

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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BOARD OF MANAGERS OF THE 432 PARK	:	Index No.
CONDOMINIUM, on behalf of the individual unit owners	:	
and the commercial unit owners, BOARD OF	:	
MANAGERS OF THE COMMERCIAL SECTION OF THE	:	COMPLAINT
432 PARK CONDOMINIUM, and BOARD OF	:	
MANAGERS OF THE RESIDENTIAL SECTION OF THE	:	
432 PARK CONDOMINIUM, on behalf of the individual	:	
unit owners,	:	
	:	
	:	
Plaintiff,	:	
	:	
-against-	:	
	:	
	:	
56TH AND PARK (NY) OWNER, LLC, CHARLES	:	
GARNER, RYAN HARTER, DEVON MCCORKLE, JEFF	:	
MACK, HAROLD MACKLOWE, JERRY THOMAS, and	:	
TERRY WACHSNER,	:	
	:	
	:	
Defendants.	:	
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Plaintiffs Board of Managers of the 432 Park Condominium (“Condominium Board”), Board of Managers of the Commercial Section of the 432 Park Condominium (“Commercial Board”), and Board of Managers of the Residential Section of the 432 Park Condominium (“Residential Board”) (together, “Plaintiffs”), by and through their attorneys, Herrick, Feinstein LLP and on behalf of the individual unit owners, as and for their Complaint against Defendants 56th And Park (NY) Owner, LLC (“Sponsor”), Charles Garner (“Garner”), Ryan Harter (“Harter”), Devon McCorkle (“McCorkle”), Jeff Mack (“Mack”), Harold Macklowe (“Macklowe”), Jerry Thomas (“Thomas”), and Terry Wachsner (“Wachsner”) allege as follows:

NATURE OF THE ACTION

1. This case is brought by the condominium boards of the 432 Park Condominium (the “Condominium”), on behalf of all residential unit owners and commercial unit owners (“Unit Owners”), for damages arising from the multiple, extremely significant and much publicized construction defects existing in the common elements and areas of the 102-story residential tower in which the Condominium is located (the “Building”).



2. This action does not concern claims of individual unit owners with respect to damages in their respective apartments, but instead concerns common elements and areas of the building.

3. Plaintiffs bring this action against the Sponsor and the Sponsor-appointed members of the formerly Sponsor-controlled Condominium Board, Residential Board, and Commercial Board.

4. This case presents one of the worst examples of sponsor malfeasance in the development of a luxury condominium in the history of New York City. What was promised as one of the finest condominiums in the City was instead delivered riddled with over 1500 identified construction and design defects to the common elements of the Building alone (leaving aside the numerous defects within individual units). And the Sponsor's response to these defects has been equally atrocious, including (i) frequent denials of responsibility, (ii) negligently performed remediation efforts that at worst caused millions of additional dollars in costs and outages of critical building systems and at best largely failed to address identified defects; and (iii) intentional delay and obfuscation by the Sponsor's hand-picked Board members, who controlled the Condominium Board until early 2021 and ran interference for the Sponsor, ignoring their obligations to the residents of the Building.

5. The Sponsor marketed the Building and the units as ultra-luxurious residences in a world-class, premium building. The soaring Park Avenue tower, just south of Central Park, is among the tallest buildings in New York City. Extraordinarily high prices were charged for these units, consistent with the Sponsor's sales pitch touting the finest quality design, construction, amenities, safety and security. Unit owners paid tens of millions of dollars to acquire units. Far from the ultraluxury spaces that they were promised, however, Unit Owners were sold a building plagued by breakdowns and failures that have endangered and inconvenienced residents, guests, and workers, and repeatedly been the subject of highly critical accounts in the press and social media.

6. Due to the Sponsor's failure to properly design and build the Building to account for its remarkable height, the units experience horrible and obtrusive noise and vibrations. Richard Ressler, the Chairman of CIM (the international real estate company behind the Sponsor) and a

fellow unit owner, in an unguarded moment admitted that the sound and vibration issues are “intolerable,” rendering it difficult to sleep during periods of even moderately inclement weather. During an October 2020 meeting, Ressler directed that he wanted the noise issues remediated before he permanently moved into the Building, but the noise issues remain. These defects are so severe that some residents have been completely displaced from their units for periods in excess of nineteen months while the Sponsor half-heartedly attempted to fix the problems.

7. Sponsor also failed to account for the Building’s height and sway with respect to the elevator design. The elevators were programmed to slow down when high winds impact the Building. The elevators have also repeatedly shut down entirely, trapping residents and Unit Owner family members. On multiple occasions residents and family members have been trapped in elevators that have shut down for hours while awaiting rescue and Building residents have been left with non-functioning elevators, thereby denying them access to their residences.

8. Due to significant corners cut during construction and poor Sponsor oversight of contractors and professionals, the Building has also experienced multiple incidents of severe flooding and widespread water damage. Persistent water infiltration issues in the Building’s sub-levels have been treated with a band-aid approach by the Sponsor.

9. On a recent occasion, due to the failure of the Sponsor to—among other things—create, maintain and provide proper as built drawings and its failure to properly supervise contractors, a worker attempting another band-aid fix to the water infiltration issues drilled through concrete into the Building’s electrical wiring, causing an explosion, damaging the Building’s electrical supply, and cutting the feed to one of the Building’s chillers supplying air conditioning to many of the Building’s residents. The damage required immediate emergency repairs, including a shutdown of the Building’s electrical supply, and cost in excess of \$1.5 million. The Sponsor

refused to accept responsibility and immediately address the damage caused by the explosion, leaving the dangerous condition caused by the Sponsor's negligence in place for the Board to address while the Sponsor dickered with its contractors and insurance carriers over financial responsibility for the incident. Incredibly, this was the second arc-flash explosion to occur at the Building in the past three years under the Sponsor's watch.

10. The Sponsor has also improperly withheld material information. The Unit Owners looked to the Sponsor to fulfill its obligations to commission and deliver comprehensive engineering reports on the state of the Building. The Sponsor refused to provide to the Unit Owners any such information or reports. Repeated demands for this information were rebuffed by the Sponsor from May 2019 to the present day. In early 2019, residential owners were forced to commission and pay for an independent engineering report.

11. The results were shocking and disturbing. The Board's engineering consultant has identified over 1,500 individual construction and design defects affecting the residential and commercial common areas, many of which are described as life safety issues. The recent arc flash explosion was caused in part by the Sponsor's failure to remediate one such issue and could have been avoided had the Sponsor agreed to mark the locations of electrical wiring buried in concrete in the sub-levels of the Building as identified by the engineering consultant.

12. Shockingly, the Sponsor has refused to accept responsibility for the vast majority of its errors, shamelessly seeking to foist the costs of repairs back onto the Unit Owners for defects that have existed from the beginning. Meetings between the Boards' professionals and Sponsor representatives have been fruitless. The Sponsor has consistently acted in bad faith, attempting to use the meetings to improve its litigation position, rather than actually addressing the defects identified in the engineering report. Even for the defects which it has conceded are its

responsibility, the Sponsor has failed to make repairs. The Sponsor recently claimed to have repaired hundreds of these defects, but a review of the engineering consultant found *only nine* repaired, with many of the purportedly repaired defects untouched and in their original defective condition.

13. When the Condominium Unit Owners asked about the various construction and design flaws in the Building that resulted in breakdowns, failures, leaks, floods, and other dangerous and vexing problems, the Sponsor engaged in a calculated, deliberate strategy to employ delaying tactics, deceptive practices, the withholding of vital information in violation of contract and ethics, and the employment of cheap, shoddy materials and methods to perform perfunctory temporary fixes to chronic serious problems in the Building, leaving the Building with flimsy, short-term, inadequate elements while claiming to have provided durable solutions. These offensive actions serve the Sponsor's explicit purpose to shirk its responsibilities and its transparent attempt to shift Sponsor costs and expenses onto the Residential Owners.

14. Under the Condominium's Offering Plan, which is incorporated by reference into each Unit Owner's purchase agreement, correcting each and every one of these defects is the Sponsor's obligation. The Sponsor, however, has ignored its obligation and repeatedly ignored or rejected written pleas and demands for repairs. In meetings between the Board's consultants and the Sponsor's consultants established to attempt to address the Building's many issues, the Sponsor has used the meetings as an opportunity to prepare litigation strategy, identifying legal excuses to avoid responsibility, rather than working in good faith to fix the many problems with the Building it turned over to the Board.

15. After years of attempting to spur Sponsor and the Individual Defendants—through the Sponsor-controlled Board of Managers—to action, it is abundantly clear to the Unit Owners

that the Sponsor is ignoring these legitimate problems and has no intention of spending the millions of dollars necessary to remedy the Building's serious design and construction defects.

16. The Sponsor's failures to remedy the defects in its own construction and design of the Building are a flagrant and intentional breach of the terms of the Offering Plan. The Individual Defendants' repeated refusals to even attempt to hold Sponsor accountable are equally flagrant violations of their fiduciary duties to act in the best interest of the Condominium and Unit Owners, which these defendants subordinated to the Sponsor's pecuniary interest.

17. The Sponsor has also systematically siphoned off the Unit Owner's purchase payments, distributing massive amounts of funds to CIM and investors as "profits" before actually remediating its defective construction of the Building. The Sponsor then depleted the Building's working capital to pay for the repairs it has addressed, forcing the new Board to collect additional funds from Unit Owners to address the many other defects left behind by the Sponsor. As a result of these distributions, the Sponsor is likely grossly undercapitalized and will be unable to satisfy its obligations after Plaintiffs' successful completion of this lawsuit.

18. In addition to the Sponsor's refusal to honor its obligations, it has attempted to interfere with the governance of the building by the Condominium Owners and their duly elected Residential Board, even after the lawful transition of Board control. For instance, on April 15, 2021, the Sponsor addressed a letter by email to all of the Residential Unit Owners of the 432 Park Condominium, to undermine the Board's effort to take action to hold the Sponsor accountable for the construction and design flaws. The email made numerous false claims about the Board's handling of the issues subject to this Complaint. The Sponsor also sought to prevent the Board from implementing a Special Assessment to fund the engagement of the professionals needed to address the Sponsor's failures.

19. This lawsuit seeks to hold all defendants responsible for their contractual and fiduciary obligations to provide a building conforming to the Offering Plan and all applicable building codes, and compensate the Plaintiffs for all of the costs, expenses and damages they have and will incur repairing the numerous construction defects affecting the Building.

PARTIES

The Condominium Board

20. The Condominium Board is the Board of Managers of the Condominium, a Condominium organized pursuant to Article 9-B of the Real Property Law of the State of New York, located at 432 Park Avenue, New York, New York.

21. The Board brings this action on its own behalf and, pursuant to Real Property Law § 339-dd, on behalf of the Unit Owners in the Condominium.

22. The causes of action contained herein relate to the Common Elements of the Residential Section of the Condominium and the Common Elements of the Commercial Section, and concern matters of common interest to the Residential and Commercial Unit Owners.

The Residential Board

23. The Residential Board is a sub-board of the Condominium that manages the operation and affairs of the Residential Section of the Condominium

24. Under the Offering Plan, the Residential Board is responsible for enforcing the obligations of the Sponsor on behalf of all Residential Unit Owners. (Offering Plan at 117).

The Commercial Board

25. The Commercial Board is a sub-board of the Condominium that manages the operation and affairs of the Commercial Section of the Condominium.

26. The Commercial Board is likewise responsible for enforcing the obligations of the Sponsor on behalf of all Commercial Unit Owners.

Defendants

27. Defendant 56th And Park (NY) Owner, LLC is a limited liability company duly organized under the laws of the State of Delaware.

28. Defendant Charles Garner is a natural person who, upon information and belief, works for the Sponsor's parent company CIM, resides in California, and has a business address c/o CIM Group, 4700 Wilshire Boulevard, Los Angeles, California. Garner was appointed by the Sponsor to serve on the Residential Board of Managers of 432 Park Avenue Condominium and served on the Board from March 23, 2016 to November 30, 2020.

29. Defendant Ryan Harter is a natural person who, upon information and belief, works for the Sponsor's parent company CIM, resides in California, and has a business address c/o CIM Group, 4700 Wilshire Boulevard, Los Angeles, California. Harter was appointed by the Sponsor to serve on the Residential Board of Managers of 432 Park Avenue Condominium and served on the Board from March 23, 2016 to June 25, 2020, and from November 30, 2020 to the present.

30. Defendant Devon McCorkle is a natural person who, upon information and belief, works for the Sponsor's parent company CIM, resides in California, and has a business address c/o CIM Group, 4700 Wilshire Boulevard, Los Angeles, California. McCorkle was appointed by the Sponsor to serve on the Residential Board of Managers of 432 Park Avenue Condominium and served on the Board from March 23, 2016 to December 22, 2020.

31. Defendant Jeff Mack is a natural person who, upon information and belief, works for the Sponsor's parent company CIM, resides in California, and has a business address c/o CIM Group, 4700 Wilshire Boulevard, Los Angeles, California. Mack was appointed by the Sponsor

to serve on the Residential Board of Managers of 432 Park Avenue Condominium and served on the Board from March 23, 2016 to June 2, 2018.

32. Defendant Harold Macklowe is a natural person who, upon information and belief, owns or works for the business known as Macklowe Properties, resides in New York City, and has a business address c/o Macklowe Properties, 767 Fifth Avenue, New York, New York. Macklowe was appointed by the Sponsor to serve on the Commercial Board of Managers of 432 Park Avenue Condominium and served on the Board from June 2016 to November 2020.

33. Defendant Jerry Thomas is a natural person who, upon information and belief, works for the Sponsor's parent company CIM, resides in California, and has a business address c/o CIM Group, 4700 Wilshire Boulevard, Los Angeles, California. Thomas was appointed by the Sponsor to serve on the Residential Board of Managers of 432 Park Avenue Condominium, and served on the Board from June 2, 2018 to November 19, 2020.

34. Defendant Terry Wachsner is a natural person who, upon information and belief, works for the Sponsor's parent company CIM, resides in California, and has a business address c/o CIM Group, 4700 Wilshire Boulevard, Los Angeles, California. Wachsner was appointed by the Sponsor to serve on the Residential Board of Managers of 432 Park Avenue Condominium and served on the Board from March 23, 2016 to January 16, 2018.

JURISDICTION AND VENUE

35. This Court has jurisdiction over Defendants pursuant to CPLR §§ 301 and 302.

36. Venue is proper in this Court pursuant to CPLR §§ 503 and 507, as Plaintiffs' residence and the property at issue are located in New York County.

FACTUAL BACKGROUND

“The Building of the 21st Century”

37. Plans to construct the Building started in 2006 when Harry Macklowe and Macklowe Properties purchased and demolished the former Drake Hotel, with the intention of developing the property into the tallest residential building in the world.

38. After defaulting on a loan used to purchase the Drake Hotel, Mr. Macklowe sold the land to Sponsor, an entity backed by CIM Group—a Los Angeles based real estate development firm—in 2010. Macklowe and his company, McGraw Hudson, remained a partner in the construction and development project with CIM and acted as the development partner.

39. Altogether, Sponsor acquired title and/or developments rights to several adjoining parcels of land, together with certain appurtenant air rights, consisting of approximately 34,470 square feet of land located at 432 Park Avenue, New York, New York (the “Property”).

40. Thereafter, Sponsor demolished all the improvements on the Property in order to construct the Building.

41. Architect Rafael Viñoly was hired to design the Building, a soaring, ultraluxury tower situated in Manhattan’s “Billionaire’s Row” designed to become one of the tallest residential buildings in the world.

42. The design of the Building—a slender, square-shaped structure tower with over 1,396 feet in height was subject to much publicity. Praising the Building’s design, Macklowe exclaimed in the *Times*, “This is the building of the 21st century, the way the Empire State Building was the building of the 20th century.”¹

¹ See <https://www.nytimes.com/2013/05/19/nyregion/boom-in-luxury-towers-is-warping-new-york-real-estate-market.html>

43. Designing a building with these dimensions, however, was not without engineering difficulties. Among them were the required accommodation for building sway—the movement resulting from the flexibility required for a tower of this height—and the stacking effect, referring to the air pressure that builds up in very tall elevator shafts resulting from the movement of elevator cars pushing air upward and downward and the need to precisely plan for the flow and release of air to avoid interference with elevator doors, hallway, stairwell, and residential unit doors, cables, and electronic and plumbing equipment, and to avoid rattling and noise throughout the Building.

The Offering Plan

44. On or about December 21, 2011, Sponsor submitted a Condominium Offering Plan for the 432 Park Condominium, which was accepted for filing on July 17, 2012, which detailed the layout and organization of the Building, which was to consist of 147 residential units, 59 storage closets, 18 wine cellars, 12 office units, a club unit, three retail units, and a garage unit, with the residential units offered at an initial sale price of \$2,361,408,800 and the aggregate initial offering price totaling \$2,400,422,875.²

45. The Offering Plan promises luxury amenities such as a private dining room; restaurant for the exclusive use of the residents of the Building; a health club consisting of a fitness center, pool, sauna, steam room, massage room; and a 46 spot parking garage.

46. Sponsor was at all relevant times the sponsor of the Condominium and was responsible for contracting and supervising the construction of the Building.

47. Sponsor presented the Condominium Offering Plan and all amendments thereto (collectively, the “Offering Plan”) to prospective purchasers, all of whom relied on the Offering Plan, marketing materials, and statements by Sponsor and its duly authorized agents, including the

² The total offering price fluctuated over the course of the next several years, as the Offering Plan was from time to time amended.

Sales agents identified in the Offering Plan and amendments as Macklowe Properties and Douglas Elliman in determining whether to purchase units in the Condominium.

48. The Declaration of Condominium, dated September 25, 2015, establishing a plan of ownership of the Property under Article 9-b of the Real Property Law of the State of New York, was recorded and filed in the office of the City Register.

49. The Offering Plan was declared effective pursuant to the Seventeenth Amendment and was accepted for filing on October 14, 2015.

50. According to the Offering Plan, Sponsor anticipated to complete construction of the Building in or about July 2015.

51. Each purchaser of a Unit executed a Purchase Agreement (“Purchase Agreement”), with the Sponsor as seller. The Purchase Agreements expressly provide that the Offering Plan and any amendments thereto are incorporated by reference with the same force and effect as if set forth therein.

52. All the Sponsor’s obligations under the Offering Plan are thus incorporated into each individual Unit Owner’s Purchase Agreement.

53. Under §17 of the Offering Plan, “Sponsor is obligated to complete the construction of the Building substantially in accordance with the provisions of this Plan, all applicable Legal Requirements and the Descriptions of the Property and Specifications[.]” The Plans and Specifications are annexed as Exhibit 6 to Part II of the Offering Plan.

54. With respect to noise and vibration emanating from mechanical equipment located on equipment floors and equipment areas of the Building, Sponsor is obligated to install and operate such “in a manner consistent with commercially reasonable practices in typical luxury

high-rise residential or mixed-use buildings and in compliance with applicable Legal Requirements, including the New York City Building Code.”

55. Sponsor and its principal, defendant Garner, explicitly certified and represented in the Offering Plan that the Offering Plan did not knowingly contain any false statement of fact or knowingly omit any material fact and that all statements and representations made therein were true:

We jointly and severally certify that the offering plan does, and that documents submitted hereafter by us which amend or supplement the offering plan will:

1. set forth the detailed terms of the transaction and be complete, current and accurate;
2. afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;
3. not omit any material fact;
4. not contain any untrue statement of material fact;
5. not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretend purchase or sale;
6. not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances; and
7. not contain any representation or statement which is false, where we:
 - (a) knew the truth;
 - (b) with reasonable effort could have known the truth;
 - (c) made no reasonable to ascertain the truth; or
 - (d) did not have knowledge concerning the representation or statement made. (Offering Plan, Ex. 14A).

56. Sponsor and Garner further certified that they have primary responsibility for compliance with the provisions of Article 23-A of the General Business Law, the Regulations of the Attorney General in Part 20, and such other laws and regulations of the Attorney General Part 20, and such other laws and regulations as may be applicable, and that they read the entire Offering Plan and investigated the facts set forth therein.

Organization of Condominium Boards

57. Under the Offering Plan and the Declaration, although “the affairs of the Condominium are vested in the Condominium Board,” a separate board of managers—a 5 member Residential Board—was vested with “the power and authority to govern the affairs of the Residential Section.” (Offering Plan at 5).

58. One of the Residential Board’s chief obligations is to “make determinations with respect to all matters relating to the operation and affairs to the Residential Section including, among other things, (i) the operation, care upkeep and maintenance of, the making of “Alterations” to, and the making of “Repairs” of, the Residential Limited Common Elements “in the condition and otherwise in such manner that maintains standards of quality, service and appearance which are appropriate for a luxury residential condominium,” (ii) commencing litigation to the extent relating to the Residential Section, and (iii) operating, maintaining and supervising the “Residential Limited Common Elements in accordance with the Condominium documents. Residential Bylaw §2.2 (a), (r), & (s).

59. Likewise, the Condominium Board is entrusted to make "determinations and take actions with respect to all matters relating to the operation and administration of the affairs of the Condominium" including, among other things, (i) the operation, care, upkeep and maintenance of, the making of "Alterations" to, and "Repairs" of, the "General Common Elements" and, to the extent provided in the Condominium documents, the "Limited Common Elements," and (ii) commencing, prosecuting and settling litigation and arbitration proceedings against third parties. Condo By- Laws §2.2.2 (a)&(p).

60. The Condominium Board was to consist of the 5 member Residential Board, plus 2 members designated by the Commercial Section.

61. The Offering Plan provided Sponsor with several years of control of the Residential Board through the ability to designate the majority of its members

“until the later of: (i) the fifth anniversary of the first closing of title to a Residential Unit Sponsor pursuant to an Agreement (the “First Closing”); or (ii) the closing of title to Residential Units representing more than ninety percent (90%), both in number and in aggregate common interests, of all Residential Units (the “Initial Control Period”).”

62. At first, Sponsor was entitled, under the Offering Plan, to appoint all 5 members of the Residential Board. Sponsor made the designation after the recording of the Declaration and before the March 23, 2016 meeting of the members of the Board of Managers of the Residential Section and designated Garner, Harter, McCorkle, Mack, and Wachsner (the “Initial Board”).

63. Pursuant to the Offering Plan, at the First Annual Residential Meeting on or about January 16, 2018 the initial Residential Board Members resigned and a new Residential Board was installed, with four out of the five members of the Residential Members—Garner, Harter, McCorkle, and Mack -- selected by Sponsor (the “Sponsor Controlled Residential Board”), and one member—Howard Lorber—selected by the Residential Unit Owners, Sponsor, and Unsold Residential Unit Owners, as that term is defined in the Offering Plan.

64. During this Initial Control Period, which lasted from the Condominium’s inception on September 25, 2016 to November 19, 2020, the Residential Board was not permitted to make decisions on behalf of the Condominium without prior written consent of Sponsor except under very limited circumstances.

65. The Sponsor-controlled Residential Board remained in place until the expiration of the Initial Control Period on November 19, 2020, at which time a total of 3 of the 5 seats on the Residential Board were held by representatives elected by the Residential Unit Owners.

66. At all relevant times from March 23, 2016 to November 19, 2020, the Sponsor Controlled Residential Board consisted of the following Sponsor appointed members: Terry Wachsner (March 23, 2016 to January 16, 2018); Charles Garner (March 23, 2016 to November 30, 2020); Ryan Harter (March 23, 2016 to June 25, 2020, and November 30, 2020 to the present); Devon McCorkle (March 23, 2016 to December 22, 2020); Jeff Mack (September 8, 2016 to May 9, 2018); and Jerry Thomas (September 5, 2018 to November 19, 2020).

67. As of January 27, 2021, control of four of the five Residential Board seats was turned over to the Unit Owners; the remaining seat, currently held by defendant Ryan Harter, will be retained by Sponsor for as long as Sponsor still owns at least one Residential Unit.

Construction of the Building

68. Upon information and belief, on or about June 26, 2013, Sponsor entered into a construction agreement with Lend Lease (US) Construction LMB Inc. to manage the construction of the Building.

69. A partial Temporary Certificate of Occupancy was issued as of November 10, 2015.

70. A Temporary Certificate of Occupancy covering all residential units was first issued on December 29, 2016.

71. Construction was allegedly completed on or about December 23, 2015. However, some apartments and aspects of the Building were still under construction into 2016.

72. The Building topped out at 1,396 feet, making it the third tallest residential building in New York City today and, for a short while at least, the tallest residential building in the Western Hemisphere. The Building's 126 condominium units range from a 351-square-foot studio to an approximate 13,000 square-foot, six-bedroom, seven-bath penthouse with a library.

73. The structure of the completed Building is composed of a 30-foot square, reinforced concrete core with 30-inch-thick walls. The outer structural skin is composed of 3'8" wide columns and equal width spandrel beams of reinforced concrete that enclose the symmetric basket grid of window openings.

74. The completed amenities include double height ceilings, private dining and screening rooms, library, billiards room, gym, pool, spa and restaurant.

75. However, to date, other amenities promised in the Offering Plan still have not been provided.

76. The first closing on a Residential Unit occurred on December 22, 2015.

Pervasive Construction Defects Plague the Building

77. As Unit Owners began to move in and occupy their units, they soon discovered that, although the Building was billed as the pinnacle of luxury, the Building's construction severely missed the mark. Not only is the Building's construction defective under prevailing luxury standards, but it also presents significant safety issues.

78. At all times relevant to this action, and under the terms of the Offering Plan, Sponsor was responsible for ensuring that the Building was constructed in accordance with, at minimum, (i) the Offering Plan, (ii) applicable code and laws, (iii) the plans and specifications incorporated into the Offering Plan, and (iv) prevailing industry standards.

79. As members of either the Initial Board or the Sponsor Controlled Residential Board, the Individual Defendants owed fiduciary duties to act solely for the benefit of the Unit Owners and Condominium, and not for the personal benefit of third parties like the Sponsor. This obligation entails, among other things, ensuring the repair, maintenance, and replacement of defective common elements throughout the entire building.

80. Notwithstanding the representations made by Sponsor, the Building suffers from substantial defects, inadequate and negligent workmanship, and material deviations from: (i) the Offering Plan, (ii) applicable codes and laws, (iii) the plans and specifications incorporated into the Offering Plan, and (iv) prevailing industry standards.

81. Extensive evidence confirms that the Building has experienced material, systemic problems affecting the use and enjoyment, health, safety, and well-being of the Unit Owners.

82. All such defects were the responsibility of Sponsor. The Individual Defendants, in their capacity as Board members, had a fiduciary obligation to hold Sponsor and its agents accountable to correct these defects. Sponsor has defaulted on its obligations to correct these defects, and the Individual Defendants thumbed their noses at their fiduciary obligations to hold Sponsor accountable. Instead, the Individual Defendants placed their own pecuniary interest and the pecuniary interest of Sponsor above the interest of the Unit Owners and the Condominium, to whom a superior obligation is owed, by assisting Sponsor in its efforts to avoid millions of dollars in extensive repairs and remediation of defective construction, all of which Sponsor is legally obligated to perform.

Persistent Flooding and Water Infiltration

83. The Building has experienced repeated floods and leakage, including but not limited to two substantial leaks in November 2018. The first leak impacted the 60th floor and the second leak on the 74th floor caused water to enter elevator shafts, which halted two of the four residential elevators from service for weeks. Thirty-five units, as well as common areas, suffered water damage. An investigation revealed that the cause was poor plumbing installation, including loose bolts buried under insulation.

84. The persistent leak issues caused by the Sponsor's failure to properly supervise construction led to significant increases in the Building's insurance premiums, costs which, again, will now be borne by the Unit Owners.

85. In addition to leaks from pipes the Building has experienced persistent water infiltration issues in the sub-basement levels. The Sponsor has applied band-aid type fixes to the infiltration problems, and the water infiltration issues are worse today than when the Building first opened. The Sponsor has refused to consider more comprehensive, and more costly, efforts to address the water infiltration issues.

Noise and Vibration Issues

86. One of the most persistent and disruptive defects in the Building is obtrusive noise caused by construction defects that inadequately accounted for the sway of the Building that affects both common areas and individual units.

87. Apartments are plagued by creaking, banging, and clicking noises. Use of the trash chute is reported to sound "like a bomb."

88. The noise and vibration issues have been so severe that some Unit Owners have been forced to move out for lengthy periods, and in at least one case for over nineteen months – during a pandemic – while the issue is remediated. To date, Sponsor has, upon information and belief, failed to even solicit a professional third party opinion concerning the cause of the issue, let alone propose any remedial measures. If such an opinion has been obtained, Sponsor has refused to provide it to Plaintiffs, despite repeated requests.

89. Richard Ressler—Chairman of CIM, the entity that backs Sponsor, and a Unit Owner—acknowledged in a meeting with other Residential Unit Owners that he too experienced

“intolerable” noise and vibration issues that rendered it nearly impossible to sleep during periods of inclement weather.

90. Although Sponsor performed some remedial measures to correct its construction defects resulting in noise and vibration issues to address individual Unit Owner complaints, for many Unit Owners those measures have been ineffective.

91. Sponsor refused to commit the resources necessary to understand the scope of the noise and vibration problem, let alone adequately remedy it, as is Sponsor’s obligation under the Offering Plan, choosing instead to attempt unit-by-unit fixes that have been largely unsuccessful.

92. Despite relatively early knowledge of the noise issues, on information and belief, the Sponsor continued to sell units without advising the prospective purchasers that their units might need noise remediation after purchase.

Recurring Elevator Malfunctions

93. The Building continues to experience frequent and pervasive disruptions to its elevator services. While Elevator disruptions have been particularly pervasive in the Residential towers, all areas of the Building, including the retail area, garage, and commercial space, have experienced and continue to experience malfunctions and shutdowns. Even escalators in the commercial space have malfunctioned, requiring prolonged shutdowns.

94. In addition to the elevator malfunctions caused by water leaks described above, the elevator malfunctions are also caused by, upon information and belief, Sponsor’s sub-standard construction that result in wind conditions frequently disrupting the Building’s elevator operations.

95. On several occasions, Unit Owners have been trapped in elevator cars for hours until the problems reside.

June 3, 2021 Arc Flash Incident

96. On or about June 3, 2021, the Sponsor engaged Macklowe's company, McGraw Hudson, to oversee yet another attempt to address the pervasive water infiltration issues affecting the Building.

97. Undertaking one of its repeated band-aid attempts to address the infiltration issue, the Sponsor's contractor was drilling through the concrete foundation before applying a patch to try to stop the latest leak.

98. The contractor was not provided with as built drawings from the Sponsor to identify where it would be safe to drill.

99. Nor had the Sponsor adopted one of the recommendations of the Board's consultant, to permanently mark the locations of electrical wiring buried in the concrete.

100. While drilling through the floor, contractors cut into an electrical cable. This resulted in an arc flash explosion, which threw the contractor backward, several feet through the air. The arc flash caused an immediate power outage to some of the Building's residential units and completely shut down air conditioning services to an even bigger portion of the Building.

101. The arc flash required immediate rewiring of electricity to a chiller in the Building to ensure that cooling was not lost to residents during the heat of the summer, inconveniencing the residents as the Building's electrical supply was cut off during the repairs.

102. More repairs are needed, including identifying and replacing electrical wiring compromised by the arc flash. Until such repair is completed, the Building is at risk of further electrical shorts and the risks they entail. While the Sponsor has acknowledged responsibility for causing the arc flash incident, it has refused to pay for the repairs urgently required, instead pursuing its contractor and insurers to fund the repairs estimated to cost in excess of \$1,500,000.

Other Defects

103. Other issues experienced as a result of Sponsor's shoddy construction include but are not limited to highly visible cracks in the drywall of many ceilings, highly visible cracks above doorways, highly visible cracks where walls meet ceilings, air and water leaks at windows, baseboard pulling and misaligned joints, malfunctioning sliding doors, grout joint openings and cracking at walls or floors in ceramic and/or stone tiling, excessive fog and window condensation, gaps and misalignment between wall and ceiling light fixtures, and repeated circuit breaker tripping.

104. Additionally, the Building has received an energy efficiency rating of a D—the lowest possible score for Buildings that submit the requisite data—from the City of New York. Upon information and belief, this score was the result of Sponsor's poor design, many construction defects and the mismanagement by the Sponsor Controlled Board.

105. The shockingly poor energy efficiency rating, in a newly constructed Building touted as an ultra-high quality modern marvel, has adversely affected the value of the Building, and the value of the units in the Building.

SBI Reports

The Residential Report

106. In order to fully assess the extent of these construction defects, a committee of concerned residents retained SBI Consultants, Inc., a well-respected firm experienced with projects such as 432 Park to catalogue the defects and offer recommendations for remediation.

107. SBI conducted a thorough visual review and assessment of the Building's mechanical, electrical, plumbing, fire protection, exterior/envelope, interior, and elevator systems. SBI additionally provided observations with regards to noise mitigation and energy efficiency.

108. Critically, the SBI report excluded all defects and non-conforming items relating to normal wear and tear.

109. After conducting its analysis, SBI identified a staggering total of 1,237 observed defects that either fail to conform with Sponsor's construction documents, fail to meet life safety standards, fail to meet industry standards, or represent code violations in common areas of the Building. These defects include defects specific to residential sections of the Building, and defects affecting both the residential sections of the Building and the commercial sections of the Building

Structural/Envelope System

110. SBI identified 305 observed defects in the Building's Structural/Envelope system, broken down as follows (some defects are included in multiple categories):

Description	Count	% of Total Observations
Total Observations	305	
Total not in conformance with construction drawings	157	51%
Total Life Safety Issues	26	9%
Total not in conformance with industry standard	79	26%
Total code violations	247	81%

111. Defects to the structural and envelope system include but are not limited to severely damaged stainless steel on the out-rigger beams on the drum floors; issues with the roofing membrane; ongoing below grade leaks; leaks at interface to louver penetration; defective fasteners on exterior cladding leaving potential points of water infiltration; air pockets underneath the surface waterproofing potentially causing water leaks; missing flashing, waterproofing, and fasteners; materials with different rates of expansion potentially causing cracked walls; improper water proofing connections between outrigger beams and walls; comprised air vapor barriers and discontinuous sealant; missing insulation; and concrete spalling.

Mechanical/Electrical & Plumbing Systems

112. SBI identified 769 observed defects in the Building's Mechanical/Electrical and Plumbing Systems, broken down as follows:

Description	Count	% of Total Observations
Total Observations	769	
Total not in conformance with construction drawings	609	79%
Total Life Safety Issues	241	31%
Total not in conformance with industry standard	588	77%
Total code violations	176	23%

113. With respect to the mechanical, electrical, and plumbing systems, SBI discovered that the following features, among others, were not installed in conformance with the contract documents: piping supports in almost all mechanical equipment rooms and hot water circulating pumps and other equipment supports.

114. Hydronic pumps on all mechanical equipment room floors are missing cyclone separators for flushing water to protect mechanical seals from failing due to small particles within water.

115. Fire pumps, temper valves, gas valves, strainers, and domestic water tanks were all found to have been either blocked or inaccessible.

116. Other issues include but are not limited to improper fire barriers, missing insulations, inconsistent plumbing hardware, and sprinkler head issues.

Architectural/Interiors

117. SBI identified 104 observed defects in the Building's architectural and interiors systems, broken down as follows:

Description	Count	% of Total Observations
Total Observations	104	

Total not in conformance with construction drawings	6	6%
Total Life Safety Issues	77	75%
Total not in conformance with industry standard	14	13%
Total code violations	7	7%

118. SBI's inspection of the interiors revealed joints between dissimilar materials in need of correcting to allow for expansion and contraction related to normal movement within the Building. This remedial work would, according to SBI, prevent both visual cracks and water infiltration.

119. Moreover, SBI identified that interior anchoring systems are required to be installed within the walls of units to allow for proper movement to mitigate noises generated by dissimilar materials.

120. SBI also identified failed waterproofing in several locations at mechanical rooms.

Elevator/Vertical Systems

121. SBI identified 19 observed defects in the Building's elevator and vertical systems, broken down as follows:

Description	Count	% of Total Observations
Total Observations	19	
Total not in conformance with construction drawings	5	26%
Total Life Safety Issues	1	5%
Total not in conformance with industry standard	13	68%

The Commercial Report

122. The commercial unit owners likewise commissioned SBI to examine and report on the existence and extent of construction defects specific to the commercial sections of the Building. SBI issued a report dated April 6, 2001 and revised that report on or about August 4, 2021.

123. The SBI commercial report, like the report prepared for the Residential Board, identified numerous construction defects that require immediate attention. To date, the vast bulk of these defects have not been addressed. SBI has estimated repairs for a portion of these construction defects at approximately \$5,000,000.

The Sponsor Controlled Board Refuses to Remedy the Defects

124. The Sponsor, through the Initial Board and Sponsor Controlled Residential Board, controlled the Residential Board from Building opening through January 27, 2021, when Board members elected by the Residential Unit Owners assumed a majority of the positions on the Board, holding four of the five positions.

125. Sponsor and the Individual Defendants—as affiliates of the Sponsor and members of the Initial Board and Residential Board—knew or had reason to know of the material defects in the Building before the closing of the Units took place but did not disclose such defects to prospective Unit Owners or take measures to address the defects, in dereliction of their respective contractual and fiduciary duties.

126. Unit Owners only discovered these defects after purchasing and occupying their units and could not have, through the exercise of reasonable diligence, discovered the existence of these defects in the construction of the Building that plague both individual units and common elements.

127. For years, a concerned group of Unit Owners attempted to persuade Sponsor to satisfy its obligations under the Offering Plan to repair the above construction defects, including but not limited to noise and vibration issues, water leaks, and elevator failures.

128. At almost every turn, the Sponsor Controlled Residential Board protected the pecuniary interest of Sponsor and refused to hold Sponsor accountable for the Building's severe construction defects.

129. Throughout 2018 and 2019, the Sponsor Controlled Residential Board failed to properly investigate repeated and serious Building design and construction defects, including but not limited to flooding, fire and electrical system failures, elevator failures resulting in residents being trapped in between floors, and persistent construction defects related to excessive noise and vibration.

130. Without explanation, discussions regarding the construction, operation, and Board management of the Building were frequently terminated by the Individual Defendants, acting through the Sponsor Controlled Residential Board on behalf of Sponsor.

131. Additionally, in violation of the Sponsor Controlled Residential Board's obligations to provide Condominium records to unit owners, the Sponsor Controlled Residential Board refused numerous record requests, including but not limited to requests for historic engineering reports.

132. In further violation of New York law, the Sponsor Controlled Residential Board refused to provide a concerned group of unit owners the names and contact information for other unit owners in order to discuss the issues plaguing the Building.

The Sponsor Controlled Board Raises Common Charges

133. In or about April 2019, Residential Unit Owners received common charge statements with an approximate 39% increase.

134. Upon information and belief, one of the chief reasons for this increase is that, under the management of the Sponsor Controlled Residential Board, the Condominium's property insurance premiums increased by approximately 300%.

135. The Board has retained an expert insurance consultant to determinate the source of the increase in insurance premiums.

136. The expert determined that the procurement of insurance coverage for the Building had been egregiously mismanaged by the Sponsor Controlled Residential Board, adding greatly to the costs passed on to the Unit Owners while actually reducing coverage to the point where the Building was seriously underinsured for more than a year.

137. Further, flooding, fire, elevator failure, and various other construction and design-related damages resulted in large insurance claims that caused the Building's insurance premium costs to rise excessively.

138. The Sponsor Controlled Board's mismanagement has also impacted the Building's exclusive restaurant. Unit Owners were sold their units based on a representation that the Building would house its own high-quality restaurant featuring a Michelin-rated chef. Initially, Unit Owners received free breakfast and were required to spend \$1,200 annually at the restaurant. As of 2021, breakfast is no longer free, and Unit Owners are required to spend \$15,000 per year—a more than 1,200% increase, to subsidize the restaurant's operation.

139. These astronomical increases in common charges and numerous incidents of gross mismanagement by the Board compelled the Residential Unit Owners to retain the accounting firm Mazars to perform a full audit of all expenses relating to operations to date.

The Sponsor Controlled Residential Board Attempts to Delay Turnover of the Residential Board to Unit Owners

140. On November 19, 2020 the Initial Control Period terminated with the election by Residential Unit Owners of 3 of the 5 seats on the Residential Board.

141. But the Individual Defendants, acting through the Sponsor Controlled Residential Board, had delayed the election in order to further protect the interests of the Sponsor in light of the pervasive construction defects that were apparent in the Building.

142. Indeed, on September 22, 2020, the eve of a scheduled election to fill a Sponsor Controlled Residential Board seat, Sponsor members unilaterally cancelled the scheduled election over Unit Owners' written objections.

143. At or around the same time, Sponsor was developing and subsequently proposed an "Election Process Amendment" that would, if adopted, permit Unit Owners to cast only a single vote—rather than separate votes—for Residential Board vacancies. This would enable candidates representing a small fraction of votes to be elected and, together, control the Board to override decisions of the members elected by the majority of Residential Unit Owners.

144. Sponsor also proposed a "Term Length Amendment" that would, if adopted, reduce the term length of each seat on the Board. It was apparent that Sponsor was attempting to dilute the ability and continuity of efforts to install an independent Board to enforce the Plan.

145. After much deliberation, it became apparent to Unit Owners that Sponsor and the Individual Defendants were attempting to delay the transition of the Residential Board to Unit Owner control and further insulate Sponsor from its obligations to repair the Building's construction defects.

146. Turnover of control of the Residential Board to Unit Owners finally occurred on or about January 27, 2021.

Sponsor Refuses to Remedy the Defects Identified in the SBI Report

147. Sponsor was tendered a preliminary SBI report provided to the Residential Board in or about July 2020.

148. The preliminary report identified numerous instances of Sponsor's construction – whether relating to mechanical, electrical and plumbing systems, building exteriors/structural/envelope, interiors, and elevator/vertical systems – failing to conform with contract specifications, posing life safety issues, and failing to conform with industry best practices affecting common areas of the Building specific to the residential section as well as common areas affecting both the residential and commercial sections of the Building.

149. After receiving SBI's preliminary report, Sponsor claimed that it was not responsible for approximately half of the issues of concern identified by SBI.

150. Worse yet, even where Sponsor allegedly agreed to accept responsibility for certain issues, it refused to provide information about such remedial work and permit SBI to approve and oversee the scope of remedial action, and although Sponsor claimed that it performed a variety of remedial measures it has refused repeatedly to provide any documentation or proof of its remediation.

151. This course of conduct continued after Sponsor received the final SBI report in or about December 2020. Despite identifying over 1200 construction defects that Sponsor is obligated to repair under the Offering Plan, Sponsor only responded to a handful of the items listed in the final SBI report.

152. Sponsor purported to have “completed” more than 100 items listed in the SBI report, and purportedly planned to complete 75 more items. However, Sponsor has not identified which items it was referring to, nor did Sponsor explain what “completing” an item means.

153. Moreover, Sponsor alleged that 175 items on the SBI report should have been classified as normal wear-and-tear and thus not a construction defect under the Offering Plan. Sponsor, however, has failed to identify which items it was referring to or provide any form of support for its assertions.

154. Sponsor further objected to SBI's definition of life safety issues as overbroad but listed only a few examples of purported overbreadth while ignoring the hundreds of other life safety issues identified in the report.

155. To date, Unit Owners know of few, if any, remedial measures performed by Sponsor, despite Sponsor being on written, actual, and constructive notice of each and every defect plaguing the Building.

156. To the extent any such remedial measures have been performed, they have not been effective, as the construction defects identified by SBI in its preliminary report and final report still plague the Building.

157. The hazardous, defective, and non-conforming conditions in the Building remain unresolved and continue to deteriorate; these conditions increasingly pose a risk to the health, safety, use, enjoyment, and well-being of Unit Owners, while jeopardizing the integrity of the Building.

158. In all, Sponsor ignored and failed to address most of the items listed in the SBI report and, upon information and belief, does not intend to remedy many of the construction defects listed therein.

159. In an attempt to avoid litigation and resolve the defects, the Board asked its engineering consultant SBI to begin meeting regularly with the Sponsor's representatives to

discuss the defects, and Sponsor's response to them, fronting these costs necessitated by the Sponsor's failures.

160. The meetings have gone poorly. It became clear that the Sponsor had no intention of reconsidering its decisions as to its responsibility for defects identified in the SBI report, despite SBI repeatedly explaining why the defects required repair and were the Sponsor's responsibility.

161. Further, for the repairs the Sponsor did agree to undertake, as it reported repairs were completed, SBI went back to review the work. SBI found in many cases that despite reporting specific items as completed, the Sponsor had not even begun work to address those issues, as was shown by photos indicating that the defects were in the same condition as first examined.

162. The defects identified in the SBI report prepared for the Commercial Board also remain largely unaddressed.

Sponsor Obstructs Plaintiffs' Efforts to Remediate Sponsor's Construction Defects By Failing to Provide Copies of Critical Construction Documents

163. Sponsor's bad faith refusal to correct its construction defects has forced Plaintiffs to perform certain corrective work at its own cost.

164. To adequately perform this work and further assess the extent of Sponsor's construction defects, Plaintiffs and their contractors and professionals need copies of routinely distributed construction documents from Sponsor's contractors and design professionals, including but not limited to contractor change orders, as-built drawings and surveys, warranty documentation for construction materials and Building components, and more. Among other things, these critical documents depict how the Building was actually built and what specific materials were used, as opposed to how the Building was initially intended to be built.

165. To date, Sponsor has failed to provide copies of these documents, despite multiple demands from Plaintiffs and their attorneys over a nearly two-year period.

166. Without copies of these documents, Plaintiff's contractors and professionals cannot efficiently perform routine maintenance work, let alone efficiently remedy Sponsor's defects.

Sponsor's "Value Engineering" Has Compromised Building Systems and Passed On Outrageously High Maintenance Costs to the Unit Owners

167. The Board has learned that the Sponsor engaged in several actions designed to provide the Sponsor short term construction savings, while creating massive ongoing expenses for the Unit Owners.

168. In one egregious example, the Sponsor negotiated a lower cost up front contract with Schindler Elevator Corporation ("Schindler")—the elevator subcontractor—for the design and installation of the Building's troubled elevators, in exchange for a long-term maintenance contract at higher than industry standard rates, effectively transferring the costs of construction to the unit owners.

169. Moreover, the Sponsor allowed Schindler to install proprietary equipment and software in the defective elevators which render it exorbitantly expensive to replace Schindler for the Building's ongoing elevator maintenance needs. The elevator performance has been so riddled with breakdowns that the Board may have to incur such costs to bring in competent professionals to ensure reasonable functionality from the elevator systems in the future.

170. Further, on the drum floors designed to house Building systems and allow the passage of air through the Building to reduce the impact of wind pressures on the Building, the Board has learned that the Sponsor installed cheap, inadequate, "under-engineered" railings which have been and are expected to continue failing far before their warranted period, rather than the slightly more expensive stainless steel railings necessary to withstand the conditions, once again shifting the construction costs onto Unit Owners in the form of what will likely be frequent repairs, rather than installing adequate railings in the first instance. The latest recommendation from the

Sponsor's engineering consultant to address that under-design was to use duct tape to tie failing sections of the railings on the drum floors -- dozens of floors and hundreds of feet up from the ground to railing sections that have not yet failed. To ensure the success of this approach, the consultant recommended that Gorilla brand duct tape be used.

171. Additionally, the Sponsor skimmed on common sense improvements that would have cost little to install, but which now will cost the Building significantly in ongoing expenses, by, for example, failing to include VFD drives on chillers and rotating equipment, causing equipment to run at full speed or not at all, leading to equipment frequently tripping offline. The Sponsor also failed to locate valves in accessible locations, or to install access platforms and ladders needed to service equipment, creating more costly – and more dangerous – conditions for workers servicing equipment.

172. The Sponsor also took the cheapest route with the Building's electrical feed, including only one main feed into the Building, which results in electrical outages whenever work related to that feed must be performed. Further, the original electrical feed was woefully inadequate and has required costly upgrades as new commercial tenants have entered the Building and electrical needs have exceeded the insufficient capacity provided in the Sponsor's original designs.

173. These and many items reflect conscious decisions by the Sponsor to build its purportedly top end, ultra-luxury Building as cheaply and as possible without regard to efficiency, and to foist the resulting increased costs of maintenance and repairs on to the Unit Owners, all in contravention of prevailing industry standards.

CLAIMS FOR RELIEF**Count I****(Breach of Contract against Sponsor– Condominium Board, Residential Board and Commercial Board)**

174. Plaintiffs restate and reallege the allegations set forth in Paragraphs 1 through 173 of this Complaint as if fully set forth herein.

175. The Purchase Agreements for the Units incorporate by reference all promises, representations, statements, warranties, reports, opinions, plans and specifications, as set forth in the Offering Plan.

176. In the Offering Plan, as incorporated in the Purchase Agreements, Sponsor promised and represented that the Building would be constructed with a quality of construction comparable to currently prevailing local standards, in accordance with the Plans and Specifications filed with the New York City Department of Buildings, and in accordance with applicable legal requirements including but not limited to then-existing environmental laws.

177. As set forth at length in the preceding paragraphs, the Building as delivered to Unit Owners was neither constructed nor designed in conformance with promises and representations contained in the Offering Plan. Numerous defects exist in the common areas affecting both the residential and commercial sections of the Building

178. Sponsor has refused to adequately remedy the defects as listed above.

179. Sponsor permitted these defects to be concealed, failed to disclose these problems and deficiencies in the Offering Plan or marketing materials and warranted that the Building was free of defects and compliant with the plans and specifications and applicable building codes.

180. Sponsor's design and construction failures, and its refusal to adequately remedy same, amount to breaches of its obligations under the Purchase Agreements and the Offering Plan as incorporated into the Purchase Agreements.

181. Because of Sponsor's material breach of its contractual obligations, Plaintiffs and Unit Owners (both residential and commercial), on whose behalf Plaintiffs bring this action, have suffered and will continue to suffer substantial damages that resulted from and will continue to result from these design and construction defects.

182. By reason of the foregoing, Plaintiffs and the Unit Owners (both residential and commercial), on whose behalf Plaintiff brings this action, have suffered and will continue to suffer damages in an amount to be determined at trial, but believed to be in excess of \$100,000,000.

Count II
(Breach of Fiduciary Duty against Individual Defendants
– Condominium Board, Residential Board and Commercial Board)

183. Plaintiffs restate and reallege the allegations set forth in Paragraphs 1 through 182 of this Complaint as if fully set forth herein.

184. For the duration of their service on the Residential Board and Commercial Board, the Individual Defendants, as members of the Initial Board, and/or Sponsor Controlled Residential Board, and/or Sponsor-controlled Commercial Board, owed fiduciary duties to the Condominium and individual Unit Owners, both residential and commercial.

185. As members of the Residential Board, the Individual Defendants owed duties to act in the interest of and protect the Condominium and Unit Owners (both residential and commercial) through their management of the Building and coordination with Sponsor.

186. Rather than act out of loyalty or duty to the Condominium and Unit Owners (both residential and commercial), the Individual Defendants ran the respective Boards for the benefit

of Sponsor and their pecuniary interests, as affiliates of Sponsor, including but not limited to failing to adequately investigate and remedy the Building's various design and construction defects.

187. The acts and omissions of the Individual Defendants in their capacity as members of the Residential Board and Commercial Board, as more particularly alleged and described above, constitute a breach of their fiduciary duties owed to the Condominium and its Unit Owners (both residential and commercial).

188. By reason of the foregoing, Plaintiffs and the Unit Owners (both residential and commercial), on whose behalf Plaintiff brings this action, have suffered and will continue to suffer damages in an amount to be determined at trial, but believed to be in excess of \$100,000,000.

Count III
(Breach of Contract against Sponsor – Condominium Board and Residential Board)

189. Plaintiffs restate and reallege the allegations set forth in Paragraphs 1 through 188 of this Complaint as if fully set forth herein.

190. The Purchase Agreements for the Units incorporate by reference all promises, representations, statements, warranties, reports, opinions, plans and specifications, as set forth in the Offering Plan.

191. In the Offering Plan, as incorporated in the Purchase Agreements, Sponsor promised and represented that the Building would be constructed with a quality of construction comparable to currently prevailing local standards, in accordance with the Plans and Specifications filed with the New York City Department of Buildings, and in accordance with applicable legal requirements including but not limited to then-existing environmental laws.

192. As set forth at length in the preceding paragraphs, the Building as delivered to Residential Unit Owners—including individual and all common elements—was neither

constructed nor designed in conformance with promises and representations contained in the Offering Plan.

193. Sponsor has refused to adequately remedy the defects as listed above.

194. Sponsor permitted these defects to be concealed, failed to disclose these problems and deficiencies in the Offering Plan or marketing materials and warranted that the Building was free of defects and compliant with the plans and specifications and applicable building codes.

195. Sponsor's design and construction failures, and its refusal to adequately remedy same, amount to breaches of its obligations under the Purchase Agreements and the Offering Plan as incorporated into the Purchase Agreements.

196. Because of Sponsor's material breach of its contractual obligations, Plaintiffs and Unit Owners, on whose behalf Plaintiffs bring this action, have suffered and will continue to suffer substantial damages that resulted from and will continue to result from these design and construction defects.

197. By reason of the foregoing, Plaintiffs and the Unit Owners, on whose behalf Plaintiff brings this action, have suffered and will continue to suffer damages in an amount to be determined at trial, but believed to be in excess of \$100,000,000.

Count IV
(Breach of Fiduciary Duty against Individual Defendants
– Condominium Board and Residential Board)

198. Plaintiffs restate and reallege the allegations set forth in Paragraphs 1 through 197 of this Complaint as if fully set forth herein.

199. For the duration of their service on the Residential Board, the Individual Defendants, as members of the Initial Board and/or Sponsor Controlled Residential Board, owed fiduciary duties to the Condominium and individual Unit Owners.

200. As members of the Residential Board, the Individual Defendants owed duties to act in the interest of and protect the Condominium and Unit Owners through their management of the Building and coordination with Sponsor.

201. Rather than act out of loyalty or duty to the Condominium and Unit Owners, the Individual Defendants ran the Residential Board for the benefit of Sponsor and their pecuniary interests, as affiliates of Sponsor, including but not limited to failing to adequately investigate and remedy the Building's various design and construction defects.

202. The acts and omissions of the Individual Defendants in their capacity as members of the Residential Board, as more particularly alleged and described above, constitute a breach of their fiduciary duties owed to the Condominium and its Unit Owners.

203. By reason of the foregoing, Plaintiffs and the Unit Owners, on whose behalf Plaintiff brings this action, have suffered and will continue to suffer damages in an amount to be determined at trial, but believed to be in excess of \$100,000,000.

Count V

(Breach of Contract against Sponsor – Condominium Board and Commercial Board)

204. Plaintiffs restate and reallege the allegations set forth in Paragraphs 1 through 203 of this Complaint as if fully set forth herein.

205. The Purchase Agreements for the Commercial Units incorporate by reference all promises, representations, statements, warranties, reports, opinions, plans and specifications, as set forth in the Offering Plan.

206. In the Offering Plan, as incorporated in the Purchase Agreements, Sponsor promised and represented that the Building would be constructed with a quality of construction comparable to currently prevailing local standards, in accordance with the Plans and Specifications

filed with the New York City Department of Buildings, and in accordance with applicable legal requirements including but not limited to then-existing environmental laws.

207. As set forth at length in the preceding paragraphs, the Building as delivered to Commercial Unit Owners—including individual and all common elements—was neither constructed nor designed in conformance with promises and representations contained in the Offering Plan.

208. Sponsor has refused to adequately remedy the defects identified by SBI in its report related to the Commercial and Retail Sections of the Condominium.

209. Sponsor permitted these defects to be concealed, failed to disclose these problems and deficiencies in the Offering Plan or marketing materials and warranted that the Building was free of defects and compliant with the plans and specifications and applicable building codes.

210. Sponsor's design and construction failures, and its refusal to adequately remedy same, amount to breaches of its obligations under the Purchase Agreements and the Offering Plan as incorporated into the Purchase Agreements.

211. Because of Sponsor's material breach of its contractual obligations, Plaintiffs and the Commercial Unit Owners, on whose behalf Plaintiffs bring this action, have suffered and will continue to suffer substantial damages that resulted from and will continue to result from these design and construction defects.

212. By reason of the foregoing, Plaintiffs and the Commercial Unit Owners, on whose behalf Plaintiff brings this action, have suffered and will continue to suffer damages in an amount to be determined at trial, but believed to be in excess of \$5,000,000.

Count VI
(Breach of Fiduciary Duty against Individual Defendants –
Condominium Board and Commercial Board)

213. Plaintiffs restate and reallege the allegations set forth in Paragraphs 1 through 212 of this Complaint as if fully set forth herein.

214. For the duration of their service on the Commercial Board, the Individual Defendants, as members of the Initial Board and/or Sponsor Controlled Commercial Board, owed fiduciary duties to the Condominium and the Commercial and Retail Unit Owners.

215. As members of the Commercial Board, the Individual Defendants owed duties to act in the interest of and protect the Condominium and Unit Owners through their management of the Building and coordination with Sponsor.

216. Rather than act out of loyalty or duty to the Condominium and Unit Owners, the Individual Defendants ran the Commercial Board for the benefit of Sponsor and their pecuniary interests, as affiliates of Sponsor, including but not limited to failing to adequately investigate and remedy the Building's various design and construction defects.

217. The acts and omissions of the Individual Defendants in their capacity as members of the Commercial Board, as more particularly alleged and described above, constitute a breach of their fiduciary duties owed to the Condominium and its Unit Owners.

218. By reason of the foregoing, Plaintiffs and the Commercial Unit Owners, on whose behalf Plaintiff brings this action, have suffered and will continue to suffer damages in an amount to be determined at trial, but believed to be in excess of \$5,000,000.

JURY TRIAL DEMAND

Plaintiffs hereby demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment in its favor and for relief and recovery as follows:

- A. On Counts I, III, and V, for an Order awarding monetary damages against Sponsor in an amount to be determined at trial but in no event less than \$125,000,000.00;
- B. On Counts II, IV and VI, for an Order awarding monetary damages against the Individual Defendants, jointly and severally, in amount to be determined at trial but in no event less than \$125,000,000.00, plus punitive damages;
- C. For costs and attorney's fees incurred in connection with this dispute;
- D. For prejudgment and post-judgment interest on all damages allowed by law; and
- E. For such other and further relief as this Court may deem just and appropriate.

Dated: New York, New York
September 23, 2021

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