SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

CATHERINE GUBERNICK, MICHELLE PERALTA, VICTOR PERALTA, QUYNH TRAN, MINH DAY, JAIME MADDEN, ERIN MADDEN, AKPORODE SHEMI, GEOFFREY HANZLIK, ANDREA LAUER, KATHRYN SULLIVAN, INGRID FELIX-PERALTA, DIANA PERALTA, MICHELLE PANZER, PAUL CAMPBELL, OLGA SHELEST, ALEXEY TISHKIN, NICHOLAS FITZHUGH, GIOVANNI PIOVAN, FRANCESCA CERENA, CLAUDIA LUNDAHL, ANDREW SANTUCCI, MATT YANCHYSHN, LOUISE CONNOLLY, TAMARA BEHAR, JOAN WASSER, LISA GRANT, WILLIAM WEITZER, JENNIFER DORFMAN, GUY DUNKLEY, JEFFREY HINES, and EVAN ROSENZWEIG, individually and derivatively on behalf of THE 189 CONOVER STREET CONDOMINIUM, Plaintiffs, -against- **DDG CONOVER OWNER, LLC, REDHOEK CONSTRUCTION LLC, LEE COHEN, ORTUS REAL ESTATE MANAGEMENT LLC, ARTHUR GERSHFELD, MICHAEL GERSHFELD, LAURA SYED, and STEVEN SITT,** Defendants.	Index No.: _____ **SUMMONS**

To the above-named defendants:

YOU ARE HEREBY SUMMONED to answer the verified complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on plaintiffs' attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is completed if this summons is not personally delivered to you within the State of New York), and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
July 3, 2023

DAVIDOFF HUTCHER & CITRON LLP
Attorneys for Plaintiffs

By: *s/ Derek Wolman*
Derek Wolman
Daniel Goldenberg
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TO: Above named Defendants:

DDG CONOVER OWNER, LLC
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REDHOEK CONSTRUCTION LLC
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LEE COHEN
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ORTUS REAL ESTATE MANAGEMENT LLC
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Plaintiffs, the above-named unit owners (the "Unit Owner Plaintiffs"), by their attorneys, Davidoff Hutcher & Citron LLP, individually and derivatively on behalf of The 189 Conover Street Condominium (the "Condominium"), as and for their Verified Complaint against defendants DDG Conover Owner, LLC (the "Sponsor"), REDHOEK CONSTRUCTION LLC (dba REDHOEK+Partners) ("REDHOEK"), Lee Cohen ("Cohen"), Ortus Real Estate Management LLC ("Ortus"), Arthur Gershfeld, Michael Gershfeld (collectively, the "Gershfeld Defendants"), Laura Syed ("Syed"), and Steven Sitt ("Sitt") (the Sponsor, REDHOEK, and Cohen

are collectively referred to as the "Sponsor Defendants"; all defendants collectively, "Defendants"), allege as follows:

NATURE OF THE ACTION

1. This is a derivative action brought by Unit Owners of The 189 Conover Street Condominium, on behalf of all Unit Owners, for damages arising from the systemic and fraudulent construction defects and gross financial misconduct that have plagued the development of this 22-unit luxury condominium located at 189 Conover Street, Brooklyn, NY (the "Building"), which was developed pursuant to an offering plan filed with the New York State Attorney General (the "Offering Plan" or "Plan").

2. Plaintiffs bring this action derivatively because the Sponsor continues to control the Board of Managers (the "Board") despite owning less than 5% of the units, and demand upon the Board would be futile as alleged herein.

3. This case presents a classic, calculated bait-and-switch scheme. What was promised to purchasers as a high-end, durable building constructed with premium materials was instead delivered with rotting façades built from cheap, untreated pine instead of the promised premium Ipe hardwood, spalling concrete structures with exposed and corroding rebar, pervasive water infiltration, and life-safety hazards, including improperly installed fire sprinklers and kitchen vents that create a fire hazard with routine use.

4. The Sponsor and its principal, Cohen, deliberately concealed their fraudulent material substitutions through the Offering Plan, its First Amendment dated April 4, 2023 (the "First Amendment"), and its Second Amendment dated November 29, 2024 (the "Second Amendment").

5. After secretly swapping cheap pine for the promised Ipe—a change with budgetary implications in the hundreds of thousands of dollars—Cohen executed a perjurious

sworn affidavit in support of the First Amendment, attesting there were "no material changes to the Budget... which have not been disclosed."

6. This, while the First Amendment itself meticulously disclosed dozens of trivial changes, such as the color of picket fencing and the brand of terrace lighting, to create the illusion of transparency while concealing the fraud at the heart of the project.

7. The Sponsor's response to the discovery of these defects has been equally appalling.

8. Faced with a comprehensive engineering report and contractor bids detailing more than $1,100,000 in necessary repairs, which includes both the $600,000 to $800,000 in base repairs and nearly $500,000 required to replace the non-conforming pine façade, the Sponsor has engaged in a pattern of delay, denial, and obstruction.

9. Its counsel dismissed professional findings, recklessly claimed that code-required safety scaffolding was "absolutely overkill and unnecessary," attacked the qualifications of licensed architects as "wholly unqualified," and made the insulting counter-offer that the widespread defects could be remedied for "not more than $100,000," a figure provided without any engineering or professional support.

10. This malfeasance extends to the Condominium's finances. During its period of control, the Sponsor-led Board drove the Condominium to the brink of insolvency, ending its first full year with a negative members' equity, unpaid bills ballooning to over $35,000 against only $14,000 in cash, and allowing utility bills to go unpaid to the point of a threatened service disconnection.

11. The Sponsor's own auditor issued a formal finding that the Board had improperly omitted required disclosures about the future costs of the very repairs at issue here, in a transparent attempt to conceal the massive, unfunded liability it created.

12. Now, despite having sold all but one unit, the Sponsor clings to control of the Board pursuant to the Offering Plan provisions, using its position to block the Condominium from investigating the full extent of its financial disarray and from pursuing the funds necessary to address the urgent defects that compound daily.

13. This lawsuit seeks to hold all Defendants accountable for their contractual and fiduciary obligations to deliver a building that conforms to the Offering Plan, the By-Laws, and all applicable laws, and to compensate the Condominium for the more than $1,100,000.00 in damages it has incurred and will incur to restore the Building to the condition that the Unit Owners were promised and for which they paid.

THE PARTIES

14. Plaintiffs are owners of individual units (the "Units") in The 189 Conover Street Condominium, a 22-unit residential building established under a Declaration (the "Declaration") and By-Laws (the "By-Laws") filed in Kings County, pursuant to Article 9-B of the New York Real Property Law.

15. Plaintiffs bring this action individually for their direct claims and derivatively on behalf of the Condominium.

16. Defendant DDG Conover Owner, LLC is a New York limited liability company that served as the Sponsor and developer of the Condominium. The Sponsor's role was to file the Offering Plan, construct the Building, and sell the Units.

17. Having sold twenty-one of the twenty-two residential units, the Sponsor continues to control the Board pursuant to the terms of the Offering Plan, which permits it to retain control for up to five years after the first closing.

18. Defendant Lee Cohen is the principal of the Sponsor and its affiliate, Defendant REDHOEK.

19. Cohen personally certified the Offering Plan and its fraudulent First Amendment under penalty of perjury, and upon information and belief, exercised complete domination and control over the Sponsor, operating it as his personal alter ego to perpetrate the wrongdoing alleged herein.

20. Defendant REDHOEK is an affiliate of the Sponsor controlled by Cohen that participated in the development of the Building.

21. Defendant Ortus Real Estate Management, under the direction of its principals, Defendants Arthur Gershfeld and Michael Gershfeld, served as the managing agent for the Condominium and grossly mismanaged the property.

22. Defendant Laura Syed is the Director of Operations at REDHOEK and participated in the Building's development and management.

23. Defendant Steven Sitt is a principal of REDHOEK who participated in the development of the Building and is listed as the "Owner/Manager" on contractor proposals for the property.

JURISDICTION AND VENUE

24. This Court has jurisdiction over Defendants pursuant to CPLR §§ 301 and 302. Venue is proper in this Court pursuant to CPLR § 507, as the property at issue is located in Kings County.

DEMAND FUTILITY

25. A demand upon the Board to initiate this action would be futile and is therefore excused.

26. The Sponsor maintains control of the Board of Managers by virtue of its continued ownership of one or more units in the Building, despite having sold twenty-one of the twenty-two units in the Building to third parties.

27. The Board has failed to pursue claims against the Sponsor for the documented construction defects, even after being presented with: (a) the comprehensive Edward Madocks Architecture Corp. ("EMA") Report dated September 5, 2024 (the "EMA Report") detailing extensive defects; (b) multiple contractor bids quantifying damages in excess of $1.1 million; and (c) formal demand letters from Unit Owners.

28. While the Board did investigate, it acted in bad faith, seeking only temporary and otherwise inadequate repairs to minimize the Sponsor's expenses.

29. In fact, this blatant disregard for the Condominium's well-being persists, evidenced by recent reports of new, significant water infiltration, an unaddressed gas leak, and continued refusal to provide adequate financial disclosure.

30. Specifically, a majority of the Board is interested in the challenged transactions because: (a) the Board members were appointed by, and remain under the control of, the Sponsor, whose interests are adverse to those of the Unit Owners due to their involvement in the alleged misconduct; (b) any action against the Sponsor would necessarily implicate the Board members' own conduct during the period of Sponsor control; and (c) the Board has repeatedly demonstrated its unwillingness to act in opposition to the Sponsor's interests.

31. The Board's response to the documented defects has been to support the Sponsor's position that repairs costing over $600,000 could be accomplished for approximately $80,000, further demonstrating that the Board cannot exercise independent business judgment.

32. Additionally, the underlying fraudulent material substitutions and financial mismanagement are so egregious that they could not be the product of sound business judgment.

33. For all of these reasons, demand upon the Board to initiate this action would be futile.

34. The Board is dominated and controlled by the Sponsor, is conflicted, and interested in the challenged transactions, and has repeatedly demonstrated its unwillingness or inability to act in the best interests of the Condominium and its Unit Owners.

35. Accordingly, demand is excused.

FACTUAL BACKGROUND

I. The Sponsor's Promises of a Luxury Condominium

36. To market the twenty-two residential units in the development initially known as "The 199 Conover Street Condominium," the Sponsor filed the Offering Plan with the New York State Attorney General, which was accepted for filing on January 10, 2022.

37. That Offering Plan, incorporated by reference into every Purchase Agreement (each, a "Purchase Agreement"), contained explicit and material representations promising a high-end, durable building constructed to luxury standards.

38. The Offering Plan explicitly required purchasers to rely solely on its specific terms, declaring that a buyer had not relied on any outside representations "except as specifically represented in the Offering Plan or Purchase Agreement" (Offering Plan, "Special Risks," p. vii).

39. Bound by these contractual stipulations within the Offering Plan and its subsequent amendments, including explicit and material representations promising a high-end,

durable building constructed to luxury standards, Plaintiffs indeed relied on these documents. They understood that the amendments were specifically intended to disclose changes to material specifications, and while numerous minor revisions were meticulously reported (as discussed below), the amendments deliberately failed to disclose the critical substitution of cheap, untreated pine for the promised Ipe wood. Accordingly, Plaintiffs fully expected and were entitled to receive units consistent with the superior quality represented, which they purchased for substantial prices, with numerous sales exceeding $1 million.

40. As detailed below, the Sponsor's failure to deliver on these promises has resulted in systemic construction defects and gross financial mismanagement, leading to significant harm to the Unit Owners.

41. The Offering Plan, accepted for filing by the New York State Department of Law on January 10, 2022, the First Amendment, and the Second Amendment (which officially changed the condominium name from "The 199 Conover Street Condominium" to "The 189 Conover Street Condominium"), govern the construction, sale, and operation of the Condominium.

42. Both the original Plan and the First Amendment, including the Architect's Report attached as Exhibit B (the "Architect's Report"), explicitly specify that the North and East façades of the building "will consist of light gauge steel construction with exterior Insulation, Gamma stone GFRC, and IPE Wood decorative members coated with Sikkens Wood Coating."

43. The Offering Plan contractually obligated the Sponsor to construct the Building "IN ACCORDANCE WITH ALL APPLICABLE CODES AND FILED PLANS AND SPECIFICATIONS" and strictly limited its ability to alter these material specifications, permitting substitutions only of "Equal or Better Quality."

44. Defendant Cohen, as the Sponsor's principal, made sworn representations in his certification dated April 7, 2021, submitted with the Offering Plan, attesting under penalty of perjury that he had exercised "due diligence," investigated the facts, and that the Offering Plan did "not omit any material fact" or "contain any untrue statement of a material fact."

45. He certified:

> We have read the entire Offering Plan. We have investigated the facts set forth in the Offering Plan and the underlying facts.
>
> We have exercised due diligence to form a basis for this certification.
>
> 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: (i) set forth the detailed terms of the transaction and be complete, current and accurate;
>
> (ii) afford potential investors, purchasers and participants an adequate basis upon which to form their judgment;
>
> (iii) not omit any material fact; (iv) not contain any untrue statement of a material fact;
>
> (v) not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;
>
> (vi) not contain any promise or representation as to the future that is beyond reasonable expectation or unwarranted by existing circumstances;
>
> and (vii) 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 effort to ascertain the truth;
>
> or (d) did not have knowledge concerning the representations or statements made.

II. The "Ipe-for-Pine" Deception and the Fraudulent First Amendment

46. Despite Cohen's sworn representations, the Sponsor executed a classic bait-and-switch.

47. Upon information and belief, the Sponsor knowingly and secretly substituted cheap, untreated pine for the promised premium Ipe wood on the building's façade—a decision that saved the Sponsor hundreds of thousands of dollars at the future expense of the Unit Owners.

48. Ipe wood is a premium Brazilian hardwood renowned for its natural resistance to rot and insects, with an expected exterior lifespan of 40-75 years and a market price approximately four times that of pine.

49. The substituted pine is a significantly inferior softwood susceptible to rot, splitting, and weather damage, with a fraction of the lifespan.

50. The Plan's "Equal or Better Quality" substitution language is found in the "Special Risks" section and applies to "fixtures and appliances," while specific items like "YKK Windows or an approved equivalent" are noted in the Architect's Report.

51. The Offering Plan explicitly specifies Ipe wood for the decorative façade elements, which was not designated as subject to substitution.

52. The First Amendment—and other provided communications to purchasers or the Department of Law—do not disclose, authorize, or suggest a substitution of any other material for the Ipe wood specified for these exterior elements.

53. The First Amendment painstakingly lists dozens of minor and even trivial project changes, such as the color of fencing, the manufacturer of terrace roof lighting, and the finish of elevator cab panels.

54. The Sponsor was fully aware of its obligation to disclose material changes to the Attorney General and to purchasers.

55. Despite this detailed disclosure of minor items, the First Amendment is completely silent on the substitution of untreated pine for Ipe wood on the building's façade—a change that fundamentally alters the building's quality, durability, and value, and that saved the Sponsor hundreds of thousands of dollars at the expense of the Unit Owners.

56. The Architect's Report, incorporated as Exhibit B to the First Amendment, continues to specify "IPE Wood decorative members," thereby affirmatively representing to purchasers and the Attorney General that Ipe wood would be used, even though, upon information and belief, the Sponsor had already installed cheaper pine.

57. The First Amendment includes a certification by the Sponsor's architect that the Amendment "does not omit any material fact; does not contain any untrue statement of a material fact; does not contain any fraud, deception, concealment, or suppression."

58. If pine was substituted for Ipe, this certification is itself false and further evidence of material misrepresentation.

59. To compound the fraud, Cohen executed a sworn "Effectiveness Affidavit" as part of the First Amendment, making the direct, categorical, and perjurious misrepresentation that:

> There are no material changes to the Budget for the first year of operation which have not been disclosed in a duly filed amendment to the Offering Plan

60. While this statement pertained specifically to the Budget, it was nevertheless part of a broader pattern of false assurances and omissions intended to mislead purchasers and regulators.

61. The First Amendment further concludes with the representation: "ALL MATERIAL CHANGES DISCLOSED."

62. This statement is demonstrably false, as the most significant change—the Ipe-to-pine substitution—was not disclosed anywhere in the First Amendment or its supporting documents.

63. The failure to disclose the Ipe-for-pine substitution was a material omission.

64. This undisclosed substitution fundamentally altered the project's quality and value, and the Sponsor retained the resulting cost savings as profit.

65. Such concealment violated the Sponsor's primary contractual obligation that "no material change will be made in the size or quality of Common Elements, except by amendment to the Offering Plan."

66. Cohen swore to the accuracy of an amendment that simultaneously concealed this material deviation while expressly representing that no such deviations existed.

67. The pattern of concealment continued even after the defects were discovered.

68. On November 29, 2024—nearly three months after the EMA Report documented the pine substitution and pervasive defects—the Sponsor filed the Second Amendment.

69. This Second Amendment disclosed only trivial changes: changing the condominium's name from "The 199 Conover Street Condominium" to "The 189 Conover Street Condominium," adding electric charging stations to parking spaces, updating the telephone service provider, and correcting minor unit designations.

70. Conspicuously absent from the Second Amendment was any disclosure of: (a) the substitution of pine for the promised Ipe wood documented in the EMA Report; (b) the extensive construction defects including cracking concrete, missing aluminum coping, improperly

vented kitchens, and fire safety violations; (c) the Unit Owners' demands for over $1.1 million in repairs; (d) the negative audit findings regarding omitted repair disclosures; or (e) any other material adverse conditions affecting the Building.

71. The stark contrast between what the Sponsor chose to disclose (electric charging stations and phone service) and what it concealed (over $1.1 million in documented defects) demonstrates the deliberate nature of this deception.

72. This selective disclosure—revealing trivial updates while hiding catastrophic defects known for months—evidences a calculated intent to mislead.

73. Upon information and belief, Cohen and/or other defendants executed certifications with the Second Amendment attesting to its accuracy and completeness, while knowing of these material omissions.

74. This constitutes a continuing pattern of fraud designed to conceal the defendants' misconduct from purchasers, the Attorney General, and potential buyers of the remaining unit.

III. The Pervasive Defects of the As-Built Building

75. As Unit Owners began to take occupancy, it became clear that the fraudulent material substitution was just the tip of the iceberg.

76. The Building was riddled with extensive construction defects stemming from substandard workmanship and disregard for the promises and representations in the Offering Plan, as well as applicable building codes.

77. In 2024, at the suggestion of certain Unit Owners, the Sponsor retained and paid for EMA to conduct a comprehensive assessment of the Building's condition.

78. However, the Sponsor subsequently ignored the findings after EMA found pervasive defects documented in the resulting EMA Report, many of which constitute life-safety hazards.

79. Key defects documented in the EMA Report include, among others:

a. Façade Wood Material Substitution

i. Offering Plan Promise: "IPE Wood decorative members coated with Sikkens Wood Coating"
ii. As Delivered: Untreated Pine wood showing "many visible splits" on 30-40% of beams and separation in 20% of joints. The EMA Report documented that the pine wood façade is already failing, with vertical cracks forming on many of the decorative wood beams and exposed screws at joinery.
iii. Required Remediation: Replace within 6 months, as conditions were "likely to deteriorate."

b. Structural Concrete Defects

i. Offering Plan Promise: Construct per "all applicable codes and filed plans and specifications"
ii. As Delivered: Cracking and spalling concrete canopies with no waterproofing or drainage. Concrete canopies are "not waterproofed and do not provide drainage routes for water," leading to cracking, spalling, and water falling directly over resident entryways.
iii. Required Remediation: Repair within 3 months.

c. Missing Aluminum Coping

i. Offering Plan Promise: "all copings shall be aluminum"
ii. As Delivered: Unfinished CMU walls with no coping, permitting water penetration. Rooftop walls were left "unfinished" and exposed to the elements, lacking the promised protective "metal coping" and thereby permitting water penetration directly into the roof assembly. These and other failures have resulted in active water infiltration in the elevator and boiler rooms.
iii. Required Remediation: Repair within 6 months.

d. Kitchen Ventilation Code Violations

i. Offering Plan Promise: Kitchens to be ventilated via "roof mounted exhaust fan"

ii. As Delivered: Exhaust fans in fifteen units "vent within each kitchen cabinet," creating a fire hazard. This causes smoke alarms to activate during normal cooking and creates a clear fire risk.
iii. Required Remediation: Repair within 3 months.

e. Fire Safety Systems

i. Offering Plan Promise: Per applicable codes
ii. As Delivered: Improperly embedded fire sprinkler heads. The fire-safety sprinkler heads were found improperly "embedded into the Sheetrock walls and ceilings," a dangerous violation of fire codes that may prevent them from functioning as designed in an emergency.
iii. Required Remediation: Repair within 1 month.

f. Additional Defects:

i. Widespread water infiltration with active roof leaks
ii. Incomplete landscaping and site work
iii. Missing or non-functional amenities promised in the Offering Plan

80. The severe construction defects outlined above are exacerbated by newly discovered and ongoing issues.

81. As of June 2025, the Building is experiencing pervasive water infiltration, with HVAC-related leaks affecting at least three units and significant water damage in units 2B and Garden B, suggesting improper pipe installation.

82. Additionally, active roof leaks continue to cause damage to the second and third floors.

83. Compounding these structural failures, a critical gas leak in unit PHB remains unaddressed, preventing its safe occupancy.

IV. The Unit Owners' Demands and the Sponsor's Bad Faith Response

84. On March 28, 2025, counsel for concerned Unit Owners sent a comprehensive demand letter to the Sponsor cataloging the defects, demanding their immediate repair at the Sponsor's expense, and demanding access to the Condominium's financial records.

85. The letter explicitly documented the material deviation regarding the façade: "the wood beams used appear to be untreated Pine wood. This is a material deviation from the Condominium's offering plan that stated the beams would be made from Ipe, which is of superior quality."

86. In response on April 24, 2025, the Sponsor, through counsel, dismissed the professionally prepared repair bids as "so high" because they included staging costs inclusive of scaffolding and sidewalk sheds, which Sponsor claimed, without any expert support, was "not required or needed." Sponsor did so, even though one of Sponsor's bids also included costs for staging, while Sponsor's other bids simply failed to address the issue.

87. On May 29, 2025, counsel for the Unit Owners provided a detailed breakdown of competitive bids, with the lowest around $600,000 (a figure that notably did not include replacing the Pine with Ipe).

V. Quantifying the Damages

88. After the Sponsor refused to cure the defects, the Unit Owners solicited competitive bids from three qualified restoration contractors to quantify the cost of repair based on the EMA Report.

89. The bids received ranged from $576,153.46 to $625,010.00 for base repairs, not including the replacement of the Pine with Ipe.

90. Multiple independent contractors confirmed similar defects and repairs needed, demonstrating the consistency and severity of the Building's deficiencies.

91. Most significantly, these bids do not include the cost to remedy the Sponsor's most brazen act of fraud: replacing the rotting Pine, which must be ripped from the façade and replaced with the promised, durable Ipe wood specified in the contract.

92. The cost for this replacement is estimated between $400,000 and $500,000.

93. When combined, the base repair costs and the façade replacement cost result in compensatory damages exceeding $1,100,000.00, a figure that does not include interior repairs, consequential damages, and the ongoing harm from daily deterioration.

VI. Financial Mismanagement and Obstruction of Board Control

94. The Sponsor's malfeasance also extends to its management of the Condominium's finances during its period of control (the "Control Period").

95. While the Sponsor has maintained control of the Board, it has driven the Condominium into a state of financial distress.

96. The 2023 audited financial statements reveal that the Condominium ended its first full year with an operating deficit of $18,901 (even after an emergency $25,000 Sponsor Contribution), members' negative equity of $5,233, and $35,379 in unpaid accounts payable against only $14,317 in cash.

97. This financial distress was caused by the gross mismanagement of the Sponsor-controlled Board.

98. The Condominium collected just $27,127 in common charges yet incurred $71,465 in expenses.

99. Management fees soared 162% over budget, and repairs/supplies costs were a staggering 919% over budget.

100. Emblematic of its negligence, the Sponsor allowed Con Edison bills to go unpaid to the point of a threatened service disconnection, forcing emergency payment plans.

101. The Condominium's independent auditor, Adelman Katz & Mond LLP, issued a formal finding that the Sponsor-controlled Board had improperly "omitted the information

about the estimates of future costs of major repairs and replacements that... is required by the Financial Accounting Standards Board, which considers it to be an essential part of financial reporting."

102. Upon information and belief, this information was deliberately omitted to conceal from Unit Owners the unfunded liability created by the Sponsor's own defective construction.

103. The Offering Plan provides that the Sponsor Control Period ends upon the earlier of five years after the first closing or thirty days after 100% of the Units are sold.

104. As of the date of this complaint, the Sponsor owns only one unit in the Building, which upon information and belief, may be under contract for sale.

105. Despite Unit Owners holding over 95% ownership, the Sponsor continues to control the Board pursuant to the Offering Plan provisions.

106. The financial records, when made available for review, have been maintained in a disorganized and incomplete manner, making it difficult for Unit Owners to assess the true financial condition of the Condominium or to verify the proper use of common funds.

VII. The Sponsor Defendants and Their Alter Ego Liability

107. Defendant Cohen is the sole or controlling principal of the Sponsor, DDG Conover Owner, LLC, and its affiliate, REDHOEK.

108. Cohen directed the entire enterprise that developed, marketed, and constructed the Condominium, and upon information and belief, used these entities interchangeably as a common enterprise, for example by using a REDHOEK email address (lee@redhoek.com) for all official Sponsor business.

109. Upon information and belief, Cohen exercised complete domination and control over the Sponsor, operating it as his personal alter ego.

110. He disregarded corporate formalities, commingled funds, used corporate assets for personal purposes, and siphoned profits from the Sponsor to himself and affiliated entities, leaving the Sponsor inadequately capitalized and a mere shell to shield him from liability for the fraud perpetrated on purchasers.

111. Upon information and belief, as construction defect claims became apparent, Cohen transferred substantial proceeds from the Sponsor's unit sales to himself and his affiliates, leaving the Sponsor entity with insufficient assets to satisfy a judgment.

112. Adhering to the fiction of a separate corporate existence would sanction this fraud and promote a grave injustice.

113. Therefore, the corporate veil of DDG Conover Owner, LLC must be pierced, and Defendant Cohen and the affiliated entity REDHOEK must be held jointly and severally liable for all damages caused by the Sponsor's wrongful acts.

114. Furthermore, Cohen is personally liable for his own tortious conduct, independent of any veil-piercing analysis.

115. His personal execution of certifications containing representations he knew or should have known were false constitutes a direct and fraudulent act intended to deceive purchasers.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Breach of Contract — Against Sponsor Defendants) (Derivative Claim)

116. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 116 as if fully set forth herein.

117. This claim is brought derivatively on behalf of the Condominium.

118. The Offering Plan and the Purchase Agreements executed by each Unit Owner constitute binding and enforceable contracts between the Sponsor and the Unit Owners.

119. Each Purchase Agreement contained specific provisions incorporating the Offering Plan and all amendments by reference, stating: "Purchaser acknowledges that the Unit and the Building will be constructed in accordance with the Offering Plan and all amendments thereto, which are incorporated herein by reference and made a part hereof."

120. The Purchase Agreements further provided that "Sponsor warrants that all work will be performed in a workmanlike manner and that all materials will be new and of good quality."

121. The Sponsor breached its contractual obligations under the Offering Plan and Purchase Agreements by, among other things:

a. a. Fraudulently substituting cheap, untreated Pine wood for the promised premium "IPE Wood decorative members coated with Sikkens Wood Coating," in direct violation of the First Amendment;

b. b. Failing to construct the Building in a workmanlike manner and free from defects, instead delivering a Building with pervasive defects as documented in the EMA Report, including but not limited to cracking concrete, exposed rebar, widespread water infiltration, and improperly installed life-safety systems;

c. c. Failing to construct the Building "in accordance with all applicable codes and filed plans and specifications," as expressly required by the Offering Plan;

d. d. Failing to install proper kitchen ventilation systems that ducted to the exterior as specified in the Architect's Report, instead creating a fire hazard by venting into cabinetry; and

e. e. Failing to effectively manage the Condominium during the Control Period, resulting in operating deficits, unpaid bills, and deferred maintenance that harmed the Condominium.

122. Unit Owners have performed all conditions precedent under their contracts, including paying the full purchase price for their Units.

123. Plaintiffs have satisfied all conditions precedent to bringing this derivative action, including establishing that demand upon the Board would be futile as alleged above.

124. The Sponsor has failed and refused to cure its breaches despite proper notice and demand.

125. As a direct and proximate result of the Sponsor's breaches of contract, the Condominium has suffered and will continue to suffer substantial damages in excess of $1,100,000.00.

SECOND CAUSE OF ACTION

(Common Law Fraud — Against All Defendants) (Derivative Claim)

126. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 126 as if fully set forth herein.

127. This claim is brought derivatively on behalf of the Condominium.

128. Defendants perpetrated a systemic fraud on purchasers through a pattern of material, affirmative misrepresentations contained in the Offering Plan and its amendments.

129. This was not merely negligent construction, but part of a calculated scheme to market and sell a luxury building on the basis of specific, premium features that Defendants knew they would not provide.

130. Defendants made specific, knowingly false promises in the Offering Plan documents, including that the façade would feature premium "IPE Wood decorative members,"

that rooftop walls would be protected by "aluminum coping," and that kitchens would have proper exterior ventilation.

131. These promises were false when made. Upon information and belief, at the very time Defendant Cohen was certifying the First Amendment in April 2023, the inferior Pine wood had already been installed on the façade, making his certification and the representations in the Amendment knowingly false when made.

132. The fraud continued through the Second Amendment, which upon information and belief, persisted in concealing these material deviations even after they had been professionally documented.

133. Defendants made these misrepresentations with the intent to deceive and to induce purchasers to buy units at premium prices relying upon features the Sponsor had no intention of delivering.

134. The undisclosed substitution of cheap Pine for Ipe wood yielded the Sponsor hundreds of thousands of dollars in illicit profits at the direct expense of the purchasers.

135. Unit Owners justifiably relied on these false representations of material fact, which were peculiarly within the Defendants' knowledge and could not be discovered through ordinary diligence during construction.

136. The Offering Plan itself directed purchasers to rely exclusively on its contents.

137. The Unit Owners would not have purchased their Units, or would have paid substantially less, had they known the truth.

138. As a direct and proximate result of Defendants' fraud, the Condominium has been damaged in an amount to be determined at trial, but believed to be no less than

$1,100,000.00, representing the cost to repair the defects and restore the Building to the condition promised in the Offering Plan.

139. Defendants' conduct was willful, wanton, malicious, and displayed a gross and criminal indifference to the rights of the purchasers, justifying an award of punitive damages to punish the Defendants and deter such fraudulent conduct in the future.

THIRD CAUSE OF ACTION

(Breach of Fiduciary Duty — Against Sponsor and Gershfeld Defendants) (Derivative Claim)

140. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 140 as if fully set forth herein.

141. This claim is brought derivatively on behalf of the Condominium.

142. During the Control Period, the Sponsor, the Sponsor-appointed members of the Board, and their appointed managing agent, the Gershfeld Defendants, owed fiduciary duties of loyalty, care, and good faith to the Condominium and its Unit Owners.

143. The Sponsor Defendants breached these fiduciary duties by, among other things:

a. a. Using their Board control to shield the Sponsor from liability for construction defects, deliberately suppressing investigations into structural deficiencies to avoid fiscal responsibility;

b. b. Causing operating deficits exceeding $18,901, defaulting on critical utility payments, and maintaining inadequate financial records to obscure the Condominium's insolvency;

c. c. Intentionally omitting reserve studies and future repair costs from disclosures to hide the true extent of construction defects, defrauding Unit Owners of material financial information; and

d. d. Ignoring known defects (e.g., structural deficiencies, fire code violations) while continuing to market units, accelerating deterioration, and endangering residents.

144. The Gershfeld Defendants breached their fiduciary duties by, among other things, failing to maintain proper books and records, failing to pay bills in a timely manner, and facilitating the Sponsor's concealment of the Condominium's true financial condition from the Unit Owners.

145. These breaches of fiduciary duty were undertaken in bad faith, constitute self-dealing, and were not protected by the business judgment rule.

146. As a direct and proximate result of these breaches, the Condominium has suffered significant damages, including financial losses from the mismanagement, diminished property values, and the cost of repairing defects that the Sponsor-controlled Board deliberately ignored.

FOURTH CAUSE OF ACTION

(Violation of General Business Law § 777-a — Against Sponsor) (Direct and Derivative Claims)

147. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 147 as if fully set forth herein.

148. This claim is brought both individually by Unit Owner Plaintiffs as statutory "owners" with direct enforcement rights, and derivatively on behalf of the Condominium.

149. The Condominium is a newly constructed, three-story residential building, and the sale of its units is subject to the housing merchant implied warranty set forth in New York General Business Law ("GBL") § 777-a.

150. The Sponsor breached the one-year warranty for skillful construction under GBL § 777-a(1)(a) by delivering a Building with improperly installed stove vents lacking required

exterior ducting, unsealed roof penetrations, incomplete EIFS patches, unsealed exterior outlets, and improperly graded drainage.

151. The Sponsor breached the two-year warranty for building systems under GBL § 777-a(1)(b) by delivering defective HVAC systems that fail to regulate temperature properly, active leaks in roofing and plumbing systems, improperly installed ventilation systems that create fire hazards, and other system failures documented in the EMA Report.

152. The Sponsor breached the six-year warranty for material defects under GBL § 777-a(1)(c) by delivering a Building with material defects, including cracked and spalling concrete canopies and a defective building envelope that allows for widespread water infiltration, which affects the load-bearing functions and renders the home unsafe or unsanitary.

153. Timely written notice of these defects was provided to the Sponsor via the March 28, 2025, letter and attached EMA Report, which was within the applicable statutory warranty periods and afforded the Sponsor a reasonable opportunity to inspect and cure.

154. The Sponsor has failed and refused to honor its statutory warranty obligations by refusing to repair the identified defects, constituting a breach of GBL § 777-a.

155. As a direct result of the Sponsor's breach of the statutory housing merchant implied warranty, Plaintiffs individually and the Condominium have suffered damages in excess of $1,100,000.00.

FIFTH CAUSE OF ACTION

(Unjust Enrichment — Against All Defendants) (Pled in the Alternative)

156. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 156 as if fully set forth herein.

157. Defendants have been unjustly enriched at the expense of Plaintiffs and the Unit Owners by, among other things, realizing substantial cost savings of approximately $400,000-

$500,000 from the undisclosed and fraudulent substitution of inferior Pine for the promised Ipe wood.

158. Defendants were further unjustly enriched by collecting premium purchase prices based on false representations of quality while knowingly delivering a substandard, defect-riddled product and avoiding the costs of proper, code-compliant construction.

159. It is against equity and good conscience to permit Defendants to retain the ill-gotten gains from their deceptive and fraudulent practices.

160. As a result, Plaintiffs have suffered damages and are entitled to restitution from Defendants in an amount to be determined at trial, but in excess of $1,100,000.00.

SIXTH CAUSE OF ACTION

(To Pierce the Corporate Veil/Alter Ego Liability — Against Lee Cohen and REDHOEK)

161. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 161 as if fully set forth herein.

162. Defendant Lee Cohen exercised complete domination and control over Defendant DDG Conover Owner, LLC, such that DDG Conover Owner, LLC had no separate mind, will, or existence of its own and was a mere instrumentality and alter ego for Cohen and his affiliated entity, REDHOEK.

163. Upon information and belief, Cohen disregarded corporate formalities, commingled corporate and personal funds, used corporate assets for personal purposes, and operated the Sponsor without adequate capitalization for a project of this scale.

164. This domination was used to perpetrate a fraud and wrong against Plaintiffs and the Unit Owners, namely the fraudulent substitution of materials and defective construction of the Building.

165. Upon information and belief, Cohen used his control to systematically strip the Sponsor of its assets and profits from unit sales, transferring them to himself and his affiliates to render the Sponsor judgment-proof, while leaving it without sufficient assets to satisfy its obligations for the defects it created.

166. Adherence to the fiction of a separate corporate existence would sanction the fraud perpetrated by Cohen and work a grave injustice against Plaintiffs.

167. Accordingly, the corporate veil of DDG Conover Owner, LLC should be pierced, and Defendant Lee Cohen and the affiliated entity REDHOEK should be held jointly and severally liable for all damages caused by the Sponsor's wrongful acts.

SEVENTH CAUSE OF ACTION

(Breach of Express and Implied Warranties — Against Sponsor) (Derivative Claim)

168. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 168 as if fully set forth herein.

169. This claim is brought derivatively on behalf of the Condominium.

170. The Offering Plan contains express warranties from the Sponsor, including that the Building would be constructed with "IPE Wood decorative members coated with Sikkens Wood Coating" and "in accordance with all applicable codes and FILED PLANS AND SPECIFICATIONS."

171. The Sponsor breached these express warranties by substituting inferior materials, failing to build in a workmanlike manner, and delivering a Building with numerous code violations and defects.

172. The Sponsor, as a merchant-builder, also provided implied warranties of merchantability and fitness for a particular purpose, namely that the Building would be fit for use as a luxury residential condominium.

173. The Sponsor breached these implied warranties by delivering a Building with systemic defects, including water infiltration and safety hazards, which render portions of the Building unsuitable for residential use without substantial repair.

174. Timely notice of these warranty breaches was provided. As a direct result, the Condominium has suffered damages in excess of $1,100,000.00.

EIGHTH CAUSE OF ACTION

(Fraudulent Conveyance — Against Sponsor, Cohen, and REDHOEK) (Derivative Claim)

175. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 175 as if fully set forth herein.

176. This claim is brought derivatively on behalf of the Condominium.

177. The Condominium is a creditor of the Sponsor based on the construction defect claims and damages arising from the Sponsor's breaches of contract and fraud.

178. Upon information and belief, between January 2024 and December 2024, the Sponsor, at the direction of Cohen, transferred the proceeds from unit sales to Cohen and his affiliate REDHOEK without fair consideration.

179. These transfers were made with the actual intent to hinder, delay, or defraud the Condominium and its Unit Owners, who are creditors of the Sponsor with respect to the construction defect claims.

180. The transfers were concealed and rendered the Sponsor insolvent or left it with unreasonably small capital to satisfy its known and anticipated warranty and contractual obligations.

181. As a result of these fraudulent conveyances, the Sponsor has been stripped of the assets necessary to fund the more than $1,100,000.00 in repairs, while Cohen and REDHOEK have been unjustly enriched by the diverted proceeds.

182. Alternatively, the transfers constitute constructive fraud as they were made without fair consideration at a time when the Sponsor was insolvent or was left with unreasonably small capital to satisfy its known liabilities.

183. The Condominium seeks to void these fraudulent transfers pursuant to the New York Debtor and Creditor Law and recover the transferred funds for the benefit of all Unit Owners.

NINTH CAUSE OF ACTION

(Negligent Misrepresentation — Against Sponsor Defendants) (*Derivative Claim)*

184. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 184 as if fully set forth herein.

185. This claim is brought derivatively on behalf of the Condominium.

186. Defendants, as sponsor-developers, had a special relationship with purchasers creating a duty to provide accurate information in the Offering Plan and its amendments.

187. Defendants negligently made false representations of material fact in the Offering Plan documents, including the representation that the Building would feature Ipe wood when inferior pine was to be installed.

188. Defendants failed to exercise reasonable care or competence in communicating this information, as evidenced by their certification of false documents.

189. Unit Owners justifiably relied on these negligent misrepresentations in purchasing their Units and did so to their detriment.

190. As a direct result of Defendants' negligent misrepresentations, the Condominium has suffered damages in excess of $1,100,000.00.

TENTH CAUSE OF ACTION

(Deceptive Business Practices, GBL § 349 — Against all Defendants) (Direct and Derivative Claims)

191. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 191 as if fully set forth herein.

This claim is brought both individually and derivatively. Defendants' conduct constitutes deceptive acts and practices in violation of GBL § 349. Defendants engaged in consumer-oriented conduct by marketing and selling residential condominium units to the public through a standardized Offering Plan. Defendants' acts were materially misleading and had a broad impact on consumers at large.

192. These acts included the fraudulent "bait-and-switch" scheme of promising premium Ipe wood in the Offering Plan and then secretly installing inferior pine, which affected all purchasers uniformly.

193. The deception continued through the Second Amendment, which failed to disclose the known defects and material substitutions even after they had been documented.

194. Plaintiffs individually and the Condominium suffered actual injury as a direct result of these deceptive acts, including overpaying for their units and now facing over $1,100,000.00 in repair and replacement costs.

195. Defendants' deceptive practices were willful and knowing, entitling Plaintiffs to an award of damages and attorneys' fees under GBL § 349(h).

ELEVENTH CAUSE OF ACTION

(Attorneys' Fees for Derivative Claims)

196. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 197 as if fully set forth herein.

197. Plaintiffs have been required to retain counsel and incur attorneys' fees and costs to prosecute this derivative action for the benefit of the Condominium.

198. Under New York law, plaintiffs who successfully prosecute a derivative action are entitled to reimbursement of their reasonable attorneys' fees and expenses from the common fund created by the recovery.

199. Plaintiffs are entitled to an award of their reasonable attorneys' fees and expenses incurred in connection with this derivative action.

JURY TRIAL DEMAND

200. Plaintiffs hereby demand a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment in their favor and against Defendants, jointly and severally, for relief and recovery as follows:

A. On the First, Fourth, Seventh, and Ninth Causes of Action, an Order awarding compensatory damages against the applicable Defendants in an amount to be determined at trial, but in no event less than $1,100,000.00;
B. On the Second Cause of Action, an Order awarding compensatory damages against all Defendants in an amount to be determined at trial, but in no event less than $1,100,000.00, plus punitive damages in an amount sufficient to punish Defendants for their willful, wanton, and malicious fraud;
C. On the Third Cause of Action, an Order awarding compensatory damages against the Sponsor and Gershfeld Defendants for all losses caused by their breaches of fiduciary duty;
D. On the Fifth Cause of Action, in the alternative, an Order awarding restitution against all Defendants in an amount to be determined at trial, but in no event less than $1,100,000.00;
E. On the Sixth Cause of Action, an Order Piercing the Corporate Veil and holding Defendants Lee Cohen and REDHOEK jointly and severally liable for all damages awarded against Defendant DDG Conover Owner, LLC;
F. On the Eighth Cause of Action, an Order voiding all fraudulent transfers and directing the return of all fraudulently conveyed funds to satisfy the judgment herein;
G. On the Tenth Cause of Action, an Order awarding actual damages, treble damages, and attorneys' fees pursuant to GBL § 349;
H. On the Eleventh Cause of Action, an Order awarding Plaintiffs their reasonable attorneys' fees and expenses incurred in prosecuting this derivative action;
I. For an order of attachment pursuant to CPLR Article 62 preventing any further fraudulent transfer or dissipation of Defendants' assets pending the resolution of this action;
J. For a mandatory injunction requiring Defendants to immediately undertake all necessary repairs to address life-safety violations;
K. For prejudgment interest at the statutory rate of 9% per annum on all damages awarded, and post-judgment interest as provided by law;

L. For attorneys' fees on all claims to the extent permitted by law, including but not limited to GBL § 349, the common fund doctrine for derivative claims, and any applicable contractual provisions;
M. For such other and further relief as the Court deems just and proper.

Dated: New York, New York
July 3, 2025

DAVIDOFF HUTCHER & CITRON LLP,
Attorneys for Plaintiffs

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VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

JAIME MADDEN, being duly sworn, deposes and says:

1. I am one of the Unit Owners of The 189 Conover Street Condominium, Plaintiff.
2. I have read the foregoing Complaint, and know the contents thereof, and the same is true to my personal knowledge, and/or review of the relevant documents, except as to the matters alleged upon information and belief, and as to those matters I believe them to be true.

Jaime Madden (Unit TH D)

Sworn to before me this
3 day of July 2025

Notary Public

MARINA OVTCHINNIKOVA
Notary Public, State of New York
No. 01OV6077008
Qualified in Kings County
Commission Expires July 1, 20 26

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