficiencies in IGU assemblies, and other deficiencies which will be particularized as and when these become ascertained. These systemic failures cause fogging, water ingress dripping and missing sealant, as well as sealant falling away from the building so as to render the strata lots within the Strata Complex uninhabitable or unsuitable for occupation and the curtain-wall system and the IGUs require a wholesale replacement. The systemic failures in the IGUs are caused by the Defendants' breaches in design, fabrication, delivery, and installation and in particular the breach by the Defendants identified in paragraphs 5 (the Owner Developer(s)) and 6a. through 6t. inclusive.~~

B. The Defendant Developer Group:

B.1 Identity of the Members of the Defendant Developer Group:

9. The group of Defendants who were at all material times the builder and/or owner-developer of the Shangri-La Tower and the Strata Complex are as follows:

- a. KBK No. 11 Ventures Ltd., a British Columbia company which has a registered and records office located at 19th floor – 885 West Georgia Street, Vancouver, British Columbia, V6C 3H4 who at all material times was agent and nominee for the other

Defendants identified below at paragraphs 9b. through 9f. in the construction of the Shangri-La Tower and the Strata Complex;

- b. 1100 Georgia Partnership, is a general partnership established pursuant to the laws of British Columbia and has a registered and records office located at 1100 – 505 Burrard Street, Vancouver, British Columbia, V7X 1M5;
- c. Peterson Investment (Georgia) Limited Partnership, a limited partnership consisting of one General Partner, Peterson Investment (Georgia) Inc., a British Columbia company which has a registered and records office located at 1100 – 505 Burrard Street, Vancouver, British Columbia, V7X 1M5;
- d. Abbey Adelaide Holdings Inc., formerly known as Westbank Georgia Holdings Ltd., a British Columbia company which has a registered and records office located at 1100 – 505 Burrard Street, Vancouver, British Columbia, V7X 1M5;
- e. LJV Georgia Investments LP, a limited partnership consisting of one General Partner, LJV Georgia Investments Inc., an Alberta company which is registered extra-provincially and has an Attorney Office in British Columbia located at 1200 – 1067 West Cordova, Street, British Columbia, V6C 1C7; and
- f. No. 274 Cathedral Ventures Ltd., a British Columbia company which has a registered and records office located at 990 – 1040 West Georgia Street, Vancouver, British Columbia, V6E 4H8;

[the aforementioned Defendants referred to collectively herein as the "Developer"] and, having regard to their roles, responsibilities, duties and warranties as particularized below in Divisions B.2 through B.3, the Developer and/or each of the above named Defendants is/are liable to the Plaintiff and the Individual Owners and/or the Original Purchasers for any breach of duty and warranty and any failures which caused or contributed to the Construction Deficiencies, Resultant Damage, and Dangerous Defects which are defined and particularized below in Part E and the loss and damage claimed in Part F particularized below.

9. ~~Further particulars of the Construction Deficiencies are as follows:~~

~~a. **Curtain Walls**~~

~~Curtain-wall defects include:~~

- ~~(i) failed IGUs as particularized in paragraph 8 of this Notice of Civil Claim that have given rise to condensation within the units and other loss and damage as~~

~~set out in paragraph 8 and/or which will be particularized as and when such particulars of loss and damage become ascertained;~~

- ~~(ii) — damaged and etched glazing;~~
- ~~(iii) — missing and/or failed sealants and flashings;~~
- ~~(iv) — missing and/or failed mechanical fasteners;~~
- ~~(v) — missing and/or failed vertical joints;~~
- ~~(vi) — missing and/or failed sunshade attachments;~~
- ~~(vii) — missing or improperly installed parapet cap flashings;~~
- ~~(viii) — improperly secured metal panels;~~
- ~~(ix) — missing and/or improperly sealed gaskets;~~
- ~~(x) — discontinuous membrane at curtain wall sill;~~
- ~~(xi) — tower curtain wall and pool deck guard rail which do not join;~~
- ~~(xii) — missing and/or failed curtain wall beauty cap attachments;~~
- ~~(xiii) — damaged extrusion frames;~~
- ~~(xiv) — "operable windows" that do not close properly;~~
- ~~(xv) — cement drip marks on windows; and~~
- ~~(xvi) — missing exterior window panels.~~

b. — Exterior Concrete Walls

~~Exterior concrete wall defects include:~~

- ~~(i) — cracked concrete surfaces;~~
- ~~(ii) — unfinished concrete walls; and~~
- ~~(iii) — chipped stone cladding.~~

c. — Roof

~~Roof defects include:~~

- ~~(i) — missing, discontinuous, exposed and/or improperly installed membranes;~~
- ~~(ii) — exposed insulation;~~
- ~~(iii) — missing and/or improperly sealed mechanical pipes; and~~
- ~~(iv) — deficiencies in roof top crane.~~

d. — Balconies and Patios

~~Balcony and patio defects include:~~

- ~~(i) — missing and/or failed sealants and flashings;~~
- ~~(ii) — incomplete and/or failed balcony soffits;~~
- ~~(iii) — defective and/or improperly installed drains; and~~
- ~~(iv) — missing and/or failed pavers.~~

e. — Parkade

~~Parkade defects include:~~

- ~~(i) — Cracked and chipped wall, ceiling and floor slabs that permit water ingress;~~
- ~~(ii) — voids in concrete walls;~~
- ~~(iii) — rough, deteriorated and improperly poured concrete floor;~~
- ~~(iv) — fasteners embedded in concrete ceilings;~~
- ~~(v) — cracked and chipped stone wall tiles;~~
- ~~(vi) — stained walls and ceilings;~~
- ~~(vii) — efflorescence and excess epoxy crack filler stains on walls and/or floors;~~
- ~~(viii) — deteriorated marble sills;~~
- ~~(ix) — missing floor to ceiling security fencing;~~
- ~~(x) — damaged and improperly sealed floor tiles;~~
- ~~(xi) — damaged traffic membranes;~~
- ~~(xii) — missing and/or defective control joints;~~
- ~~(xiii) — unsealed sprinklers;~~
- ~~(xiv) — missing and/or spray applied ceiling insulation;~~
- ~~(xv) — incompletely painted metal doors and frames;~~
- ~~(xvi) — damaged elevator lobby walls; and~~
- ~~(xvii) — unsealed penetrations through concrete blocks for sprinkler heads.~~

f. Common Areas~~Common Area defects include:~~

- ~~(i) — misaligned or missing glass panes in the lobby;~~
- ~~(ii) — mortar residue on brick veneers in the lobby;~~
- ~~(iii) — deteriorating lower lobby floor;~~
- ~~(iv) — damaged, stained and/or unfinished walls and ceilings;~~
- ~~(v) — unpainted and/or improperly painted walls and ceilings;~~
- ~~(vi) — walls and ceilings stained with drywall filler, firestop sealant and/or paint;~~
- ~~(vii) — exposed drywall fasteners;~~
- ~~(viii) — voids in concrete walls;~~
- ~~(ix) — improperly glued plastic wall covers;~~
- ~~(x) — bulging, peeling, cracked and/or improperly finished wallpaper;~~
- ~~(xi) — cracked, bowed out, inadequately sealed and/or improperly installed baseboards;~~
- ~~(xii) — missing corner guards;~~
- ~~(xiii) — missing, untrowelled and/or failed wall tile grout;~~
- ~~(xiv) — unlabelled ceiling access panels;~~

- (xv) — ~~chipped, scratched and/or stained tiles;~~
- (xvi) — ~~stained flooring and carpets due to drywall filler, paint overspray and/or other material;~~
- (xvii) — ~~stained flooring with red paint residue;~~
- (xviii) — ~~deteriorating wood laminate flooring in fitness centre;~~
- (xix) — ~~missing, damaged, stained, improperly painted or improperly sealed doors;~~
- (xx) — ~~deteriorating, marked and stained granite thresholds;~~
- (xxi) — ~~stained brick veneers;~~
- (xxii) — ~~improperly applied wallpaper at doorframes;~~
- (xxiii) — ~~improperly functioning door locks;~~
- (xxiv) — ~~unevenly cut door frames;~~
- (xxv) — ~~poor light levels in interior spaces; and~~
- (xxvi) — ~~missing or improperly installed lighting;~~

g. — Elevators

Elevator defects include:

- (i) — ~~malfunctioning and inoperative elevators;~~
- (ii) — ~~excessive noise due to air pressure imbalances;~~
- (iii) — ~~water ingress into elevators pits;~~
- (iv) — ~~damaged elevator doors; and~~
- (v) — ~~metal jambs of elevator doorframes do not match the slope of the floor;~~

h. — Electrical System

Electrical system defects include:

- (i) — ~~cracked electrical receptacle face plates;~~
- (ii) — ~~visible, improperly installed and/or exposed electrical conduits;~~
- (iii) — ~~unpainted electrical cover plates and conduits; and~~
- (iv) — ~~electrical conduits are not properly sealed.~~

i. — Mechanical Systems

Mechanical system defects include:

- (i) — ~~deficient building air pressurization and ventilation system;~~
- (ii) — ~~noisy mechanical room;~~
- (iii) — ~~plumbing deficiencies that permit water egress;~~
- (iv) — ~~improperly installed sprinkler heads; and~~
- (v) — ~~failed building irrigation system.~~

B.2 The Roles and Responsibilities of the Defendant Developer Group and its Members:

10. The Developer and/or each of the Defendants named above in paragraph 9 undertook the construction of the Shangri-La Development and the Strata Complex between 2004 and 2008-10 and undertook the creation of the Strata Corporation and at all material times was primarily responsible for:

- a. the design, construction, development, manufacturing and inspection services, approvals and supervision associated with the design and construction of the Strata Complex;
- b. the supply of work and materials in connection with the construction of and subsequent remedial and repair work at the Strata Complex;
- c. the hiring of architectural, engineering and specialty consultants, project managers, construction managers, general contractors, sub-contractors, sub-sub contractors and workers;
- d. the review of the work in-progress and completed, quality of materials provided, and actions of its contractors, suppliers, consultants, engineers – all as required to complete the project -- and workers under its direction or control;
- e. ensuring that the work of its project managers, construction managers, general contractors, sub-contractors, sub-sub contractors and suppliers was properly coordinated, certified as required, supervised and inspected; and
- f. inspection of the Strata Complex during and after construction, including certification that the work was completed in a manner consistent with the project documents (drawings and specifications), local codes and requirements of all authorities having jurisdiction over the construction of the Shangri-La Development;

[referred to hereinafter as the "Construction"].

~~10. The Construction Deficiencies have resulted in continuous property damage and loss to the Strata Complex's strata lots, common property, common facilities and other common assets and property and include depreciation to the market value of the Individual Owners' interest in the strata lots, common property, common facilities and other common assets and property (the "Resultant Damage").~~

11. The Developer and/or each of the Defendants named above in paragraph 9 warranted and represented to the Plaintiff and/or Individual Owners and/or Original Purchasers that:

- a. the express and implied warranties and obligations particularized below in paragraph 12 of this Amended Notice of Civil Claim would be fully discharged;
- b. they would obtain course of construction insurance for the period up to completion of the Live/Work Component, the Hotel Component, the Residential Component and the Commercial Component for not less than \$100,000,000.00 for the construction cost of the Tower and the Podium as well as comprehensive general liability coverage of not less than \$5,000,000 in accordance with Article 3.11(a) of the Amended and Restated Disclosure Statement(s) of March 8, 2005;
- c. in addition to home warranty insurance, any suppliers and manufacturers' warranties would be passed on to the purchasers or the Strata Corporation as the case may be, if and to the extent permitted by such warranties in accordance with Article 5.2 of the Amended and Restated Disclosure Statement(s) of March 8, 2005;
- d. they would in accordance with Article 7.5 of the Amended and Restated Disclosure Statement(s) of March 8, 2005 and s. 20(2) of the **Strata Property Act** provide documents to the Plaintiff at the first annual general meeting including:
 - i. the names and addresses of all contractors or subcontractors primarily responsible for the supply of labour or materials to each of the major components of the Development;
 - ii. the names of all technical consultants including the building envelope specialist;
 - iii. the name and address of any project manager; and
 - iv. all warranties, manuals, schematic drawings, operating instructions, service guides, manufacturer's documentation and other similar information respecting the construction, installation, operation, maintenance, repair and servicing of any common property or common assets of the Strata Corporation, including any warranty information provided to the Developer by contractors and subcontractors.

~~11. The Construction Deficiencies and Resultant Damage were caused or contributed to by each of the Defendants' deficient design, construction, development, manufacturing, approval, provision, and use of improper materials and inspection and supervision of construction and repairs to the Strata Complex (the "Defendants' Breaches").~~

B.3 The Duties of the Defendant Developer Group and its Members:

12. Having regard to their roles and responsibilities and the warranties and representations which they provided or conveyed, the Developer and/or each of the Defendants named above in paragraph 9 were under a contractual and/or statutory obligation under the provisions of the *Real Estate Development Marketing Act* and sections 6(1) and 6(2) of the *Strata Property Act* to the Plaintiff claiming on behalf of itself and all Individual Owners and/or as the case may be, the Original Purchasers, and/or in addition owed a duty of care and/or provided to the Plaintiff and all Individual Owners and/or as the case may be, the Original Purchasers, an implied or express warranty in contract, at common law and/or under statute that:

- a. the Shangri-La Development generally and the Strata Complex specifically would be state of the art;
- b. the Construction would be completed in a workmanlike manner free from defect, latent or patent;
- c. any and all construction defects would be repaired and remediated and the Strata Complex would be and was inspected during and after the Construction and any deficiencies repaired and remediated;
- d. the Construction would be of the highest superior quality of construction and consist of the highest quality systems and durability of components;
- e. the Construction would be reasonably suitable for the Strata Complex's intended purpose of habitation at the highest superior quality of construction;
- f. the Shangri-La Development generally and the Strata Complex specifically would be suitable for its purpose, namely habitation and would not pose a risk to the health and safety of the Individual Owners, occupants and visitors;
- g. each and every one of its consultants, managers, trades, sub-trades, sub-sub-trades, and suppliers who provided services and/or work and/or materials in the Construction as particularized in Part C of these Statement of Facts would do so in a

workmanlike manner free from defect, latent or patent and at the highest superior quality of construction;

h. all products, materials and systems supplied for the Construction, especially certain critical products and materials associated with curtainwall systems and within the curtainwall system and including the products, materials, components and systems within the assembly of the insulating glass units ("IGUs"), would be suitable (one to the other) and meet the exact project specifications, drawings, manufacturers' instructions, Building Code and in addition product certification imposed by the Building Code, the City of Vancouver's building bylaws (the "Bylaws"), regulations and prudent industry and glazing industry standards as particularized below; and

i. all IGUs would:

i. as a building component or assembly which is subjected to an intended temperature differential, consist of materials and components to resist heat or cold transfer for the interior and exterior design temperatures and in conjunction with other materials and components in the assembly, minimize condensation within the component or assembly in accordance with section 5.3.1.1, and 5.3.1.2(1)(a) of ***Vancouver Building Bylaw No. 8057 1999***;

ii. conform to the requirements of the standard known as CAN/Canadian General Standards Board ["CGSB"] - 12.8-M, "Insulating Glass Units" in accordance with section 5.3.1.2.(2)(a) of ***Vancouver Building Bylaw No. 8057 1999*** and section 08920, subsections 1.5 "Reference Standards" and 2.1.11 "Curtain Wall Materials - Glass" of the ***Tower Podium Specifications***;

iii. be guaranteed, either expressly or impliedly, for a period of ten (10) years from Substantial Performance of the Work against any obstruction of vision as a result of hermetic seal failure, dust or film formation on the inner glass surfaces, fogging, breaking due to edge flaws (chips, gouges, etc.), and migration of edge spacer, delamination, or other manufacturing defects;

iv. be replaced without cost to the Owner if they failed to comply with the guarantees as aforesaid in accordance with section 08920, subsection 1.18.3.3 Reference Standards of the ***Tower Podium Specifications*** and/or in the alternative, in accordance with warranties and guarantees necessarily

implied by CAN/CGSB – 12.8-M standards and the **Vancouver Building Bylaw No. 8057 1999**;

- v. have certification from the **Insulated Glass Manufacturers Association of Canada ("IGMAC")** in strict accordance with the project specifications section 08920, subsections 1.5 "Reference Standards" and 2.1.11 "Curtain Wall Materials - Glass" of the **Tower Podium Specifications**; and
- vi. via its marketing/sales and maintenance materials, have a service life-span of forty (40) years and free of any defect and blemish for ten (10) years;
failing which a number of warranties and representations involving longevity and operability of the IGUs would be undermined;
- j. they would pursue all remedies under any and all express and implied contractor and supplier warranties on behalf of the Strata Corporation and Individual Owners;
- k. they would comply with their signed schedules of undertaking submitted to the City of Vancouver, including representations and warranties:
 - i. that the Developer and/or each of the Defendants would comply with or cause those whom it employed or retained to comply with the Building Code, the Bylaws and all other statutes and regulations in force in the City of Vancouver relating to the development, work, undertaking or permission in respect of which the building permit applications were made;
 - ii. that the Developer and/or each of the Defendants would be fully responsible for carrying out the work on the Strata Complex or, having the work carried out, in accordance with the requirements of the Building Code, the Bylaws and all other bylaws of the City of Vancouver;
 - iii. that the Developer and/or each of the Defendants would obtain all letters of assurance of "Professional Design and Commitment for Field Review" prepared by registered professionals and submit such letters of assurance to the City of Vancouver with its building permit applications; and
- l. neither it the Developer or any of its members or any of its contractors, sub-contractors, sub-sub-contractors or suppliers would engage or acquiesce, in this a consumer transaction, in any contravention of the **Business Practices and Consumer Protection Act**, [SBC 2004], c. 2 (the "**BPCPA**") and in particular in any

unfair or deceptive act or practice or representation, as those terms are defined in section 4 of the *BPCPA* in respect of the supply of goods, services or real property in the Construction at the Strata Complex, especially but not limited to the IGUs as specified above, and that any violation of the *BPCPA* would be disclosed to the Plaintiff and the Individual Owners and/or the Original Purchasers as consumers and investigated and remedied, especially upon the Developer's assumption of the duties of strata council of the Strata Corporation under s. 6 of the *Strata Property Act* in the period after the deposit of the strata plan and up to the date of the first AGM.

~~12. The Defendants' breaches as aforesaid have caused and continue to cause the Plaintiff to incur and suffer loss, damage and expense arising from and in connection with the Construction Deficiencies and Resulting Damage.~~

13. In addition, the Developer and/or each of the Defendants named above in paragraph 9 were at all times prior to, during and after the Construction of the Shangri-La Development and the Strata Complex, especially upon the Developer's assumption of the duties of strata council of the Strata Corporation under s. 6 of the *Strata Property Act* in the period after the deposit of the strata plan and up to the date of the first AGM, uniquely situated as developer and builder to have actual or constructive knowledge that the Construction Deficiencies defined and particularized below existed and would give rise to Resultant Damage and Dangerous Defects and thus owed the Plaintiff and Individual Owners a further duty to warn the Plaintiff and Individual Owners and/or the Original Purchasers that the services, work or products of the Developer and those that they supervised or employed were defective, would cause resultant damage and dangerous defects that would give rise to hazardous conditions that posed a health or safety risk to the Individual Owners, occupants or visitors at the Strata Complex.

~~13. The Plaintiff claims against each of the Defendants for the loss, damage and expense suffered by the Plaintiff as a result of the Defendants' breaches of contract, breaches of warranty, negligence, negligent failure to warn, negligent misrepresentation, and breaches of statutory duties.~~

B.4 Breaches Committed by the Defendant Developer Group and its Members:

14. In breach of their obligations, duties and warranties set out in paragraphs 12 and 13 above, the Developer and/or each of the Defendants named above in paragraph 9 constructed or caused to be constructed the Shangri-La Development and the Strata Complex with Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized

below in Part E. More particularly, the Developer and/or each of the Defendants named above in paragraph 9 failed to discharge each of the duties set out in paragraphs 12a. through 12l. and 13. and such failures caused or contributed to the Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F below, rendering the strata lots and common property unsuitable and unfit for their intended purpose, including for the purpose of habitation.

C. The Defendant Prime Building Contractor and Construction Manager Group:

15. In the development and construction of the Strata Complex, the Developer engaged a prime building contractor who agreed to undertake the control and management of the Construction and who in turn engaged a construction manager as identified below. As such, the prime building contractor and the construction manager as aforesaid assumed the same roles, responsibilities and duties and provided the same express and implied warranties as set out in paragraphs 12 and 13 *mutatis mutandis*, above and additional duties as set out below.

C.1 Prime Building Contractor:

16. Ledcor Properties Inc. and/or Ledcor Construction Limited [referred to collectively as "Ledcor"], both Alberta companies which are each registered extra-provincially with an Attorney Office in British Columbia located at 1200 – 1067 West Cordova Street, Vancouver, British Columbia, V6C 1C7 were at all material times either solely or jointly engaged by the Developer as the prime building (general) contractor for the construction of the Shangri-La Development including the Strata Complex and, in addition to the responsibilities and duties set out in paragraph 12 and 13 above, was responsible for:

- a. hiring of contractors, sub-contractors, workers and suppliers and for those under its direction and/or control, review of their work and materials;
- b. the oversight, supervision and day to day management of all reviews, approvals, component fabrication and installation, means and methods for all building systems and components contributing to the construction of the Shangri-La Development including the Strata Complex;
- c. ensuring that the Strata Complex would be constructed at or remediated to a deficiency free state and at the highest quality of construction;
- d. reviewing and approving of IGU shop drawings, proof of IGMAC certification and compliance as related to the IGUs, and all other submissions, inspections, and

confirmations required by the project specifications and the relevant building bylaws of the City of Vancouver as described herein;

- e. oversight and supervision of the day-to-day installation of the curtain wall/IGU system and its coordination with all other relevant trades;

such that to the extent of its role and its responsibilities, Ledcor owed to the Plaintiff and the Individual Owners the duties and provided the warranties particularized above and particularized in paragraphs 12 and 13 above and is liable to the Plaintiff and/or the Individual Owners for all of the Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F of these Statement of Facts.

C.2 Construction Manager:

17. Tidball Projects (2005) Ltd., a British Columbia company which has a registered and records office located at 1410 Palmerston Avenue, West Vancouver, British Columbia, V7T 2H7 was engaged by the Developer as the construction manager for the construction of the Shangri-La Development including the Strata Complex and, in addition to the responsibilities and duties set out in paragraph 12 and 13 above, was responsible for:

- a. ensuring the review and approval of submissions and tests, mandated by the project specifications in compliance with the project drawings and specifications are completed by the designated technical and specialty consultant members of the Developer's team;
- b. the review of in-progress and day-to-day installation of materials and systems to ensure that the as-constructed systems, materials, components, and configurations properly interface with adjacent materials and met all specified/design requirements including but not limited to IGMAC certification for each of the IGU types specified for the Shangri-La Development and the relevant building bylaws of the City of Vancouver as described herein;
- c. ensuring that as-built construction met industry standards and quality expectations;
- d. assisting the Developer and Ledcor in assessing and certifying "completion of work" and ensuring that all building systems and components met the requirements set forth in the project documents (drawings and specifications), local codes, and the

requirements of all authorities having jurisdiction over the Shangri-La Development; and

- e. oversight and supervision of the day-to-day installation of the curtain wall/IGU system and its coordination with all other relevant trades;

such that Tidball Projects (2005) Ltd. owed to the Plaintiff and the Individual Owners the duties and provided the warranties particularized above and particularized in paragraphs 12 and 13 above and is liable to the Plaintiff and the Individual Owners for all of the Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized in Part E and the loss and damage claimed in Part F of these Statement of Facts.

C.3 Breaches Committed by Prime Building Contractor and Construction Manager:

18. In breach of their obligations, duties and warranties set out in paragraphs 16 and 17 above, the Defendant Prime Building Contractor and the Construction Manager constructed or caused to be constructed the Shangri-La Development and the Strata Complex with Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E. More particularly, the Defendant Prime Building Contractor and the Construction Manager failed to discharge each of the duties set out in paragraphs 12a. through 12l. and 13, *mutatis mutandis*, and their respective duties under paragraphs 16 and 17 and such failures caused or contributed to the Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F of these Statement of Facts below, rendering the strata lots and common property unsuitable and unfit for their intended purpose, including for the purpose of habitation.

D. The Defendant Consultant/Engineer/Sub-Trade/Sub-Sub-Trade Group:

19. In addition to the Developer and/or each of the Defendants named above in paragraphs 9, 16 and 17, the Developer engaged architectural, engineering, and specialty consultants, managers, trades, sub-trades, sub-sub-trades and suppliers listed under Divisions D.1 through D.4 below of this, Part D of the Statement of Facts, and who provided services and/or work and/or materials in the Construction at the Strata Complex and who, having regard to their specific service/work/supply function:

- a. owed a duty at common law to the Plaintiff and the Individual Owners to provide such services/work/materials with reasonable care and skill and/or in a good and workmanlike manner free from defect, latent or patent and at the highest superior

- quality of construction and in exact conformity with specifications and product certification;
- b. owed a duty at common law to the Plaintiff and the Individual Owners that the provision by architectural, engineering, and specialty consultants, managers, trades, sub-trades, sub-sub-trades and suppliers of services and/or work and or materials in the Construction at the Strata Complex would meet or exceed the standards and warranties set out in paragraph 12.a through 12.l above;
 - c. provided to the Plaintiff and all Individual Owners an implied or express warranty of fitness and workmanlike quality or in the alternative, agreed that in consideration for payment of their service/work/supply, such implied or express warranties would be assigned by the Developer to the Plaintiff and all Individual Owners;
 - d. where expressly indicated in Divisions D.1 through D.4 below, provided an express warranty for a set number of years to repair and/or replace defective service/work/supply;
 - e. owed the Plaintiff and the Individual Owners a further duty at all material times prior to, during and after the Construction to warn the Plaintiff and the Individual Owners that the services, work, and supplies which they and those that they supervised or employed were responsible to provide would give rise to hazardous conditions that posed a health or safety risk to the Individual Owners, occupants or visitors at the Strata Complex; and
 - f. owed a statutory duty specifically to the Plaintiff and the Individual Owners that they would not contravene the *BPCPA* and specifically that they would not engage in any deceptive act or practice or representation as those terms are defined in the *BPCPA*, in respect of the supply of their goods, services or real property in the Construction at the Strata Complex and.

20. In breach of their obligations, duties and warranties set out in paragraph 19 above and their respective obligations set out in Divisions D.1 through D.4 below, the Defendant Consultant/Engineer/Sub-Trade Group and its members failed to provide services/work/supplies in a workmanlike manner and consistent with the express or implied warranty of fitness such that the Shangri-La Development and the Strata Complex were constructed with Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized in Part E and the loss and damage claimed in Part F of these Statement of Facts. More particularly, the

Defendant Consultant/Engineer/Sub-Trade/Sub-Sub-Trade Group and its members failed to discharge each of the duties set out in paragraphs 19a. through 19f. above and Divisions D.1 through D.4 below and such failures caused or contributed to the Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F of these Statement of Facts below, rendering the strata lots and common property unsuitable and unfit for their intended purpose, including for the purpose of habitation.

D.1 Architectural/Design:

21. James KM Cheng Architects Inc. ("James KM Cheng"), a British Columbia company which has a registered and records office located at 2800 – 595 Burrard Street, Vancouver, British Columbia, V7X 1J5 was engaged by the Developer as the project architect and prime design consultant for the construction of the Shangri-La Development including the Strata Complex and was responsible for:

- a. setting acceptable design and project quality expectations by way of project drawings and specifications and bid documentation;
- b. setting acceptable materials and system components to be used in the project;
- c. setting the overall design requirements with respect to materials, configurations, colours, and interface/interrelationship of building systems and components;
- d. ensuring that all plans, drawings and specifications were free of technical or design defects or errors;
- e. designing a curtain wall system based on a frameless attachment of IGUs on the building exterior in which the outer lite of the IGU is adhered to the IGU's spacer bar using structural silicone;
- f. reviewing and approving specified sub-contractor submissions, shop drawings, and related submittals, including but not limited to those associated with the fabrication, testing, IGMAC certification, and installation of the IGUs within the curtain wall system to ensure their full and complete compliance with the project specifications and the relevant building bylaws of the City of Vancouver as described herein;
- g. providing consulting and supervisory expertise during construction including regular inspection and review of in-progress construction to ensure that the work,

construction (including the curtain wall system) and the component materials which were installed met the following standards:

- i. complied with and met the specified requirements of the project documents as both specified and drawn, manufacturers' instructions, the Building Code, the Bylaws and all other regulatory requirements and prudent design and construction standards;
 - ii. complied with standards of good workmanship; and
 - iii. all materials were suitable and fit for their intended purpose;
- h. ensuring that any defects that were discovered or ought to have been discovered during construction were corrected; and
- i. issuing a Schedule C-B Assurance of Professional Review and Compliance or in the alternative causing such assurance to be issued and/or acquiescing in the issuance of such assurance only if the systems and components of the Strata Complex for which James KM Cheng was responsible substantially complied in all material respects with the plans and supporting documents, the Building Code, the Bylaws and other applicable enactments respecting safety;

such that James KM Cheng owed the duties and provided the warranties to the Plaintiff and the Individual Owners particularized above in paragraph 19 and 21a. through 21i. and is liable to the Plaintiff and the Individual Owners for all of the Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F of these Statement of Facts below, rendering the strata lots and common property unsuitable and unfit for their intended purpose, including for the purpose of habitation.

22. Brook Van Dalen & Associates Limited, 36 Ash Street, Uxbridge, Ontario, L9P 1E5, is a dissolved Ontario corporation which was engaged by the Developer and/or James KM Cheng as the Curtain Wall Specialty Design Consultant for the construction of the Shangri-La Development including the Strata Complex and was responsible for:

- a. provision of performance design details and specification expertise in support of the project architect's principal design objective -- a frameless curtain wall system;
- b. development of performance-based bid documents for the frameless curtain wall system in which the critical shapes of the curtainwall components were detailed, the

IGU and aluminum structural frame performance characteristics were defined, and a variety of IGU assembly types' requirements designed in recognition of the various environmental conditions expected over the surface area of the Shangri-La Tower;

- c. liaising with the mechanical design consultant to determine the curtain wall's optimal heat/cooling load performance;
- d. overseeing quality control of the IGU assemblies (by type), compliance with IGMAC certification and other relevant glazing industry standards and the relevant building bylaws of the City of Vancouver as described herein so as to maximize service life, durability and compatibility with the specified curtain wall design requirements, and to perform periodic inspection of the installed curtain wall system;

such that Brook Van Dalen & Associates Limited owed the duties and provided the warranties to the Plaintiff and the Individual Owners particularized above in paragraphs 19 and 22a. through 22d. and is liable to the Plaintiff and the Individual Owners for those Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F of these Statement of Facts below, rendering the strata lots and common property unsuitable and unfit for their intended purpose, including for the purpose of habitation.

D.2 Engineering:

23. RDH Engineering Ltd. and RDH Building Engineering Ltd. ["RDH"], are British Columbia companies which have a registered and records office located at 20th floor – 250 Howe Street, Vancouver, British Columbia, V6C 3R8 and were engaged by the Developer and/or Ledcor as the engineers for the construction of the Shangri-La Development including the Strata Complex and was responsible for:

- a. oversight and quality control of the installed building systems, including the curtain wall system during the course of construction;
- b. assisting the Construction Manager in providing specialty technical testing oversight (IGMAC certification and compliance with relevant building bylaws of the City of Vancouver as described herein) and review of the various building systems through review of the shop drawings and other specified design submissions prior to component fabrication and installation;

- c. review of in progress work for compliance and consistency with Project Drawings and Specifications and for conformity with quality standards and specifications;
- d. cross-checking system and component materials specifications and ensuring that such systems and component materials were properly tested and certified before acceptance for the Shangri-La Development including the Strata Complex and before installation in the project;
- e. technical oversight and in-progress monitoring of the installation of the curtainwall system both in terms of structural aluminum framing and IGUs;
- f. assisting the Construction Manager and Developer in assessing whether a satisfactory threshold in the completion of the work for all building components and systems, including the curtainwall system, its structural aluminum frame and the IGU components, had been achieved;
- g. preparing system descriptions (including service life expectations) to be incorporated into the Developer's marketing/sales/maintenance materials;
- h. investigating system failures after completion, including failure of the IGUs, after occupancy of the Shangri-La Development had occurred and reporting the results (deficiencies) of such investigation to the Developer, Ledcor, the construction manager, the architect and specialty design consultant;
- i. ensuring that any defects that were discovered or ought to have been discovered during construction were corrected; and
- j. issuing a Schedule C-B Assurance of Professional Review and Compliance or in the alternative causing such assurance to be issued and/or acquiescing in the issuance of such assurance only if the systems and components of the Strata Complex for which RDH was responsible substantially complied in all material respects with the plans and supporting documents, the Building Code, the Bylaws and other applicable enactments respecting safety;

such that RDH Engineering Ltd. and RDH Building Engineering Ltd. owed the duties and provided the warranties to the Plaintiff and the Individual Owners particularized above in paragraphs 19 and 23a. through 23j. and are liable to the Plaintiff and the Individual Owners for those Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F of these Statement of

Facts below, rendering the strata lots and common property unsuitable and unfit for their intended purpose, including for the purpose of habitation.

D.3 Manufacturer/Supplier/Installer of Insulated Glazing Units and Window Wall System:

24. IGA/AGS Joint Venture Inc. ("IGA/AGS"), is a British Columbia company which has a registered and records office located at 200 – 121 St. Paul Street, Kamloops, British Columbia, V2C 3K8 and was engaged by Ledcor as the principal curtainwall subcontractor for the final design, fabrication, and installation of the performance-based curtainwall system, responsible for providing and installing both IGUs and structural aluminum frame for the construction of the Shangri-La Development including the Strata Complex and accordingly was responsible for:

- a. warranting and guaranteeing and thus confirming that sub-sub-contractors working for or engaged by IGA/AGS met all of the specified requirements for the curtainwall components, most particularly the IGUs which had to meet the requirement for IGMAC certification and compliance with relevant bylaws of the City of Vancouver as described herein;
- b. ensuring that the inter-compatibility and longevity of the IGU component materials as well as the longevity of the thermal and visual properties of the IGU assembly would meet the requirements stipulated in the project specifications and in the Developer's marketing materials;
- c. ensuring that the component materials and prototype designs for the various IGU types to be provided to complete the Shangri-La Development met the design intentions, as detailed in the Architect's drawings, and the project specifications;
- d. ensuring that the IGUs were IGMAC certified as specified in the Project Specifications prior to their fabrication and prior to being accepted and installed at the site;
- e. overseeing the fabrication of the IGUs to ensure that they met the specifications established for tolerances, thermal and wind loads, compatibility of materials, and quality expectations;
- f. overseeing the installation of the structural aluminum frame and the IGUs;

- g. supervising all sub-sub-contractors and suppliers who submitted product and materials and inspecting such product and materials for conformity with specifications; and
- h. inspecting, testing and verifying that the performance of the IGU system assembly and component parts met the project specifications prior to completion and acceptance of the construction;

such that IGA/AGS owed the duties and provided the warranties to the Plaintiff and the Individual Owners particularized above in paragraphs 19 and 24a. through 24h. and is liable to the Plaintiff and the Individual Owners for those Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F of these Statement of Facts below, rendering the strata lots and common property unsuitable and unfit for their intended purpose, including for the purpose of habitation.

25. IGA/AGS specifically delivered a ten year warranty to the Plaintiff and the Individual Owners that its curtain wall system and IGUs would be IGMAC certified and expressly and/or impliedly warranted that the IGUs had an expected service life of forty (40) years as represented and defined by the Developer and were warranted to be defect and blemish free for ten (10) years.

26. Advanced Glazing Systems Ltd., a British Columbia company which has a registered and records office located at 2700 – 700 West Georgia Street, Vancouver, British Columbia, V7Y 1B8 is a constituent entity associated with IGA/AGS and was also engaged by Ledcor and/or IGA/AGS as the associated curtainwall subcontractor for the final design, fabrication, and installation of the performance-based curtainwall system, providing both IGUs and structural aluminum frame for the construction of the Shangri-La Development including the Strata Complex and accordingly was responsible for:

- a. warranting and guaranteeing and thus confirming that as a sub-sub-contractor engaged by IGA/AGS met all of the specified requirements for the curtainwall components, most particularly the IGUs;
- b. ensuring that the inter-compatibility and longevity of the IGU component materials as well as the longevity of the thermal and visual properties of the IGU assembly would meet the requirements stipulated in the project specifications and in the Developer's marketing materials;

- c. ensuring that the prototype designs for the various IGU types to be provided to complete the Shangri-La Development met the design intentions (as detailed in the Architect's drawings) and the project specifications;
- d. ensuring that the IGUs were IGMAC certified as specified in the Project Specifications prior to their fabrication and prior to being accepted and installed at the site;
- e. overseeing the fabrication of the IGUs to ensure that they met the specifications established for tolerances, thermal and wind loads, compatibility of materials, and quality expectations;
- f. overseeing the installation of the structural aluminum frame and the IGUs; and
- g. supervising all sub-sub-contractors who submitted product and materials and inspecting such product and materials for conformity with specifications;

such that Advanced Glazing Systems Ltd. owed the duties and provided the warranties to the Plaintiff and the Individual Owners particularized above in paragraphs 19 and 26a. through 26g. and is liable to the Plaintiff and the Individual Owners for those Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F of these Statement of Facts below, rendering the strata lots and common property unsuitable and unfit for their intended purpose, including for the purpose of habitation.

27. Garibaldi Glass Industries Inc., a British Columbia company which has a registered and records office located at 1200 – 200 Burrard Street, Vancouver, British Columbia, V7X 1T2 was engaged by Ledcor and/or IGA/AGS as the manufacturer of the IGUs and was responsible for:

- a. the detailed design of the various prototype IGUs and selection of materials and components for fabrication of the IGU assemblies which would satisfy the performance-based project specifications and design configurations prepared by the Architect and specialty design consultant, structural engineer providing wind loads, and the project mechanical engineer providing thermal (heat and cooling) loads;
- b. providing an IGMAC certification for each of the prototype assemblies specified for this project to determine inter-compatibility and longevity of the IGU component materials plus longevity of the thermal and visual properties of the IGU assembly which were to meet the service-life and longevity requirements stipulated in the

project specifications and in the Developer's marketing/sales/maintenance materials and Building Enclosure Maintenance & Renewals Manual;

- c. providing quality control and testing of all components within the IGU assembly prior to and during the manufacturing process at the factory and prior to the installation at the construction site;
- d. fabricating the IGUs in accordance with the project specifications and the glazing industry's standards as they apply to the Shangri-La Development and the Strata Complex, including IGMAC certification and relevant building bylaws of the City of Vancouver as described herein;
- e. evaluation and warranty of the IGU assembly's structural design to ensure safety and safe residual structural capacity in the event of the loss of either an inner or outer lite; and
- f. alerting and warning the Developer and IGA/AGS of any vulnerabilities or weaknesses or substandard conditions within the IGU assembly;

such that Garibaldi Glass Industries Inc. owed the duties and provided the warranties to the Plaintiff and the Individual Owners particularized above in paragraphs 19 and 27a. through 27f. and is liable to the Plaintiff and the Individual Owners for those Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F of these Statement of Facts below, rendering the strata lots and common property unsuitable and unfit for their intended purpose, including for the purpose of habitation.

28. Garibaldi specifically delivered a ten year warranty to the Plaintiff and the Individual Owners that its IGUs would be IGMAC certified (which would include an associated expectation relating to an anticipated service life of greater than 40 years) and expressly and/or impliedly warranted that the IGUs would be defect and blemish free for ten (10) years.

D.4 Other Subtrades:

29. In 2017 and 2018, the Plaintiff entered or will enter into Standstill and Tolling Agreements and filed or will file Notices of Discontinuance against the following Defendants:

- a. Glastech Contracting (BC) Ltd., a British Columbia company which has a registered and records office located 2900 – 595 Burrard Street, Vancouver, British Columbia, V7X 1J5;
- b. CRS Construction Ltd., a British Columbia company which has a registered and records office located at 33066 First Avenue, Mission, British Columbia, V2V 1G3;
- c. DH Glass Solutions Inc., a British Columbia company which has a registered and records office located at 315 – 2233 Burrard Street, Vancouver, British Columbia, V6J 3H9;
- d. Dekor Glass (1996) Ltd., a British Columbia company which has a registered and records office located at 3667 – 208th Street, Langley, British Columbia, V3A 4X6;
- e. Alumicor Limited, a Ontario company which is registered extra-provincially and has an Attorney Office in British Columbia located at 2800 – 666 Burrard Street, Vancouver, British Columbia, V6C 2Z7;
- f. National Glass Ltd., a British Columbia company which has a registered and records office located at 215 – 8171 Cook Road, Richmond, British Columbia, V6Y 3T8;
- g. Westcor Services Ltd., a British Columbia company which has a registered and records office located at 1000 – 595 Burrard Street, Vancouver, British Columbia, V7X 1S8;
- h. Formglas Inc., an Ontario company which as a registered and records office located at 1420 – 99 Bank Street, Ottawa, Ontario, K1P 1H4;
- i. Vitrium Industries Ltd. also known as Vitrium Systems Inc., a British Columbia Company which has a registered and records office located at 600 – 1090 West Georgia, Vancouver, British Columbia, V6E 3V7;
- j. Victory Glass & Aluminum, a sole proprietorship which has a business address of 101 – 514 Thirteenth Street, New Westminster, British Columbia, V3M 5Y7;
- k. Peter Ross 2006 Ltd., 1635 MacDonald Avenue, Burnaby, British Columbia, V6C 4P1,

- l. Nightingale Electrical Ltd., a British Columbia company which has a registered and records office located at 208 – 4940 No. 3 Road, Richmond, British Columbia, V6X 3A5; and
- m. East & West Alum Craft Ltd., a British Columbia company which has a registered and records office located at 901 – 1788 West Broadway, Vancouver, British Columbia, V6J 1Y1.

30. The Plaintiff maintains a claim against a number of other Defendants who at all material times owed the duties to the Plaintiff as set out in paragraphs 19 and 20 above and in particular:

- a. Taishan City Kam Kiu Aluminum Extrusion Co. Ltd., whose address is currently unknown to the Plaintiff, was involved in the aluminum extrusion work at the Strata Complex such that Taishan City Kam Kiu Aluminum Extrusion Co. Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 36a. through 36g. below;
- b. Intricate Glass (1996) Ltd., a British Columbia company which has a registered and records office located at 700 – 275 Lansdowne Street, Kamloops, British Columbia, V2C 6H6 was involved in the construction of the curtain-wall and IGU system as defined below or in other glazing systems such that Intricate Glass (1996) Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraph 36a. below;
- c. Jones Kwong Kishi Consulting Engineers (now known as Jones Kwong Kishi), #109B – 949 West 3rd Avenue, North Vancouver, BC, V7P 3P7, is a general partnership which was involved in the structural design and construction of the Shangri-La Tower and the Strata Complex and owed a duty to the Plaintiff to oversee and supervise and manage the construction of the Shangri-La Tower and the Strata Complex and ensure that the Plaintiff's Strata Complex would be constructed or remediated to a deficiency free state and at the highest quality such that Jones Kwong Kishi Consulting Engineers is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs paragraphs.36b. and 36d. below;
- d. Western Tank and Lining Ltd., a British Columbia company which has a registered and records office located at 200 – 7565 – 132nd Street, Surrey, British Columbia,

V3W 1K5 was involved in construction or supply of membrane systems such that Western Tank and Lining Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs paragraphs 36a, 36c. and 36d. below;

- e. Moi's Waterproofing Inc., a British Columbia company which has a registered and records office located at building 5, 21183 – 88th Avenue, Langley, British Columbia, V1M 2G5 was involved in construction or supply of membrane systems such that Moi's Waterproofing Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 36a., 36c. and 36d. below;
- f. Compass Cladding Inc., a British Columbia company which has a registered and records office located at 2 – 3180 262 Street, Aldergrove, British Columbia, V4W 2Z6 which provided services and work in the cladding for the Shangri-La Tower and the Strata Complex such that Compass Cladding Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 36a., 36c. and 36d. below;
- g. Lightmore Glazing Ltd., a British Columbia company which has a registered and records office located at 1542 Prairie Avenue, Port Coquitlam, British Columbia, V3B 1T4 is a glazing company involved in the glazing projects at the Construction such that Lightmore Glazing Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraph 36a. below;
- h. Northern Glass & Aluminum, a sole proprietorship at 5789 Keith Street, Burnaby, British Columbia, V5J 3C6 was involved in the manufacture, construction or supply of glass and aluminum products such that Northern Glass & Aluminum is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraph 36a. below;
- i. US Railing LLC, 13902 Lynmar Blvd., Tampa, Florida, was involved in the supply and construction of aluminum railings such that US Railing LLC is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 36a. and 36c. below;
- j. US Railings LLC, Suite 101 – 4660 NE Bellknap Court, Hillsboro, Oregon, was involved in the supply and construction of aluminum railings such that US Railings

LLC is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 36a. and 36c. and consisting of railing deficiencies below;

k. Micro Seal Ltd., a British Columbia company which has a registered and records office located at 1427 Columbia Avenue, Port Coquitlam, British Columbia, V3C 1C4 was involved in the supply and installation of glass handrails such that Micro Seal Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 36a. and 36c. and consisting of railing deficiencies below; and

l. Tractel Swingstage Division Ltd., whose address is unknown to the Plaintiff, supplied and installed the swing-stage which proved to be defective such that Tractel Swingstage Division Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 36a. through 36g. below.

E. Construction Deficiency and Resultant Damage Claims of the Plaintiff and all Individual Owners:

31. In breach of each of the Defendants' implied and/or express warranties and/or contractual and/or common law duties to the Plaintiff and the Individual Owners and the Original Purchasers and in breach of the *BPCPA* and *Strata Property Act* as particularized in Parts B through D of this Statement of Facts, the Strata Complex was not properly completed or, as that term is defined at common law, completed at all and in particular not constructed in accordance with contract specifications and/or was constructed in a deficient and substandard manner and with a number of latent or, as the case may be, patent building deficiencies and construction defects caused by faulty materials, workmanship and design and which have caused resultant damage to the Strata Complex and loss of use of property to the Individual Owners, including defects and deficiencies that have given rise to conditions which pose substantial danger to person and property and which render the strata lots and the Strata Complex potentially uninhabitable or in the alternative much less habitable and/or unfit for their intended purpose and which are particularized below in paragraphs 32 through 36 (the "Construction Deficiencies").

32. In particular, the Shangri-La Development and the Strata Complex rely on a curtain-wall system based on four-sided structurally glazed sealed insulating glass units ["IGUs"] which separate the exterior and the interior environments and which is integral to the proper functioning of the Shangri-La Development and the Strata Complex. The Developer was under a duty to the Plaintiff and the Individual Owners to ensure and expressly and impliedly warranted and represented to the Plaintiff and to the Individual Owners that the IGU component of the

curtain wall system and component materials would meet the building specifications and CAN/CGSB – 12.8 standards set out in the building bylaw of Vancouver and particularized in paragraph 12.i. above and that the IGU and its component materials be certified by IGMAC when in fact the IGUs and their component materials were not certified and did not meet the project specifications or CAN/CGSB – 12.8 standards pertaining to their fabrication or installation or both. Consequently, the curtain-wall system has encountered systemic and total failures in the IGUs with, *inter alia*:

- a. moisture related condensation or fogging in the IGU sealed cavities;
- b. drooping or flowing of the IGU's PIB sealant;
- c. contaminated or defective dessicant contributing to the moisture fogging observed in the IGU sealed cavity;
- d. cracked thermal barrier material found within the spacer bar, moisture and alcohols and volatile organic acids within the IGU sealed cavity caused by "off-gassing" of materials used to create the IGU assembly;
- e. condensation in and/or fogging of the IGU sealed cavity caused by "off-gassing" of materials used to create the IGU assembly;
- f. water ingress dripping;
- g. very significant number of failed units within the limits of the Strata Complex, now approaching a very substantial majority of the total IGUs installed with a IGU failure rate expected to climb towards 100% over the next several years;
- h. increasing staining of interior surfaces on the exterior and interior lites in the IGU cavity;
- i. undermined thermal, insulation and R-value properties; and
- j. other deficiencies which will be particularized as and when these become ascertained.

33. These systemic failures are a manifestation of and result from moisture and off-gassing which causes fogging, penetrations in the spacer bar used to fill the sealed cavity with argon gas and which have failed and which thus allow penetration of moisture, dripping and flowing PIB sealant and missing structural sealant along the perimeter of certain IGUs securing the IGU to

the structural aluminum frame, and sealant falling away from the building so as to render the strata lots within the Strata Complex potentially uninhabitable or in the alternative much less habitable and/or not fit for their intended purpose such that the curtain-wall system and the IGUs require a wholesale replacement. The systemic failures in the IGUs are caused by the Defendants' breaches in design, fabrication, delivery, and installation of the component materials and the IGUs and in particular the breach by the Defendants of their respective duties as particularized in Parts B through D of this Statement of Facts.

34. The Defendants and each of them knew or ought to have known that, in breach of their duties to the Plaintiff and the Individual Owners as aforesaid and contrary to their duty to warn and their duty not to contravene s. 4 of the *BPCPA* as well as the *Strata Property Act*, the IGUs and glazing component materials were not in fact *IGMAC* certified and compatible and thus could not have been verified as CGSB-12.8 compliant and thus were completely suspect in terms of their ability to meet performance based and longevity specifications for the Shangri-La Development and the Strata Complex. The systemic failures of the IGUs at the Shangri-La Development and the Strata Complex were completely known or foreseeable to the Defendants.

35. Further, an increasing number of IGU glazing components, notably the inner lites which are tempered glass and the outer lites which are heat strengthened, are spontaneously failing and shattering and, in the case of the failure of the outer heat strengthened lites in particular, thus present the risk of serious injury to any person or property in the path or vicinity of falling shards.

36. Further particulars of the Construction Deficiencies are as follows:

a. Curtain Walls

Curtain wall defects as follows:

- i. failed IGUs as particularized above in this Statement of Facts that have given rise to condensation/fogging within the units and other loss and damage as set out above in this Statement of Facts and/or which will be particularized as and when such particulars of loss and damage become ascertained;
- ii. damaged and etched glazing;
- iii. damaged and etched low emissivity coatings;
- iv. missing and/or failed sealants and flashings;
- v. missing and/or failed mechanical fasteners;
- vi. missing and/or failed vertical joints;

- vii. missing and/or failed sunshade attachments;
- viii. missing or improperly installed parapet cap flashings;
- ix. improperly secured metal panels;
- x. missing and/or improperly sealed gaskets;
- xi. discontinuous membrane at curtain wall sill;
- xii. tower curtain wall and pool deck guard rail which do not join;
- xiii. missing and/or failed curtain wall beauty cap attachments;
- xiv. damaged extrusion frames;
- xv. "operable windows" that do not close properly;
- xvi. cement drip marks on windows; and
- xvii. missing exterior window panels.

b. Exterior Concrete Walls

Exterior concrete wall defects as follows:

- i. cracked concrete surfaces;
- ii. unfinished concrete walls; and
- iii. chipped stone cladding.

c. Balconies and Patios

Balcony and patio defects as follows:

- i. missing and/or failed sealants and flashings;
- ii. incomplete and/or failed balcony soffits;
- iii. defective and/or improperly installed drains; and
- iv. missing and/or failed pavers.

d. Parkade

Parkade defects as follows:

- i. Cracked and chipped wall, ceiling and floor slabs that permit water ingress;
- ii. efflorescence and excess epoxy crack filler stains on walls and/or floors;
- iii. damaged traffic membranes;

e. Common Areas

Common Area defects as follows:

- i. deteriorating lower lobby floor at P1 level/lower lobby;
- ii. damaged, stained and/or unfinished walls and ceilings at P1 level/lower lobby;
- iii. unpainted and/or improperly painted walls and ceilings at P1 level/lower lobby;

f. Elevators

Elevator defects include malfunctioning and inoperative elevators calling for repeated and continuous rope replacement;

g. Mechanical Systems

Mechanical system defects consisting of failed building irrigation system.

37. The Construction Deficiencies have caused resultant damage to the Strata Complex and loss of use to the Individual Owners and resulted in continuous property damage and loss to the Strata Complex's strata lots, common property, common facilities and other common assets and property and include depreciation to the market value of the Individual Owners' interest in the strata lots, common property, common facilities and other common assets and property (the "Resultant Damage").

38. The Construction Deficiencies and Resultant Damage were caused or contributed to by each of the Defendants' deficient design, construction, development, manufacturing, approval, provision, and use of improper materials and deficient inspection and supervision of construction and repairs to the Strata Complex and failure to discharge their respective duties as particularized in Parts B through D above (the "Defendants' Breaches").

39. The Construction Deficiencies and Resultant Damage pose a real and substantial danger to the Individual Owners and other persons, and to the property of Individual Owners and other persons (the "Dangerous Defects").

40. The Plaintiff has provided full report and notice to the Defendants of the Construction Deficiencies, the Resultant Damage, and the Dangerous Defects and has demanded that the Defendants remediate these but the Defendants have refused and/or neglected to provide the necessary or any remediation.

F. Loss and Damage:

41. The Defendants' Breaches as aforesaid have caused and continue to cause the Plaintiff and the Individual Owners to incur and suffer loss, damage and expense arising from and in connection with the Construction Deficiencies, Resultant Damage and Dangerous Defects including:

- a. loss of use and enjoyment of the strata lots and common property, especially caused by the failure of the IGUs and the resultant obstruction of views;

- b. the cost of investigating and repairing the Construction Deficiencies and Resultant Damage;
- c. increased maintenance costs;
- d. increased property management costs;
- e. property damage to the common property and strata lots;
- f. loss of use and enjoyment of the strata lots, common property, common facilities and other assets of the Strata Corporation as a result of the Construction Deficiencies and Resultant Damage;
- g. depreciation in the market value of the Individual Owners' interest in the strata lots, common property, common facilities and other assets of the Strata Corporation; and
- h. such further loss and damage as may be proven at trial.

42. The Plaintiff claims against each of the Defendants for the loss, damage and expense suffered by the Plaintiff as a result of the Defendants' breaches of contract, breaches of warranty, negligence, negligent failure to warn, negligent misrepresentation, and breaches of statutory duties.

43. The Defendants are jointly and severally liable for all of the loss, damage and expense suffered by the Plaintiff and the Individual Owners and the Plaintiff pleads and relies on the provisions of the **Negligence Act**, RSBC 1996, c. 333 and the applicable provisions of the Building Codes and other bylaws, codes and building regulations, as amended.

Part 2: RELIEF SOUGHT

- 1. The Plaintiff claims against the Defendants and each of them for breach of implied and/or express warranty and claims:
 - a. specific performance of each of their respective warranties and general and special damages;
 - b. in the alternative, general and special damages in lieu of specific performance;
 - c. in the further alternative, general and special damages for breach of contract;
- 2. The Plaintiff claims against the Defendants and each of them in tort for general and special damages;

3. The Plaintiff claims against the Defendants and each of them for damages and statutory remedies under the **Business Practices and Consumer Protection Act** and the **Strata Property Act** and in particular:
 - a. damages pursuant to s. 171 of the **BPCPA**;
 - b. a declaration pursuant to s. 172(1)(a) of the **BPCPA** that the breaches of the Defendants contravenes the **Business Practices and Consumer Protection Act**;
 - c. restoration orders under s. 172(3) of the **BPCPA**;
 4. The Plaintiff claims against the Defendants and each of them for:
 - a. interest pursuant to the **Court Order Interest Act**, RSBC 1996, c. 79;
 - b. costs; and
 - c. such further relief as to which this Court deems just and meet.
1. ~~general damages;~~
 2. ~~special damages;~~
 3. ~~specific performance of the express or implied warranty;~~
 4. ~~interest pursuant to the **Court Order Interest Act**, RSBC 1996, c. 79~~
 5. ~~costs; and~~
 6. ~~such further and other relief that this Honourable Court deems just and meet.~~

Part 3: LEGAL BASIS

A. General:

1. The Strata Corporation claims against each and every one of the Defendants on behalf of itself and representatively on behalf of the Individual Owners pursuant to section 171(1)(b) of the **Strata Property Act** for matters relating to the common assets of the Strata Corporation.
2. The Strata Corporation claims against each of the Defendants for the loss, damage and expense suffered as a result of the Defendants' Breaches, which constitute breaches of contract, breaches of warranty, negligence, negligent failure to warn, negligent misrepresentation, and breaches of statutory duties under the **Business Practices and**

Consumer Protection Act, supra; Strata Property Act, supra; and the Real Estate Development Marketing Act RSBC 2004, c. 41.

3. The Defendant Developer Group have admitted that the curtain wall system is defective and in particular that the IGUs and component materials have failed and the contract for their installation not completed and by way of performance bond action in May of 2012 under Action Number S-123530 in the Vancouver Registry, sought remedies against the co-sureties of the Defendants, IGA/AGS Joint Venture Inc.
4. The Defendants are jointly and severally liable for all of the Plaintiff's loss, damage and expense and the Plaintiff pleads and relies on the provisions of the **Negligence Act**, RSBC 1996, c. 333 and the applicable provisions of the **City of Vancouver Building By-law No. 8057 (1999), Building Codes** and other bylaws, codes and building regulations, and amendments thereto.

B. Breach of Warranty:

5. The implied and express warranties which are described in Part I of this Amended Notice of Civil Claim are contracts which are binding and enforceable as against the Defendants and benefit the Plaintiff and Individual Owners.
6. The Defendants have breached their respective warranties.
7. The Defendants' breach of their respective warranties have caused loss and damage to the Plaintiff and Individual Owners as described in Part I of this Amended Notice of Civil Claim.

C. Negligence (Breach of Duty of Care) and Duty to Warn:

8. Each of the Defendants owed to the Plaintiff and Individual Owners a duty of care and duty to warn as described in Part I of this Amended Notice of Civil Claim.
9. Each of the Defendants have breached their duty of care and/or breached their duty to warn the Plaintiff and Individual Owners as described in Part I of this Amended Notice of Civil Claim.
10. The said breaches by the Defendants of their duty of care and/or duty to warn have caused loss and damage to the Plaintiff and Individual Owners as described in Part I of this Amended Notice of Civil Claim.

D. Breach of Business Practices and Consumer Act, REDMA and Strata Property Act:

11. The Defendants are in breach of statutory and regulatory strictures as set out in the Business Practices and Consumer Act, the Real Estate Development Marketing Act and the Strata Property Act and are liable to the Plaintiff and the Individual Owners.

~~1. The Strata Corporation claims against each and every one of the Defendants on behalf of itself and representatively on behalf of the Individual Owners pursuant to section 171(1)(b) of the Strata Property Act for matters relating to the common assets of the Strata Corporation.~~

~~2. The Strata Corporation claims against each of the Defendants for the loss, damage and expense suffered as a result of the Defendants' Breaches, which constitute breaches of contract, breaches of warranty, negligence, negligent failure to warn, negligent misrepresentation, and breaches of statutory duties under the Strata Property Act, supra, and the Real Estate Development Marketing Act RSBC 2004, c. 41.~~

~~3. The Defendants are jointly and severally liable for all of the Plaintiff's loss, damage and expense and the Plaintiff pleads and relies on the provisions of the Negligence Act, RSBC 1996, c. 333 and the applicable provisions of the Building Codes and other bylaws, codes and building regulations, and amendments thereto.~~

Plaintiff's address for service: c/o DuMoulin Boskovich LLP
1800 – 1095 West Pender Street
Vancouver, British Columbia
V6E 2M6

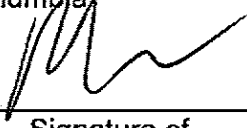
Fax number address for service (if any): (604) 688-8491

E-mail address for service (if any): N/A

Place of trial: Vancouver, B.C.

The address of the registry is: 800 Smithe Street
Vancouver, British Columbia
V6Z 2E1

Date: 14/Dec/2015



Signature of
 Plaintiff lawyer for Plaintiff
Michael D. Tatchell

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Plaintiff claims against each of the Defendants for the loss, damage and expense suffered as a result of the Defendants' breaches of contract, breaches of warranty, negligence, negligent failure to warn, negligent misrepresentation, and breaches of statutory duties under the ***Strata Property Act, supra***, the ***Business Practices and Consumer Protection Act, supra*** and the ***Real Estate Development Marketing Act, supra*** in the construction and design of a strata complex in Vancouver, British Columbia.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investments losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES

- a class action
- maritime law
- aboriginal law
- constitutional law

conflict of laws

none of the above

do not know

Part 4:

***Strata Property Act*, SBC 1998, c. 43**

Building Codes

***Negligence Act*, RSBC 1996, c. 333**

***Real Estate Development Marketing Act* RSBC 2004, c. 41**

***Business Practices and Consumer Protection Act*, [SBC 2004], c. 2**

[B.C. Reg. 119/2010, Sch. A, s. 38]

SCHEDULE “C-6”

Original NOCC filed December 15, 2015

Amended pursuant to the Order of Master Muir pronounced June 26, 2019



No. S1510419
Vancouver Registry

In the Supreme Court of British Columbia

The Owners, Strata Plan BCS 3206

Plaintiff

and

KBK No. 11 Ventures Ltd., 1100 Georgia Partnership, Peterson Investment (Georgia) Limited Partnership, Abbey Adelaide Holdings Inc., LJV Georgia Investments Inc. and No. 274 Cathedral Ventures Ltd., Leducor Construction Limited, Tidball Projects (2005) Ltd., IGA/AGS Joint Ventures Inc., Garibaldi Glass Industries Inc., James KM Cheng Architects Inc. and RDH Building Science Inc.

Defendants

AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. The plaintiff The Owners, Strata Plan BCS 3206 is a strata corporation established pursuant to s. 2 of the *Strata Property Act*, S.B.C. 1998, c. 43 ("*Strata Property Act*") with an address for service of c/o ~~Hunter Litigation Chambers, 2100—1040 West Georgia Street, Vancouver, British Columbia~~ McEwan Cooper Dennis LLP 900 – 980 Howe Street, Vancouver, British Columbia (the "Residential Strata").
2. The plaintiff's members are owners of strata lots (the "Owners") in Strata Plan BCS 3206.
3. The plaintiff claims as the representative of the Owners pursuant to the *Strata Property Act*.
4. The defendant KBK No. 11 Ventures Ltd. ("KBK") is a company incorporated pursuant to the laws of British Columbia with a registered and records office of the 19th floor, 885 West Georgia Street, Vancouver, British Columbia.

5. The defendant 1100 Georgia Partnership (the “Developer”) is a general partnership formed under the laws of British Columbia between Peterson Investment (Georgia) Limited Partnership, West Bank Georgia Holdings Ltd., LJV Georgia Investments Inc. and No. 274 Cathedral Ventures Ltd.
6. The defendant Peterson Investment (Georgia) Limited Partnership is a limited partnership registered in British Columbia, with Peterson Investment (Georgia) Inc. as its general partner.
7. The defendant Abbey Adelaide Holdings Inc. (“Abbey”) is a corporation amalgamated on December 20, 2012 under the laws of British Columbia (incorporation number BC0958325) with a registered and records office of 1100 One Bentall Centre, 505 Burrard Street, Box 11, Vancouver, British Columbia. The defendant Abbey is a corporate successor to, among other corporations, Westbank Georgia Holdings Ltd.
8. The defendant LJV Georgia Investments Inc. is a company incorporated pursuant to the laws of Alberta with a delivery address of 7008 Roper Road, Edmonton, Alberta.
9. The defendant No. 274 Cathedral Ventures Ltd. is a company incorporated pursuant to the laws of British Columbia with a registered and records office of Suite 990 – 1040 West Georgia Street, Vancouver, British Columbia.
10. The defendant Ledcor Construction Limited (“Ledcor”) is a company incorporated pursuant to the laws of Alberta and registered extra-provincially with an attorney office located at 1200-1067 West Cordova Street, Vancouver, British Columbia.
11. The defendant Tidball Projects (2005) Ltd. (“Tidball Projects”) is a company incorporated pursuant to the laws of British Columbia with a registered and records office of 1410 Palmerston Avenue, West Vancouver, British Columbia.
12. The defendant IGA/AGS Joint Venture Inc. (“IGA”) is a company incorporated pursuant to the laws of British Columbia with a registered and records office of 200-121 St. Paul Street, Kamloops, British Columbia.

13. The defendant Garibaldi Glass Industries Inc. (“Garibaldi Glass”) is a company incorporated pursuant to the laws of British Columbia with a registered and records office of 2700-200 Burrard Street, Vancouver, British Columbia.
14. The defendant James KM Cheng Architects Inc. (“James KM Cheng”) is a company incorporated pursuant to the laws of British Columbia with a registered and records office of 2800-595 Burrard Street, Vancouver, British Columbia.
15. The defendant RDH Building Science Inc. (“RDH”) is a company incorporated pursuant to the laws of British Columbia with a registered and records office of 20th floor – 250 Howe Street, Vancouver, British Columbia.

The Shangri-La Development

- ~~16. 10.~~ The Shangri-La is a high-end and unique multi-use glazed tower, until recently the tallest building in Vancouver. The Residential Strata occupies floors 44 to 62.
- ~~17. 11.~~ The Shangri-La has a civic address of 1128 West Georgia Street, Vancouver, British Columbia and is situated on lands legally described as:

Parcel Identifier: 017-483-093
Lot G Block 18 District Lot 185 Group 1 New Westminster District
Plan LMP1597 Except Air Space Plan BCP38696

(the “Land”)

- ~~18. 12.~~ The registered owner of the Land is KBK.
- ~~19. 13.~~ The Land was at all material times held by KBK as agent and nominee for the Developer.
20. Ledcor was the construction manager engaged by the Developer for the construction of the Shangri-La and was at all material times, responsible for the proper construction of the Shangri-La and the adequate management and coordination of the involved sub-contractors.
21. Tidball Projects was engaged to act as the agent for the development manager for the Shangri-La.

Disclosure in respect of the Shangri-La Development

~~22.~~ 14. The Developer is subject to a number of obligations in relation to the Shangri-La development pursuant to the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41 (“*REDMA*”), including the requirement that it issue a disclosure statement containing various representations and setting out its contractual obligations as Developer.

~~23.~~ 15. On or about August 26, 2004, the Developer filed a disclosure statement with the Superintendent of Real Estate in relation to the Shangri-La development.

~~24.~~ 16. Amendments to the disclosure statement were filed on March 8, 2005, September 30, 2005 and March 10, 2006.

~~25.~~ 17. Pre-sales of strata units started in or about 2004. The Owners purchased their units at various times between 2004 and present.

The Construction of the Shangri-La

~~26.~~ 18. The Shangri-La’s exterior predominantly consists of a “curtain wall”, an external non-load-bearing wall that is intended to separate the exterior and the interior environments (the “Curtain Wall”).

~~27.~~ 19. The Curtain Wall is constructed in part of four-sided structurally glazed and sealed insulating glass units (“IGUs”).

~~28.~~ 20. The disclosure statement filed by the Developer included as Exhibit I a contract for purchase and sale, which provided under Schedule A, clause 5 that:

... The Closing Date shall be after the date that the City of Vancouver has given permission to occupy the Unit. The Seller presently anticipates that such permission will be given on or about May 15, 2008. For the purposes of this section, permission to occupy the Unit means the initial permission given by the City of Vancouver, whether such permission is temporary, conditional or final and refers to occupation of the Unit only and not to the occupation of other units in the Development, the common property in the Development or any other position of the Project. ...

29. Around April 2004, James KM Cheng entered into a contract with KBK to provide architectural services for the construction of the Shangri-La development.
30. In or around October 14, 2004, RDH entered into a contract with James KM Cheng to provide engineering services including building envelope consulting services for the Shangri-La development.
31. On May 4, 2005, KBK engaged IGA as a subcontractor responsible for the design, fabrication, supply and installation of the IGUs for the Curtain Wall.
32. Subsequently, IGA engaged and entered into purchase orders with Garibaldi Glass to manufacture and supply the IGUs to be used in the Curtain Wall.
33. 21. Occupancy permits were granted by the City of Vancouver for the residential units at the Shangri-La between October 17, 2008 and February 5, 2010.
34. 22. Construction of the Shangri-La continued throughout this period.
35. 23. In or around November 6, 2008, Aviva Insurance Company of Canada, represented by its agent National Home Warranty Group Inc. (“National Home Warranty”), issued a common property warranty certificate No. 4106-B01 for the Shangri-La (the “Warranty”).

The Defects

36. 24. Within the first year of moving into their strata units at the Shangri-La, a limited number of strata owners noticed fogging of certain IGUs.
37. 25. Over the course of the next several years, an increasing number of residents of the Shangri-La noticed performance issues with their windows, including fogging, water ingress, dripping and missing sealant, as well as sealant falling away from the building.
38. Additionally, a number of the inner and outer lites on the IGUs are spontaneously breaking, cracking and/or failing which has caused the IGUs and Shangri-La building to be unsafe, hazardous and to pose a substantial risk of physical danger, including to the

health and safety of any person or property in the vicinity of the Shangri-La (the “Spontaneous Breakage Events”).

39. Particulars of the Spontaneous Breakage Events include:

- (a) 10 inner glass lites of IGUs in unit nos. 2101, 2408, 2705, 2706, 2902, 3606, 3804, 4302 and 6101 before November 1, 2013;
- (b) 2 inner glass lites of IGUs in unit nos. 5902 and 6103 in July 2014;
- (c) 1 inner glass lite of an IGU in unit no. 1601 in July 2017;
- (d) 1 inner glass lite of an IGU in unit no. 5904 on or around September 6, 2018;
- (e) 1 inner glass lite of an IGU in unit no. 5903 on or around October 19, 2018;
- (f) 1 external glass lite of an IGU in unit no. 1905 on or around January 10, 2019;
- (g) 2 inner glass lites of IGUs in unit nos. 4001 and 2408 on or around January 11, 2019; and
- (h) 1 external glass lite of an IGU in unit no. 4202 on or around January 13, 2019.

40. 26. In or around July 2015, the plaintiff received an expert report on the IGUs. The report concluded the installed IGUs have systemic latent defects associated with their design and fabrication. Particulars of the defects include, but are not limited to, pre-existing moisture in the cavity of the IGUs, failed sealant, cracked thermal barriers and the release of organic acid gases within the IGUs at elevated temperatures. (the “Defects”).

Implied Warranty

41. 27. The Defects in the IGUs are covered by an implied warranty owed by the Developer to the Owners. The implied warranty at common law requires that:

- (a) a residence is designed and built in a good and workmanlike manner;
- (b) is constructed with suitable materials;

- (c) is free from defects; and
- (d) is suitable for its purpose of habitation.

~~42. 28.~~ The Developer breached this implied warranty by designing and constructing the Shangri-La with materials that were not suitable and free from the Defects, rendering the strata units unsuitable, including for the purpose of habitation.

Negligence

43. The defendants, and each of them, owed duties of care to the plaintiff and Owners to ensure that the IGUs that compose the Curtain Wall of the Shangri-La building were constructed using all reasonable care, skill, diligence and competence, and without construction and design deficiencies, including the Defects.

44. Particulars of the duties of care owed by the defendants KBK, the Developer, Peterson Investment (Georgia) Limited Partnership, Abbey, LJV Georgia Investments Inc., No. 274 Cathedral Ventures Ltd., Ledcor and Tidball Projects to the plaintiff and Owners include to:

- (a) take reasonable care in controlling and managing the design and construction of the Shangri-La to ensure that it was built with suitable materials, in a good and workmanlike manner, and in compliance with all applicable architectural, engineering and construction standards and regulations;
- (b) control, manage and inspect the fabrication and installation of the IGUs used in the Shangri-La building to ensure that they were built with suitable materials and in compliance with all applicable architectural, engineering and construction specifications and standards;
- (c) ensure that only qualified consultants, suppliers and subcontractors were retained to design, manufacture and install the IGUs;
- (d) ensure that the IGUs were designed, constructed and installed in a good and workmanlike manner;

- (e) take reasonable care to exercise and ensure proper quality control through the construction of the Shangri-La, including in particular with respect to the IGUs and Curtain Wall;
- (f) take reasonable care to ensure that the work of all consultants, suppliers, contractors and subcontractors was properly supervised, inspected and complied with all applicable architectural, engineering and construction standards; and
- (g) take reasonable steps to ensure that the IGUs were free of deficiencies and the Defects in particular, those which could pose a real and substantial or threat of danger to the health and safety of the Owners and other occupants of the lands on which the Shangri-La is located.

45. Particulars of the duties of care owed by the defendant IGA to the plaintiff and Owners include to:

- (a) ensure that only qualified consultants, suppliers and subcontractors were retained to design, manufacture and install the IGUs;
- (b) ensure that the IGUs were designed, constructed and installed in a good and workmanlike manner;
- (c) ensure that all consultants, suppliers and subcontractors working for or engaged by IGA were properly supervised and complied with all applicable architectural, engineering and construction standards;
- (d) control, manage and inspect the fabrication and installation of the IGUs used in the Shangri-La building to ensure that they were built with suitable materials and in compliance with all applicable architectural, engineering and construction specifications and standards;
- (e) inspect, test and verify that the performance of the IGUs and Curtain Wall system met the applicable specifications; and

(f) take reasonable steps to ensure that the IGUs were free of deficiencies and the Defects in particular, those which could pose a real and substantial or threat of danger to the health and safety of the Owners and other occupants of the lands on which the Shangri-La is located.

46. Particulars of the duties of care owed by the defendant Garibaldi Glass to the plaintiff and Owners include to:

(a) ensure that only qualified consultants, suppliers and personnel were retained to manufacture the IGUs;

(b) ensure that the IGUs were manufactured in a good and workmanlike manner and in compliance with applicable specification and industry standards;

(c) ensure that the materials and components obtained for manufacturing the IGUs would satisfy all applicable specifications and meet the IGU service-life and longevity requirements;

(d) provide quality control and testing of all components and materials within the IGUs prior to, during and after the manufacturing process and the installation of the IGUs on the Shangri-La building; and

(e) take reasonable steps to ensure that the IGUs were free of deficiencies and the Defects in particular, those which could pose a real and substantial or threat of danger to the health and safety of the Owners and other occupants of the lands on which the Shangri-La is located.

47. Particulars of the duties of care owed by the defendant James KM Cheng to the plaintiff and Owners include to:

(a) properly design and prepare the Shangri-La specifications and drawings in such a manner to ensure the IGUs and Curtain Wall were constructed free of deficiencies and the Defects;

- (b) ensure proper coordination and execution of the construction of the Shangri-La, including of the IGUs and Curtain Wall, by the contractors and subcontractors;
- (c) ensure that the construction of the Shangri-La, including the IGUs and Curtain Wall, was performed in accordance with the specifications, drawings, plans, applicable building bylaws, and all applicable architectural, engineering and construction standards;
- (d) supervise and inspect construction of the Shangri-La, including of the IGUs and Curtain Wall; and
- (e) take reasonable steps to ensure that the IGUs were free of deficiencies and the Defects in particular, those which could pose a real and substantial or threat of danger to the health and safety of the Owners and other occupants of the lands on which the Shangri-La is located.

48. Particulars of the duties of care owed by the defendant RDH to the plaintiff and Owners include to:

- (a) ensure that the construction of the IGUs and Curtain Wall was performed in accordance with the specifications, drawings, plans, applicable building bylaws, and all applicable architectural, engineering and construction standards;
- (b) provide oversight, monitoring and quality control of the construction of the IGUs and the Curtain Wall;
- (c) investigate any defects or deficiencies with the construction of the IGUs and Curtain Wall and to provide recommendations to remedy any such defects or deficiencies; and
- (d) take reasonable steps to ensure that the IGUs were free of deficiencies and the Defects in particular, those which could pose a real and substantial or threat of danger to the health and safety of the Owners and other occupants of the lands on which the Shangri-La is located.

49. The defendants, and each of them, were negligent in that the defendants breached the duties of care they owed to the plaintiff and Owners given the Defects with the design, manufacturing and installation of the IGUs as particularized in paragraphs 36-40.
50. The Defects pose a real and substantial danger or threat of danger to the health and safety of the Owners and other occupants of the lands on which the Shangri-La is located, including as a result of the Spontaneous Breakage Events.
51. The defendants knew or ought to have known before and after occupancy of the Shangri-La that the Defects with the IGUs would pose a real and substantial danger to the Owners and other occupants of the lands on which the Shangri-La is located.
52. The defendants' negligence has caused or contributed to the Defects and resulting loss and damages as particularized below in paragraphs 53-55.

Loss and Damage

53. 29. The Owners have suffered from extensive and ongoing loss and damage by reason of the Developer's breach of the implied warranty, and the defendants' negligence.

54. 30. Particulars of the loss and damage include:

- (a) the cost of investigating the problems with the IGUs;
- (b) the cost of replacing the IGUs;
- (c) damage to the common property and strata lots;
- (d) depreciation in the market value of the Owners' interest in the strata lots, common property, common facilities and other assets of the Owners;
- (e) loss of use and enjoyment of the strata units; and
- (f) such further loss and damage as may be proven at trial.

55. 31. The defendants are jointly and severally liable for the loss and damage suffered by the Owners.

Part 2: RELIEF SOUGHT

56. ~~32.~~ The plaintiff claims against the defendants for:

(a) ~~(a)~~ General damages.

(b) ~~(a)~~ Specific performance of the Developer's obligations under the implied warranty, including to provide IGUs that are suitable and free from defect, rendering the premises suitable for habitation.

(c) ~~(b)~~ In the alternative, general damages for the Developer's breach of the implied warranty.

(d) ~~(c)~~ Special damages.

(e) ~~(d)~~ Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.

(f) ~~(e)~~ Costs of this action.

(g) ~~(f)~~ Such other and further relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

57. ~~33.~~ The Developer owed an implied warranty to the Owners that the work already done and not yet done would be done in a good and workmanlike manner, that the materials would be suitable, and that the building would be fit for its purpose, namely, habitation.

58. ~~34.~~ The Shangri-La development was incomplete at the time the contracts for purchase and sale were entered into and at the time those contracts completed.

59. ~~35.~~ The Developer was expected to do any further work required in order to make the Shangri-La development complete.

60. ~~36.~~ The implied warranty was not expressly excluded by the terms of the disclosure statement, the Warranty or the contracts for purchase and sale entered into between the Owners and the Developer.

61. ~~37.~~ By using the IGUs, the Developer failed to use proper materials for the Curtain Wall and breached the implied warranty owed to the Owners.

62. ~~38.~~ The IGUs have made the Shangri-La development not reasonably fit for habitation, and have breached the implied warranty owed to the Owners.

63. ~~39.~~ As a result of the Developer's breach of the implied warranty, the Owners have suffered and continue to suffer loss and damage as particularized above.

64. ~~40.~~ Further, or in the alternative, it was a term and condition of the contracts for purchase and sale entered into with the Owners that the Developer would:

- (a) ensure that the Shangri-La development was constructed in a good and workmanlike manner, free of construction deficiencies or structural defects due to faulty design, materials, equipment or workmanship;
- (b) exercise all reasonable care, skill, diligence and competence as a Developer while causing the construction of the Shangri-La development to be carried out;
- (c) ensure that the construction of the Shangri-La development would be performed in accordance with generally accepted construction and engineering standards;
- (d) ensure that the construction of the Shangri-La development would be free from defects; and
- (e) warn purchasers of any defects in the construction of the Shangri-La development.

65. ~~41.~~ The Developer breached the contracts for purchase and sale entered into with the Owners by failing to use proper materials for the Curtain Wall.

66. ~~42.~~ As a result of the Developer's breach of the contracts for purchase and sale entered into with the Owners, the Owners have suffered and continue to suffer loss and damage as particularized above.

67. Further, the defendants, and each of them, owed duties of care to the plaintiff and the Owners as described in Part 1 of this Amended Notice of Civil Claim.
68. Each of the defendants have breached their duties of care owed to the plaintiff and the Owners as described in Part 1 of this Amended Notice of Civil Claim.
69. The aforementioned breaches by the defendants have caused loss and damages to the plaintiff and to the Owners as described in Part 1 of this Amended Notice of Civil Claim.

Plaintiff's address for service: ~~e/o Hunter Litigation Chambers, 2100—1040 West Georgia~~

~~Street, Vancouver, British Columbia, V6E 4H1.~~

McEwan Partners
900-980 Howe Street
Vancouver, BC V6Z 0C8
Attention: Ken McEwan, Q.C./Kelly Ann Maw

Fax number address for service: ~~604-647-4554.~~

778-300-9393

E-mail address for service: ~~kmcewan@litigationchambers.com; copy to~~

~~rwhyman@litigationchambers.com.~~

kmcewan@mcewanpartners.com
kmaw@mcewanpartners.com

Place of trial: Vancouver, British Columbia.

The address of the registry is: 800 Smithe Street, Vancouver, British Columbia, V6Z 2E1.

Dated: August 28, 2019 ~~December~~ , 2015



J. Kenneth McEwan, Q.C./Kelly Ann Maw

Signature of

plaintiff

lawyer for plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Court Order Interest Act, R.S.B.C. 1996, c. 79.

Strata Property Act, S.B.C. 1998, c. 43.

Real Estate Development Marketing Act, S.B.C. 2004, c. 41.

SCHEDULE “C-7”

Further amended pursuant to Rule 6-1(1)(b) and the Case Plan Order of Justice Walker pronounced October 28, 2021

Original NOCC filed December 15, 2015

Amended pursuant to Rule 6-1(1)(a) on February 14, 2018

**SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY**

No. S-1510431
Vancouver Registry

DEC 17 2021

In the Supreme Court of British Columbia

Between



THE OWNERS, STRATA PLAN BCS 3165

Plaintiff

And:

KBK NO. 11 VENTURES LTD., 1100 GEORGIA PARTNERSHIP, PETERSON INVESTMENT (GEORGIA) LIMITED PARTNERSHIP, PETERSON INVESTMENT (GEORGIA) INC., ABBEY ADELAIDE HOLDINGS INC., LJV GEORGIA INVESTMENTS LP, LJV GEORGIA INVESTMENTS INC., NO. 274 CATHEDRAL VENTURES LTD., IGA/AGS JOINT VENTURE INC., ~~ADVANCED GLAZING SYSTEMS LTD., GARIBALDI GLASS INDUSTRIES INC., GLASTECH CONTRACTING (BC) LTD., BROOK VAN DALEN & ASSOCIATES LIMITED, CRS CONSTRUCTION LTD., DH GLASS SOLUTIONS INC., TAISHAN CITY KAM KIU ALUMINUM EXTRUSION CO. LTD., VITRIUM INDUSTRIES LTD., DEKOR GLASS (1996) LIMITED, FORMGLAS INC., INTRICATE GLASS (1996) LTD., VICTORY GLASS AND ALUMINUM, NATIONAL GLASS, ALUMICOR LIMITED, LEDCOR PROPERTIES INC., LEDCOR CONSTRUCTION LIMITED, JONES KWONG KISHI CONSULTING ENGINEERS, TIDBALL PROJECTS (2005) LTD., RDH ENGINEERING LTD., RDH BUILDING ENGINEERING LTD., and JAMES KM CHENG ARCHITECTS INC., PETER ROSS 2006 LTD., WESTERN TANK AND LINING LTD., MO'S WATERPROOFING INC., WESTCOR SERVICES LTD., COMPASS CLADDING INC., LIGHTMORE GLAZING LTD., NORTHERN GLASS & ALUMINUM LTD., US RAILING LLC, US RAILINGS LLC, MICRO SEAL LTD., EAST & WEST ALUM CRAFT LTD., TRACTEL SWINGSTAGE DIVISION LTD. and NIGHTINGALE ELECTRICAL LTD.~~

Defendants

And:

KBK NO. 11 VENTURES LTD., 1100 GEORGIA PARTNERSHIP, TIDBALL PROJECTS (2005) LTD., PETERSON INVESTMENT (GEORGIA) LIMITED PARTNERSHIP, PETERSON INVESTMENT (GEORGIA) INC., ABBEY ADELAIDE HOLDINGS INC., LJV GEORGIA INVESTMENTS INC., LJV GEORGIA INVESTMENTS LP, NO. 274 CATHEDRAL VENTURES LTD., IGA/AGS JOINT VENTURE INC., LEDCOR PROPERTIES INC., LEDCOR CONSTRUCTION LIMITED, JAMES KM CHENG ARCHITECTS INC., RDH ENGINEERING LTD., RDH BUILDING SCIENCE LTD., GARIBALDI GLASS INDUSTRIES INC., DOW

SILICONES CORPORATION, ADVANCED GLAZING SYSTEMS LTD., GUARDIAN GLASS, LLC, GUARDIAN INDUSTRIES CORP., GUARDIAN GLASS COMPANY, ALLSTAR HOLDINGS INCORPORATED, FENZI NORTH AMERICA INC., AZON USA INC., TAISHAN CITY KAM KIU ALUMINIUM CO. LTD., INTRICATE GLASS (1996) LTD., WESTERN TANK AND LINING LTD, MOI'S WATERPROOFING INC., COMPASS CLADDING INC., LIGHTMORE GLAZING LTD., NORTHERN GLASS & ALUMINUM LTD., US RAILING LLC, US RAILINGS LLC, MICRO SEAL LTD., TRACTEL SWINGSTAGE DIVISION LTD., HONEYWELL UOP and HONEYWELL INTERNATIONAL INC.

FURTHER AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

~~A. The Plaintiff:~~

- ~~1. The plaintiff, The Owners, Strata Plan BCS 3165, is a strata corporation ~~incorporated~~established pursuant to the provisions s. 2 of the *Strata Property Act*, S.B.C. 1998, c. 43 (the "Strata Corporation" or "Plaintiff SPA") with an address for service at ~~958 West 8th, c/o McEwan Cooper Dennis LLP, 900 – 980 Howe Street, Vancouver, British Columbia.~~~~

- ~~2. Control of the Strata Corporation was transferred from the Developer (defined below in Part B) to the Plaintiff's strata council for the first time when the Strata Corporation's first annual general meeting ("AGM") occurred on or about February 3, 2009 or within one week after the date of that AGM.~~

- ~~2. 3. The plaintiff's members of the Strata Corporation (collectively, the "Individual (the "Owners")) are the purchasers and registered owners of the 234 strata lots contained within the Strata Corporation, itself contained within Air Space Parcel 2 ("ASP2"), one of three separate air space parcels in addition to one Remainder Parcel and subdivided by subdivision plan BCP38696 (the "Shangri-La Development") Strata Plan BCS 3165.~~

- ~~4. The Shangri-La Development is a high end development which was constructed by the Defendant Developer Group and other Defendants as identified in Parts B. through D. of these Statement of Facts and is a single integrated structure consisting of a 3 storey podium base (the "Shangri-La Podium") and a 60 storey (61 numbered floors with the floors being numbered 1 through 3, 5 through 61) mixed use tower (the "Shangri-La Tower"), circumscribed by the eastern half of the block demarcated by West Georgia Street, Thurlow Street, and Alberni Street, Vancouver, British Columbia.~~

- ~~5. ASP2 is owned and occupied by the Strata Corporation and occupies portions of the 5th and 6th floors and the entire 16th through 43rd floors of the Shangri-La Tower, including all common property, common assets, facilities and common areas and all strata lots~~

~~contained therein (the "Strata Complex"). The Strata Complex has a civic address of 1111 Alberni Street, in the City of Vancouver, Province of British Columbia and is situate above lands which until subdivision were legally described as:~~

~~Parcel Identifier: 017-483-093
Lot G Block 18 District Lot 185
Group 1 New Westminster District
Plan LMP1597 Except Air Space Plan BCP38696~~

- ~~6. The Strata Corporation and/or its Individual Owners is/are the beneficiary/ies of:~~
- ~~a. a homeowner policy of warranty insurance pursuant to the Homeowners Protection Act, with a commencement date which coincided with the date of the occupancy permit and first conveyance on November 6, 2008. The warranty provides various coverages for construction deficiencies not to exceed \$2.5 million for 15 month/two year/five year/ten year warranty periods expiring on February 6, 2010, November 6, 2010, November 6, 2013 and November 6, 2018 respectively;~~
 - ~~b. numerous warranties provided by the Defendant Developer Group and/or the Defendant Consultant/Engineer/Sub Trade Group and particularized below; and/or~~
 - ~~c. numerous warranties implied at law and particularized below.~~
- ~~3. 7. The plaintiff brings this action claims on its own behalf as a strata corporation and as representative on behalf of,~~
- ~~a. all Individual Owners pursuant to s. 171 of the SPA Strata Property Act—such Individual Owners being all owners who purchased their units at various times between 2004 and the present; and/or~~
 - ~~b. one or more but not all of the Individual Owners, as the case may be and where expressly stated below in this Amended Notice of Civil Claim, about matters affecting only their strata lots, pursuant to s. 172 of the Strata Property Act and/or pursuant to Rule 20-3 of the B.C. Supreme Court Rules.~~
- ~~8. Having regard to the Plaintiff's representative proceedings which are brought on behalf of a group consisting of less than all of the Individual Owners as averred in paragraph 7b. above, the Plaintiff advances additional claims on behalf of those members of the strata~~

~~corporation who are original, first-time purchasers of their strata lot [which subgroup of Individual Owners is hereinafter referred to as "Original Purchasers"] and who thus were at all material times in contractual privity with the "Developer" (as that term is defined below in paragraph 9 of this Amended Notice of Civil Claim).~~

~~B. The Defendant Developer Group~~

~~B.1 Identity of the Members of the Defendant Developer Group:~~

The Defendants

4. Each of the defendants was involved in the development, design and/or construction of the Shangri-La (as defined in paragraph 14 below).
5. ~~9.~~ The group of ~~Defendants~~defendants who were at all material times the builder and/or owner-developer (collectively, the "Developer") of the Shangri-La Tower and the Strata Complex ~~are~~is as follows:
 - a. KBK No. 11 Ventures Ltd. ("**KBK**") is a British Columbia company with a registered and records office located at 19th floor, 885 West Georgia Street, Vancouver, British Columbia, and was at all material times agent and nominee for the other defendants identified below at paragraphs ~~9b5b.~~ through ~~9f5h.~~ in the construction of the Shangri-La Tower and the Strata Complex;
 - b. 1100 Georgia Partnership ("**1100**") is a general partnership established ~~pursuant to~~formed under the laws of British Columbia and ~~has~~with a registered and records office located at 1100 – 505 Burrard Street, Vancouver, British Columbia. ~~V7X 1M5;~~
 - c. Peterson Investment (Georgia) Limited Partnership, ("**Peterson LP**") is a limited partnership consisting of one General Partner, registered in British Columbia with a registered and records office located at 1100 – 505 Burrard Street, Vancouver, British Columbia;

~~d.~~ Peterson Investment (Georgia) Inc., is a British Columbia company which has a registered and records office located at 1100 – 505 Burrard Street, Vancouver, British Columbia, V7X 1M5; the general partner of Peterson LP, with a registered and records office located at 1100 – 505 Burrard Street, Vancouver, British Columbia, V7X 1M5;

~~e.~~ Abbey Adelaide Holdings Inc., formerly known as Westbank Georgia Holdings Ltd., is a British Columbia company which has with a registered and records office located at 1100 – 505 Burrard Street, Vancouver, British Columbia, V7X 1M5;

~~f.~~ LJV Georgia Investments LP, (“LJV LP”) is a limited partnership consisting of one General Partner, LJV Georgia Investments Inc., an Alberta company which is registered extra-provincially and has an Attorney Office in British Columbia with an address for service of located at 1200 – 1067 West Cordova Street 1100 – 505 Burrard Street, Vancouver, British Columbia, V6C 1C7; and

~~g.~~ LJV Georgia Investments Inc. is an Alberta company registered extra-provincially in British Columbia, and the general partner of LJV LP, with an address for service of 1100 – 505 Burrard Street, Vancouver, British Columbia; and

~~h.~~ No. 274 Cathedral Ventures Ltd., is a British Columbia company which has with a registered and records office located at 990 – 1040 West Georgia of 1100 – 505 Burrard Street, Vancouver, British Columbia, V6E 4H8;

~~{the aforementioned Defendants referred to collectively herein as the "Developer"} and, having regard to their roles, responsibilities, duties and warranties as particularized below in Divisions B.2 through B.3, the Developer and/or each of the above named Defendants is/are liable to the Plaintiff and the Individual Owners and/or the Original Purchasers for any breach of duty and warranty and any failures which caused or contributed to the Construction Deficiencies, Resultant Damage, and Dangerous Defects which are defined and particularized below in Part E and the loss and damage claimed in Part F particularized below.~~

~~**B.2 The Roles and Responsibilities of the Defendant Developer Group and its Members:**~~

~~10. The Developer and/or each of the Defendants named above in paragraph 9 undertook the construction of the Shangri La Development and the Strata Complex between 2004 and 2008-10 and undertook the creation of the Strata Corporation and at all material times was primarily responsible for:~~

- ~~a. the design, construction, development, manufacturing and inspection services, approvals and supervision associated with the design and construction of the Strata Complex;~~
- ~~b. the supply of work and materials in connection with the construction of and subsequent remedial and repair work at the Strata Complex;~~
- ~~c. the hiring of architectural, engineering and specially consultants, project managers, construction managers, general contractors, sub-contractors, sub-sub contractors and workers;~~
- ~~d. the review of the work in progress and completed, quality of materials provided and actions of its contractors, suppliers, consultants, engineers — all as required to complete the project — and workers under its direction or control;~~
- ~~e. ensuring that the work of its project managers, construction managers, general contractors, sub-contractors, sub-sub contractors and suppliers was properly coordinated, certified as required, supervised and inspected; and~~
- ~~f. inspection of the Strata Complex during and after construction, including certification that the work was completed in a manner consistent with the project documents (drawings and specifications), local codes and requirements of all authorities having jurisdiction over the construction of the Shangri La Development [referred to hereinafter as the “Construction”].~~

~~11. The Developer and/or each of the Defendants named above in paragraph 9 warranted and represented to the Plaintiff and/or Individual Owners and/or Original Purchasers that:~~

- ~~a. the express and implied warranties and obligations particularized below in paragraph 12 of this Amended Notice of Civil Claim would be fully discharged;~~

- ~~b. they would obtain course of construction insurance for the period up to completion of the Live/Work Component, the Hotel Component, the Residential Component and the Commercial Component for not less than \$100,000,000.00 for the construction cost of the Tower and the Podium as well as comprehensive general liability coverage of not less than \$5,000,000 in accordance with Article 3.11(a) of the Amended and Restated Disclosure Statement(s) of March 8, 2005;~~
- ~~e. in addition to home warranty insurance, any suppliers and manufacturers' warranties would be passed on to the purchasers or the Strata Corporation as the case may be, if and to the extent permitted by such warranties in accordance with Article 5.2 of the Amended and Restated Disclosure Statements of March 8, 2005;~~
- ~~d. they would in accordance with Article 7.5 of the Amended and Restated Disclosure Statement(s) of March 8, 2005 and s. 20(2) of the Strata Property Act provide documents to the Plaintiff at the first annual general meeting including
 - ~~i. the names and addresses of all contractors or subcontractors primarily responsible for the supply of labour or materials to each of the major components of the Development;~~
 - ~~ii. the names of all technical consultants including the building envelope specialist;~~
 - ~~iii. the name and address of any project manager; and~~
 - ~~iv. all warranties, manuals, schematic drawings, operating instructions, service guides, manufacturer's documentation and other similar information respecting the construction, installation, operation, maintenance, repair and servicing of any common property or common assets of the Strata Corporation, including any warranty information provided to the Developer by contractors and subcontractors.~~~~

~~**B.3 The Duties of the Defendant Developer Group and its Members:**~~

- ~~12. Having regard to their roles and responsibilities and the warranties and representations which they provided or conveyed, the Developer and/or each of the Defendants named above in paragraph 9 were under a contractual and/or statutory obligation under the~~

~~provisions of the Real Estate Development Marketing Act and sections 6(1) and 6(2) of the Strata Property Act to the Plaintiff claiming on behalf of itself and all Individual Owners and/or as the case may be, the Original Purchasers, and/or in addition owed a duty of care and/or provided to the Plaintiff and all Individual Owners and/or as the case may be, the Original Purchasers, an implied or express warranty in contract, at common law and/or under statute that:~~

- ~~a. the Shangri La Development generally and the Strata Complex specifically would be state of the art;~~
- ~~b. the Construction would be completed in a workmanlike manner free from defect, latent or patent;~~
- ~~c. any and all construction defects would be repaired and remediated and the Strata Complex would be and was inspected during and after the Construction and any deficiencies repaired and remediated;~~
- ~~d. the Construction would be of the highest superior quality of construction and consist of the highest quality systems and durability of components;~~
- ~~e. the Construction would be reasonably suitable for the Strata Complex's intended purpose of habitation at the highest superior quality of construction;~~
- ~~f. the Shangri La Development generally and the Strata Complex specifically would be suitable for its purpose, namely habitation and would not pose a risk to the health and safety of the Individual Owners, occupants and visitors;~~
- ~~g. each and every one of its consultants, managers, trades, sub-trades, sub-sub-trades, and suppliers who provided services and/or work and/or materials in the Construction as particularized in Part C of these Statement of Facts would do so in a workmanlike manner free from defect, latent or patent and at the highest superior quality of construction;~~
- ~~h. all products, materials and systems supplied for the Construction, especially certain critical products and materials associated with curtainwall systems and within the curtainwall system and including the products, materials, components and systems within the assembly of the insulating glass units ("IGUs") would be suitable (one to~~

~~the other) and meet the exact project specifications, drawings, manufacturers' instructions, Building Code and in addition product certification imposed by the Building Code, the City of Vancouver's building bylaws (the "Bylaws"), regulations and prudent industry and glazing industry standards as particularized below; and~~

~~i. all IGUs would:~~

- ~~i. as a building component or assembly which is subjected to an intended temperature differential, consist of materials and components to resist heat or cold transfer for the interior and exterior design temperatures and in conjunction with other materials and components in the assembly, minimize condensation within the component or assembly in accordance with section 5.3.1.1. and 5.3.1.2(1)(a) of Vancouver Building Bylaw No. 8057 1999;~~
- ~~ii. conform to the requirements of the standard known as CAN/Canadian General Standards Board ["CGSB"] 12.8 M, "Insulating Glass Units" in accordance with section 5.3.1.2(1)(a) of Vancouver Building Bylaw No. 8057 1999 and section 08920, subsections 1.5 "Reference Standards" and 2.1.11 "Curtain Wall Materials -Glass" of the Tower Podium Specifications;~~
- ~~iii. be guaranteed, either expressly or impliedly, for a period of ten (10) years from Substantial Performance of the Work against any obstruction of vision as a result of hermetic seal failure, dust or film formation on the inner glass surfaces, fogging, breaking due to edge flaws (chips, gouges, etc.), and migration of edge spacer, delamination, or other manufacturing defects;~~
- ~~iv. be replaced without cost to the Owner if they failed to comply with the guarantees as aforesaid in accordance with section 08920, subsection 1.18.3.3 Reference Standards of the Tower Podium Specifications and/or in the alternative. in accordance with warranties and guarantees necessarily implied by CAN/CGSB 12.8 M standards and the Vancouver Building Bylaw No. 8057 1999;~~
- ~~v. have certification from the Insulated Glass Manufacturers Association of Canada ("IGMAC") in strict accordance with the project specifications section 08920,~~

- ~~subsections 1.5 "Reference Standards" and 2.1.11 "Curtain Wall Materials—Glass" of the Tower Podium Specifications; and~~
- ~~vi. via its marketing/sales and maintenance materials, have a service life span of forty (40) years and free of any defect and blemish for ten (10) years;~~
- ~~failing which a number of warranties and representations involving longevity and operability of the IGUs would be undermined;~~
- ~~j. they would pursue all remedies under any and all express and implied contractor and supplier warranties on behalf of the Strata Corporation and Individual Owners;~~
- ~~k. they would comply with their signed schedules of undertaking submitted to the City of Vancouver; including representations and warranties~~
- ~~i. that the Developer and/or each of the Defendants would comply with or cause those whom it employed or retained to comply with the Building Code, the Bylaws and all other statutes and regulations in force in the City of Vancouver relating to the development, work, undertaking or permission in respect of which the building permit applications were made;~~
- ~~ii. that the Developer and/or each of the Defendants would be fully responsible for carrying out the work on the Strata Complex or, having the work carried out, in accordance with the requirements of the Building Code, the Bylaws and all other bylaws of the City of Vancouver;~~
- ~~iii. that the Developer and/or each of the Defendants would obtain all letters of assurance of "Professional Design and Commitment for Field Review" prepared by registered professionals and submit such letters of assurance to the City of Vancouver with its building permit applications; and~~
- ~~l. neither it the Developer or any of its members or any of its contractors, subcontractors, sub-sub-contractors or suppliers would engage or acquiesce, in this a consumer transaction, in any contravention of the Business Practices and Consumer Protection Act [SBC 2004], c. 2 (the "BPCPA") and in particular in any unfair or deceptive act or practice or representation, as those terms are defined in section 4 of the BPCPA in respect of the supply of goods, services or real property in the~~

~~Construction at the Strata Complex, especially but not limited to the IGUs as specified above, and that any violation of the BPCPA would be disclosed to the Plaintiff and the Individual Owners and/or the Original Purchasers as consumers and investigated and remedied, especially upon the developer's assumption of the duties of strata council of the Strata Corporation under s. 6 of the Strata Property Act in the period after the deposit of the strata plan and up to the date of the first AGM.~~

~~13. In addition, the Developer and/or each of the Defendants named above in paragraph 9 were at all times prior to, during and after the Construction of the Shangri La Development and the Strata Complex, especially upon the Developer's assumption of the duties of strata council of the Strata Corporation under s. 6 of the Strata Property Act in the period after the deposit of the strata plan and up to the date of the first AGM, uniquely situated as developer and builder to have actual or constructive knowledge that the Construction Deficiencies defined and particularized below existed and would give rise to Resultant Damage and Dangerous Defects and thus owed the Plaintiff and Individual Owners a further duty to warn the Plaintiff and Individual Owners and/or the Original Purchasers that the services, work or products of the Developer and those that they supervised or employed were defective, would cause resultant damage and dangerous defects that would give rise to hazardous conditions that posed a health or safety risk to the Individual Owners, occupants or visitors at the Strata Complex.~~

~~B.4 Breaches Committed by the Defendant Developer Group and its Members:~~

~~14. In breach of their obligations, duties and warranties set out in paragraphs 12 and 13 above, the Developer and/or each of the Defendants named above in paragraph 9 constructed or caused to be constructed the Shangri La Development and the Strata Complex with Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E. More particularly, the Developer and/or each of the Defendants named above in paragraph 9 failed to discharge each of the duties set out in paragraphs 12a. through 12l. and 13 and such failures caused or contributed to the Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F below,~~

~~rendering the strata lots and common property unsuitable and unfit for their intended purpose, including for the purpose of habitation.~~

~~**C. The Defendant Prime Building Contractor and Construction Manager Group:**~~

~~15. In the development and construction of the Strata Complex, the Developer engaged a prime building contractor who agreed to undertake the control and management of the Construction and who in turn engaged a construction manager as identified below. As such, the prime building contractor and the construction manager as aforesaid assumed the same roles, responsibilities and duties and provided the same express and implied warranties as set out in paragraphs 12 and 13 mutatis mutandis above and additional duties as set out below.~~

~~**C.1 Prime Building Contractor:**~~

~~6. 16. The defendants Ledor Properties Inc. and Ledor Construction Limited (together, "Ledor") [referred to collectively as "Ledor"], are companies incorporated pursuant to the laws of Alberta companies which are each and registered extra-provincially with an Attorney Office in British Columbia located at 1200 1067 West Cordova an address for service of 1100 505 Burrard Street, Vancouver, British Columbia, V6C 1C7 were at all material times either solely or jointly engaged by the Developer as the prime building (general) contractor for the construction of the Shangri La Development including the Strata Complex and, in addition to the responsibilities and duties set out in paragraph 12 and 13 above, was responsible for:~~

- ~~a. hiring of contractors, sub-contractors, workers and suppliers and for those under its direction and/or control, review of their work and materials;~~
- ~~b. the oversight, supervision and day to day management of all reviews, approvals, component fabrication and installation, means and methods for all building systems and components contributing to the construction of the Shangri La Development including the Strata Complex;~~
- ~~c. ensuring that the Strata Complex would be constructed at or remediated to a deficiency free state and at the highest quality of construction;~~

- d. ~~reviewing and approving of IGU shop drawings, proof of IGMAC certification and compliance as related to the IGUs, and all other submissions, inspections, and confirmations required by the project specifications and the relevant building bylaws of the City of Vancouver as described herein;~~
- e. ~~oversight and supervision of the day to day installation of the curtain wall/IGU system and its coordination with all other relevant trades;~~

~~such that to the extent of its role and its responsibilities, Ledcor owed to the Plaintiff and the Individual Owners the duties and provided the warranties particularized above and particularized in paragraphs 12 and 13 above and is liable to the Plaintiff and/or the Individual Owners for all of the Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F of these Statement of Facts.~~

~~C.2 Construction Manager:~~

~~7. 17. The defendant Tidball Projects (2005) Ltd. ("Tidball") is a company incorporated pursuant to the laws of British Columbia company which has a registered and records office located at 1410 Palmerston Avenue, West with an address for service of 1100 – 505 Burrard Street, Vancouver, British Columbia, V7T 2H7 was engaged by the Developer as the construction manager for the construction of the Shangri La Development including the Strata Complex and, in addition to the responsibilities and duties set out in paragraph 12 and 13 above, was responsible for:~~

- a. ~~ensuring the review and approval of submissions and tests, mandated by the project specifications in compliance with the project drawings and specifications are completed by the designated technical and specialty consultant members of the Developer's team;~~
- b. ~~the review of in progress and day to day installation of materials and systems to ensure that the as constructed systems, materials, components, and configurations properly interface with adjacent materials and met all specified/design requirements including but not limited to IGMAC certification for each of the IGU types specified~~

~~for the Shangri-La Development and the relevant building bylaws of the City of Vancouver as described herein;~~

- ~~e. ensuring that as-built construction met industry standards and quality expectations;~~
- ~~d. assisting the Developer and Ledcor in assessing and certifying "completion of work" and ensuring that all building systems and components met the requirements set forth in the project documents (drawings and specifications), local codes, and the requirements of all authorities having jurisdiction over the Shangri-La Development; and~~
- ~~e. oversight and supervision of the day-to-day installation of the curtain wall/IGU system and its coordination with all other relevant trades;~~

~~such that Tidball Projects (2005) Ltd. owed to the Plaintiff and the Individual Owners the duties and provided the warranties particularized above and particularized in paragraphs 12 and 13 above and is liable to the Plaintiff and the Individual Owners for all of the Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized in Part E and the loss and damage claimed in Part F of these Statement of Facts.~~

~~**C.3 Breaches Committed by Prime Building Contractor and Construction Manager:**~~

- ~~18. In breach of their obligations, duties and warranties set out in paragraphs 16 and 17 above, the Defendant Prime Building Contractor and the Construction Manager constructed or caused to be constructed the Shangri-La Development and the Strata Complex, with Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E. More particularly, the Defendant Prime Building Contractor and the Construction Manager failed to discharge each of the duties set out in paragraphs 12a. through 12i. and 13, mutatis mutandis, and their respective duties under paragraphs 16 and 17 and such failures caused or contributed to the Construction Deficiencies, Resultant Damage, And Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F of these~~

~~Statement of Facts below, rendering the strata lots and common property unsuitable and unfit for their intended purpose, including for the purpose of habitation.~~

~~**D. The Defendant Consultant/Engineer/Sub-Trade/Sub-Sub-Trade Group:**~~

~~19. In addition to the Developer and/or each of the Defendants named above in paragraphs 9, 16 and 17, the Developer engaged architectural, engineering, and specialty consultants, managers, trades, sub-trades, sub-sub-trades and suppliers listed under Divisions D.1 through D.4 below of this Part D of the Statement of Facts, and who provided services and/or work and/or materials in the Construction at the Strata Complex and who, having regard to their specific service/work/supply function:~~

~~a. owed a duty at common law to the Plaintiff and the Individual Owners to provide such services/work/materials with reasonable care and skill and/or in a good and workmanlike manner free from defect, latent or patent and at the highest superior quality of construction and in exact conformity with specifications and product certification;~~

~~b. owed a duty at common law to the Plaintiff and the Individual Owners that the provision by architectural, engineering, and specialty consultants, managers, trades, sub-trades, sub-sub-trades and suppliers of services and/or work and/or materials in the Construction at the Strata Complex would meet or exceed the standards and warranties set out in paragraph 12.a through 12.1 above;~~

~~c. provided to the Plaintiff and all Individual Owners an implied or express warranty of fitness and workmanlike quality or in the alternative, agreed that in consideration for payment of their service/work/supply, such implied or express warranties would be assigned by the Developer to the Plaintiff and all Individual Owners;~~

~~d. where expressly indicated in Divisions D.1 through D.4 below, provided an express warranty for a set number of years to repair and/or replace defective service/work/supply;~~

~~e. owed the Plaintiff and the Individual Owners a further duty at all material times prior to, during and after the Construction to warn the Plaintiff and the Individual Owners~~

~~that the services, work, and supplies which they and those that they supervised or employed were responsible to provide would give rise to hazardous conditions that posed a health or safety risk to the Individual Owners, occupants or visitors at the Strata Complex; and~~

~~f. owed a statutory duty specifically to the Plaintiff and the Individual Owners that they would not contravene the BPCPA and specifically that they would not engage in any deceptive act or practice or representation as those terms are defined in the BPCPA in respect of the supply of their goods, services or real property in the Construction at the Strata Complex and.~~

~~20. In breach of their obligations, duties and warranties set out in paragraph 19 above and their respective obligations set out in Divisions D.1 through D.4 below, the Defendant Consultant/Engineer/Sub Trade Group and its members failed to provide services/work/supplies in a workmanlike manner and consistent with the express or implied warranty of fitness such that the Shangri-La Development and the Strata Complex were constructed with Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized in Part E and the loss and damage claimed in Part F of these Statement of Facts. More particularly, the Defendant Consultant/Engineer/Sub Trade/Sub Sub Trade Group and its members failed to discharge each of the duties set out in paragraphs 19a. through 19f. above and Divisions D.1 through D.4 below and such failures caused or contributed to the Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F of these Statement of Facts below, rendering the strata lots and common property unsuitable and unfit for their intended purpose, including for the purpose of habitation.~~

~~D.1 Architectural/Design:~~

~~8. 21. The defendant James KM Cheng Architects Inc. (“James KM Cheng”) is a company incorporated pursuant to the laws of British Columbia company which has with a registered and records office located at of 2800 – 595 Burrard Street, Vancouver, British Columbia, V7X 1J5 was engaged by the Developer as the project architect and prime~~

~~design consultant for the construction of the Shangri-La Development including the Strata Complex and was responsible for:~~

- ~~a. setting acceptable design and project quality expectations by way of project drawings and specifications and bid documentation;~~
- ~~b. setting acceptable materials and system components to be used in the project;~~
- ~~c. setting the overall design requirements with respect to materials, configurations, colours, and interface/interrelationship of building systems and components;~~
- ~~d. ensuring that all plans, drawings and specifications were free of technical or design defects or errors;~~
- ~~e. designing a curtain wall system based on a frameless attachment of IGUs on the building exterior in which the outer lite of the IGU is adhered to the IGU's spacer bar using structural silicone;~~
- ~~f. reviewing and approving specified sub-contractor submissions, shop drawings, and related submittals, including but not limited to those associated with the fabrication, testing, IGMAC certification, and installation of the IGUs within the curtain wall system to ensure their full and complete compliance with the project specifications and the relevant building bylaws of the City of Vancouver as described herein;~~
- ~~g. providing consulting and supervisory expertise during construction including regular inspection and review of in-progress construction to ensure that the work, construction (including the curtain wall system) and the component materials which were installed met the following standards:
 - ~~i. complied with and met the specified requirements of the project documents as both specified and drawn, manufacturers' instructions, the Building Code, the Bylaws and all other regulatory requirements and prudent design and construction standards;~~
 - ~~ii. complied with standards of good workmanship; and~~
 - ~~iii. all materials were suitable and fit for their intended purpose;~~~~

- ~~h. ensuring that any defects that were discovered or ought to have been discovered during construction were corrected; and~~
- ~~i. issuing a Schedule C-B Assurance of Professional Review and Compliance or in the alternative causing such assurance to be issued and/or acquiescing in the issuance of such assurance only if the systems and components of the Strata Complex for which James KM Cheng was responsible substantially complied in all material respects with the plans and supporting documents, the Building Code, the Bylaws and other applicable enactments respecting safety;~~

~~such that James KM Cheng owed the duties and provided the warranties to the Plaintiff and the Individual Owners particularized above in paragraph 19 and 21a. through 21i. and is liable to the Plaintiff and the Individual Owners for all of the Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F of these Statement of Facts below, rendering the strata lots and common property unsuitable and unfit for their intended purpose, including for the purpose of habitation.~~

9. ~~22.~~ The defendant Brook Van Dalen & Associates Limited (“**Brook Van Dalen**”) ~~36 Ash Street, Uxbridge, Ontario L9P 1E5~~ is a dissolved Ontario corporation, with its last registered address located at 33 Beddington Avenue, Ottawa, Ontario, K2J 3N2 ~~which was engaged by the Developer and/or James KM Cheng as the Curtain Wall Specialty Design Consultant for the construction of the Shangri La Development including the Strata Complex and was responsible for:~~

- ~~a. provision of performance design details and specification expertise in support of the project architect's principal design objective—a frameless curtain wall system;~~
- ~~b. development of performance-based bid documents for the frameless curtain wall system in which the critical shapes of the curtainwall components were detailed, the IGU and aluminum structural frame performance characteristics were defined, and a variety of IGU assembly types' requirements designed in recognition of the various environmental conditions expected over the surface area of the Shangri La Tower;~~

- ~~e. liaising with the mechanical design consultant to determine the curtain wall's optimal heat/cooling load performance;~~
- ~~d. overseeing quality control of the IGU assemblies (by type), compliance with IGMAC certification and other relevant glazing industry standards and the relevant building bylaws of the City of Vancouver as described herein so as to maximize service life, durability and compatibility with the specified curtain wall design requirements, and to perform periodic inspection of the installed curtain wall system;~~

~~such that Brook Van Dalen & Associates Limited owed the duties and provided the warranties to the Plaintiff and the Individual Owners particularized above in paragraphs 19 and 22a. through 22d. and is liable to the Plaintiff and the Individual Owners for those Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F of these Statement of Facts below, rendering the strata lots and common property unsuitable and unfit for their intended purpose, including for the purpose of habitation.~~

~~D.2 Engineering:~~

- ~~10. 23. The defendant RDH Engineering Ltd. and RDH Building Engineering Ltd. Science Inc. ("RDH") ["RDH"] are British Columbia companies which have is a company incorporated pursuant to the laws of British Columbia with a registered and records office of 20th floor, 250 Howe Street, Vancouver, British Columbia, V6C 3R8 and were engaged by the Developer and/or Ledor as the engineers for the construction of the Shangri-La Development including the Strata Complex and was responsible for:~~
- ~~a. oversight and quality control of the installed building systems, including the curtain wall system during the course of construction;~~
 - ~~b. assisting the Construction Manager in providing specially technical testing oversight (IGMAC certification and compliance with relevant building bylaws of the City of Vancouver as described herein) and review of the various building systems through review of the shop drawings and other specified design submissions prior to component fabrication and installation;~~

- ~~e. review of in progress work for compliance and consistency with Project Drawings and Specifications and for conformity with quality standards and specifications;~~
- ~~d. cross checking system and component materials specifications and ensuring that such systems and component materials were properly tested and certified before acceptance for the Shangri-La Development including the Strata Complex and before installation in the project;~~
- ~~e. technical oversight and in progress monitoring of the installation of the curtainwall system both in terms of structural aluminum framing and IGUs;~~
- ~~f. assisting the Construction Manager and Developer in assessing whether a satisfactory threshold in the completion of the work for all building components and systems, including the curtainwall system, its structural aluminum frame and the IGU components had been achieved;~~
- ~~f. preparing system descriptions (including service life expectations) to be incorporated into the Developer's marketing/sales/maintenance materials;~~
- ~~g. investigating system failures after completion, including failure of the IGUs, after occupancy of the Shangri-La Development had occurred and reporting the results (deficiencies) of such investigation to the Developer, Ledcor, the construction manager, the architect and specialty design consultant;~~
- ~~h. ensuring that any defects that were discovered or ought to have been discovered during construction were corrected; and~~
- ~~i. issuing a Schedule C-B Assurance of Professional Review and Compliance or in the alternative causing such assurance to be issued and/or acquiescing in the issuance of such assurance only if the systems and components of the Strata Complex for which RDH was responsible substantially complied in all material respects with the plans and supporting documents, the Building Code, the Bylaws and other applicable enactments respecting safety;~~

~~such that RDH Engineering Ltd. and RDH Building Engineering Ltd. owed the duties and provided the warranties to the Plaintiff and the Individual Owners particularized~~

~~above in paragraphs 19 and 23a. through 23j. and are liable to the Plaintiff and the Individual Owners for those Construction Deficiencies. Resultant Damage, and Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F of these Statement of Facts below, rendering the strata lots and common property unsuitable and unfit for their intended purpose, including for the purpose of habitation.~~

~~**D.3 — Manufacturer/Supplier/Installer of Insulated Glazing Units and Window Wall System:**~~

- ~~11. 24. The defendant IGA/AGS Joint Venture Inc. (“IGA/AGS”) is a British Columbia company incorporated pursuant to the laws of British Columbia with a registered and records office located at 200 – 121 St. Paul Street, Kamloops, British Columbia, V2C 3K6 and was engaged by Ledeor as the principal curtainwall subcontractor for the final design, fabrication, and installation of the performance-based curtainwall system, responsible for providing and installing both IGUs and structural aluminum frame for the construction of the Shangri-la Development including the Strata Complex and accordingly was responsible for:~~
- ~~a. warranting and guaranteeing and thus confirming that sub-sub-contractors working for or engaged by IGA/AGS met all of the specified requirements for the curtainwall components, most particularly the IGUs which had to meet the requirement for IGMAC certification and compliance with relevant bylaws of the City of Vancouver as described herein;~~
 - ~~b. ensuring that the inter-compatibility and longevity of the IGU component materials as well as the longevity of the thermal and visual properties of the IGU assembly would meet the requirements stipulated in the project specifications and in the Developer's marketing materials;~~
 - ~~c. ensuring that the component materials and prototype designs for the various IGU types to be provided to complete the Shangri-La Development met the design intentions, as detailed in the Architect's drawings, and the project specifications;~~

- ~~d. ensuring that the IGUs were IGMAC certified as specified in the Project Specifications prior to their fabrication and prior to being accepted and installed at the site;~~
- ~~e. overseeing the fabrication of the IGUs to ensure that they met the specifications established for tolerances, thermal and wind loads, compatibility of materials, and quality expectations;~~
- ~~f. overseeing the installation of the structural aluminum frame and the IGUs;~~
- ~~g. supervising all sub-sub-contractors and suppliers who submitted product and materials and inspecting such product and materials for conformity with specifications; and~~
- ~~h. inspecting, testing and verifying that the performance of the IGU system assembly and component parts met the project specifications prior to completion and acceptance of the construction;~~

~~such that IGA/AGS owed the duties and provided the warranties to the Plaintiff and the Individual Owners particularized above in paragraphs 19 and 24a. through 24h. and is liable to the Plaintiff and the Individual Owners for those Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F of these Statement of Facts below, rendering the strata lots and common property unsuitable and unfit for their intended purpose, including for the purpose of habitation.~~

~~25. IGA/AGS specifically delivered a ten year warranty to the Plaintiff and the Individual Owners that its curtain wall system and IGUs would be IGMAC certified and expressly and/or impliedly warranted that the IGUs had an expected service life of forty (40) years as represented and defined by the Developer and were warranted to be defect and blemish free for ten (10) years.~~

~~26. Advanced Glazing Systems Ltd., a British Columbia company which has a registered and records office located at 2700 700 West Georgia Street, Vancouver, British Columbia, V7Y 1B8 is a constituent entity associated with IGA/AGS and was also engaged by~~

~~Ledcor and/or IGA/AGS as the associated curtainwall subcontractor for the final design, fabrication, and installation of the performance-based curtainwall system, providing both IGUs and structural aluminum frame for the construction of the Shangri-La Development including the Strata Complex and accordingly was responsible for:~~

- ~~a. warranting and guaranteeing and thus confirming that as a sub-sub contractor engaged by IGA/AGS met all of the specified requirements for the curtainwall components, most particularly the IGUs;~~
- ~~b. ensuring that the inter-compatibility and longevity of the IGU component materials as well as the longevity of the thermal and visual properties of the IGU assembly would meet the requirements stipulated in the project specifications and in the Developer's marketing materials;~~
- ~~c. ensuring that the prototype designs for the various IGU types to be provided to complete the Shangri-La Development met the design intentions (as detailed in the Architect's drawings) and the project specifications;~~
- ~~d. ensuring that the IGUs were IGMAC certified as specified in the Project Specifications prior to their fabrication and prior to being accepted and installed at the site;~~
- ~~e. overseeing the fabrication of the IGUs to ensure that they met the specifications established for tolerances, thermal and wind loads, compatibility of materials, and quality expectations;~~
- ~~f. overseeing the installation of the structural aluminum frame and the IGUs; and~~
- ~~g. supervising all sub-sub contractors who submitted product and materials and inspecting such product and materials for conformity with specifications;~~

~~such that Advanced Glazing Systems Ltd. owed the duties and provided the warranties to the Plaintiff and the Individual Owners particularized above in paragraphs 19 and 26a. through 26g. and is liable to the Plaintiff and the Individual Owners for those Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F of these~~

~~Statement of Facts below, rendering the strata lots and common property unsuitable and unfit for their intended purpose, including for the purpose of habitation.~~

~~12. 27. The defendant Garibaldi Glass Industries Inc., (“Garibaldi”) is a company incorporated pursuant to the laws of British Columbia company which has with a registered and records office located at of 1200 – 200 Burrard Street, Vancouver, British Columbia, V7X 1T2 was engaged by Ledcor and/or IGA/AGS as the manufacturer of the IGUs and was responsible for:~~

- ~~a. the detailed design of the various prototype IGUs and selection of materials and components for fabrication of the IGU assemblies which would satisfy the performance based project specifications and design configurations prepared by the Architect and specialty design consultant, structural engineer providing wind loads, and the project mechanical engineer providing thermal (heat and cooling) loads;~~
- ~~b. providing an IGMAC certification for each of the prototype assemblies specified for this project to determine inter compatibility and longevity of the IGU component materials plus longevity of the thermal and visual properties of the IGU assembly which were to meet the service life and longevity requirements stipulated in the project specifications and in the Developer's marketing/sales/maintenance materials and Building Enclosure Maintenance & Renewals Manual;~~
- ~~c. providing quality control and testing of all components within the IGU assembly prior to and during the manufacturing process at the factory and prior to the installation at the construction site;~~
- ~~d. fabricating the IGUs in accordance with the project specifications and the glazing industry's standards as they apply to the Shangri La Development and the Strata Complex, including IGMAC certification and relevant building bylaws of the City of Vancouver as described herein;~~
- ~~e. evaluation and warranty of the IGU assembly's structural design to ensure safety and safe residual structural capacity in the event of the loss of either an inner or outer lite; and~~

~~f. alerting and warning the Developer and IGA/AGS of any vulnerabilities or weaknesses or substandard conditions within the IGU assembly;~~

~~such that Garibaldi Glass Industries Inc. owed the duties and provided the warranties to the Plaintiff and the Individual Owners particularized above in paragraphs 19 and 27a. through 27f. and is liable to the Plaintiff and the Individual Owners for those Construction Deficiencies, Resultant Damage, and Dangerous Defects which are particularized below in Part E and the loss and damage claimed in Part F of these Statement of Facts below, rendering the strata lots and common property unsuitable and unfit for their intended purpose, including for the purpose of habitation.~~

~~28. Garibaldi specifically delivered a ten year warranty to the Plaintiff and the Individual Owners that its IGUs would be IGMAC certified (which would include an associated expectation relating to an anticipated service life of greater than 40 years) and expressly and/or impliedly warranted that the IGUs would be defect and blemish free for ten (10) years.~~

~~D.4 Other Subtrades:~~

~~29. In 2017 and 2018, the Plaintiff entered or will enter into Standstill and Tolling Agreements and filed or will file Notices of Discontinuance against the following Defendants:~~

~~a. Glastech Contracting (BC) Ltd., a British Columbia company which has a registered and records office located 2900 595 Burrard Street, Vancouver, British Columbia, V7X 1J5;~~

~~b. CRS Construction Ltd., a British Columbia company which has a registered and records office located at 33066 First Avenue, Mission, British Columbia, V2V 1G3;~~

~~e. DH Glass Solutions Inc., a British Columbia company which has a registered and records office located at 315 2233 Burrard Street, Vancouver, British Columbia, V6J 3H9;~~

- d. ~~Dekor Glass (1996) Ltd., a British Columbia company which has a registered and records office located at 3667 208th Street, Langley, British Columbia, V3A 4X6;~~
- e. ~~Alumicor Limited, a Ontario company which is registered extra provincially and has an Attorney Office in British Columbia located at 2800 666 Burrard Street, Vancouver, British Columbia, V6C 2Z7;~~
- f. ~~National Glass Ltd., a British Columbia company which has a registered and records office located at 215 8171 Cook Road, Richmond, British Columbia, V6Y 3T8;~~
- g. ~~Westcor Services Ltd., a British Columbia company which has a registered and records office located at 1000 595 Burrard Street, Vancouver, British Columbia, V7X 1S8;~~
- h. ~~Formglas Inc., an Ontario company which as a registered and records office located at 1420 99 Bank Street, Ottawa, Ontario, K1P 1H4;~~
- i. ~~Vitrium Industries Ltd. also known as Vitrium Systems Inc., a British Columbia Company which has a registered and records office located at 600 1090 West Georgia, Vancouver, British Columbia, V6E 3V7;~~
- j. ~~Victory Glass & Aluminum, a sole proprietorship which has a business address of 101 514 Thirteenth Street, New Westminster, British Columbia, V3M 5Y7;~~
- k. ~~Peter Ross 2006 Ltd., 1635 MacDonald Avenue, Burnaby, British Columbia, V6C 4P1;~~
- l. ~~Nightingale Electrical Ltd., a British Columbia company which has a registered and records office located at 208 4940 No. 3 Road, Richmond, British Columbia, V6X 3A5; and~~
- m. ~~East & West Alum Craft Ltd., a British Columbia company which has a registered and records office located at 901 1788 West Broadway, Vancouver, British Columbia, V6J 1Y1.~~

~~30. The Plaintiff maintains a claim against a number of other Defendants who at all material times owed the duties to the Plaintiff as set out in paragraphs 19 and 20 above and in particular:~~

~~a. Taishan City Kam Kiu Aluminum Extrusion Co. Ltd., whose address is currently unknown to the Plaintiff, was involved in the aluminum extrusion work at the Strata Complex such that Taishan City Kam Kiu Aluminum Extrusion Co. Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 36a. through 36g. below;~~

~~b. Intricate Glass (1996) Ltd., a British Columbia company which has a registered and records office located at 700 275 Lansdowne Street, Kamloops, British Columbia, V2C 6H6 was involved in the construction of the curtain wall and IGU system as defined below or in other glazing systems such that Intricate Glass (1996) Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraph 36a. below;~~

~~e. Jones Kwong Kishi Consulting Engineers (now known as Jones Kwong Kishi), #109B 949 West 3rd Avenue, North Vancouver, BC, V7P 3P7, is a general partnership which was involved in the structural design and construction of the Shangri-La Tower and the Strata Complex and owed a duty to the Plaintiff to oversee and supervise and manage the construction of the Shangri-La Tower and the Strata Complex and ensure that the Plaintiff's Strata Complex would be constructed or remediated to a deficiency free state and at the highest quality such that Jones Kwong Kishi Consulting Engineers is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 36b. and 36d. below;~~

~~d. Western Tank and Lining Ltd., a British Columbia company which has a registered and records office located at 200 7565 132nd Street, Surrey, British Columbia, V3W 1K5 was involved in construction or supply of membrane systems such that Western Tank and Lining Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs paragraphs 36a. 36c. and 36d. below;~~

~~e. Moi's Waterproofing Inc., a British Columbia company which has a registered and records office located at building 5, 21183 88th Avenue, Langley, British Columbia,~~

- ~~V1M 2G5 was involved in construction or supply of membrane systems such that Moi's Waterproofing Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 36a., 36c. and 36d. below;~~
- ~~f. Compass Cladding Inc., a British Columbia company which has a registered and records office located at 2 3180 262 Street, Aldergrove, British Columbia, V4W 2Z6 which provided services and work in the cladding for the Shangri-La Tower and the Strata Complex such that Compass Cladding Inc. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 36a., 36c. and 36d. below;~~
- ~~g. Lightmore Glazing Ltd., a British Columbia company which has a registered and records office located at 1542 Prairie Avenue, Port Coquitlam, British Columbia, V3B 1T4 is a glazing company involved in the glazing projects at the Construction such that Lightmore Glazing Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraph 36a. below;~~
- ~~h. Northern Glass & Aluminum, a sole proprietorship at 5789 Keith Street, Burnaby, British Columbia, V5J 3C6 was involved in the manufacture, construction or supply of glass and aluminum products such that Northern Glass & Aluminum is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraph 36a. below;~~
- ~~i. US Railing LLC, 13902 Lynmar Blvd., Tampa, Florida, was involved in the supply and construction of aluminum railings such that US Railing LLC is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 36a. and 36c. below;~~
- ~~j. US Railings LLC. Suite 101 4660 NE Belknap Court, Hillsboro, Oregon, was involved in the supply and construction of aluminum railings such that US Railings LLC is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 36a. and 36c. and consisting of railing deficiencies below;~~
- ~~k. Micro Seal Ltd., a British Columbia company which has a registered and records office located at 1427 Columbia Avenue, Port Coquitlam, British Columbia, V3C~~

~~1C4 was involved in the supply and installation of glass handrails such that Micro Seal Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 36a. and 36c. and consisting of railing deficiencies below; and~~

~~1. Tractel Swingstage Division Ltd., whose address is unknown to the Plaintiff, supplied and installed the swing stage which proved to be defective such that Tractel Swingstage Division Ltd. is liable to the Plaintiff for all of the Construction Deficiencies particularized below in paragraphs 36a. through 36g. below.~~

The Shangri-La

13. On October 23, 2008, KBK deposited the strata plan in the Land Title Office to establish the plaintiff strata corporation.

14. The plaintiff strata corporation occupies portions of floors 5 and 6, and all of floors 16 to 43 of the Shangri-La tower, a high-end and mixed-use development bounded by the Georgia, Thurlow and Alberni Streets in Vancouver, (the “Shangri-La”).

15. The Shangri-La has a civic address of 1111 Alberni Street, Vancouver, British Columbia and is situated on lands legally described as:

Parcel Identifier: 017-483-093
Lot G Block 18 District Lot 185
Group 1 New Westminster District
Plan LMP1597 Except Air Space Plan BCP38696

(the “Land”).

16. The registered owner of the Land is KBK, who at all material times held the Land as agent and nominee for 1100.

17. Ledcor was the construction manager engaged by the Developer for the construction of the Shangri-La and was, at all material times, responsible for the proper construction of the Shangri-La and the adequate management and coordination of the involved sub-contractors.

18. The Developer engaged Tidball as the developer representative for the construction of the Shangri-La.

~~E. Construction Deficiency and Resultant Damage Claims of the Plaintiff and all Individual Owners:~~

The Construction of the Shangri-La

~~31. In breach of each of the Defendants' implied and/or express warranties and/or contractual and/or common law duties to the Plaintiff and the Individual Owners and the Original Purchasers and in breach of the BPCPA and Strata Property Act as particularized in Parts B through D of this Statement of Facts, the Strata Complex was not properly completed or, as that term is defined at common law, completed at all and in particular not constructed in accordance with contract specifications and/or was constructed in a deficient and substandard manner and with a number of latent or, as the case may be, patent building deficiencies and construction defects caused by faulty materials, workmanship and design and which have caused resultant damage to the Strata Complex and loss of use of property to the Individual Owners, including defects and deficiencies that have given rise to conditions which pose substantial danger to person and property and which render the strata lots and the Strata Complex potentially uninhabitable or in the alternative much less habitable and/or unfit for their intended purpose and which are particularized below in paragraphs 32 through 36 (the "Construction Deficiencies").~~

19. 32. In particular, the Shangri-La Development and the Strata Complex rely on The exterior of the Shangri-La is predominantly comprised of a curtain wall system based on that is an external non-load-bearing wall (the "Curtain Wall"). The Curtain Wall consists of prefabricated panels constructed as distinct four-sided structurally glazed-sealed insulated glass glazing units (the "IGUs"), which separate the interior and exterior environments and which is-are integral to the proper functioning of the Shangri-La Development and the Strata Complex. The Developer was under a duty to the Plaintiff and the Individual Owners to ensure and expressly and impliedly warranted and represented to the Plaintiff and to the Individual Owners that the IGU component of the

~~curtain wall system and component materials would meet the building specifications and CAN/CGSB 12.8 standards set out in the building bylaw of Vancouver and particularized in paragraph 12.i. above and that the IGU and its component materials be certified by IGMAC when in fact the IGUs and their component materials were not certified and did not meet the project specifications or CAN/CGSB 12.8 standards pertaining to their fabrication or installation or both. Consequently, the curtain wall system has encountered systemic and total failures in the IGUs with, inter alia:~~

- ~~a. moisture related condensation or fogging in the IGU sealed cavities;~~
- ~~b. drooping or flowing of the IGU's PIB sealant;~~
- ~~c. contaminated or defective desiccant contributing to the moisture fogging observed in the IGU sealed cavity;~~
- ~~d. cracked thermal barrier material found within the spacer bar, moisture and alcohols and volatile organic acids within the IGU sealed cavity caused by "off gassing" of materials used to create the IGU assembly;~~
- ~~e. condensation in and/or fogging of the IGU sealed cavity caused by "off gassing" of materials used to create the IGU assembly;~~
- ~~f. water ingress dripping;~~
- ~~g. very significant number of failed units within the limits of the Strata Complex, now approaching a very substantial majority of the total IGUs installed with a IGU failure rate expected to climb towards 100% over the next several years;~~
- ~~h. increasing staining of interior surfaces on the exterior and interior lites in the IGU cavity;~~
- ~~i. undermined thermal, insulation and R-value properties; and~~
- ~~j. other deficiencies which will be particularized as and when these become ascertained.~~

20. IGUs include inner and outer panes of glass, called "lites", separated by a metal spacer bar. Both glass lites are sealed to the spacer using two types of sealant which are meant to provide an air- and vapour-tight cavity between the glass panes. The spacer bar contains a dessicant material which is designed to absorb moisture in the air between the two lites.

21. Around April of 2004, James KM Cheng entered into a contract with KBK to provide architectural services for the construction of the Shangri-La.
22. On or around October 14, 2004, James KM Cheng retained RDH to provide engineering services, including building envelope consulting services, for the Shangri-La.
23. On or around October 15, 2004, James KM Cheng retained Brook Van Dalen as the Curtain Wall specialty design consultant for the design and construction of the Shangri-La.
24. On May 4, 2005, KBK engaged IGA/AGS as a subcontractor responsible for the design, fabrication, supply and installation of the IGUs for the Curtain Wall.
25. Subsequently, IGA/AGS engaged and entered into purchase orders with Garibaldi to manufacture and supply the IGUs to be used in the Curtain Wall.
26. Occupancy permits were granted by the City of Vancouver for the Owners' units at the Shangri-La between approximately October 2008 and February 2010.
27. Construction of the Shangri-La continued throughout this period.
28. In or around November 6, 2008, Aviva Insurance Company of Canada, represented by its agent National Home Warranty Group Inc., issued a common property warranty certificate No. 4106-B01 for the Shangri-La.

The Dangerous Defects

29. Within one year of occupancy, residents in the Shangri-La noticed and reported to the plaintiff that IGUs in their strata units were exhibiting condensation and/or fogging.
30. Over the course of the next several years, an increasing number of residents of the Shangri-La noticed and reported issues with the IGUs, including fogging, water ingress, dripping and missing sealant, as well as sealant falling away from the building.

31. The Developer and IGA/AGS removed and replaced certain of the IGUs that had been identified as having these issues.
32. The Developer retained RDH to test certain IGUs, including those that had been removed from strata units.
33. The plaintiff retained Trow Associates Inc. to conduct an exterior 15-month building envelope warranty review.
34. In 2010, Trow Associates Inc. delivered its report, which stated that the condensation and/or fogging issues in the IGUs were not discrete, individual defects, but rather potentially systemic defects in the design and installation of the Curtain Wall.
35. Also in 2010, RDH delivered a report which stated that the “likely cause” of the condensation and/or fogging in the IGUs was “a combination of moisture contaminated desiccant and moisture and alcohols from the spacer bar that was sealed inside the IGU during the manufacturing process”.
36. Ledcor notified KBK, IGA/AGS and RDH that IGA/AGS had not completed its work on the Curtain Wall as specified in its contract.
37. Ledcor and KBK notified IGA/AGS that IGA/AGS was obligated to replace all defective IGUs.
38. On May 16, 2012, KBK filed a notice of civil claim against IGA/AGS’ co-sureties, relating to its performance bond and IGA/AGS’ breach of its contractual obligations.
39. The Developer did not notify the plaintiff or the Owners of the events described in paragraphs 36-38.
- ~~33. These systemic failures are a manifestation of and result from moisture and off-gassing which causes fogging, penetrations in the spacer bar used to fill the sealed cavity with argon gas and which have failed and which thus allow penetration of moisture, dripping and flowing PIB sealant and missing structural sealant along the perimeter of certain IGUs securing the IGU to the structural aluminum frame, and sealant falling away from~~

~~the building so as to render the strata lots within the Strata Complex potentially uninhabitable or in the alternative much less habitable and/or not fit for their intended purpose such that the curtain wall system and the IGUs require a wholesale replacement. The systemic failures in the IGUs are caused by the Defendants' breaches in design, fabrication, delivery, and installation of the component materials and the IGUs and in particular the breach by the Defendants of their respective duties as particularized in Parts B through D of this Statement of Facts.~~

~~34. The Defendants and each of them knew or ought to have known that, in breach of their duties to the Plaintiff and the Individual Owners as aforesaid and contrary to their duty to warn and their duty not to contravene s. 4 of the BPCPA as well as the Strata Property Act, the IGUs and glazing component materials were not in fact IGMAC certified and compatible and thus could not have been verified as CGSB 12.8 compliant and thus were completely suspect in terms of their ability to meet performance based and longevity specifications for the Shangri La Development and the Strata Complex. The systemic failures of the IGUs at the Shangri La Development and the Strata Complex were completely known or foreseeable to the Defendants.~~

~~40. 35. Further, Subsequent to and separate from the condensation and fogging issues, a an increasing number of IGUs glazing components, notably the inner lites which are tempered glass and the outer lites which are heat strengthened, are have exhibited spontaneously failing and breakage, cracking, shattering and/or failing in the case of the failure, of their inner and/or outer heat strengthened lites (the "**Spontaneous Breakage Events**") in particular, thus present the risk of serious injury to any person or property in the path or vicinity of falling shards.~~

~~41. 36. Further Particulars of the Spontaneous Breakage Events include particulars of the Construction Deficiencies are as follows:~~

- ~~(a) 10 inner glass lites of IGUs in unit nos. 2101, 2408, 2705, 2706, 2902, 3606, 3804, 4302 and 6101 before November 1, 2013;~~
- ~~(b) 2 inner glass lites of IGUs in unit nos. 5902 and 6103 in July 2014;~~

- (c) 1 inner glass lite of an IGU in unit no. 1601 in July 2017;
- (d) 1 inner glass lite of an IGU in unit no. 5904 on or around September 6, 2018;
- (e) 1 inner glass lite of an IGU in unit no. 5903 on or around October 19, 2018;
- (f) 1 external glass lite of an IGU in unit no. 1905 on or around January 10, 2019;
- (g) 2 inner glass lites of IGUs in unit nos. 2408 and 4001 on or around January 11, 2019;
- (h) 1 external glass lite of an IGU in unit no. 4202 on or around January 13, 2019;
- (i) 1 inner glass lite of an IGU in unit no. 5604 on or around October 31, 2019;
- (j) 1 IGU inner cavity failure in unit no. 1908 on or around November 25, 2019; and
- (k) 1 external glass lite of an IGU in unit no. 3707 on or around August 10, 2020.

~~— a. Curtain Walls~~

~~— Curtain wall defects as follows:~~

- ~~i. failed IGUs as particularized above in this Statement of Facts that have given rise to condensation/fogging within the units and other loss and damage as set out above in this Statement of Facts and/or which will be particularized as and when such particulars of loss and damage become ascertained;~~
- ~~ii. damaged and etched glazing;~~
- ~~iii. damaged and etched low emissivity coatings;~~
- ~~iv. missing and/or failed sealants and flashings;~~
- ~~v. missing and/or failed mechanical fasteners;~~
- ~~vi. missing and/or failed vertical joints;~~
- ~~vii. missing and/or failed sunshade attachments;~~
- ~~viii. missing or improperly installed parapet cap flashings;~~
- ~~ix. improperly secured metal panels;~~
- ~~x. missing and/or improperly sealed gaskets;~~
- ~~xi. discontinuous membrane at curtain wall sill;~~

- ~~xii. tower curtain wall and pool deck guard rail which do not join;~~
- ~~xiii. missing and/or failed curtain wall beauty cap attachments;~~
- ~~xiv. damaged extrusion frames;~~
- ~~xv. "operable windows" that do not close properly;~~
- ~~xvi. cement drip marks on windows; and~~
- ~~xvii. missing exterior window panels.~~

~~b. Exterior Concrete Walls~~

~~Exterior concrete wall defects as follows:~~

- ~~i. cracked concrete surfaces;~~
- ~~ii. unfinished concrete walls; and~~
- ~~iii. chipped stone cladding.~~

~~e. Balconies and Patios~~

~~Balcony and patio defects as follows:~~

- ~~i. missing and/or failed sealants and flashings;~~
- ~~ii. incomplete and/or failed balcony soffits;~~
- ~~iii. defective and/or improperly installed drains; and~~
- ~~iv. missing and/or failed pavers.~~

~~d. Parkade~~

~~Parkade defects as follows:~~

- ~~i. cracked and chipped wall, ceiling and floor slabs that permit water ingress;~~
- ~~ii. efflorescence and excess epoxy crack filler stains on walls and/or floors;~~
- ~~iii. damaged traffic membranes;~~

~~e. Common Areas~~

~~Common Area defects as follows:~~

- ~~i. deteriorating lower lobby floor at P1 level/lower lobby;~~
- ~~ii. damaged, stained and/or unfinished walls and ceilings at P1 level/lower lobby;~~
- ~~iii. unpainted and/or improperly painted walls and ceilings at P1 level/lower lobby;~~

~~f. Elevators~~

~~Elevator defects include malfunctioning and inoperative elevators calling for repeated and continuous rope replacement;~~

~~g. Mechanical Systems~~

~~Mechanical system defects consisting of failed building irrigation system.~~

~~37. The Construction Deficiencies have caused resultant damage to the Strata Complex and loss of use to the Individual Owners and resulted in continuous property damage and loss to the Strata Complex's strata lots, common property, common facilities and other common assets and property and include depreciation to the market value of the Individual Owners' interest in the strata lots, common property, common facilities and other common assets and property (the "Resultant Damage").~~

~~38. The Construction Deficiencies and Resultant Damage were caused or contributed to by each of the Defendants' deficient design, construction, development, manufacturing, approval, provision, and use of improper materials and deficient inspection and supervision of construction and repairs to the Strata Complex and failure to discharge their respective duties as particularized in Parts B through D above (the "Defendants' Breaches").~~

42. In or around July 2015, the plaintiff learned that the installed IGUs have systemic defects associated with their design and fabrication. The plaintiff also learned that the outer lites of the IGUs are made of non-tempered glass that shatters into large, sharp pieces when broken.

~~43. 39. The Construction Deficiencies and Resultant Damage~~ A spontaneous breakage of an IGU's outer lite can, therefore, result in large, sharp pieces of glass falling to the street below. Accordingly, the IGUs have defects that pose a real and substantial danger to the Individual Owners and other persons; and to the property in the vicinity of Individual Owners and other persons- the Shangri-La (the "Dangerous Defects").

44. The Dangerous Defects render the IGUs unsafe and also substantially interfere with the use and enjoyment of the Owners' strata lots. Due to the systemic nature of the

Dangerous Defects in the IGUs, the Curtain Wall and its components must be repaired or replaced, or both.

45. The Dangerous Defects are a consequence or manifestation of the defective design and/or construction of the Curtain Wall, which failed to meet required industry standards.
46. In the alternative, the Dangerous Defects are a consequence of the Curtain Wall's assembly and/or installation, including the defective manufacturing, fabrication, handling, transportation, storage and/or installation of the IGUs which failed to meet required contractual and industry standards.
- ~~40. The Plaintiff has provided full report and notice to the Defendants of the Construction Deficiencies, the Resultant Damage, and the Dangerous Defects and has demanded that the Defendants remediate these but the Defendants have refused and/or neglected to provide the necessary or any remediation.~~
47. Each of the defendants, as described below, caused the Dangerous Defects, including by failing to meet the standards of care each of them owed to the plaintiff and the Owners, and which the defendants represented to hold, should have held and ought to have demonstrated in the provision of services for which they were responsible.
48. Further, each of the defendants caused the Dangerous Defects through their acts and/or omissions as they related to the Curtain Wall.

The Defendants' Duties of Care

49. The defendants, and each of them, owed duties of care to the plaintiff and Owners to ensure that the IGUs that compose the Curtain Wall of the Shangri-La were constructed using all reasonable care, skill, diligence and competence, and without construction and design deficiencies, including the Dangerous Defects.
50. It was reasonably foreseeable that any breach(es) of the standard of care owed by each defendant could cause the plaintiff and the Owners to suffer loss or damage.

51. Particulars of the duties of care owed by the Developer, Ledcor and Tidball to the plaintiff and Owners include to:

(a) take reasonable care in controlling and managing the design and construction of the Shangri-La to ensure that it was built with suitable materials, in a good and workmanlike manner, and in compliance with all applicable architectural, engineering and construction standards and regulations;

(b) control, manage and inspect the fabrication and installation of the IGUs used in the Shangri-La to ensure that they were built with suitable materials and in compliance with all applicable architectural, engineering and construction specifications and standards;

(c) ensure that only qualified consultants, suppliers and subcontractors were retained to design, manufacture and install the IGUs;

(d) ensure that the IGUs were designed, constructed and installed in a good and workmanlike manner;

(e) take reasonable care to exercise and ensure proper quality control through the construction of the Shangri-La, including in particular with respect to the IGUs and Curtain Wall;

(f) take reasonable care to ensure that the work of all consultants, suppliers, contractors and subcontractors was properly supervised, inspected and complied with all applicable architectural, engineering and construction standards; and

(g) take reasonable steps to ensure that the IGUs were free of deficiencies, including the Dangerous Defects.

52. Particulars of the duty of care owed by the defendant Brook Van Dalen to the plaintiff and Owners include to:

- (h) properly review the Shangri-La drawings and specifications in such a manner to ensure the IGUs and Curtain Wall were constructed free of deficiencies, including the Dangerous Defects;
 - (b) review, test and inspect the work performed and the materials used by contractors, subcontractors and suppliers;
 - (c) take reasonable care to exercise and ensure proper quality control through the construction of the Shangri-La, including in particular with respect to the IGUs and Curtain Wall;
 - (d) perform its services with reasonable skill, care and diligence and in compliance with all applicable architectural, engineering and construction specifications and standards; and
 - (e) take reasonable steps to ensure that the IGUs were free of deficiencies, including the Dangerous Defects.
53. Particulars of the duty of care owed by the defendant IGA/AGS to the plaintiff and Owners include to:
- (i) ensure that only qualified consultants, suppliers and subcontractors were retained to design, manufacture and install the IGUs;
 - (j) ensure that the IGUs were designed, constructed and installed in a good and workmanlike manner;
 - (k) ensure that all consultants, suppliers and subcontractors working for or engaged by IGA/AGS were properly supervised and complied with all applicable architectural, engineering and construction standards;
 - (l) control, manage and inspect the fabrication and installation of the IGUs used in the Shangri-La to ensure that they were built with suitable materials and in compliance with all applicable architectural, engineering and construction specifications and standards;

(m) inspect, test and verify that the performance of the IGUs and Curtain Wall system met the applicable specifications; and

(n) take reasonable steps to ensure that the IGUs were free of deficiencies, including the Dangerous Defects.

54. Particulars of the duty of care owed by the defendant Garibaldi to the plaintiff and Owners include to:

(o) ensure that only qualified consultants, suppliers and personnel were retained to manufacture the IGUs;

(p) ensure that the IGUs were manufactured in a good and workmanlike manner and in compliance with applicable specification and industry standards;

(q) ensure that the materials and components obtained for manufacturing the IGUs would satisfy all applicable specifications and meet the IGU service-life and longevity requirements;

(r) provide quality control and testing of all components and materials within the IGUs prior to, during and after the manufacturing process and the installation of the IGUs on the Shangri-La; and

(s) take reasonable steps to ensure that the IGUs were free of deficiencies, including the Dangerous Defects.

55. Particulars of the duty of care owed by the defendant James KM Cheng to the plaintiff and Owners include to:

(t) properly design and prepare the Shangri-La specifications and drawings in such a manner to ensure the IGUs and Curtain Wall were constructed free of deficiencies, including the Dangerous Defects;

(u) ensure proper coordination and execution of the construction of the Shangri-La, including of the IGUs and Curtain Wall, by the contractors and subcontractors;

(v) ensure that the construction of the Shangri-La, including the IGUs and Curtain Wall, was performed in accordance with the specifications, drawings, plans, applicable building bylaws, and all applicable architectural, engineering and construction standards;

(w) supervise and inspect construction of the Shangri-La, including of the IGUs and Curtain Wall; and

(x) take reasonable steps to ensure that the IGUs were free of deficiencies, including the Dangerous Defects.

56. Particulars of the duty of care owed by the defendant RDH to the plaintiff and Owners include to:

(y) ensure that the construction of the IGUs and Curtain Wall was performed in accordance with the specifications, drawings, plans, applicable building bylaws, and all applicable architectural, engineering and construction standards;

(z) provide oversight, monitoring and quality control of the construction of the IGUs and the Curtain Wall;

(aa) investigate any defects or deficiencies with the construction of the IGUs and Curtain Wall and to provide recommendations to remedy any such defects or deficiencies; and

(bb) take reasonable steps to ensure that the IGUs were free of deficiencies, including the Dangerous Defects.

57. The defendants, and each of them, were negligent in that the defendants breached the duties of care they owed to the plaintiff and Owners given the deficiencies with the design, manufacturing and installation of the IGUs, including the Dangerous Defects.

58. The defendants knew or ought to have known before and after occupancy of the Shangri-La that their failure to take reasonable care in constructing the Curtain Wall caused the Dangerous Defects.

59. As a result of the foreseeable and substantial danger to persons and property in the vicinity of the Shangri-La, the Curtain Wall or components thereof must be repaired or replaced, or both, to put the Shangri-La into a non-dangerous state and to prevent injuries from occurring.

49.60. The defendants' negligence has caused the Dangerous Defects and resulting loss and damages as particularized below in paragraph 62.

F. ~~Loss and Damage:~~

~~61. 41. The Defendants' Breaches as aforesaid have caused and continue to cause the plaintiff and the Individual Owners have and continue to incur and suffer from extensive and ongoing loss, and damage by reason of the defendants' negligence and expense arising from and in connection with the Construction Deficiencies, Resultant Damage and Dangerous Defects including:~~

62. Particulars of the loss and damage include:

- (a) the costs incurred to investigate the problems with the IGUs;
- (b) the costs incurred to bring this action;
- (c) the costs to repair and/or replace the Curtain Wall and/or the IGUs, including the costs for all incidental and necessary activities related thereto; and
 - ~~a. loss of use and enjoyment of the strata lots and common property, especially caused by the failure of the IGUs and the resultant obstruction of views;~~
 - ~~b. the cost of investigating and repairing the Construction Deficiencies and Resultant Damage;~~
 - ~~c. increased maintenance costs;~~
 - ~~d. increased property management costs;~~
 - ~~e. property damage to the common property and strata lots;~~

- ~~f. loss of use and enjoyment of the strata lots, common property, common facilities and other assets of the Strata Corporation as a result of the Construction Deficiencies and Resultant Damage;~~
- ~~g. depreciation in the market value of the Individual Owners' interest in the strata lots, common property, common facilities and other assets of the Strata Corporation; and~~
- ~~(d) h. such further loss and damage as may be proven at trial.~~

~~42. The Plaintiff claims against each of the Defendants for the loss, damage and expense suffered by the Plaintiff as a result of the Defendants' breaches of contract, breaches of warranty, negligence, negligent failure to warn, negligent misrepresentation, and breaches of statutory duties.~~

~~63. 43. The defendants are jointly and severally liable for all of the loss, and damage and expense suffered by the plaintiff and the Individual Owners and the Plaintiff pleads and relies on the provisions of the Negligence Act, RSBC 1996, c. 333 and the applicable provisions of the Building Codes and other bylaws, codes and building regulations, as amended.~~

Part 2: RELIEF SOUGHT

~~1. The Plaintiff claims against the Defendants and each of them for breach of implied and/or express warranty and claims:~~

- ~~a. specific performance of each of their respective warranties and general and special damages;~~
- ~~b. in the alternative, general and special damages in lieu of specific performance;~~
- ~~c. in the further alternative, general and special damages for breach of contract;~~

~~2. The Plaintiff claims against the Defendants and each of them in tort for general and special damages;~~

~~3. The Plaintiff claims against the Defendants and each of them for damages and statutory remedies under the Business Practices and Consumer Protection Act and the Strata Property Act and in particular:~~

~~a. damages pursuant to s. 171 of the BPCPA;~~

~~b. a declaration pursuant to s. 172(1)(a) of the BPCPA that the breaches of the Defendants contravenes the Business Practices and Consumer Protection Act;~~

~~c. restoration orders under s. 172(3) of the BPCPA;~~

64. ~~4. The Plaintiff claims against the defendants and each of them for:~~

(a) general damages;

(b) special damages;

(c) a- interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;

(d) ~~b-~~ costs of this action; and

(e) such other and further relief as ~~to which~~ this Honourable Court may deems just and meet.

Part 3: LEGAL BASIS

~~A. General:~~

~~1. The Strata Corporation claims against each and every one of the Defendants on behalf of itself and representatively on behalf of the Individual Owners pursuant to section 171(1)(b) of the Strata Property Act for matters relating to the common assets of the Strata Corporation.~~

~~2. The Strata Corporation claims against each of the Defendants for the loss, damage and expense suffered as a result of the Defendants' Breaches, which constitute breaches of contract, breaches of warranty, negligence, negligent failure to warn, negligent misrepresentation, and breaches of statutory duties under the Business Practices and~~

~~Consumer Protection Act, supra; Strata Property Act, supra; and the Real Estate Development Marketing Act, RSBC 2004, c. 41.~~

~~3. The Defendant Developer Group have admitted that the curtain wall system is defective and in particular that the IGUs and component materials have failed and the contract for their installation not completed and by way of performance bond action in May of 2012 under Action Number S 123530 in the Vancouver Registry, sought remedies against the co-sureties of the Defendants, IGA/AGS Joint Venture Inc.~~

~~4. The Defendants are jointly and severally liable for all of the Plaintiff's loss, damage and expense and the Plaintiff pleads and relies on the provisions of the Negligence Act, RSBC 1996, c. 333 and the applicable provisions of the City of Vancouver Building Bylaw No. 8057 (1999), Building Codes and other bylaws, codes and building regulations, and amendments thereto.~~

~~**B. Breach of Warranty:**~~

~~5. The implied and express warranties which are described in Part I of this Amended Notice of Civil Claim are contracts which are binding and enforceable as against the Defendants and benefit the Plaintiff and Individual Owners.~~

~~6. The Defendants have breached their respective warranties.~~

~~7. The Defendants' breach of their respective warranties have caused loss and damage to the Plaintiff and Individual Owners as described in Part I of this Amended Notice of Civil Claim.~~

~~**C. Negligence (Breach of Duty of Care) and Duty to Warn:**~~

~~65. 8. Each All of the defendants owed to the Plaintiff and Individual Owners a duty duties of care and duty to warn as described in Part I of this Further Amended Notice of Civil Claim.~~

66. ~~9.~~ Each of the defendants ~~have breached their duty~~ duties of care and/or ~~breached their duty to warn~~ owed to the plaintiff and the Individual Owners as described in Part I1 of this Further Amended Notice of Civil Claim.

67. It was reasonably foreseeable to all and each of the defendants that a breach of their duties of care would cause the Dangerous Defects as described in Part 1 of this Further Amended Notice of Civil Claim.

68. ~~10.~~ The said-forementioned breaches by the defendants ~~of their duty of care and/or duty to warn~~ have caused loss and damage to the plaintiff and the Individual Owners as described in Part I1 of this Further Amended Notice of Civil Claim.

~~**D. Breach of Business Practices and Consumer Act, REDMA and Strata Property Act:**~~

~~11. The Defendants are in breach of statutory and regulatory strictures as set out in the Business Practices and Consumer Act, the Real Estate Development Marketing Act and the Strata Property Act and are liable to the Plaintiff and the Individual Owners.~~

Plaintiffs' address for service: c/o ~~Dumoulin Boskovich LLP~~ McEwan Partners
1800 ~~1095 West Pender~~ 900-980 Howe Street
Vancouver, British Columbia
~~V6E 2M6~~ V6Z 0C8

Fax number address for service: ~~(604) 688-8491~~ 778-300-9393

E-mail address for service: ~~N/A~~
kmcewan@mcewanpartners.com
mhunt@mcewanpartners.com
echristian@mcewanpartners.com

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street
Vancouver, British Columbia
V6Z 2E1

Dated: November 15, 2021



Michael D. Tatchell
J. Kenneth McEwan, Q.C./
Melissa Hunt/Emma Christian

Signature of
 plaintiff lawyer for plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Court Order Interest Act, R.S.B.C. 1996, c. 79.

Strata Property Act, S.B.C. 1998, c. 43.

Real Estate Development Marketing Act, S.B.C. 2004, c. 41.

SCHEDULE “C-8”

Further amended pursuant to Rule 6-1(1)(b) and the Case Plan Order of Justice Walker pronounced October 28, 2021

Original NOCC filed December 15, 2015

Amended pursuant to the Order of Master Muir pronounced June 26, 2019

**SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY**

No. S1510419
Vancouver Registry

DEC 17 2021

In the Supreme Court of British Columbia

Between



THE OWNERS, STRATA PLAN BCS 3206

Plaintiff

and

KBK NO. 11 VENTURES LTD., 1100 GEORGIA PARTNERSHIP, PETERSON INVESTMENT (GEORGIA) LIMITED PARTNERSHIP, ABBEY ADELAIDE HOLDINGS INC., LJV GEORGIA INVESTMENTS INC. AND NO. 274 CATHEDRAL VENTURES LTD., LEDCOR CONSTRUCTION LIMITED, TIDBALL PROJECTS (2005) LTD., IGA/AGS JOINT VENTURES INC., GARIBALDI GLASS INDUSTRIES INC., JAMES KM CHENG ARCHITECTS INC. AND RDH BUILDING SCIENCE INC.

Defendants

and

IGA/AGS JOINT VENTURES INC., GARIBALDI GLASS INDUSTRIES INC., KBK NO. 11 VENTURES LTD., 1100 GEORGIA PARTNERSHIP, PETERSON INVESTMENT (GEORGIA) LIMITED PARTNERSHIP, ABBEY ADELAIDE HOLDINGS INC., LJV GEORGIA INVESTMENTS INC., NO. 274 CATHEDRAL VENTURES LTD., BROOK VAN DALEN & ASSOCIATES LIMITED, VITRUM INDUSTRIES LTD., FORMGLAS INC., INTRICATE GLASS (1996) LTD., VICTORY GLASS AND ALUMINUM, LEDCOR CONSTRUCTION LIMITED, TIDBALL PROJECTS (2005) LTD., JAMES KM CHENG ARCHITECTS INC., WESTERN TANK AND LINING LTD., MOI'S WATERPROOFING INC., LIGHTMORE GLAZING LTD., NORTHERN GLASS & ALUMINUM LTD., RDH BUILDING SCIENCE INC., DOW SILICONES CORPORATION, GUARDIAN GLASS LLC, GUARDIAN INDUSTRIES CORP., GUARDIAN GLASS COMPANY, ALLSTAR HOLDINGS INCORPORATED, FENZI NORTH AMERICA INC., AZON USA INC., RPM ROLLFORMED METAL PRODUCTS LIMITED (FKA JOHN DOE DESICCANT MANUFACTURER), BROWN STRACHAN ASSOCIATES, DSD TECHNICAL SERVICES, INTERTEK TESTING SERVICES NA LTD., ROWAN WILLIAMS DAVIES & IRWIN INC., HONEYWELL UOP and HONEYWELL INTERNATIONAL INC.

FURTHER AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties Plaintiff

1. The plaintiff The Owners, Strata Plan BCS 3206 is a strata corporation established pursuant to s. 2 of the *Strata Property Act*, S.B.C. 1998, c. 43 (~~“*Strata Property Act*”~~ the “*SPA*”) with an address for service of c/o McEwan Cooper Dennis LLP, 900 – 980 Howe Street, Vancouver, British Columbia (~~the “Residential Strata”~~).
2. The plaintiff’s members (the “**Owners**”) are the registered owners of the strata lots (the “**Owners**”) in contained within Strata Plan BCS 3206. Pursuant to s. 66 of the *SPA*, each

of the Owners also owns the common property and common assets of the strata corporation as a tenant in common.

3. The plaintiff ~~claims~~ brings this action as the representative of the all Owners, pursuant to s. 171 of the *Strata Property Act* SPA.

The defendant *Defendants*

4. Each of the defendants was involved in the development, design and/or construction of the Shangri-La (as defined in paragraph 13 below).

5. The group of defendants who were at all material times the builder and/or owner-developer (collectively, the “**Developer**”) of the Shangri-La is as follows:

(a) 4. ~~KBK No. 11 Ventures Ltd. (“KBK”) is a company incorporated pursuant to the laws of British Columbia~~ company with a registered and records office of the located at 19th floor, 885 West Georgia Street, Vancouver, British Columbia, and was at all material times agent and nominee for the other defendants identified below at paragraphs 5b. through 5f. in the construction of the Shangri-La;

(b) 5. ~~The defendant 1100 Georgia Partnership (the “Developer (“1100”)) is a general partnership formed under the laws of British Columbia between Peterson Investment (Georgia) Limited Partnership, West Bank Georgia Holdings Ltd., LJV Georgia Investments Inc. and No. 274 Cathedral Ventures Ltd. with a registered and records office located at 1100 – 505 Burrard Street, Vancouver, British Columbia;~~

(c) 6. ~~The defendant Peterson Investment (Georgia) Limited Partnership is a limited partnership registered in British Columbia, with Peterson Investment (Georgia) Inc. as its general partner, and a registered and records office located at 1100 – 505 Burrard Street, Vancouver, British Columbia;~~

(d) 7. ~~The defendant Abbey Adelaide Holdings Inc. (“Abbey”), formerly known as Westbank Georgia Holdings Ltd., is a corporation amalgamated on December 20, 2012 under the laws of British Columbia (incorporation number BC0958325) company with a registered and records office of 1100 One Bentall Centre, 505 Burrard Street, Box~~

- ~~11.~~ Vancouver, British Columbia. ~~The defendant Abbey is a corporate successor to, among other corporations, Westbank Georgia Holdings Ltd.;~~
- (e) ~~8.~~ ~~The defendant LJV Georgia Investments Inc. is a company incorporated pursuant to the laws of~~ an Alberta company registered extra-provincially in British Columbia with a delivery address of 7008 Roper Road, Edmonton, Alberta. for service of 1100 – 505 Burrard Street, Vancouver, British Columbia; and
- (f) ~~9.~~ ~~The defendant No. 274 Cathedral Ventures Ltd. is a company incorporated pursuant to the laws of~~ British Columbia company with a registered and records office of Suite 990 – 1040 West Georgia Street, Vancouver, British Columbia.
6. ~~10.~~—The defendant Ledcor Construction Limited (“**Ledcor**”) is a company incorporated pursuant to the laws of Alberta and registered extra-provincially with an ~~attorney office located at 1200-1067 West Cordova~~address for service of 1100 – 505 Burrard Street, Vancouver, British Columbia.
7. ~~11.~~—The defendant Tidball Projects (2005) Ltd. (“**Tidball Projects**”) is a company incorporated pursuant to the laws of British Columbia with a ~~registered and records office~~an address for service of 1410 Palmerston Avenue, West 1100 – 505 Burrard Street, Vancouver, British Columbia.
8. ~~12.~~—The defendant IGA/AGS Joint Venture Inc. (“**IGA/AGS**”) is a company incorporated pursuant to the laws of British Columbia with a registered and records office of 200-~~—~~121 St. Paul Street, Kamloops, British Columbia.
9. ~~13.~~—The defendant Garibaldi Glass Industries Inc. (“**Garibaldi Glass**”) is a company incorporated pursuant to the laws of British Columbia with a registered and records office of ~~2700-~~1200 – 200 Burrard Street, Vancouver, British Columbia.
10. ~~14.~~—The defendant James KM Cheng Architects Inc. (“**James KM Cheng**”) is a company incorporated pursuant to the laws of British Columbia with a registered and records office of 2800-~~—~~595 Burrard Street, Vancouver, British Columbia.

11. ~~15.~~—The defendant RDH Building Science Inc. (“**RDH**”) is a company incorporated pursuant to the laws of British Columbia with a registered and records office of 20th floor —, 250 Howe Street, Vancouver, British Columbia.

The Shangri-La-Development

12. ~~16.~~—On October 23, 2008, KBK deposited the strata plan in the Land Title Office to establish the plaintiff strata corporation.

13. The plaintiff strata corporation occupies floors 44 to 62 of the Shangri-La istower, a high-end and unique ~~multimixed-use glazed tower, until recently the tallest buildingdevelopment~~ bounded by the West Georgia, Thurlow and Alberni Streets in Vancouver. ~~The Residential Strata occupies floors 44 to 62.,~~ British Columbia (the “**Shangri-La**”).

14. ~~17.~~—The Shangri-La has a civic address of 1128 West Georgia Street, Vancouver, British Columbia and is situated on lands legally described as:

Parcel Identifier: 017-483-093
Lot G Block 18 District Lot 185~~Group 1 New Westminster District~~
Group 1 New Westminster District
Plan LMP1597 Except Air Space Plan BCP38696

(the “**Land**”).

15. The registered owner of the Land is KBK-

~~19.~~—~~The Land was, who~~ at all material times held by ~~KBK~~ the Land as agent and nominee for ~~the Developer~~ 1100.

16. ~~20.~~—Ledcor was the construction manager engaged by the Developer for the construction of the Shangri-La and was, at all material times, responsible for the proper construction of the Shangri-La and the adequate management and coordination of the involved sub-contractors.

17. ~~Tidball Projects was~~ The Developer engaged to act Tidball as the agent/developer representative for the development manager for the Shangri-La.

Disclosure in respect of the Shangri-La Development

~~22. — The Developer is subject to a number of obligations in relation to the Shangri-La development pursuant to the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41 (“*REDMA*”), including the requirement that it issue a disclosure statement containing various representations and setting out its contractual obligations as Developer.~~

~~23. — On or about August 26, 2004, the Developer filed a disclosure statement with the Superintendent of Real Estate in relation to the Shangri-La development.~~

~~24. — Amendments to the disclosure statement were filed on March 8, 2005, September 30, 2005 and March 10, 2006.~~

~~25. — Pre-sales of strata units started in or about 2004. The Owners purchased their units at various times between 2004 and present.~~

The Construction of the Shangri-La

~~18. 26. — The Shangri-La’s exterior of the Shangri-La is predominantly exists comprised of a “curtain wall”, system that is an external non-load-bearing wall that is intended to separate the exterior and the interior environments (the “**Curtain Wall**”).~~

~~27. — The Curtain Wall is consists of prefabricated panels constructed in part of as distinct four-sided structurally glazed and sealed insulating glass insulated glazing units (“(the “**IGUs**”) which are integral to the proper functioning of the Shangri-La and separate the interior and exterior environments.~~

~~28. — The disclosure statement filed by the Developer included as Exhibit I a contract for purchase and sale, which provided under Schedule A, clause 5 that:...~~

~~The Closing Date shall be after the date that the City of Vancouver has given permission to occupy the Unit. The Seller presently anticipates that such permission will be given on or about May 15, 2008. For the purposes of this section, permission to occupy the Unit means the initial permission given by the City of Vancouver, whether such permission is temporary, conditional or final and refers to occupation of the Unit only and not to the occupation of other~~

~~units in the Development, the common property in the Development or any other position of the Project. ...~~

19. IGUs include inner and outer panes of glass, called “lites”, separated by a metal spacer bar. Both glass lites are sealed to the spacer using two types of sealant which are meant to provide an air- and vapour-tight cavity between the glass panes. The spacer bar contains a dessicant material which is designed to absorb moisture in the air between the two lites.
20. ~~29.—~~ Around April of 2004, James KM Cheng entered into a contract with KBK to provide architectural services for the construction of the Shangri-La ~~development.~~
21. ~~30.—~~ ~~In~~On or around October 14, 2004, ~~RDH entered into a contract with~~ James KM Cheng retained RDH to provide engineering services, including building envelope consulting services, for the Shangri-La ~~development.~~
22. ~~31.—~~ On May 4, 2005, KBK engaged IGA/AGS as a subcontractor responsible for the design, fabrication, supply and installation of the IGUs for the Curtain Wall.
23. ~~32.—~~ Subsequently, IGA/AGS engaged and entered into purchase orders with Garibaldi ~~Glass~~ to manufacture and supply the IGUs to be used in the Curtain Wall.
24. ~~33.—~~ Occupancy permits were granted by the City of Vancouver for the ~~residential~~Owners’ units at the Shangri-La between October 17, 2008 and February 5, 2010.
25. ~~34.—~~ Construction of the Shangri-La continued throughout this period.
26. ~~35.—~~ In or around November 6, 2008, Aviva Insurance Company of Canada, represented by its agent National Home Warranty Group Inc. (~~“National Home Warranty”~~), ~~;~~ issued a common property warranty certificate No. 4106-B01 for the Shangri-La (~~the “Warranty”~~).

The Dangerous Defects

27. ~~36.—~~ Within the ~~first~~stone year of ~~moving into their strata units at~~occupancy, residents in the Shangri-La, ~~a limited number of strata owners~~ noticed and reported to the plaintiff

that IGUs in their strata units were exhibiting condensation and/or fogging of certain IGUs.

28. 37.—Over the course of the next several years, an increasing number of residents of the Shangri-La noticed performance and reported issues with their windows the IGUs, including fogging, water ingress, dripping and missing sealant, as well as sealant falling away from the building.

29. The Developer and IGA/AGS removed and replaced certain of the IGUs that had been identified as having these issues.

30. The Developer retained RDH to test certain IGUs and those that had been removed from strata units.

31. The plaintiff retained Trow Associates Inc. to conduct an exterior 15-month building envelope warranty review.

32. In 2010, Trow Associates Inc. delivered its report, which stated that the condensation and/or fogging issues in the IGUs were not discrete, individual defects, but rather potentially systemic defects in the design and installation of the Curtain Wall.

33. Also in 2010, RDH delivered a report which stated that the “likely cause” of the condensation and/or fogging in the IGUs was “a combination of moisture contaminated desiccant and moisture and alcohols from the spacer bar that was sealed inside the IGU during the manufacturing process”.

34. Ledcor notified KBK, IGA/AGS and RDH that IGA/AGS had not completed its work on the Curtain Wall as specified in its contract.

35. Ledcor and KBK notified IGA/AGS that IGA/AGS was obligated to replace all defective IGUs.

36. On May 16, 2012, KBK filed a notice of civil claim against IGA/AGS’ co-sureties, relating to its performance bond and IGA/AGS’ breach of its contractual obligations.

37. The Developer did not notify the plaintiff or the Owners of the events described in paragraphs 34-36.
38. ~~Additionally, a number of the inner and outer lites on the IGUs are spontaneously breaking, cracking and/or failing which has caused the Shangri-La building to be unsafe, hazardous and to pose a substantial risk of physical danger, including to the health and safety of any person or property in the vicinity of the Shangri-La~~ Subsequent to and separate from the condensation and fogging issues, a number of IGUs have exhibited spontaneous breakage, cracking, shattering and/or failing of their inner and/or outer lites (the “Spontaneous Breakage Events”).
39. Particulars of the Spontaneous Breakage Events include:
- (a) 10 inner glass lites of IGUs in unit nos. 2101, 2408, 2705, 2706, 2902, 3606, 3804, 4302 and 6101 before November 1, 2013;
 - (b) 2 inner glass lites of IGUs in unit nos. 5902 and 6103 in July 2014;
 - (c) 1 inner glass lite of an IGU in unit no. 1601 in July 2017;
 - (d) 1 inner glass lite of an IGU in unit no. 5904 on or around September 6, 2018;
 - (e) 1 inner glass lite of an IGU in unit no. 5903 on or around October 19, 2018;
 - (f) 1 external glass lite of an IGU in unit no. 1905 on or around January 10, 2019;
 - (g) 2 inner glass lites of IGUs in unit nos. 2408 and 4001 ~~and 2408~~ on or around January 11, 2019; ~~and~~
 - (h) 1 external glass lite of an IGU in unit no. 4202 on or around January 13, 2019; ~~;~~
 - (i) 1 inner glass lite of an IGU in unit no. 5604 on or around October 31, 2019;
 - (j) 1 IGU inner cavity failure in unit no. 1908 on or around November 25, 2019; and
 - (k) 1 external glass lite of an IGU in unit no. 3707 on or around August 10, 2020.

40. In or around July 2015, the plaintiff received an expert report on the IGUs. The report concluded learned that the installed IGUs have systemic latent defects associated with their design and fabrication. The plaintiff also learned that the outer lites of the IGUs are made of non-tempered glass that shatters into large, sharp pieces when broken. Particulars of the defects include, but are not limited to, pre-existing moisture in the cavity of the IGUs, failed sealant, cracked thermal barriers and the release of organic acid gases within the IGUs at elevated temperatures. (the “Defects”).
41. A spontaneous breakage of an IGU’s outer lite can, therefore, result in large, sharp pieces of glass falling to the street below. Accordingly, the IGUs have defects that pose a real and substantial danger to persons and property in the vicinity of the Shangri-La (the “Dangerous Defects”).
42. The Dangerous Defects render the IGUs unsafe and also substantially interfere with the use and enjoyment of the Owners’ strata lots. Due to the systemic nature of the Dangerous Defects in the IGUs, the Curtain Wall and its components must be repaired or replaced, or both.
43. The Dangerous Defects are a consequence or manifestation of the defective design and/or construction of the Curtain Wall, which failed to meet required industry standards.
44. In the alternative, the Dangerous Defects are a consequence of the Curtain Wall’s assembly and/or installation, including the defective manufacturing, fabrication, handling, transportation, storage and/or installation of the IGUs which failed to meet required contractual and industry standards.
45. Each of the defendants, as described below, caused the Dangerous Defects, including by failing to meet the standards of care each of them owed to the plaintiff and the Owners, and which the defendants represented to hold, should have held and ought to have demonstrated in the provision of services for which they were responsible.
46. Further, each of the defendants caused the Dangerous Defects through their acts and/or omissions as they related to the Curtain Wall.

Implied Warranty

41. ~~The Defects in the IGUs are covered by an implied warranty owed by the Developer to the Owners. The implied warranty at common law requires that:~~

~~(a) a residence is designed and built in a good and workmanlike manner;~~

~~(b) is constructed with suitable materials;~~

~~(c) is free from defects; and~~

~~(d) is suitable for its purpose of habitation.~~

42. ~~The Developer breached this implied warranty by designing and constructing the Shangri-La with materials that were not suitable and free from the Defects, rendering the strata units unsuitable, including for the purpose of habitation.~~

The Defendants' Duties of Care

47. 43. ~~The defendants, and each of them, owed duties of care to the plaintiff and Owners to ensure that the IGUs that compose the Curtain Wall of the Shangri-La building were constructed using all reasonable care, skill, diligence and competence, and without construction and design deficiencies, including the Dangerous Defects.~~

48. It was reasonably foreseeable that any breach(es) of the standard of care owed by each defendant could cause the plaintiff and the Owners to suffer loss or damage.

49. 44. ~~Particulars of the duties of care owed by the defendants KBK, the Developer, Peterson Investment (Georgia) Limited Partnership, Abbey, LJV Georgia Investments Inc., No. 274 Cathedral Ventures Ltd., Ledcor and Tidball Projects to the plaintiff and Owners include to:~~

~~(a) take reasonable care in controlling and managing the design and construction of the Shangri-La to ensure that it was built with suitable materials, in a good and~~

workmanlike manner, and in compliance with all applicable architectural, engineering and construction standards and regulations;

- (b) control, manage and inspect the fabrication and installation of the IGUs used in the Shangri-La ~~building~~ to ensure that they were built with suitable materials and in compliance with all applicable architectural, engineering and construction specifications and standards;
- (c) ensure that only qualified consultants, suppliers and subcontractors were retained to design, manufacture and install the IGUs;
- (d) ensure that the IGUs were designed, constructed and installed in a good and workmanlike manner;
- (e) take reasonable care to exercise and ensure proper quality control through the construction of the Shangri-La, including in particular with respect to the IGUs and Curtain Wall;
- (f) take reasonable care to ensure that the work of all consultants, suppliers, contractors and subcontractors was properly supervised, inspected and complied with all applicable architectural, engineering and construction standards; and
- (g) take reasonable steps to ensure that the IGUs were free of deficiencies ~~and the Defects in particular, those which could pose a real and substantial or threat of danger to the health and safety of the Owners and other occupants of the lands on which the Shangri-La is located, including the Dangerous Defects.~~

50. 45.—Particulars of the ~~duties~~duty of care owed by the defendant IGA/AGS to the plaintiff and Owners include to:

- (a) ensure that only qualified consultants, suppliers and subcontractors were retained to design, manufacture and install the IGUs;
- (b) ensure that the IGUs were designed, constructed and installed in a good and workmanlike manner;

- (c) ensure that all consultants, suppliers and subcontractors working for or engaged by IGA/AGS were properly supervised and complied with all applicable architectural, engineering and construction standards;
- (d) control, manage and inspect the fabrication and installation of the IGUs used in the Shangri-La ~~building~~ to ensure that they were built with suitable materials and in compliance with all applicable architectural, engineering and construction specifications and standards;
- (e) inspect, test and verify that the performance of the IGUs and Curtain Wall system met the applicable specifications; and
- (f) take reasonable steps to ensure that the IGUs were free of deficiencies ~~and the Defects in particular, those which could pose a real and substantial or threat of danger to the health and safety of the Owners and other occupants of the lands on which the Shangri-La is located, including the Dangerous Defects.~~

51. 46.—Particulars of the ~~duties~~duty of care owed by the defendant Garibaldi Glass to the plaintiff and Owners include to:

- (a) ensure that only qualified consultants, suppliers and personnel were retained to manufacture the IGUs;
- (b) ensure that the IGUs were manufactured in a good and workmanlike manner and in compliance with applicable specification and industry standards;
- (c) ensure that the materials and components obtained for manufacturing the IGUs would satisfy all applicable specifications and meet the IGU service-life and longevity requirements;
- (d) provide quality control and testing of all components and materials within the IGUs prior to, during and after the manufacturing process and the installation of the IGUs on the Shangri-La ~~building~~; and

- (e) take reasonable steps to ensure that the IGUs were free of deficiencies ~~and, including the Dangerous Defects in particular, those which could pose a real and substantial or threat of danger to the health and safety of the Owners and other occupants of the lands on which the Shangri-La is located.~~
52. 47.—Particulars of the ~~duties~~duty of care owed by the defendant James KM Cheng to the plaintiff and Owners include to:
- (a) properly design and prepare the Shangri-La specifications and drawings in such a manner to ensure the IGUs and Curtain Wall were constructed free of deficiencies ~~and, including the Dangerous Defects;~~
 - (b) ensure proper coordination and execution of the construction of the Shangri-La, including of the IGUs and Curtain Wall, by the contractors and subcontractors;
 - (c) ensure that the construction of the Shangri-La, including the IGUs and Curtain Wall, was performed in accordance with the specifications, drawings, plans, applicable building bylaws, and all applicable architectural, engineering and construction standards;
 - (d) supervise and inspect construction of the Shangri-La, including of the IGUs and Curtain Wall; and
 - (e) take reasonable steps to ensure that the IGUs were free of deficiencies ~~and the Defects in particular, those which could pose a real and substantial or threat of danger to the health and safety of the Owners and other occupants of the lands on which the Shangri-La is located,~~ including the Dangerous Defects.
53. 48.—Particulars of the ~~duties~~duty of care owed by the defendant RDH to the plaintiff and Owners include to:
- (a) ensure that the construction of the IGUs and Curtain Wall was performed in accordance with the specifications, drawings, plans, applicable building bylaws, and all applicable architectural, engineering and construction standards;

- (b) provide oversight, monitoring and quality control of the construction of the IGUs and the Curtain Wall;
- (c) investigate any defects or deficiencies with the construction of the IGUs and Curtain Wall and to provide recommendations to remedy any such defects or deficiencies; and
- (d) take reasonable steps to ensure that the IGUs were free of deficiencies ~~and the Defects in particular, those which could pose a real and substantial or threat of danger to the health and safety of the Owners and other occupants of the lands on which the Shangri-La is located,~~ including the Dangerous Defects.
54. 49.—The defendants, and each of them, were negligent in that the defendants breached the duties of care they owed to the plaintiff and Owners given the ~~Defects~~deficiencies with the design, manufacturing and installation of the IGUs ~~as particularized in paragraphs 36-40,~~ including the Dangerous Defects.
- ~~50.—The Defects pose a real and substantial danger or threat of danger to the health and safety of the Owners and other occupants of the lands on which the Shangri-La is located, including as a result of the Spontaneous Breakage Events.~~
55. 51.—The defendants knew or ought to have known before and after occupancy of the Shangri-La that ~~the Defects with the IGUs would pose a real and substantial danger to the Owners and other occupants of the lands on which the Shangri-La is located,~~ their failure to take reasonable care in constructing the Curtain Wall caused the Dangerous Defects.
56. As a result of the foreseeable and substantial danger to persons and property in the vicinity of the Shangri-La, the Curtain Wall or components thereof must be repaired or replaced, or both, to put the Shangri-La into a non-dangerous state and to prevent injuries from occurring.
57. 52.—The defendants' negligence has caused ~~or contributed to the~~ Dangerous Defects and resulting loss and damages as particularized below in ~~paragraphs 53-55,~~ paragraph 59.

Loss and Damage

58. ~~53.~~—The plaintiff and the Owners have ~~suffered~~and continue to suffer from extensive and ongoing loss and damage by reason of the ~~Developer's breach of the implied warranty,~~ and the defendants' negligence.

59. ~~54.~~—Particulars of the loss and damage include:

(a) ~~the cost of investigating~~costs incurred to investigate the problems with the IGUs;

(b) the costs incurred to bring this action;

(c) ~~(b) the cost of replacing~~costs to repair and/or replace the Curtain Wall and/or the IGUs, including costs for all incidental and necessary activities related thereto; and

~~(e) damage to the common property and strata lots;~~

~~(d) depreciation in the market value of the Owners' interest in the strata lots, common property, common facilities and other assets of the Owners;~~

~~(e) loss of use and enjoyment of the strata units; and~~

(d) (f)-such further loss and damage as may be proven at trial.

60. ~~55.~~—The defendants are jointly and severally liable for the loss and damage suffered by the plaintiff and the Owners.

Part 2: RELIEF SOUGHT

61. ~~56.~~—The plaintiff claims against the defendants for:

(a) general damages;

~~(b) Specific performance of the Developer's obligations under the implied warranty, including to provide IGUs that are suitable and free from defect, rendering the premises suitable for habitation.~~

~~(e) In the alternative, general damages for the Developer's breach of the implied warranty.~~

~~(b) (d) special damages;~~

~~(c) (e) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;~~

~~(d) (f) costs of this action; and~~

~~(e) (g) such other and further relief as this Honourable Court may deem just.~~

Part 3: LEGAL BASIS

~~57. The Developer owed an implied warranty to the Owners that the work already done and not yet done would be done in a good and workmanlike manner, that the materials would be suitable, and that the building would be fit for its purpose, namely, habitation.~~

~~58. The Shangri La development was incomplete at the time the contracts for purchase and sale were entered into and at the time those contracts completed.~~

~~59. The Developer was expected to do any further work required in order to make the Shangri La development complete.~~

~~60. The implied warranty was not expressly excluded by the terms of the disclosure statement, the Warranty or the contracts for purchase and sale entered into between the Owners and the Developer.~~

~~61. By using the IGUs, the Developer failed to use proper materials for the Curtain Wall and breached the implied warranty owed to the Owners.~~

~~62. The IGUs have made the Shangri La development not reasonably fit for habitation, and have breached the implied warranty owed to the Owners.~~

~~63. As a result of the Developer's breach of the implied warranty, the Owners have suffered and continue to suffer loss and damage as particularized above.~~

~~64. Further, or in the alternative, it was a term and condition of the contracts for purchase and sale entered into with the Owners that the Developer would:~~

- ~~(a) ensure that the Shangri-La development was constructed in a good and workmanlike manner, free of construction deficiencies or structural defects due to faulty design, materials, equipment or workmanship;~~
- ~~(b) exercise all reasonable care, skill, diligence and competence as a Developer while causing the construction of the Shangri-La development to be carried out;~~
- ~~(c) ensure that the construction of the Shangri-La development would be performed in accordance with generally accepted construction and engineering standards;~~
- ~~(d) ensure that the construction of the Shangri-La development would be free from defects; and~~
- ~~(e) warn purchasers of any defects in the construction of the Shangri-La development.~~

~~65. The Developer breached the contracts for purchase and sale entered into with the Owners by failing to use proper materials for the Curtain Wall.~~

~~66. As a result of the Developer's breach of the contracts for purchase and sale entered into with the Owners, the Owners have suffered and continue to suffer loss and damage as particularized above.~~

62. ~~67. Further, All of the defendants, and each of them, owed duties of care to the plaintiff and the Owners as described in Part 1 of this Further Amended Notice of Civil Claim.~~

63. ~~68. Each of the defendants have breached their duties of care owed to the plaintiff and the Owners as described in Part 1 of this Further Amended Notice of Civil Claim.~~

64. ~~69. It was reasonably foreseeable to all and each of the defendants that a breach of their duties of care would cause the Dangerous Defects as described in Part 1 of this Further Amended Notice of Civil Claim.~~

65. The aforementioned breaches by the defendants have caused loss and damages to the plaintiff and to the Owners as described in Part 1 of this Further Amended Notice of Civil Claim.

Plaintiff's address for service: c/o McEwan Partners
900-980 Howe Street
Vancouver, BC V6Z 0C8
Attention: Ken McEwan, Q.C./Kelly Ann Maw
Melissa Hunt/Emma Christian

Fax number address for service: 778-300-9393

E-mail address for service: kmcewan@mcewanpartners.com
kmaw@mcewanpartners.com
mhunt@mcewanpartners.com
echristian@mcewanpartners.com

Place of trial: Vancouver, British Columbia-

The address of the registry is: 800 Smithe Street
Vancouver, ~~British Columbia~~, BC V6Z 2E1-

Dated: ~~August 28, 2019~~ November 15, 2021



J. Kenneth McEwan, Q.C./Kelly Ann Maw
Melissa Hunt/Emma Christian

Signature of
 plaintiff lawyer for plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Court Order Interest Act, R.S.B.C. 1996, c. 79.

Strata Property Act, S.B.C. 1998, c. 43.

Real Estate Development Marketing Act, S.B.C. 2004, c. 41.

SCHEDULE “C-1”

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

DEC 15 2015

S= 1510418

No.
Vancouver Registry

In the Supreme Court of British Columbia

Between



0790482 B.C. Ltd.

Plaintiff

and

KBK No. 11 Ventures Ltd., 1100 Georgia Partnership, Peterson Investment (Georgia) Limited Partnership, Abbey Adelaide Holdings Inc., LJV Georgia Investments Inc. and No. 274 Cathedral Ventures Ltd.

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

(a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

(b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. The plaintiff 0790482 B.C. Ltd. is a company incorporated pursuant to the laws of British Columbia with a registered and records office of Suite 1910-777 Hornby Street, Vancouver, British Columbia, and an address for service of c/o Hunter Litigation Chambers, 2100 – 1040 West Georgia Street, Vancouver, British Columbia.
2. The defendant KBK No. 11 Ventures Ltd. (“KBK”) is a company incorporated pursuant to the laws of British Columbia with a registered and records office of the 19th floor, 885 West Georgia Street, Vancouver, British Columbia.
3. The defendant 1100 Georgia Partnership (the “Developer”) is a general partnership formed under the laws of British Columbia between Peterson Investment (Georgia) Limited Partnership, West Bank Georgia Holdings Ltd., LJV Georgia Investments Inc. and No. 274 Cathedral Ventures Ltd.
4. The defendant Peterson Investment (Georgia) Limited Partnership is a limited partnership registered in British Columbia, with Peterson Investment (Georgia) Inc. as its general partner.

5. The defendant Abbey Adelaide Holdings Inc. (“Abbey”) is a corporation amalgamated on December 20, 2012 under the laws of British Columbia (incorporation number BC0958325) with a registered and records office of 1100 One Bentall Centre, 505 Burrard Street, Box 11, Vancouver, British Columbia. The defendant Abbey is a corporate successor to, among other corporations, Westbank Georgia Holdings Ltd.
6. The defendant LJV Georgia Investments Inc. is a company incorporated pursuant to the laws of Alberta with a delivery address of 7008 Roper Road, Edmonton, Alberta.
7. The defendant No. 274 Cathedral Ventures Ltd. is a company incorporated pursuant to the laws of British Columbia with a registered and records office of Suite 990 – 1040 West Georgia Street, Vancouver, British Columbia.

The Shangri-La Development

8. The Shangri-La is a high-end and unique multi-use glazed tower, until recently the tallest building in Vancouver. A hotel operates on the first 15 floors. Floors 16 through 62 are occupied by the owners of strata units in Strata Plan BCS 3165 (the “Live-Work Strata”) and Strata Plan BCS 3206 (the “Residential Strata”).
9. The Shangri-La has a civic address of 1128 West Georgia Street, Vancouver, British Columbia and is situated on lands legally described as:

Parcel Identifier: 017-483-093
Lot G Block 18 District Lot 185 Group 1 New Westminster District
Plan LMP1597 Except Air Space Plan BCP38696

(the “Land”)

10. The registered owner of the Land is KBK.
11. The Land was at all material times held by KBK as agent and nominee for the Developer.

Disclosure in respect of the Shangri-La Development

12. The Developer is subject to a number of obligations in relation to the Shangri-La development pursuant to the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41

(“*REDMA*”), including the requirement that it issue a disclosure statement containing various representations and setting out its contractual obligations as Developer.

13. On or about August 26, 2004, the Developer filed a disclosure statement with the Superintendent of Real Estate in relation to the Shangri-La development.
14. Amendments to the disclosure statement were filed on March 8, 2005, September 30, 2005 and March 10, 2006.
15. Pre-sales of strata units started in or about 2004. Individual buyers purchased their units at various times between 2004 and present.

The Construction of the Shangri-La

16. The Shangri-La’s exterior predominantly consists of a “curtain wall”, an external non-load-bearing wall that is intended to separate the exterior and the interior environments (the “Curtain Wall”).
17. The Curtain Wall is constructed in part of four-sided structurally glazed and sealed insulating glass units (“IGUs”).
18. The disclosure statement filed by the Developer included as Exhibit I a contract for purchase and sale, which provided under Schedule A, clause 5 that:

... The Closing Date shall be after the date that the City of Vancouver has given permission to occupy the Unit. The Seller presently anticipates that such permission will be given on or about May 15, 2008. For the purposes of this section, permission to occupy the Unit means the initial permission given by the City of Vancouver, whether such permission is temporary, conditional or final and refers to occupation of the Unit only and not to the occupation of other units in the Development, the common property in the Development or any other position of the Project. ...
19. Occupancy permits were granted by the City of Vancouver for the residential units at the Shangri-La between October 17, 2008 and February 5, 2010.
20. Construction of the Shangri-La continued throughout this period.

21. In or around November 6, 2008, Aviva Insurance Company of Canada, represented by its agent National Home Warranty Group Inc. (“National Home Warranty”), issued a common property warranty certificate No. 4106-B01 for the Shangri-La (the “Warranty”).

The Plaintiff and the Class

22. The plaintiff is a resident of British Columbia and owns a strata unit in the Residential Strata. In or around August 4, 2009, the plaintiff took an assignment of a contract of purchase and sale for Strata Lot 64, a unit in the Residential Strata, from 1077 Holdings Ltd. Amos Michelson, the sole shareholder and director of the plaintiff, resides at Strata Lot 64. The assignment was taken on notice to and with the consent of the Developer.
23. This action is brought on behalf of the plaintiff and all purchasers of residential strata units at the Shangri-La (the “Class”).
24. The plaintiff and all members of the Class entered into contracts for purchase and sale in relation to strata units at the Shangri-La.

The Defects

25. Within the first year of moving into their strata units at the Shangri-La, Mr. Michelson and a limited number of strata owners noticed fogging of certain IGUs.
26. Over a period of several years, an increasing number of residents of the Shangri-La noticed performance issues with their windows, including fogging, water ingress dripping and missing sealant, as well as sealant falling away from the building.
27. In or around July 2015, the plaintiff and other strata unit owners received an expert report on the IGUs. The report concluded the installed IGUs have systemic latent defects associated with their design and fabrication. Particulars of the defects include, but are not limited to, pre-existing moisture installed into the cavity of the IGUs, failed sealant, cracked thermal barriers and the release of organic acid gases within the IGUs at elevated temperatures.

Implied Warranty

28. The defects in the IGUs are covered by an implied warranty owed by the Developer to members of the Class. The implied warranty at common law requires that:
- (a) a residence is designed and built in a good and workmanlike manner;
 - (b) is constructed with suitable materials;
 - (c) is free from defects; and
 - (d) is suitable for its purpose of habitation.
29. The Developer breached this implied warranty by designing and constructing the Shangri-La with materials that were not suitable and free from defect, rendering the strata units unsuitable, including for the purpose of habitation.

Loss and Damage

30. The plaintiff and the Class have suffered from extensive and ongoing loss and damage by reason of the Developer's breach of the implied warranty.
31. Particulars of the loss and damage include:
- (a) the cost of investigating the problems with the IGUs;
 - (b) the cost of replacing the IGUs;
 - (c) damage to the common property and strata lots;
 - (d) depreciation in the market value of the Class' interest in the strata lots, common property, common facilities and other assets of the Class;
 - (e) loss of use and enjoyment of the strata units; and
 - (f) such further loss and damage as may be proven at trial.

32. The defendants are jointly and severally liable for the loss and damage suffered by the plaintiff and the Class.

Part 2: RELIEF SOUGHT

33. The plaintiff, on his own behalf and on behalf of the Class, claims against the defendants for:
- (a) Certification of this action as a class proceeding and appointment of the plaintiff as the representative plaintiff.
 - (b) Specific performance of the Developer's obligations under the implied warranty, including to provide IGUs that are suitable and free from defect, rendering the premises suitable for habitation.
 - (c) In the alternative, general damages for breach of the implied warranty.
 - (d) Special damages.
 - (e) Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.
 - (f) Costs of this action.
 - (g) Such other and further relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

34. The Developer owed an implied warranty to the Class that the work already done and not yet done would be done in a good and workmanlike manner, that the materials would be suitable, and that the building would be fit for its purpose, namely, habitation.
35. The Shangri-La development was incomplete at the time the contracts for purchase and sale were entered into and at the time those contracts completed.
36. The Developer was expected to do any further work required in order to make the Shangri-La development complete.

37. The implied warranty was not expressly excluded by the terms of the disclosure statement, the Warranty or the contracts for purchase and sale entered into between Class members and the Developer.
38. By using the IGUs, the Developer failed to use proper materials for the Curtain Wall and breached the implied warranty owed to the Class members.
39. The IGUs have made the Shangri-La development not reasonably fit for habitation, and have breached the implied warranty owed to the Class members.
40. As a result of the Developer's breach of the implied warranty, the Class has suffered and continues to suffer the loss and damage as particularized above.
41. Further, or in the alternative, it was a term and condition of the contracts for purchase and sale entered into with the Class members that the Developer would:
 - (a) ensure that the Shangri-La development was constructed in a good and workmanlike manner, free of construction deficiencies or structural defects due to faulty design, materials, equipment or workmanship;
 - (b) exercise all reasonable care, skill, diligence and competence as a Developer while causing the construction of the Shangri-La development to be carried out;
 - (c) ensure that the construction of the Shangri-La development would be performed in accordance with generally accepted construction and engineering standards;
 - (d) ensure that the construction of the Shangri-La development would be free from defects; and
 - (e) warn purchasers of any defects in the construction of the Shangri-La development.
42. The Developer breached the contracts for purchase and sale entered into with Class members by failing to use proper materials for the Curtain Wall.

43. As a result of the Developer's breach of the contracts for purchase and sale entered into with Class members, the Class has suffered and continues to suffer the loss and damage as particularized above.

Plaintiffs' address for service: c/o Hunter Litigation Chambers, 2100 – 1040 West Georgia Street, Vancouver, British Columbia, V6E 4H1.

Fax number address for service: 604-647-4554.

E-mail address for service: kmcewan@litigationchambers.com; copy to rwhyman@litigationchambers.com

Place of trial: Vancouver, British Columbia.

The address of the registry is: 800 Smithe Street, Vancouver, British Columbia, V6Z 2E1.

Dated: December 15, 2015



J. Kenneth McEwan, Q.C.

Signature of

plaintiff lawyer for plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

- a class action

- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Court Order Interest Act, R.S.B.C. 1996, c. 79.

Strata Property Act, S.B.C. 1998, c. 43.

Real Estate Development Marketing Act, S.B.C. 2004, c. 41.

SCHEDULE “C-2”

Amended pursuant to the Order of Mr. Justice Walker pronounced on September 3, 2021
Original Notice of Civil Claim filed December 15, 2015

OF BRITISH COLUMBIA
VANCOUVER REGISTRY

No. S-1510418
Vancouver Registry

DEC 17 2021

In the Supreme Court of British Columbia

Between



0790482 B.C. Ltd.

Plaintiff

and

**KBK No. 11 Ventures Ltd., 1100 Georgia Partnership, Peterson Investment (Georgia)
Limited Partnership, Abbey Adelaide Holdings Inc., LJV Georgia Investments Inc. and
No. 274 Cathedral Ventures Ltd.**

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

(a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

(b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. The plaintiff 0790482 B.C. Ltd. is a company incorporated pursuant to the laws of British Columbia with a registered and records office of Suite 1910-777 Hornby Street, Vancouver, British Columbia, and an address for service of ~~e/o Hunter Litigation Chambers, 2100~~ 1040 West Georgia ~~c/o McEwan Cooper Dennis LLP, 900 – 980 Howe Street, Vancouver, British Columbia.~~
2. The defendant KBK No. 11 Ventures Ltd. (“**KBK**”) is a ~~company incorporated pursuant to the laws of British Columbia~~ company with a registered and records office of ~~the~~ located at 19th floor, 885 West Georgia Street, Vancouver, British Columbia., and was at all material times agent and nominee for the other defendants identified below at paragraphs 3 through 7 in the construction of the Shangri-La (as defined in paragraph 9 below).
3. The defendant 1100 Georgia Partnership (~~the “Developer (“1100”)”~~) is a general partnership formed under the laws of British Columbia ~~between Peterson Investment (Georgia) Limited Partnership, West Bank Georgia Holdings Ltd., LJV Georgia Investments Inc. and No. 274 Cathedral Ventures Ltd~~ with a registered and records office located at 1100 – 505 Burrard Street, Vancouver, British Columbia.

4. The defendant Peterson Investment (Georgia) Limited Partnership is a limited partnership registered in British Columbia, with Peterson Investment (Georgia) Inc. as its general partner and a registered and records office located at 1100 – 505 Burrard Street, Vancouver, British Columbia.
5. The defendant Abbey Adelaide Holdings Inc. (“Abbey”), formerly known as Westbank Georgia Holdings Ltd., is a corporation amalgamated on December 20, 2012 under the laws of British Columbia (incorporation number BC0958325) company with a registered and records office of 1100 One Bentall Centre, 505 Burrard Street, Box 11, Vancouver, British Columbia. The defendant Abbey is a corporate successor to, among other corporations, Westbank Georgia Holdings Ltd.
6. The defendant LJV Georgia Investments Inc. is a company incorporated pursuant to the laws of an Alberta company registered extra-provincially in British Columbia with a delivery address of 7008 Roper Road, Edmonton, Alberta. for service of 1100 – 505 Burrard Street, Vancouver, British Columbia.
7. The defendant No. 274 Cathedral Ventures Ltd. is a company incorporated pursuant to the laws of British Columbia company with a registered and records office of Suite 990 – 1040 West Georgia Street, Vancouver, British Columbia.
8. Each of the defendants was at all material times the builder and/or owner-developer of the Shangri-La (collectively, the “Developer”).

The Shangri-La Development

9. The Shangri-La is a high-end and unique multi-mixed-use glazed tower, until recently the tallest building development bounded by the West Georgia, Thurlow and Alberni Streets in Vancouver, British Columbia (the “Shangri-La”).
- 8-10. A hotel operates on the first 15 floors. Floors of the Shangri-La. Strata units on portions of floors 5 and 6 and on floors 16 through 62 43 are occupied by the owners part of strata units in Strata Plan BCS 3165 (the “Live-Work Strata”) and”). Strata units on floors 44 through 62 are part of Strata Plan BCS 3206 (the “Residential Strata”). The Live-Work

Strata units and Residential Strata units are collectively referred to herein as the “units” or “strata units”.

9.11. The Shangri-La has a civic address of 1128 West Georgia Street, Vancouver, British Columbia, and is situated on lands legally described as:

Parcel Identifier: 017-483-093
Lot G Block 18 District Lot 185 ~~Group 1 New Westminster District~~
Group 1 New Westminster District
Plan LMP1597 Except Air Space Plan BCP38696

(the “**Land**”).

~~10.~~—The registered owner of the Land is KBK.

~~11.12.~~ ~~The Land was, who~~ at all material times held by ~~KBK~~ the Land as agent and nominee for ~~the Developer~~ 1100.

Disclosure in respect of the Shangri-La Development

~~12.13.~~ The Developer is subject to a number of obligations in relation to the Shangri-La development pursuant to the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41 (“**REDMA**”), including the requirement that it issue a disclosure statement containing various representations and setting out its contractual obligations as Developer.

~~13.14.~~ On or about August 26, 2004, the Developer filed a disclosure statement with the Superintendent of Real Estate in relation to the Shangri-La ~~development~~.

~~14.15.~~ Amendments to the disclosure statement were filed on March 8, 2005, September 30, 2005 and March 10, 2006.

~~15.~~—~~Pre-sales of strata units started in or about 2004. Individual buyers purchased their units at various times between 2004 and present.~~

16. Construction of the Shangri-La commenced in 2004 and continued to 2010. During that period, the units were offered for sale to the public and purchased on a pre-sale basis per REDMA.

The Construction of the Shangri-La

~~16.17.~~ The Shangri-La's exterior of the Shangri-La is predominantly consists/comprised of a "curtain wall", system that is an external non-load-bearing wall that is intended to separate the exterior and the interior environments (the "Curtain Wall"). The Curtain Wall is consists of prefabricated panels constructed in part of as distinct four-sided structurally glazed and sealed insulating glass units ("IGUs")-insulated glazing units (the "IGUs"), which are integral to the proper functioning of the Shangri-La and separate the interior and exterior environments.

~~18.~~ IGUs include inner and outer panes of glass, called "lites", separated by a metal spacer bar. Both glass lites are sealed to the spacer using two types of sealant which are meant to provide an air- and vapour-tight cavity between the glass panes. The spacer bar contains a dessicant material which is designed to absorb moisture in the air between the two lites.

~~17.19.~~ The disclosure statement filed by the Developer included as Exhibit I a contract for purchase and sale, which provided under Schedule A, clause 5 that:

... The Closing Date shall be after the date that the City of Vancouver has given permission to occupy the Unit. The Seller presently anticipates that such permission will be given on or about May 15, 2008. For the purposes of this section, permission to occupy the Unit means the initial permission given by the City of Vancouver, whether such permission is temporary, conditional or final and refers to occupation of the Unit only and not to the occupation of other units in the Development, the common property in the Development or any other position of the Project. ...

~~20.~~ Pursuant to the terms of the contracts of purchase and sale between the Developer and purchasers of strata units in the Shangri-La, the Developer is obliged to complete the construction of the Shangri-La and address the Defects (as defined below).

~~18.21.~~ Occupancy permits were granted by the City of Vancouver for the residential units at the Shangri-La between approximately October 17, 2008 and February 5, 2010.

~~19.22.~~ Construction of the Shangri-La continued throughout this period.

~~20.~~23. In or around November 6, 2008, Aviva Insurance Company of Canada, represented by its agent National Home Warranty Group Inc. (“~~National Home Warranty~~”), issued a common property warranty certificate No. 4106-B01 for the Shangri-La (the “**2-5-10 Warranty**”).

The Plaintiff and the Class

~~21.~~24. The plaintiff is a resident of British Columbia and owns a strata unit in the Residential Strata. In or around August 4, 2009, the plaintiff took an assignment of a contract of purchase and sale for Strata Lot 64, a unit in the Residential Strata, from 1077 Holdings Ltd. Amos Michelson, the sole shareholder and director of the plaintiff, resides at Strata Lot 64. The assignment was taken on notice to and with the consent of the Developer.

~~22.~~ This action is brought on behalf of the plaintiff and all purchasers of residential strata units at the Shangri-La (the “Class”).

25. The plaintiff brings the within action on behalf of all original owners who purchased a pre-sale contract from the Developer for a unit (“**Pre-Sale Contract**”), and all purchasers who took an assignment of a Pre-Sale Contract with the written consent of the Developer (collectively, the “Class”). The Class excludes those original owners who assigned their Pre-Sale Contract to a purchaser who is a member of the Class.

~~23.~~26. The plaintiff and all members of the Class entered into contracts for purchase and sale are in contractual privity with the Developer in relation to ~~strata~~ units at the Shangri-La.

The Defects

~~24.~~27. Within the ~~first~~ stone year of moving into their strata units at the Shangri-La occupancy, Mr. Michelson and a ~~limited number of~~ other strata owners noticed and reported to the corresponding strata corporation that IGUs in their units were exhibiting condensation and/or fogging of certain IGUs.

28. Over a ~~period~~ the course of the next several years, an increasing number of residents of the Shangri-La noticed performance and reported issues with the IGUs ~~in their units~~, including

fogging, water ingress, dripping and missing sealant, as well as sealant falling away from the building.

29. The Developer and IGA/AGS Joint Venture Inc. (“IGA/AGS”), the subcontractor responsible for the design, fabrication, supply and installation of the IGUs for the Curtain Wall, removed and replaced certain of the IGUs that had been identified as having these issues.
30. The Developer retained RDH Building Science Inc. (“RDH”) to test certain IGUs, including those that had been removed from strata units.
31. The Residential Strata and the Live-Work Strata retained Trow Associates Inc. to conduct an exterior 15-month building envelope warranty review.
32. In 2010, Trow Associates Inc. delivered its report, which stated that the condensation and/or fogging issues in the IGUs were not discrete, individual defects, but rather potential systemic defects in the design and installation of the Curtain Wall.
33. Also in 2010, RDH delivered a report which stated that the “likely cause” of the condensation and/or fogging in the IGUs was “a combination of moisture contaminated desiccant and moisture and alcohols from the spacer bar that was sealed inside the IGU during the manufacturing process”.
34. KBK was notified that IGA/AGS had not completed its work as specified in its contract.
35. KBK notified IGA/AGS that IGA/AGS was obligated to replace all defective IGUs.
36. On May 16, 2012, KBK filed a notice of civil claim against IGA/AGS’ co-sureties, relating to its performance bond and IGA/AGS’ breach of its contractual obligations.
37. KBK and the other defendants failed to notify the plaintiff, the Class, or either of the strata corporations in the Shangri-La of the events described in paragraphs 34-36.
38. To date, residents in the Shangri-La have continued to report condensation and/or fogging issues in the IGUs in their strata units.

39. Subsequent to and separate from the condensation and fogging issues, a number of IGUs have exhibited spontaneous breakage, cracking, shattering and/or failing of their inner and/or outer lites (the “Spontaneous Breakage Events”).

40. Particulars of the Spontaneous Breakage Events include:

(a) 10 inner glass lites of IGUs in unit nos. 2101, 2408, 2705, 2706, 2902, 3606, 3804, 4302 and 6101 before November 1, 2013;

(b) 2 inner glass lites of IGUs in unit nos. 5902 and 6103 in July 2014;

(c) 1 inner glass lite of an IGU in unit no. 1601 in July 2017;

(d) 1 inner glass lite of an IGU in unit no. 5904 on or around September 6, 2018;

(e) 1 inner glass lite of an IGU in unit no. 5903 on or around October 19, 2018;

(f) 1 external glass lite of an IGU in unit no. 1905 on or around January 10, 2019;

(g) 2 inner glass lites of IGUs in unit nos. 2408 and 4001 on or around January 11, 2019;

(h) 1 external glass lite of an IGU in unit no. 4202 on or around January 13, 2019;

(i) 1 inner glass lite of an IGU in unit no. 5604 on or around October 31, 2019;

(j) 1 IGU inner cavity failure in unit no. 1908 on or around November 25, 2019; and

(a)(k) 1 external glass lite of an IGU in unit no. 3707 on or around August 10, 2020.

25.41. In or around July 2015, the plaintiff ~~and other strata unit owners received an expert report on the IGUs. The report concluded~~ learned that the installed IGUs have systemic latent defects associated with their design and fabrication.

42. Particulars of the systemic defects include, but are not limited to:

(a) the Spontaneous Breakage Events;

- (b) condensation and/or fogging;
- (c) pre-existing moisture ~~installed into~~ the cavity of the IGUs;
- (d) contaminated, insufficient and/or defective dessicant;
- (e) failed, migrating, flowing and/or defective polyisobutylene sealant;
- (f) water ingress;
- (g) scratches on the exterior lites of the IGUs;
- (h) cracked thermal barriers ~~and the~~;
- (i) staining of the interior surfaces of the inner and outer lites of the IGUs;
- (j) the release of organic acid gases within the IGUs at elevated temperatures; and
- (k) other defects and deficiencies that will be particularized at or before the trial of this action

(collectively, the “Defects”).

43. Due to the systemic nature of the Defects, the Curtain Wall and its components must be repaired or replaced, or both.

44. The Defects are a consequence or manifestation of the defective design and/or construction of the Curtain Wall, which failed to meet required industry standards.

26.45. In the alternative, the Defects are a consequence of the Curtain Wall’s assembly and/or installation, including the defective manufacturing, fabrication, handling, transportation, storage and/or installation of the IGUs which failed to meet required contractual and industry standards.

Implied Warranty

~~27.46.~~ The Defects in the IGUs are covered by an implied warranty owed by the Developer owed to members of the Class.

~~28.47.~~ The implied warranty at common law requires that:

- (a) a residence is designed and built in a good and workmanlike manner;
- (b) is constructed with suitable materials;
- (c) is free from defects; and
- (d) is suitable for its purpose of habitation.

~~29.48.~~ The Developer breached this implied warranty by designing and constructing the Shangri-La with materials that were not suitable and free from defect, rendering the The Defects in the IGUs and the Curtain Wall have rendered the plaintiff and the Class' strata units unsuitable, including for the purpose of habitation.

Loss and Damage

~~30.49.~~ The plaintiff and the Class have suffered from extensive and ongoing loss and damage by reason of the Developer's breach of the implied warranty from the Defects.

~~31.~~ Particulars of the loss and damage include:

- (a) ~~the cost of investigating the problems with the IGUs;~~
- (b) ~~the cost of replacing the IGUs;~~
- (c) ~~damage to the common property and strata lots;~~

50. The Defects are a consequence of the Developer's breach of their obligations to the plaintiff and to the Class under the Pre-Sale Contracts and warranties implied by common law and/or statute, including REDMA and the Strata Property Act, S.B.C. 1998, c. 43 ("SPA").

51. The plaintiff and the Class are entitled to recover any individual losses resulting from the Defects, whether dangerous or latent, which may include among other things:

- (a) damage to individual property within the unit that is not common property owned by the Live-Work Strata or Residential Strata;
- ~~(d)~~(b) depreciation or diminution in the market value of the Class' interest in the strata lots, common property, common facilities and other assets of the Classstrata lots;
- (c) loss of use and enjoyment of the Class' strata units;
- ~~(e)~~(d) loss of rental or lease income; and
- ~~(f)~~(e) such further loss and damage as may be proven at trial.

32-52. The defendants are jointly and severally liable for the loss and damage suffered by the plaintiff and the Class.

Part 2: RELIEF SOUGHT

33-53. The plaintiff, on his own behalf and on behalf of the Class, claims against the defendants for:

- (a) ~~Certification~~certification of this action as a class proceeding and appointment of the plaintiff as the representative plaintiff-;
- (b) ~~Specifies~~specific performance of the Developer's obligations under the Pre-Sale Contract and/or implied warranty, including to provide IGUs that are suitable and free from defect, rendering the premises suitable for habitation-;
- (c) ~~In the alternative,~~ general damages for breach of the implied warranty- and/or breach of contract;
- (d) ~~Specials~~special damages-;
- (e) ~~Interest~~interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79-;

(f) ~~Costs~~costs of this action; and

(g) ~~Such~~such other and further relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

~~34.54.~~ The Developer owed an implied warranty to the Class that the work already done and not yet done would be done in a good and workmanlike manner, that the materials would be suitable, and that the building would be fit for its purpose, namely, habitation.

~~35.55.~~ The Shangri-La ~~development~~ was incomplete at the time the ~~contracts for purchase and sale~~Pre-Sale Contracts were entered into and at the time those contracts completed.

~~36.56.~~ The Developer was expected to do any further work required in order to make the Shangri-La ~~development~~ complete.

~~37.57.~~ The implied warranty was not expressly excluded by the terms of the disclosure statement, the 2-5-10 Warranty or the ~~contracts for purchase and sale entered into between Class members and the Developer~~Pre-Sale Contracts.

~~38.58.~~ By using the IGUs, the Developer failed to use proper materials for the Curtain Wall and breached the implied warranty owed to the Class members.

~~39.59.~~ The IGUs have made the Shangri-La ~~development~~ not reasonably fit for habitation, and have breached the implied warranty owed to the Class members.

~~40.60.~~ As a result of the Developer's ~~breach~~breaches of the implied warranty, the Class has suffered and continues to suffer the loss and damage as particularized above.

~~41.61.~~ Further, or in the alternative, it was a term ~~and condition of~~for warranty in the ~~contracts for purchase and sale entered into with the Class members~~Pre-Sale Contracts that the Developer would:

(a) ensure that the Shangri-La ~~development~~ was constructed in a good and workmanlike manner, free of construction deficiencies or structural defects due to faulty design, materials, equipment or workmanship;

- (b) exercise all reasonable care, skill, diligence and competence as a Developer while causing the construction of the Shangri-La ~~development~~ to be carried out;
- (c) ensure that the construction of the Shangri-La ~~development~~ would be performed in accordance with generally accepted construction and engineering standards;
- (d) ensure that the construction of the Shangri-La ~~development~~ would be free from defects; and
- (e) warn potential purchasers of any defects in the construction of the Shangri-La ~~development~~.

42.62. ~~The Developer breached the contracts for purchase and sale entered into with Class members~~ Pre-Sale Contracts by failing to use proper materials for the Curtain Wall.

43.63. As a result of the Developer's ~~breach~~ breaches of the ~~contracts for purchase and sale entered into with Class members~~ Pre-Sale Contracts, the Class has suffered and continues to suffer the loss and damage as particularized above.

Plaintiffs' address for service: c/o ~~Hunter Litigation Chambers, 2100~~ 1040 West Georgia
McEwan Partners
900-980 Howe Street
~~;~~ Vancouver, ~~British Columbia, V6E 4H1.~~ BC V6Z 0C8

Fax number address for service: ~~604-647-4554.~~ 778-300-9393

E-mail address for service: kmcewan@mcewanpartners.com
mhunt@mcewanpartners.com
echristian@mcewanpartners.com;
 copy to rwhyman@litigationchambers.com

Place of trial: Vancouver, British Columbia.

The address of the registry is: 800 Smithe Street
~~;~~ Vancouver, ~~British Columbia,~~ BC V6Z 2E1.

Dated: ~~December~~ November 15, 20152021



J. Kenneth McEwan, Q.C./
Melissa Hunt/Emma Christian

Signature of

plaintiff lawyer for plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the ~~party's~~ party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

a motor vehicle accident

medical malpractice

another cause

A dispute concerning:

contaminated sites

construction defects

real property (real estate)

personal property

the provision of goods or services or other general commercial matters

investment losses

the lending of money

an employment relationship

a will or other issues concerning the probate of an estate

a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

a class action

maritime law

- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Court Order Interest Act, R.S.B.C. 1996, c. 79.

Strata Property Act, S.B.C. 1998, c. 43.

Real Estate Development Marketing Act, S.B.C. 2004, c. 41.

Class Proceedings Act, R.S.B.C., c. 50.

SCHEDULE “D-1”

23 OCT 2008 14 55

BB0724187

**Strata Property Act
Form V
FILING LETTER**

1 # free DF

Vancouver, B.C.
October 22, 2008

Registrar
Land Title Office
88 - 6th Street
New Westminster, B.C.
V3L 5B3

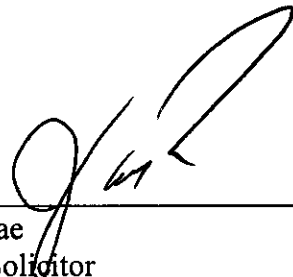
SH 08/10/23 14:55:06 02 LM
DOC FILE FREE

864239
\$0.00

26

Please receive herewith the following document(s) for filing:

Form V Schedule of Unit Entitlement



James S. McRae
Barrister and Solicitor
KORNFELD MACKOFF SILBER LLP
Barristers and Solicitors
1100 One Bentall Centre
505 Burrard Street
Vancouver, B.C. V7X 1M5

West Coast
Client # 10350

**Strata Property Act
Form V
SCHEDULE OF UNIT ENTITLEMENT**

(Section 245 (a), 246, 264)

Re: Strata Plan BCS3165
Being a Strata Plan of Air Space Parcel 2 Block 18 DL 185 Group 1 NWD
Air Space Plan BCP 38696

P.I.D.

STRATA PLAN CONSISTING ENTIRELY OF RESIDENTIAL STRATA LOTS

The unit entitlement for each residential strata lot is one of the following (check appropriate box), as set out in the following table:

- (a) the habitable area of the strata lot, in square metres, rounded to the nearest whole number as determined by a British Columbia land surveyor as set out in section 246 (3) (a) (i) of the *Strata Property Act*.

Certificate of British Columbia Land Surveyor

I, William P. Wong
a British Columbia land surveyor, certify that the following table reflects the habitable area of each residential strata lot.

Date: Oct 15, 2008 (month, day, year).

W.P. Wong
Signature

OR

- (b) a whole number that is the same for all of the residential strata lots as set out in section 246 (3) (a) (ii) of the *Strata Property Act*.

OR

- (c) a number that is approved by the Superintendent of Real Estate in accordance with section 246 (3) (a) (iii) of the *Strata Property Act*.

.....
Signature of Superintendent of Real Estate

Strata Lot No.	Sheet No.	Habitable Area in m ²	Unit Entitlement	%* of Total Unit Entitlement
1	24	120.5	121	0.49%
2	24	150.7	151	0.61%
3	24	62.4	62	0.25%
4	24	62.4	62	0.25%
5	24	101.4	101	0.41%
6	24	67.9	68	0.28%
7	24	54.8	55	0.22%
8	24	106.1	106	0.43%
9	24	111.9	112	0.45%
10	25	120.7	121	0.49%
11	25	150.7	151	0.61%
12	25	62.4	62	0.25%
13	25	62.4	62	0.25%
14	25	101.5	102	0.41%
15	25	67.9	68	0.28%
16	25	54.8	55	0.22%
17	25	106.2	106	0.43%
18	25	111.9	112	0.45%
19	26	144.3	144	0.58%
20	26	150.4	150	0.61%
21	26	62.4	62	0.25%
22	26	62.4	62	0.25%
23	26	101.7	102	0.41%
24	26	67.9	68	0.28%
25	26	54.8	55	0.22%
26	26	106.1	106	0.43%
27	26	134.3	134	0.54%
28	27	144.2	144	0.58%
29	27	150.4	150	0.61%
30	27	62.4	62	0.25%
31	27	62.4	62	0.25%
32	27	101.7	102	0.41%
33	27	67.9	68	0.28%
34	27	55.2	55	0.22%
35	27	106.0	106	0.43%
36	27	134.2	134	0.54%
37	28	144.4	144	0.58%
38	28	150.4	150	0.61%
39	28	62.4	62	0.25%
40	28	62.4	62	0.25%
41	28	101.7	102	0.41%
42	28	67.9	68	0.28%
43	28	55.2	55	0.22%

Strata Lot No.	Sheet No.	Habitable Area in m ²	Unit Entitlement	%* of Total Unit Entitlement
44	28	106.0	106	0.43%
45	28	134.4	134	0.54%
46	29	144.4	144	0.58%
47	29	150.4	150	0.61%
48	29	62.4	62	0.25%
49	29	62.4	62	0.25%
50	29	101.7	102	0.41%
51	29	67.9	68	0.28%
52	29	55.2	55	0.22%
53	29	106.0	106	0.43%
54	29	134.2	134	0.54%
55	30	144.4	144	0.58%
56	30	150.4	106	0.43%
57	30	62.4	62	0.25%
58	30	62.4	62	0.25%
59	30	101.7	102	0.41%
60	30	67.9	68	0.28%
61	30	55.2	55	0.22%
62	30	106.0	106	0.43%
63	30	134.2	134	0.54%
64	31	144.4	144	0.58%
65	31	150.4	150	0.61%
66	31	62.4	62	0.25%
67	31	62.4	62	0.25%
68	31	101.7	102	0.41%
69	31	67.9	68	0.28%
70	31	55.2	55	0.22%
71	31	106.0	106	0.43%
72	31	134.4	134	0.54%
73	32	144.8	145	0.59%
74	32	150.0	150	0.61%
75	32	62.4	62	0.25%
76	32	62.4	62	0.25%
77	32	101.7	102	0.41%
78	32	67.9	68	0.28%
79	32	55.2	55	0.22%
80	32	106.0	106	0.43%
81	32	134.4	134	0.54%
82	33	144.3	144	0.58%
83	33	150.4	150	0.61%
84	33	62.4	62	0.25%
85	33	62.4	62	0.25%
86	33	101.7	102	0.41%
87	33	67.9	68	0.28%

Strata Lot No.	Sheet No.	Habitable Area in m ²	Unit Entitlement	%* of Total Unit Entitlement
88	33	55.2	55	0.22%
89	33	106.0	106	0.43%
90	33	134.4	134	0.54%
91	34	144.4	144	0.58%
92	34	150.4	150	0.61%
93	34	62.4	62	0.25%
94	34	62.4	62	0.25%
95	34	101.7	102	0.41%
96	34	67.9	68	0.28%
97	34	55.2	55	0.22%
98	34	106.0	106	0.43%
99	34	134.4	134	0.54%
100	35	144.4	144	0.58%
101	35	150.4	150	0.61%
102	35	62.4	62	0.25%
103	35	62.4	62	0.25%
104	35	101.6	102	0.41%
105	35	67.8	68	0.28%
106	35	56.3	56	0.23%
107	35	105.6	106	0.43%
108	35	134.4	134	0.54%
109	36	144.4	144	0.58%
110	36	150.4	150	0.61%
111	36	62.4	62	0.25%
112	36	62.4	62	0.25%
113	36	101.6	102	0.41%
114	36	67.8	68	0.28%
115	36	56.3	56	0.23%
116	36	105.6	106	0.43%
117	36	134.4	134	0.54%
118	37	144.4	144	0.58%
119	37	150.4	150	0.61%
120	37	62.4	62	0.25%
121	37	62.4	62	0.25%
122	37	101.6	102	0.41%
123	37	67.8	68	0.28%
124	37	56.3	56	0.23%
125	37	105.6	106	0.43%
126	37	134.4	134	0.54%
127	38	144.4	144	0.58%
128	38	150.4	150	0.61%
129	38	62.4	62	0.25%
130	38	62.4	62	0.25%
131	38	101.6	102	0.41%

Strata Lot No.	Sheet No.	Habitable Area in m ²	Unit Entitlement	%* of Total Unit Entitlement
132	38	67.8	68	0.28%
133	38	56.3	56	0.23%
134	38	105.6	106	0.43%
135	38	134.4	134	0.54%
136	39	144.4	144	0.58%
137	39	150.4	150	0.61%
138	39	62.4	62	0.25%
139	39	62.4	62	0.25%
140	39	101.6	102	0.41%
141	39	67.8	68	0.28%
142	39	56.3	56	0.23%
143	39	105.6	106	0.43%
144	39	134.4	134	0.54%
145	40	144.4	144	0.58%
146	40	150.4	150	0.61%
147	40	62.4	62	0.25%
148	40	62.4	62	0.25%
149	40	101.6	102	0.41%
150	40	67.8	68	0.28%
151	40	56.3	56	0.23%
152	40	105.6	106	0.43%
153	40	134.4	134	0.54%
154	41	144.4	144	0.58%
155	41	150.4	150	0.61%
156	41	62.4	62	0.25%
157	41	62.4	62	0.25%
158	41	101.6	102	0.41%
159	41	67.8	68	0.28%
160	41	56.3	56	0.23%
161	41	105.6	106	0.43%
162	41	134.3	134	0.54%
163	42	144.4	144	0.58%
164	42	150.4	150	0.61%
165	42	62.4	62	0.25%
166	42	62.4	62	0.25%
167	42	101.6	102	0.41%
168	42	67.8	68	0.28%
169	42	56.3	56	0.23%
170	42	105.6	106	0.43%
171	42	134.3	134	0.54%
172	43	144.4	144	0.58%
173	43	150.4	150	0.61%
174	43	96.9	97	0.39%
175	43	129.4	129	0.52%

Strata Lot No.	Sheet No.	Habitable Area in m ²	Unit Entitlement	%* of Total Unit Entitlement
176	43	95.5	96	0.39%
177	43	144.9	145	0.59%
178	43	134.3	134	0.54%
179	44	144.4	144	0.58%
180	44	150.4	150	0.61%
181	44	96.9	97	0.39%
182	44	129.4	129	0.52%
183	44	95.5	96	0.39%
184	44	144.9	145	0.59%
185	44	134.3	134	0.54%
186	45	144.4	144	0.58%
187	45	150.4	150	0.61%
188	45	96.9	97	0.39%
189	45	129.4	129	0.52%
190	45	95.5	96	0.39%
191	45	144.9	145	0.59%
192	45	134.4	134	0.54%
193	46	144.4	144	0.58%
194	46	150.4	150	0.61%
195	46	96.9	97	0.39%
196	46	129.4	129	0.52%
197	46	95.5	96	0.39%
198	46	144.9	145	0.59%
199	46	134.4	134	0.54%
200	47	144.4	144	0.58%
201	47	150.4	150	0.61%
202	47	96.9	97	0.39%
203	47	129.4	129	0.52%
204	47	95.5	96	0.39%
205	47	144.9	145	0.59%
206	47	134.4	134	0.54%
207	48	144.3	144	0.58%
208	48	150.4	150	0.61%
209	48	97.7	98	0.40%
210	48	129.5	130	0.53%
211	48	95.5	96	0.39%
212	48	144.9	145	0.59%
213	48	134.4	134	0.54%
214	49	144.3	144	0.58%
215	49	150.4	150	0.61%
216	49	97.7	98	0.40%
217	49	129.5	130	0.53%
218	49	95.5	96	0.39%
219	49	144.9	145	0.59%

Strata Lot No.	Sheet No.	Habitable Area in m ²	Unit Entitlement	%* of Total Unit Entitlement
220	49	134.4	134	0.54%
221	50	144.0	144	0.58%
222	50	150.7	151	0.61%
223	50	97.7	98	0.40%
224	50	129.5	130	0.53%
225	50	95.5	96	0.39%
226	50	144.9	145	0.59%
227	50	134.4	134	0.54%
228	51	144.3	144	0.58%
229	51	150.4	150	0.61%
230	51	97.7	98	0.40%
231	51	129.5	130	0.53%
232	51	95.5	96	0.39%
233	51	144.9	145	0.59%
234	51	134.4	134	0.54%
TOTAL NUMBER OF STRATA UNITS = 234			TOTAL UNIT ENTITLEMENT = 24717	

* expression of percentage is for informational purposes only and has no legal effect

Date: October 22, 2008 (month, day, year)

KBK NO. 11 VENTURES LTD.,
by its authorized signatory

Signature of Owner Developer

Ian Gillespie

SCHEDULE “D-2”

18 NOV 2008 14 57

BB319541

Strata Property Act
Form V
FILING LETTER

F
D

Vancouver, B.C.
November 18, 2008

Registrar
Land Title Office
88 - 6th Street
New Westminster, B.C.
V3L 5B3

RS 08/11/18 14:57:56 03 LM
DOC FILE FREE

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\$0.00/

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Please receive herewith the following document(s) for filing:

Form V Schedule of Unit Entitlement

BCS 3206

James S. McKae
Barrister and Solicitor
KORNFELD MACKOFF SILBER LLP
Barristers and Solicitors
1100 One Bentall Centre
505 Burrard Street
Vancouver, B.C. V7X 1M5
604-331-8300

West Coast
Client # 10350

**Strata Property Act
Form V
SCHEDULE OF UNIT ENTITLEMENT
(Section 245 (a), 246, 264)**

Re: Strata Plan *BCS 3206*
 Being a Strata Plan of Air Space Parcel 1 Block 18 DL 185 Group 1 NWD Air Space Plan BCP38696
 P.I.D. 027-700-275

STRATA PLAN CONSISTING ENTIRELY OF RESIDENTIAL STRATA LOTS

The unit entitlement for each residential strata lot is one of the following (check appropriate box), as set out in the following table:

- (a) the habitable area of the strata lot, in square metres, rounded to the nearest whole number as determined by a British Columbia land surveyor as set out in section 246 (3) (a) (i) of the *Strata Property Act*.

Certificate of British Columbia Land Surveyor

I, William P. Wong
 a British Columbia land surveyor, certify that the following table reflects the habitable area of each residential strata lot.

Date: November 13, 2008 (month, day, year).

W.P. Wong
 Signature

OR

- (b) a whole number that is the same for all of the residential strata lots as set out in section 246 (3) (a) (ii) of the *Strata Property Act*.

OR

- (c) a number that is approved by the Superintendent of Real Estate in accordance with section 246 (3) (a) (iii) of the *Strata Property Act*.

.....
 Signature of Superintendent of Real Estate

Strata Lot No.	Sheet No.	Habitable Area In m ²	Unit Entitlement	%* of Total Unit Entitlement
1	52	310.9	311	1.89%
2	52	226.8	227	1.38%
3	53	223.2	223	1.35%
4	53	249.1	249	1.51%
5	53	226.8	227	1.38%
6	53	208.1	208	1.26%
7	54	223.2	223	1.35%
8	54	249.1	249	1.51%
9	54	226.8	227	1.38%
10	54	208.1	208	1.26%
11	55	231.7	232	1.41%
12	55	249.1	249	1.51%
13	55	226.8	227	1.38%
14	55	221.8	222	1.35%
15	56	234.0	234	1.42%
16	56	249.1	249	1.51%
17	56	226.8	227	1.38%
18	56	221.8	222	1.35%
19	57	234.0	234	1.42%
20	57	249.1	249	1.51%
21	57, 58	415.2	415	2.52%
22	57	221.8	222	1.35%
23	58	234.0	234	1.42%
24	58	249.1	249	1.51%
25	58	221.8	222	1.35%
26	59	234.2	234	1.42%
27	59	249.1	249	1.51%
28	59, 60	415.2	415	2.52%
29	59	221.8	222	1.35%
30	60	234.0	234	1.42%
31	60	249.1	249	1.51%
32	60	221.8	222	1.35%
33	61	234.0	234	1.42%
34	61	249.1	249	1.51%
35	61, 62	415.2	415	2.52%
36	61	221.8	222	1.35%
37	62	234.0	234	1.42%
38	62	249.1	249	1.51%
39	62	221.8	222	1.35%
40	63	234.0	234	1.42%
41	63	249.1	249	1.51%
42	63	218.9	219	1.33%

Strata Lot No.	Sheet No.	Habitable Area in m ²	Unit Entitlement	%* of Total Unit Entitlement
43	63	221.8	222	1.35%
44	64	234.0	234	1.42%
45	64	249.1	249	1.51%
46	64	226.8	227	1.38%
47	64	221.8	222	1.35%
48	65	234.0	234	1.42%
49	65	249.1	249	1.51%
50	65	226.8	227	1.38%
51	65	221.8	222	1.35%
52	66	234.0	234	1.42%
53	66	249.1	249	1.51%
54	66	226.7	227	1.38%
55	66	221.8	222	1.35%
56	67	240.9	241	1.46%
57	67	249.1	249	1.51%
58	67	226.8	227	1.38%
59	67	221.5	222	1.35%
60	68	241.1	241	1.46%
61	68	249.1	249	1.51%
62	68	226.8	227	1.38%
63	68	221.5	222	1.35%
64	69, 70	540.1	540	3.28%
65	69, 70	382.2	382	2.32%
66	69	259.2	259	1.57%
Total Number of Strata Units = 66			Total Unit Entitlement = 16,468	

* expression of percentage is for informational purposes only and has no legal effect

Date: NOV. 18, 2008 (month, day, year)

KBK NO. 11 VENTURES LTD.

by its authorized signatory ✓

Signature of Owner Developer

Ian Gillespie

SCHEDULE “E”

Schedule of Maximum Per Strata Lot Payments

If the Settlement is approved by the Court, the Maximum Per Strata Lot Payments are “up to” estimates of the maximum potential compensation that Eligible Claimants might receive. The Maximum Per Strata Lot Payments are determined by dividing the Unit Entitlement of each strata lot (*i.e.*, the habitable area, in square metres, rounded to the nearest whole number) by the total of the Unit Entitlements for all strata lots in SP 3165 and SP 3206, and then multiplying the resulting percentage by the Settlement Fund amount of \$6,644,000. Payments are available only to Eligible Claimants in respect of strata lots for which they entered into, or took an assignment of, a Pre-Sale Contract. In the event that the total amount of Claims to be paid out to Eligible Claimants exceeds the funds available in the Settlement Fund after deducting Counsel Fees and all costs, including with respect to Administrative Expenses, then the payments to Eligible Claimants will be reduced *pro rata* to the total amount that is available. Under this *pro rata* distribution, the portions of the Maximum Per Strata Lot Payments of all Eligible Claimants will be aggregated, and Eligible Claimants will each be entitled to a payment based on the relative share of their portion of the Maximum Per Strata Lot Payment for their strata lot(s).

Strata Corporation	Strata Lot	Unit Number	Unit Entitlement	% of Total Unit Entitlements	Maximum Per Strata Lot Payment (CAD \$)
SP 3165	1	1601	121	0.29%	\$ 19,519.83
SP 3165	2	1602	151	0.37%	\$ 24,359.45
SP 3165	3	1603	62	0.15%	\$ 10,001.89
SP 3165	4	1604	62	0.15%	\$ 10,001.89
SP 3165	5	1605	101	0.25%	\$ 16,293.41
SP 3165	6	1606	68	0.17%	\$ 10,969.82
SP 3165	7	1607	55	0.13%	\$ 8,872.65
SP 3165	8	1608	106	0.26%	\$ 17,100.01
SP 3165	9	1609	112	0.27%	\$ 18,067.94
SP 3165	10	1701	121	0.29%	\$ 19,519.83
SP 3165	11	1702	151	0.37%	\$ 24,359.45
SP 3165	12	1703	62	0.15%	\$ 10,001.89
SP 3165	13	1704	62	0.15%	\$ 10,001.89
SP 3165	14	1705	102	0.25%	\$ 16,454.73
SP 3165	15	1706	68	0.17%	\$ 10,969.82
SP 3165	16	1707	55	0.13%	\$ 8,872.65
SP 3165	17	1708	106	0.26%	\$ 17,100.01
SP 3165	18	1709	112	0.27%	\$ 18,067.94
SP 3165	19	1801	144	0.35%	\$ 23,230.21
SP 3165	20	1802	150	0.36%	\$ 24,198.13

Strata Corporation	Strata Lot	Unit Number	Unit Entitlement	% of Total Unit Entitlements	Maximum Per Strata Lot Payment (CAD \$)
SP 3165	21	1803	62	0.15%	\$ 10,001.89
SP 3165	22	1804	62	0.15%	\$ 10,001.89
SP 3165	23	1805	102	0.25%	\$ 16,454.73
SP 3165	24	1806	68	0.17%	\$ 10,969.82
SP 3165	25	1807	55	0.13%	\$ 8,872.65
SP 3165	26	1808	106	0.26%	\$ 17,100.01
SP 3165	27	1809	134	0.33%	\$ 21,617.00
SP 3165	28	1901	144	0.35%	\$ 23,230.21
SP 3165	29	1902	150	0.36%	\$ 24,198.13
SP 3165	30	1903	62	0.15%	\$ 10,001.89
SP 3165	31	1904	62	0.15%	\$ 10,001.89
SP 3165	32	1905	102	0.25%	\$ 16,454.73
SP 3165	33	1906	68	0.17%	\$ 10,969.82
SP 3165	34	1907	55	0.13%	\$ 8,872.65
SP 3165	35	1908	106	0.26%	\$ 17,100.01
SP 3165	36	1909	134	0.33%	\$ 21,617.00
SP 3165	37	2001	144	0.35%	\$ 23,230.21
SP 3165	38	2002	150	0.36%	\$ 24,198.13
SP 3165	39	2003	62	0.15%	\$ 10,001.89
SP 3165	40	2004	62	0.15%	\$ 10,001.89
SP 3165	41	2005	102	0.25%	\$ 16,454.73
SP 3165	42	2006	68	0.17%	\$ 10,969.82
SP 3165	43	2007	55	0.13%	\$ 8,872.65
SP 3165	44	2008	106	0.26%	\$ 17,100.01
SP 3165	45	2009	134	0.33%	\$ 21,617.00
SP 3165	46	2101	144	0.35%	\$ 23,230.21
SP 3165	47	2102	150	0.36%	\$ 24,198.13
SP 3165	48	2103	62	0.15%	\$ 10,001.89
SP 3165	49	2104	62	0.15%	\$ 10,001.89
SP 3165	50	2105	102	0.25%	\$ 16,454.73
SP 3165	51	2106	68	0.17%	\$ 10,969.82
SP 3165	52	2107	55	0.13%	\$ 8,872.65
SP 3165	53	2108	106	0.26%	\$ 17,100.01

Strata Corporation	Strata Lot	Unit Number	Unit Entitlement	% of Total Unit Entitlements	Maximum Per Strata Lot Payment (CAD \$)
SP 3165	54	2109	134	0.33%	\$ 21,617.00
SP 3165	55	2201	144	0.35%	\$ 23,230.21
SP 3165	56	2202	106	0.26%	\$ 17,100.01
SP 3165	57	2203	62	0.15%	\$ 10,001.89
SP 3165	58	2204	62	0.15%	\$ 10,001.89
SP 3165	59	2205	102	0.25%	\$ 16,454.73
SP 3165	60	2206	68	0.17%	\$ 10,969.82
SP 3165	61	2207	55	0.13%	\$ 8,872.65
SP 3165	62	2208	106	0.26%	\$ 17,100.01
SP 3165	63	2209	134	0.33%	\$ 21,617.00
SP 3165	64	2301	144	0.35%	\$ 23,230.21
SP 3165	65	2302	150	0.36%	\$ 24,198.13
SP 3165	66	2303	62	0.15%	\$ 10,001.89
SP 3165	67	2304	62	0.15%	\$ 10,001.89
SP 3165	68	2305	102	0.25%	\$ 16,454.73
SP 3165	69	2306	68	0.17%	\$ 10,969.82
SP 3165	70	2307	55	0.13%	\$ 8,872.65
SP 3165	71	2308	106	0.26%	\$ 17,100.01
SP 3165	72	2309	134	0.33%	\$ 21,617.00
SP 3165	73	2401	145	0.35%	\$ 23,391.53
SP 3165	74	2402	150	0.36%	\$ 24,198.13
SP 3165	75	2403	62	0.15%	\$ 10,001.89
SP 3165	76	2404	62	0.15%	\$ 10,001.89
SP 3165	77	2405	102	0.25%	\$ 16,454.73
SP 3165	78	2406	68	0.17%	\$ 10,969.82
SP 3165	79	2407	55	0.13%	\$ 8,872.65
SP 3165	80	2408	106	0.26%	\$ 17,100.01
SP 3165	81	2409	134	0.33%	\$ 21,617.00
SP 3165	82	2501	144	0.35%	\$ 23,230.21
SP 3165	83	2502	150	0.36%	\$ 24,198.13
SP 3165	84	2503	62	0.15%	\$ 10,001.89
SP 3165	85	2504	62	0.15%	\$ 10,001.89
SP 3165	86	2505	102	0.25%	\$ 16,454.73

Strata Corporation	Strata Lot	Unit Number	Unit Entitlement	% of Total Unit Entitlements	Maximum Per Strata Lot Payment (CAD \$)
SP 3165	87	2506	68	0.17%	\$ 10,969.82
SP 3165	88	2507	55	0.13%	\$ 8,872.65
SP 3165	89	2508	106	0.26%	\$ 17,100.01
SP 3165	90	2509	134	0.33%	\$ 21,617.00
SP 3165	91	2601	144	0.35%	\$ 23,230.21
SP 3165	92	2602	150	0.36%	\$ 24,198.13
SP 3165	93	2603	62	0.15%	\$ 10,001.89
SP 3165	94	2604	62	0.15%	\$ 10,001.89
SP 3165	95	2605	102	0.25%	\$ 16,454.73
SP 3165	96	2606	68	0.17%	\$ 10,969.82
SP 3165	97	2607	55	0.13%	\$ 8,872.65
SP 3165	98	2608	106	0.26%	\$ 17,100.01
SP 3165	99	2609	134	0.33%	\$ 21,617.00
SP 3165	100	2701	144	0.35%	\$ 23,230.21
SP 3165	101	2702	150	0.36%	\$ 24,198.13
SP 3165	102	2703	62	0.15%	\$ 10,001.89
SP 3165	103	2704	62	0.15%	\$ 10,001.89
SP 3165	104	2705	102	0.25%	\$ 16,454.73
SP 3165	105	2706	68	0.17%	\$ 10,969.82
SP 3165	106	2707	56	0.14%	\$ 9,033.97
SP 3165	107	2708	106	0.26%	\$ 17,100.01
SP 3165	108	2709	134	0.33%	\$ 21,617.00
SP 3165	109	2801	144	0.35%	\$ 23,230.21
SP 3165	110	2802	150	0.36%	\$ 24,198.13
SP 3165	111	2803	62	0.15%	\$ 10,001.89
SP 3165	112	2804	62	0.15%	\$ 10,001.89
SP 3165	113	2805	102	0.25%	\$ 16,454.73
SP 3165	114	2806	68	0.17%	\$ 10,969.82
SP 3165	115	2807	56	0.14%	\$ 9,033.97
SP 3165	116	2808	106	0.26%	\$ 17,100.01
SP 3165	117	2809	134	0.33%	\$ 21,617.00
SP 3165	118	2901	144	0.35%	\$ 23,230.21
SP 3165	119	2902	150	0.36%	\$ 24,198.13

Strata Corporation	Strata Lot	Unit Number	Unit Entitlement	% of Total Unit Entitlements	Maximum Per Strata Lot Payment (CAD \$)
SP 3165	120	2903	62	0.15%	\$ 10,001.89
SP 3165	121	2904	62	0.15%	\$ 10,001.89
SP 3165	122	2905	102	0.25%	\$ 16,454.73
SP 3165	123	2906	68	0.17%	\$ 10,969.82
SP 3165	124	2907	56	0.14%	\$ 9,033.97
SP 3165	125	2908	106	0.26%	\$ 17,100.01
SP 3165	126	2909	134	0.33%	\$ 21,617.00
SP 3165	127	3001	144	0.35%	\$ 23,230.21
SP 3165	128	3002	150	0.36%	\$ 24,198.13
SP 3165	129	3003	62	0.15%	\$ 10,001.89
SP 3165	130	3004	62	0.15%	\$ 10,001.89
SP 3165	131	3005	102	0.25%	\$ 16,454.73
SP 3165	132	3006	68	0.17%	\$ 10,969.82
SP 3165	133	3007	56	0.14%	\$ 9,033.97
SP 3165	134	3008	106	0.26%	\$ 17,100.01
SP 3165	135	3009	134	0.33%	\$ 21,617.00
SP 3165	136	3101	144	0.35%	\$ 23,230.21
SP 3165	137	3102	150	0.36%	\$ 24,198.13
SP 3165	138	3103	62	0.15%	\$ 10,001.89
SP 3165	139	3104	62	0.15%	\$ 10,001.89
SP 3165	140	3105	102	0.25%	\$ 16,454.73
SP 3165	141	3106	68	0.17%	\$ 10,969.82
SP 3165	142	3107	56	0.14%	\$ 9,033.97
SP 3165	143	3108	106	0.26%	\$ 17,100.01
SP 3165	144	3109	134	0.33%	\$ 21,617.00
SP 3165	145	3201	144	0.35%	\$ 23,230.21
SP 3165	146	3202	150	0.36%	\$ 24,198.13
SP 3165	147	3203	62	0.15%	\$ 10,001.89
SP 3165	148	3204	62	0.15%	\$ 10,001.89
SP 3165	149	3205	102	0.25%	\$ 16,454.73
SP 3165	150	3206	68	0.17%	\$ 10,969.82
SP 3165	151	3207	56	0.14%	\$ 9,033.97
SP 3165	152	3208	106	0.26%	\$ 17,100.01

Strata Corporation	Strata Lot	Unit Number	Unit Entitlement	% of Total Unit Entitlements	Maximum Per Strata Lot Payment (CAD \$)
SP 3165	153	3209	134	0.33%	\$ 21,617.00
SP 3165	154	3301	144	0.35%	\$ 23,230.21
SP 3165	155	3302	150	0.36%	\$ 24,198.13
SP 3165	156	3303	62	0.15%	\$ 10,001.89
SP 3165	157	3304	62	0.15%	\$ 10,001.89
SP 3165	158	3305	102	0.25%	\$ 16,454.73
SP 3165	159	3306	68	0.17%	\$ 10,969.82
SP 3165	160	3307	56	0.14%	\$ 9,033.97
SP 3165	161	3308	106	0.26%	\$ 17,100.01
SP 3165	162	3309	134	0.33%	\$ 21,617.00
SP 3165	163	3401	144	0.35%	\$ 23,230.21
SP 3165	164	3402	150	0.36%	\$ 24,198.13
SP 3165	165	3403	62	0.15%	\$ 10,001.89
SP 3165	166	3404	62	0.15%	\$ 10,001.89
SP 3165	167	3405	102	0.25%	\$ 16,454.73
SP 3165	168	3406	68	0.17%	\$ 10,969.82
SP 3165	169	3407	56	0.14%	\$ 9,033.97
SP 3165	170	3408	106	0.26%	\$ 17,100.01
SP 3165	171	3409	134	0.33%	\$ 21,617.00
SP 3165	172	3501	144	0.35%	\$ 23,230.21
SP 3165	173	3502	150	0.36%	\$ 24,198.13
SP 3165	174	3503	97	0.24%	\$ 15,648.12
SP 3165	175	3504	129	0.31%	\$ 20,810.39
SP 3165	176	3505	96	0.23%	\$ 15,486.80
SP 3165	177	3506	145	0.35%	\$ 23,391.53
SP 3165	178	3507	134	0.33%	\$ 21,617.00
SP 3165	179	3601	144	0.35%	\$ 23,230.21
SP 3165	180	3602	150	0.36%	\$ 24,198.13
SP 3165	181	3603	97	0.24%	\$ 15,648.12
SP 3165	182	3604	129	0.31%	\$ 20,810.39
SP 3165	183	3605	96	0.23%	\$ 15,486.80
SP 3165	184	3606	145	0.35%	\$ 23,391.53
SP 3165	185	3607	134	0.33%	\$ 21,617.00

Strata Corporation	Strata Lot	Unit Number	Unit Entitlement	% of Total Unit Entitlements	Maximum Per Strata Lot Payment (CAD \$)
SP 3165	186	3701	144	0.35%	\$ 23,230.21
SP 3165	187	3702	150	0.36%	\$ 24,198.13
SP 3165	188	3703	97	0.24%	\$ 15,648.12
SP 3165	189	3704	129	0.31%	\$ 20,810.39
SP 3165	190	3705	96	0.23%	\$ 15,486.80
SP 3165	191	3706	145	0.35%	\$ 23,391.53
SP 3165	192	3707	134	0.33%	\$ 21,617.00
SP 3165	193	3801	144	0.35%	\$ 23,230.21
SP 3165	194	3802	150	0.36%	\$ 24,198.13
SP 3165	195	3803	97	0.24%	\$ 15,648.12
SP 3165	196	3804	129	0.31%	\$ 20,810.39
SP 3165	197	3805	96	0.23%	\$ 15,486.80
SP 3165	198	3806	145	0.35%	\$ 23,391.53
SP 3165	199	3807	134	0.33%	\$ 21,617.00
SP 3165	200	3901	144	0.35%	\$ 23,230.21
SP 3165	201	3902	150	0.36%	\$ 24,198.13
SP 3165	202	3903	97	0.24%	\$ 15,648.12
SP 3165	203	3904	129	0.31%	\$ 20,810.39
SP 3165	204	3905	96	0.23%	\$ 15,486.80
SP 3165	205	3906	145	0.35%	\$ 23,391.53
SP 3165	206	3907	134	0.33%	\$ 21,617.00
SP 3165	207	4001	144	0.35%	\$ 23,230.21
SP 3165	208	4002	150	0.36%	\$ 24,198.13
SP 3165	209	4003	98	0.24%	\$ 15,809.45
SP 3165	210	4004	130	0.32%	\$ 20,971.71
SP 3165	211	4005	96	0.23%	\$ 15,486.80
SP 3165	212	4006	145	0.35%	\$ 23,391.53
SP 3165	213	4007	134	0.33%	\$ 21,617.00
SP 3165	214	4101	144	0.35%	\$ 23,230.21
SP 3165	215	4102	150	0.36%	\$ 24,198.13
SP 3165	216	4103	98	0.24%	\$ 15,809.45
SP 3165	217	4104	130	0.32%	\$ 20,971.71
SP 3165	218	4105	96	0.23%	\$ 15,486.80

Strata Corporation	Strata Lot	Unit Number	Unit Entitlement	% of Total Unit Entitlements	Maximum Per Strata Lot Payment (CAD \$)
SP 3165	219	4106	145	0.35%	\$ 23,391.53
SP 3165	220	4107	134	0.33%	\$ 21,617.00
SP 3165	221	4201	144	0.35%	\$ 23,230.21
SP 3165	222	4202	151	0.37%	\$ 24,359.45
SP 3165	223	4203	98	0.24%	\$ 15,809.45
SP 3165	224	4204	130	0.32%	\$ 20,971.71
SP 3165	225	4205	96	0.23%	\$ 15,486.80
SP 3165	226	4206	145	0.35%	\$ 23,391.53
SP 3165	227	4207	134	0.33%	\$ 21,617.00
SP 3165	228	4301	144	0.35%	\$ 23,230.21
SP 3165	229	4302	150	0.36%	\$ 24,198.13
SP 3165	230	4303	98	0.24%	\$ 15,809.45
SP 3165	231	4304	130	0.32%	\$ 20,971.71
SP 3165	232	4305	96	0.23%	\$ 15,486.80
SP 3165	233	4306	145	0.35%	\$ 23,391.53
SP 3165	234	4307	134	0.33%	\$ 21,617.00
SP 3206	1	4401	311	0.76%	\$ 50,170.79
SP 3206	2	4402	227	0.55%	\$ 36,619.84
SP 3206	3	4501	223	0.54%	\$ 35,974.55
SP 3206	4	4502	249	0.60%	\$ 40,168.90
SP 3206	5	4503	227	0.55%	\$ 36,619.84
SP 3206	6	4504	208	0.51%	\$ 33,554.74
SP 3206	7	4601	223	0.54%	\$ 35,974.55
SP 3206	8	4602	249	0.60%	\$ 40,168.90
SP 3206	9	4603	227	0.55%	\$ 36,619.84
SP 3206	10	4604	208	0.51%	\$ 33,554.74
SP 3206	11	4701	232	0.56%	\$ 37,426.44
SP 3206	12	4702	249	0.60%	\$ 40,168.90
SP 3206	13	4703	227	0.55%	\$ 36,619.84
SP 3206	14	4704	222	0.54%	\$ 35,813.23
SP 3206	15	4801	234	0.57%	\$ 37,749.08
SP 3206	16	4802	249	0.60%	\$ 40,168.90
SP 3206	17	4803	227	0.55%	\$ 36,619.84

Strata Corporation	Strata Lot	Unit Number	Unit Entitlement	% of Total Unit Entitlements	Maximum Per Strata Lot Payment (CAD \$)
SP 3206	18	4804	222	0.54%	\$ 35,813.23
SP 3206	19	4901	234	0.57%	\$ 37,749.08
SP 3206	20	4902	249	0.60%	\$ 40,168.90
SP 3206	21	4903	415	1.01%	\$ 66,948.16
SP 3206	22	4904	222	0.54%	\$ 35,813.23
SP 3206	23	5001	234	0.57%	\$ 37,749.08
SP 3206	24	5002	249	0.60%	\$ 40,168.90
SP 3206	25	5004	222	0.54%	\$ 35,813.23
SP 3206	26	5101	234	0.57%	\$ 37,749.08
SP 3206	27	5102	249	0.60%	\$ 40,168.90
SP 3206	28	5103	415	1.01%	\$ 66,948.16
SP 3206	29	5104	222	0.54%	\$ 35,813.23
SP 3206	30	5201	234	0.57%	\$ 37,749.08
SP 3206	31	5202	249	0.60%	\$ 40,168.90
SP 3206	32	5204	222	0.54%	\$ 35,813.23
SP 3206	33	5301	234	0.57%	\$ 37,749.08
SP 3206	34	5302	249	0.60%	\$ 40,168.90
SP 3206	35	5303	415	1.01%	\$ 66,948.16
SP 3206	36	5304	222	0.54%	\$ 35,813.23
SP 3206	37	5401	234	0.57%	\$ 37,749.08
SP 3206	38	5402	249	0.60%	\$ 40,168.90
SP 3206	39	5404	222	0.54%	\$ 35,813.23
SP 3206	40	5501	234	0.57%	\$ 37,749.08
SP 3206	41	5502	249	0.60%	\$ 40,168.90
SP 3206	42	5503	219	0.53%	\$ 35,329.27
SP 3206	43	5504	222	0.54%	\$ 35,813.23
SP 3206	44	5601	234	0.57%	\$ 37,749.08
SP 3206	45	5602	249	0.60%	\$ 40,168.90
SP 3206	46	5603	227	0.55%	\$ 36,619.84
SP 3206	47	5604	222	0.54%	\$ 35,813.23
SP 3206	48	5701	234	0.57%	\$ 37,749.08
SP 3206	49	5702	249	0.60%	\$ 40,168.90
SP 3206	50	5703	227	0.55%	\$ 36,619.84

Strata Corporation	Strata Lot	Unit Number	Unit Entitlement	% of Total Unit Entitlements	Maximum Per Strata Lot Payment (CAD \$)
SP 3206	51	5704	222	0.54%	\$ 35,813.23
SP 3206	52	5801	234	0.57%	\$ 37,749.08
SP 3206	53	5802	249	0.60%	\$ 40,168.90
SP 3206	54	5803	227	0.55%	\$ 36,619.84
SP 3206	55	5804	222	0.54%	\$ 35,813.23
SP 3206	56	5901	241	0.59%	\$ 38,878.33
SP 3206	57	5902	249	0.60%	\$ 40,168.90
SP 3206	58	5903	227	0.55%	\$ 36,619.84
SP 3206	59	5904	222	0.54%	\$ 35,813.23
SP 3206	60	6001	241	0.59%	\$ 38,878.33
SP 3206	61	6002	249	0.60%	\$ 40,168.90
SP 3206	62	6003	227	0.55%	\$ 36,619.84
SP 3206	63	6004	222	0.54%	\$ 35,813.23
SP 3206	64	6101	540	1.31%	\$ 87,113.27
SP 3206	65	6102	382	0.93%	\$ 61,624.57
SP 3206	66	6103	259	0.63%	\$ 41,782.11
Total:			41,185	100.00%	\$ 6,644,000.00

SCHEDULE “F”

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CHỈ DẪN QUAN TRỌNG Xin nhờ người dịch hộ

ਜ਼ਰੂਰੀ ਜਾਣਕਾਰੀ ਕਿਰਪਾ ਕਰਕੇ ਕਿਸੇ ਕੋਲੋਂ ਇਸ ਦਾ ਉਲੰਘਾ ਕਰਵਾਓ

**SHANGRI-LA WINDOWS CLASS ACTION FOR ORIGINAL PURCHASERS
SUPPORT/OBJECT FORM FOR THE \$6,644,000 SETTLEMENT**

THIS FORM IS FOR CLASS MEMBERS WHO **WISH** TO SUBMIT A STATEMENT OF SUPPORT FOR, OR OBJECTION TO, THE SETTLEMENT FOR CONSIDERATION BY THE COURT IN DECIDING WHETHER TO APPROVE THE SETTLEMENT. Class Members may, but are not required to, submit this form. Forms must be completed on behalf of a single Class Member, or may be on behalf of multiple Class Members if residing together. Completed forms must be delivered and received **no later than April 27, 2023** in order to be valid.

1. OWNER IDENTIFICATION

Please provide current contact information for the current or former Shangri-La unit owner submitting this Support/Object Form. **PLEASE PRINT.**

Last Name:		First Name:		Middle Initial:	
Address:			Unit Number:		
City:	Province/State:	Postal Code/Zip Code:	Country:		
Phone Number:			Email Address:		

2. SHANGRI-LA UNIT IDENTIFICATION

Please provide the following information concerning the pre-sale strata unit purchased prior to the completion of construction of the Shangri-La building that has a civic address of 1111 Alberni Street or 1128 West Georgia Street in Vancouver, British Columbia. If there is more than one unit, provide the following information for other units in an attachment. **PLEASE PRINT.**

Unit number:
Unit's strata plan: <input type="checkbox"/> BCS 3165 (live-work parcel) <input type="checkbox"/> BCS 3206 (residential parcel)
Date of purchase of unit:
Did you purchase the unit as: <input type="checkbox"/> An original purchaser who entered into a contract of purchase and sale with the Developer prior to the completion of construction (a "Pre-Sale Contract"), or <input type="checkbox"/> A purchaser who took an assignment of an original purchaser's Pre-Sale Contract before the completion of construction.

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महुरी महुरी विरय वरने विने वेले दिस दा कुल्लु वरवर्

If you were the original purchaser of this unit, did you assign your Pre-Sale Contract to another purchaser before the completion of construction? Yes No

If yes, the date of the assignment: _____

Are you a current or former owner of this unit? Current Owner Former Owner

If you are a former owner, the date you sold the unit: _____

Are you a senior officer or director of any of the companies listed below? Yes No

- 1100 Georgia Partnership
- KBK No. 11 Ventures Ltd.
- Peterson Investment (Georgia) Limited Partnership
- Abbey Adelaide Holdings Inc.
- LJV Georgia Investments Inc.
- No. 274 Cathedral Ventures Ltd.

3. STATEMENT OF SUPPORT FOR OR OBJECTION TO THE SETTLEMENT

Please provide a brief statement of the reasons for the objection to, or for supporting, the \$6,644,000 settlement in the class action. If providing a handwritten statement below, it must be legible and in print. Alternatively, a typed statement may be provided in an attachment.

[PLEASE PRINT]

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सुवृती जाणवारी विरथा वरजे विजे वेले तिम चा सुलंका वरवाचे

4. OPTIONAL ATTENDANCE AT THE SETTLEMENT APPROVAL HEARING

Statements of support for, or objection to, the settlement will be considered by the Supreme Court of British Columbia at the hearing to decide whether to approve the settlement, which is scheduled for April 28, 2023, at 10:00 am PT. Class Members may, but are not required to, attend this hearing to make oral submissions to the court regarding the settlement. Check the box that identifies whether or not you will appear at this hearing to make oral submissions, and if appearing through your own lawyer, the contact information for your lawyer. If you appear through your own lawyer, you are responsible for hiring and paying that lawyer.

I will **NOT** make oral submissions at the settlement approval hearing.

I, or my lawyer, **WILL** make oral submissions at the settlement approval hearing.

Your lawyer's information (if applicable):

Lawyer's name: _____

Lawyer's law firm: _____

Lawyer's address: _____

Lawyer's telephone number: _____

Lawyer's email address: _____

5. SIGNATURE

Your Signature

_____/_____/_____
YYYY MM DD

This completed and signed form, including any attachments, **MUST be delivered and received no later than April 27, 2023** and sent by prepaid mail, courier or email to:

McEwan Cooper Dennis LLP
Attention: Shangri-La Windows Class Action
900-980 Howe Street
Vancouver, BC V6Z 0C8
Email: ShangriLaClassAction@mcewanpartners.com