IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

WARDMAN TOWER RESIDENTIAL CONDOMINIUM UNIT OWNERS ASSOCIATION, **Plaintiff,** **v.** **JBG SMITH PROPERTIES, et al.,** **Defendants.**	**2020 CA 004807 B** **Judge Yvonne Williams**

TRIAL ORDER

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This matter appeared before the Court for a Non-Jury Trial ("Trial") on November 10, 2025 and concluded on March 5, 2026. Upon review of the evidence and arguments presented at Trial and in Post-Trial Briefing, the Court makes the following findings of fact and conclusions of law.

I. PROCEDURAL HISTORY

This case arises under D.C. Code § 42.1901.01 *et seq.* for alleged defective design, construction, and renovation of the Wardman Tower Residential Condominium ("Condominium"). Wardman Tower is a mixed-used, eight story building that contains a hotel on floors one and two and a 32-unit residential condominium on floors three through eight. This action concerns the 32-unit residential condominium, or Condominium. Wardman Tower Residential Condominium Unit Owners Association ("Plaintiff" or "Association") brings suit on behalf of two or more unit-owners against Defendants NASH Wardman Tower Residential LLC, JBG SMITH Properties, JBG SMITH Properties LP, Wardman Tower Residential LLC, and JBG/Development Services, LLP (collectively, "Developer Defendants"), and Plaza Construction D.C., LLC ("Plaza") for damages.

A. Pretrial

On November 25, 2020, Wardman Tower Residential Condominium Unit Owners Association ("Plaintiff") filed the instant suit seeking injunctive relief and monetary damages.[1] Plaintiff filed their First Amended Complaint on November 21, 2022, their Second Amended Complaint on August 2, 2023, and their Third Amended Complaint, the operative Complaint, was

[1] The original complaint named as Defendants JBG SMITH Properties, JBG SMITH Properties LP, JBG SMITH Properties of Washington, D.C. Inc., NASH Wardman Tower Residential, LLC, Wardman Tower, LLC, Wardman Investor, LLC, JBG/Company Manager, LLC, John Doe Corporations, John Doe Entities, John and Jane Does, Plaza Construction LLC, Plaza Construction DC, LLC, JBG/Company Manager, LLC, John Doe Corporations, John Doe Entities, John and Jane Does, Plaza Construction LLC, Plaza Construction DC, LLC, Plaza Group Holdings, LLC, and Plaza Construction Holding Company, LLC.

filed on December 15, 2025, and accepted by the Court on January 19, 2026. Plaintiff plead eleven Counts: (i) Negligent Construction and Renovation against Developer Defendants; (ii) Negligent Repair against Developer Defendants; (iii) Negligent Misrepresentation against Developer Defendants; (iv) Violation of the Consumer Protection Procedures Act against Developer Defendants; (v) Breach of Statutory Warranty Against Structural Defects against NASH Wardman Tower Residential, LLC; (vi) Breach of Statutory Warranty Against Structural Defects against Wardman Tower Residential, LLC; (vii) Misleading Statements or Omission in Public Offering Statement against NASH Wardman Tower Residential, LLC and Wardman Tower Residential, LLC; (viii) Breach of Contract against NASH Wardman Tower Residential, LLC; (ix) Strict Liability against Developer Defendants; (x) Breach of Fiduciary Duty against Developer Defendants; and (xi) Negligent Construction and Renovation against Plaza Construction D.C., LLC.[2]

On March 3, 2025, the matter was certified and transferred to the Civil I calendar before this Court. Parties filed their Joint Pretrial Statement on May 21, 2025 and the Court held a Pretrial Conference on May 28, 2025 at which multiple Motions *in Limine* were considered[3] and a Trial date was set.

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[2] On December 17, 2024, Plaintiff withdrew their claim for Injunctive Relief, previously enumerated as Claim XI.

[3] On the May 28, 2025, at the Pretrial Conference, the Court: (i) Denied Developer Defendants' Motion to Strike Plaintiff's damages expert Daniel Shovlin of Faithful & Gould; (ii) Denied Developer Defendants' Motion to Preclude Plaintiff's Structural Experts Raths, Raths, & Johnson from testifying at trial on the Above-Grade Exterior Wall; (iii) Denied Developer Defendants' Motion to Preclude Testimony and Reports by Expert Robert Davidson; (iv) Granted in Part and Denied in Part Plaintiff's Motion *in Limine* to Preclude Christopher Schumacher from Testifying at Trial, holding expert is precluded from testifying as to any WUFI rebuttal opinions; and (v) Conditionally Granted Developer Defendants' Motion to Strike Party Counsel from Plaintiff's Witness List, holding that, if Plaintiff has any evidence that even remotely duplicates the potential testimony of Ballard Spahr attorneys, Plaintiff will be precluded from calling Ballard Spahr attorneys as witnesses at trial. Pretrial Order at 3-4 (May 28, 2025).

B. Trial

The Non-Jury Trial in this matter convened on November 10, 2025 and concluded on March 5, 2026. During the Trial, the Court heard testimony from Plaintiff's fact witnesses including: (i) Wardman Tower unit owners Carolyn Abbey, Kevin Meehan, Kenneth Ellis, Kenneth Gallo, Helen Zax, Marcia Hale, and Karen Dixon; (ii) NASH Executive Vice President Thomas McKay; (iii) Wiss Janey Engineers Senior Associate and Project Lead Clarissa Kenney, who testified in both the Plaintiff and Developer Defendants' cases; (iv) JBG SMITH Associate General Counsel Livya Heithaus; (v) CEO of JBG SMITH Matthew Kelly; (vi) JBG and JBG SMITH Vice President of Residential Asset Management Christina Chang; (vii) Plaza CEO Daniel Peyton; (viii) JBG and JBG SMITH Executive Andrew Hennemuth; and (ix) JBG SMITH Executive Andrew VanHorn.

Plaintiff's expert witnesses included: (i) Otto Guedelhoefer, certified as an expert in structural engineering; (ii) David Mirch, certified as an expert in elevator system evaluation and costing; (iii) David Burton, certified as an expert in mechanical engineering; (iv) Jeff Marsh, certified as an expert in electrical engineering; (v) Robert Davidson, certified as an expert in architecture, forensic architecture, and construction analysis; (vi) Robert Splain, certified as an expert in architecture and forensic architecture, property condition assessments, building codes, industry standards, and construction forensics; and (v) Daniel Shovlin, certified as an expert in construction cost estimating.

The following fact witnesses testified on behalf of the Developer Defendants: (i) Anderson Cooper Group Principal Todd Friedlander; (ii) NASH Development Manager Gabriel Katz; (iii) Plaza Senior Superintendent Jennifer May, who testified for both Developer Defendants and Plaza; and (iv) CORE Engineers Consulting Group Co-Founder Eric Mayl. Developer Defendants' expert witnesses included: (i) Thomas Carcaterra, certified as an expert in mechanical engineering; (ii)

Joseph Lstiburek, certified as an expert in building science; (iii) Christopher Schumacher, certified as an expert in building science; (iv) Elisa Paone, certified as an expert in electrical engineering; (v) Mark Coggin, certified as an expert in structural engineering; (vi) Richard Vivenzio, certified as an expert in forensic architecture, code compliance, and water testing; (vii) Raymond Grill, certified as an expert in fire protection engineering and code application; (viii) Mark Tamaro, certified as an expert in structural engineering; (ix) Eron Whitehurst, certified as an expert in elevator maintenance; (x) Ayo Idowu, certified as an expert in construction cost estimation; and (xi) Scott Cullen, certified as an expert in construction cost estimation.

Defendant Plaza's fact witnesses included: (i) Jennifer May, Plaza Senior Superintendent; (ii) Joseph Michael Schneider, Senior Project Manager at James Myers Company; (iii) Scott McKelvy, Project Manager at Severn Group; and (iv) Peter Ege, Senior Project Manager at Plaza. Plaza also called expert Ben Nolan, who was certified as an expert in preparation and evaluation of construction claims and methodology, estimating and pricing construction claims and damages, and construction scope and performance evaluation.

On December 15, 2025, Plaintiff filed their Motion to Amend Complaint. Defendants filed their Opposition on December 31, 2025 and Plaintiff filed their Reply on January 5, 2026. The Court granted Plaintiff's Motion to Amend on January 19, 2026 and ordered that the Complaint be amended to add JBG/Development Services as a named Defendant and add to Plaintiff's CPPA claim alleged misrepresentations made in the Public Offering Statement regarding the Porte Cochere and sunken gardens.

On January 29, 2026, at the close of Plaintiff's case, Developer Defendants filed a Motion for Judgment on Partial Findings under Rule 52(c). The Court ordered Plaintiff to incorporate their Opposition in their Post-Trial Brief. At the close of Trial, the Court ordered the Parties to submit

Post-Trial Briefs summarizing the evidence and testimony at Trial and presenting legal argument. Parties filed their Post-Trial Briefs on April 6, 2026 and their Replies on April 20, 2026 and the Court heard argument on May 5, 2026 and May 6, 2026.

II. OVERVIEW

A. The Parties

Plaintiff's claims are against NASH Wardman Tower Residential LLC, JBG SMITH Properties, JBG SMITH Properties LP, Wardman Tower Residential LLC, and JBG/Development Services, LLP (collectively, "Developer Defendants"), and Plaza Construction D.C., LLC.

Wardman Tower Residential Condominium Unit Owners Association ("Plaintiff" or "Association") is the association of unit owners in Wardman Tower Residential Condominium ("Wardman Tower"). Plaintiff filed suit "on its own behalf and on behalf of two or more unit owners." Compl. at 1.

The JBG Companies ("JBG") is the trade name used by a family of affiliated entities.

NASH Wardman Tower Residential LLC ("NASH Wardman" or "Declarant") is a joint venture created December 9, 2013 to develop Wardman Tower. It consists of NASH WT Holdings, LLC ("NASH Member") as 90% owner and managing member and Wardman Tower Member, LLC as 10% owner and operating member ("JBG Member"). It is the Declarant.

JBG SMITH Properties ("JBG SMITH") is a publicly traded Maryland Real Estate Investment Trust ("REIT") and was formed in July 2017 by the merger of parts of The JBG Companies and Vornado Realty Trust. JBG SMITH Properties is the parent company and majority owner of JBG SMITH Properties, LP.

JBG SMITH Properties, LP ("JBG SMITH Operating Company") was formed in July 2017 to serve as the operating partnership for JBG SMITH Properties.

Wardman Tower Residential LLC ("WT LLC") is the entity that originally acquired the Wardman Tower property in 2005. In 2013, it subdivided the property into two units (the Residential Unit and Hotel Unit). It transferred the Residential Unit to NASH Wardman.

JBG/Development Services, LLP ("Development Services") originally owned by The JBG Companies, became a subsidiary of JBG SMITH Properties in July 2017. It entered a Project Management Agreement ("PMA") with NASH Wardman Tower Residential LLC on January 31, 2014 to manage Wardman Tower's development, including construction, marketing, and sales. After becoming a subsidiary of JBG Smith Properties in 2017, it provided the same services and honored its existing contracts, obligations, and liabilities under the PMA.

Plaza Construction D.C., LLC. ("Plaza") is a general contractor retained by NASH Wardman to perform specified new construction and interior renovation scopes of work at Wardman Tower.

B. Summary of Allegations

Wardman Tower was built in 1929 and is located at 2660 Connecticut Avenue NW, in Washington, D.C. It is registered in the National Register of Historic Places, as well as in the D.C. equivalent. After its initial construction, it served as an eight-story apartment building and hotel before being converted into a condominium. In 2005, WT LLC acquired Wardman Tower and the neighboring hotel. In 2013, WT LLC subdivided Wardman Tower into two units: a residential unit ("Unit A" or "Condominium") and a hotel unit ("Unit B" or "Hotel"). Joint Pretrial Statement ("JPS") at 4; PTX-842.236-339. The Condominium's renovation is the basis of this dispute.

The Condominium is part of the Master Condominium, which includes the entire Wardman Tower consisting of the Condominium and Hotel. The Association owns a 75.27% interest in the Master Condominium and is obligated to pay 75.27% of the Master Condominium's expenses. PTX-569.00262, 275, 282, 286-87. The Condominium is located on floors B1, floors 3 through 8, and various other areas in and around the building. The Condominium contains 32 residential units, a lobby level with common meeting areas, exercise room, manager's office, utility rooms, and storage spaces as well as certain portions of the basement and a newly constructed, two-level, underground parking garage. The Hotel is located on the first and second floors and operates separately from the Condominium.

In 2014, WT LLC transferred interest in the Condominium to NASH Wardman in which JBG was a member. NASH Wardman contracted with architects Anderson Cooper Group ("ACG") and engineers Wiss Janney Elstner Associates, Inc. ("WJE") to begin the Wardman Tower renovation. In 2014, Development Services entered into a Project Management Agreement ("PMA") with NASH Wardman to manage the condominium construction, renovation, and conversion. PTX-329.00131. NASH Wardman hired Plaza Construction D.C., LLC. ("Plaza") as the general contractor for the project on June 8, 2015 with a building renovation scope that included the interior build-out of floors 3 to 8, the new garage, the rooftop, the B1 level, and site work. PTX-1918.

The District of Columbia issued the Condominium a temporary Certificate of Occupancy on December 13, 2016. The final Certificate of Occupancy indicating that the work was substantially complete, inspected and accepted was issued on July 18, 2017. Plaza 804; Plaza 1963.

On July 17, 2017, parts of The JBG Companies and Vornado Realty Trust merged to create JBG SMITH as a publicly traded Maryland Real Estate Investment Trust ("REIT"). DD17827. The JBG SMITH Operating Company was also created to serve as the operating partner. DD17828. JBG SMITH is the parent company and majority owner of JBG SMITH Operating Company. Development Services, originally part of The JBG Companies, became a subsidiary of

JBG SMITH.[4] Development Services provided the same services at Wardman Tower before and after the formation of JBG SMITH.

The Condominium at Wardman Tower was marketed to prospective purchasers as fully renovated, luxury, high-end condominiums. PTX-787.00014-15. Prospective purchasers entered into contracts to purchase units at Wardman Tower as early as July 2015. Nineteen units were sold after JBG SMITH was formed in July 2017. DD18751; DD18991. The Association was created as the body that controls and exercises the rights and powers of the Condominium. PTX-569.00253-254. All Wardman Tower unit owners were members of the Association which was governed by the Board of Directors ("Board"). PTX-569.00119. Developer Defendants controlled the Board until November 2019, when control was transferred to the unit owners. PTX-738.00003.

In November 2018, after unit owners voiced several concerns related to the quality of the building's construction, the Developer Defendant controlled Board authorized a Transition Study to identify issues at Wardman Tower and engaged the services of Thomas Downey, Ltd. ("TDL") to prepare the Transition Study.[5] PTX-1506.00079. TDL identified multiple issues of concern in its report that the Developer Defendant controlled Board declined to investigate. PTX-1506. After November 2019, when Board control was transferred to the unit owners, the Board, on behalf of the Association, hired experts to further investigate the issues identified in the Transition Study. Based on those findings, Plaintiff filed suit against Defendants on November 25, 2020.

Plaintiff alleges that the building and underground parking garage suffer from numerous defects involving, principally, the building's elevators, roof, HVAC system, electrical system, the above- and below-grade exterior walls, and the underground parking garage's elevator, foundation,

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[4] Development Services is a disregarded entity for tax purposes.

[5] Thomas A. Carcaterra, LLC ("TAC") was engaged to investigate HVAC issues identified in the Transition Study.

and driveway traffic slabs. JPS at 5. Central to Plaintiff's claims is that Developer Defendants misled condominium purchasers about defects Developer Defendants knew or should have known existed, including in written public offering statements and other documents. *Id.* Plaintiff also alleges that Developer Defendants breached their fiduciary duty to the Association during the period Developer Defendants controlled the Board and took no action to address the defects. *Id.* Plaintiff seeks damages for the cost of repairing the defects, as well as treble damages and attorneys' fees under the D.C. Consumer Protection Procedures Act ("CPPA"). *Id.*

Developer Defendants deny all allegations and liability, including as to the amount and nature of damages. *Id.* at 6. Developer Defendants assert that the Wardman Tower building is structurally sound and has satisfactorily performed for almost 100 years. *Id.* Developer Defendants contend that Declarant hired qualified experts and contractors to conduct a thorough review of the Wardman Tower building and to make recommendations regarding necessary repairs, renovations and updates, which Developer Defendants contend were performed. *Id.* Plaza similarly denies all allegations and liability.

III. FINDINGS OF FACT

The issues raised in this litigation can be generally organized into seven categories: (1) whether the Plaintiff has standing to bring this case against Developer Defendants and Plaza; (2) whether Developer Defendants can be held liable directly, via agency and *respondeat superior* principles, or veil piercing; (3) Developer Defendants' alleged defective renovation of Wardman Tower that gave rise to Plaintiff's negligence, breach of statutory warranty, strict liability, and breach of fiduciary duty claims; (4) Developer Defendants' conduct that gave rise to Plaintiff's negligent misrepresentation, CPPA, and D.C. Condominium Act claims; (5) Plaza's alleged negligent construction and renovation that gave rise to Plaintiff's negligent construction claim against Plaza; and (6) the appropriate measure of damages.

A. The Role of NASH Wardman, JBG/Development Services, and JBG SMITH at Wardman Tower

NASH Wardman is a joint venture created December 9, 2013 to develop Wardman Tower. It does not have its own offices, employees, property, email accounts, or equipment. Tr. 11/13 AM, 148:1-149:12 (McKay). It did not draft business plans, public offering statements ("POSs"), nor prepare or distribute any marketing materials related to the Wardman Tower. *Id.*, 149:9-12; Tr. 11/13 PM, 5:17-6:14, 18:24-19:3, 64:19-66:5 (McKay). Its principal place of business and corporate address is the corporate headquarters of The JBG Companies ("JBG"), later known as JBG SMITH. Tr. 11/13 PM, 5:6-13 (McKay). JBG, and later JBG SMITH, employees oversaw the NASH Wardman's daily operations, including managing its bank accounts, bonds, and records. Tr. 11/13 PM, 76:8-9 (McKay); Tr. 1/8 PM, 99:20-100:18 (Heithaus). JBG, and later JBG SMITH, were responsible for employing and paying individuals through its subsidiary, JBG/Development Services, LLP ("Development Services").

Development Services was formed in 2001 under JBG to perform "third-party development services." Development Services did not, and does not to this day, have any of its own employees, offices, equipment, nor corporate address. Tr. 12/1 AM, 97:1-8, 25; 98:1-18 (Kelly). Development Services' employees were employees of, and paid by, JBG and, after 2017, JBG SMITH. *Id.* In 2014, Development Services entered into a PMA with NASH Wardman Tower to serve as the project manager for the condominium's construction, renovation, and conversion for a fee. PTX-329.00131. Development Services, through use of JBG and JBG SMITH employees renovated the Wardman Tower under an Employee Sharing Agreement ("ESA"). *Id.*

In July 2017, JBG SMITH was formed by the merger of parts of JBG and the Vornado Realty Trust. DD17827. JBG SMITH is the successor to JBG. PTX-3337. Every JBG employee either became employed under the JBG SMITH umbrella or was terminated. Tr. 12/1 AM, 74:3-

24 (Kelly). JBG SMITH, in turn, is the parent of the operating company, JBG SMITH Properties, LP. Tr. 11/20 PM, 41:19-42:1 (Heithaus). JBG SMITH has the authority to direct the operations of JBG SMITH Properties, LP. *Id.* JBG SMITH Properties, LP is the primary employer of all employees under the JBG SMITH umbrella. *Id.*, 42:1-43:13.[6] Development Services became a wholly owned subsidiary of JBG SMITH Properties, LP and a part of the JBG SMITH umbrella.[7] *Id.*, 45:1-16, 22-25. After the merger, Development Services continued to provide the same services at Wardman Tower, honoring its existing contracts and obligations under the PMA after becoming a JBG SMITH subsidiary. Tr. 12/1 AM, 60:17-23,79:23-80:7,122:6-10 (Kelly). Those services were performed by the same employees, who had been employed by JBG prior to the merger, but were now employed by JBG SMITH. Tr. 12/1 AM, 58:9-25, 63:11-19; Tr. 11/20 PM, 47:1-6 (Heithaus).

1. Overlapping Responsibilities of NASH Wardman, JBG/Development Services, and JBG SMITH

The role of NASH Wardman and Development Services in the Wardman Tower project is largely interwoven, and often indistinguishable, from the role of JBG and later JBG SMITH. As noted *supra* Section III.A, neither NASH Wardman nor Development Services had its own offices, employees, property, email accounts, equipment, or address. Tr. 11/13 AM, 148:1-149:12 (McKay); Tr. 12/1 AM, 97:1-8, 25; 98:1-18 (Kelly). Their corporeality only existed through JBG and then JBG SMITH.

[6] Ms. Heithaus testified that the only employees of JBG SMITH that are not under JBG SMITH Properties, LP are "C-Suite officers" such as Matthew Kelly who is employed as the CEO of JBG SMITH. Tr. 11/20 PM, 42:13-43:7 (Heithaus).

[7] Development Services is a disregarded entity for tax purposes. DD18744.

a. NASH Wardman and JBG SMITH

As to NASH Wardman, JBG employees, through the PMA, managed NASH Wardman's bank accounts, bonds, and records. Tr. 11/13 PM, 76:8-9 (McKay); Tr. 1/8 PM, 99:20-100:18 (Heithaus). As of 2023, NASH Wardman's Executive Committee had never formally met. Tr. 11/13 PM, 12:5-17 (McKay). The Executive Committee was responsible for approving annual business plans, prepared by Development Services, for the project. *Id.*, 12:15-13:10. Thomas McKay, NASH's representative on the Executive Committee, could not name the JBG members on the committee, that all business plans were approved by email, and that every resolution put before the Executive Committee was passed. Tr. 11/13 PM, 12:5-8, 13:8-14:22 (McKay). Additionally, there were no final business plans prepared in 2021 and 2022. *Id.*, 26:20-27:7. Thomas McKay recalled seeing only one POS draft and he did not recall which one. *Id.*, 65:24-66:5. JBG Employees drafted the POSs, not NASH Wardman. PTX-834; PTX-827; PTX-841; PTX-569. The signature of Rafael Muniz, an employee of JBG, is on all the POSs even though he left JBG in 2015. *Id.*; Tr. 12/9 AM, 109:8-12 (Peyton).

b. JBG/Development Services and JBG SMITH

As to Development Services, all employees were hired, fired, paid and directed by JBG and then JBG SMITH. Tr. 1/7 PM, 69:22-70:2 (Heithaus); Tr. 12/1 AM, 97:1-98:22 (Kelly). Thomas McKay, who helped negotiate the NASH Wardman venture, did not distinguish between entities under the JBG umbrella and did not know how JBG and Development Services distinguished internally between entities. Tr. 11/13 PM, 17:25-18:14, 21:6-17 (McKay). Another NASH executive, Gabriel Katz, referred to "JBG" generally and would not consider the specifics of the entity to which he referred. Tr. 2/18 PM, 16:25-17:10 (Katz).

Under the PMA, Development Services is owed "Development Management Fees" for its work at the Wardman Tower project. PTX-329.00155. Those payments, however, were paid to

JBG/Development Group, LLC, which is wholly owned by JBG SMITH Properties, LP and JBG SMITH. DD18731; Tr. 11/13 PM, 75:22-76:9 (McKay). Invoices confirm that requests for checks were payable to JBG/Development Group, LLC rather than Development Services. *See* DD18731. The fees that Development Services earned pursuant to the terms of the PMA were recorded on JBG SMITH's "balance sheet" and was "a source of revenue" for JBG SMITH. Tr. 12/1 AM, 96:14-25, 99:19-100:14 (Kelly).

2. Actions Taken by The JBG Companies and JBG SMITH in Construction, Renovation, Management, and Sales of Wardman Tower

JBG, and later JBG SMITH, employees were responsible for the construction, renovation, management, and unit sales at Wardman Tower. The work was done through Development Services but, as noted *supra* Section III.A, that entity did not have any of its own employees or assets. Rather, the work was done by JBG and JBG SMITH employees through the ESA, allowing JBG and JBG SMITH to direct all activities and decision-making. Those same JBG employees that worked on Wardman Tower through the ESA continued their work on Wardman Tower after JBG SMITH was formed. Their role prior to the merger and how their responsibilities continued after JBG SMITH was created will be discussed in turn.

As to construction and renovation, Anderson Cooper Group ("ACG") was hired to be the architect for the Condominium renovation in November 2013. DD18750. The contract with ACG was signed by NASH Wardman, "c/o the JBG Companies." *Id*. Importantly, at this time, NASH Wardman had not yet been formed. PTX-329. It was formed on December 9, 2013, a month after the contract with ACG was purportedly signed by NASH Wardman, "c/o the JBG Companies." *Id*. Shortly thereafter, Plaza was retained as the general contractor and Development Services as the project manager pursuant to the PMA. PTX-1918; PTX-329.00131. The PMA, executed on January 31, 2014 between JBG and Development Services, was signed by Brian Coulter, a JBG executive, on behalf of both parties. PTX-329. The key documents for the renovation work, including the governing plans and change orders, listed JBG as the owner of Wardman Tower and included the JBG logo. PTX-1048, 2006, 2007, 2010, 2013, 2018, 2020, 2025, 2032, 2033, 2034, 114.00004. Further, JBG employees were intimately involved with the renovation work including setting project budgets, approving plans and change orders, and overseeing Plaza's work. Tr. 2/26 PM, 91:6-92:5 (Ege); Tr. 2/3 AM, 30:11-14, 31:21- 25 (Friedlander); Tr. 12/9 AM, 146:4-7 (Peyton); Tr. 12/1 PM, 15:9-16:2 (Chang); Tr. 1/8 AM, 14:3-15:2 (VanHorn); PTX-114. Plaza considered JBG to be the property's owner and its client for the contracted work. Tr. 12/9 AM, 99:13-25,111:4-16 (Peyton); Tr. 2/26 PM, 54:23-55:3 (Ege). Development Services "continued to provide the same services [at Wardman Tower] post-[JBG SMITH] as it had pre-[JBG SMITH]," because "[a]nything that it had a contract to do, it had to continue to honor that contract." Tr. 12/1 AM, 63:11-15 (Kelly). This included continuity of personnel and provision of services at Wardman Tower before and after the merger.

As to management, JBG was the Operating Member of NASH Wardman. PTX-329.00020. As such, it was in charge of the day-to-day operations, management, and administration of the Wardman Tower renovation. The PMA assigned these responsibilities to Development Services and JBG ensured that Development Services complied with the PMA. PTX-329; Tr. 11/13 PM, 15:15-17:20 (McKay). After the formation of JBG SMITH, those same employees continued the management of the Wardman Tower renovation. JBG SMITH, under the PMA, staffed the Board with JBG SMITH employees. PTX-3386; Tr. 1/7 PM, 72:3-8, 13-16 (Heithaus); Tr. 12/1 PM, 11:22-12:24 (Chang). Those employees controlled the Board until November 2019. *Id.* JBG SMITH employees made warranty and insurance claims on behalf of Wardman Tower, oversaw the completion of "punch list" list items, directed close-out work in units, and promised to repair common element issues at Wardman Tower. PTX-556L, 859, 3242, 2781, 2731; *see also* Tr. 11/24 AM, 17:19-21:12, 20:22-21:7, 22:8-10 (Ellis); Tr. 12/2 AM, 95:2-9 (Chang). In 2018, for example, JBG SMITH offered to pay for unit owners to stay at the Marriott while HVAC repairs occurred and promised to fix numerous issues that were identified at Wardman Tower and in the units. PTX-130; Tr. 11/24 AM, 17:19-21:12, 20:22-21:7, 22:8-10 (Ellis); Tr. 11/12 AM, 31:11-20 (Abbey); PTXs 556L, 859L; Tr. 11/13 AM, 113:6-116:8 (Meehan); PTX-3242; Tr. 12/9 AM, 30:6-18, 39:7-25 (Zax); PTXs 2781, 2731; Tr. 12/2 AM, 95:2-9; Tr. 1/8 AM, 149:11-22 (VanHorn).

As to sales and marketing, JBG and JBG SMITH employees directed unit sales and marketing. For example: (i) a JBG SMITH executive was responsible for a marketing article in the *Washingtonian* about Wardman Tower, DD19001; Tr. 1/8 AM, 132:24-133:6 (VanHorn); (ii) initial unit purchasers met sales agents at JBG's corporate headquarters as that was where the sales office was located, Tr. 11/10, 187:6-17 (Abbey); Tr. 1/13 AM, 142:20-143:3 (Hale); (iii) JBG SMITH employees oversaw the sales process of at least 19 units, DD18751; DD18991; (iv) JBG SMITH accepted an award for the renovation of Wardman Tower, PTX-0722; (v) JBG SMITH gave prospective buyers "quick access to the top of JBG" to give them "the right level of confidence," PTX-3225; and (vi) JBG and JBG SMITH employees were responsible for drafting and distributing the POSs relied upon by unit purchasers during the closing process. Tr. 11/13 PM, 64:12-25, 65:24-66:5 (McKay).

Further, unit owners understood JBG and JBG SMITH to be responsible for the Wardman Tower renovation and sales and did not distinguish between the two entities after the merger. JBG and JBG SMITH's conduct demonstrate that this was their intent. For example: (i) JBG employees email addresses remained the same for residents after the merger so that they would have the same point of contact after JBG SMITH was formed, Tr. 11/12 AM, 44:15-45:11 (Abbey); (ii) the

Wardman Tower internet domain was registered by JBG SMITH Properties LP, as part of JBG SMITH, PTX-2331, 2332; (iii) JBG SMITH executives made "buyer calls" to multiple buyers prior to sale, Tr. 11/13 PM, 36:6-37:16 (McKay); and (iv) in 2018, unit owners sent a letter to the JBG SMITH CEO, Matthew Kelly, documenting renovation concerns at Wardman Tower. PTX-2745A. JBG SMITH executives maintain that JBG SMITH "stands behind" the work at Wardman Tower. Tr. 12/1 AM, 115:14-21 (Kelly); Tr. 1/8 PM, 36:3-37:18 (VanHorn). Furthermore, JBG SMITH, for this litigation, signed a Joint Defense Agreement on behalf of seven JBG entities, including NASH Wardman, showing the conflated responsibilities between entities that were distinct only on paper. PTX-3391.000019.

3. Wardman Tower Budget and Financing

Poor planning at Wardman Tower led to budgeting issues and subsequent financial decisions that impacted the Wardman Tower renovation. As a result, the Wardman Tower project was poorly constructed and significantly undercapitalized.

a. Budgeting Issues

North America Sekisui House, LLC ("NASH") was the "capital partner" in NASH Wardman and provided funding for the project. Tr. 11/13 PM, 40:3-14 (McKay). In this role, NASH functioned as a limited partner or investor and JBG functioned as the operating partner and developer. Tr. 11/13 PM, 40:3-19 (McKay). When NASH Wardman was created, it made a special distribution to JBG for the Wardman Tower development. PTX-329.00019; Tr. 11/13 AM, 152:23-153:11. JBG and JBG SMITH relied on NASH for funding over the course of the Wardman Tower development including multiple renewals, extensions, and modifications of debt financing for the project, which functioned as a loan to be repaid with interest. Tr. 1/8 AM, 72:19-73:18 (VanHorn).

The Wardman Tower project began with "an overly simplified expected scope of work." Tr. 11/13 PM, 92:11-13 (McKay). It incurred significant budget increases soon after renovation began and the existing building conditions were understood. Tr. 11/17 AM, 48:10-49:2 (McKay). In 2014, just after the Wardman Tower was purchased, Developer Defendants hired WJE and Construction Systems Group ("CSG") to investigate the exterior above-grade walls for the presence of water intrusion. They identified the following issues all of which increased the budget significantly: (i) extensive bond line failure; (ii) open mortar joints; (iii) irregular mortar droppings and debris in the collar joint; (iv) evidence of uncontrolled water intrusion through walls; and (v) evidence of sealant that could reduce the efficacy of future repointing efforts. Tr. 11/17 AM, 67:9-69:6, 117:12-22, 121:10-122:5 & Tr. 11/18 AM, 80:3-13 (Kenney); PTXs 1103.00013, 295.00007-11, 898.00044. As late as 2016, JBG identified multiple areas causing the "dramatic increase to the budget" including water intrusion, structural deficiencies, issues with the façade, repointing, roof, mechanical system complications, and interior build out costs. PTX-2103.

Plaza, as the hired general contractor, identified numerous unforeseen conditions during the renovation. These conditions were often unforeseen because the approved plans on which Plaza relied to place its bid did not align with the actual conditions at Wardman Tower. Tr. 2/26 AM, 53:10-22 (Ege); Tr. 2/3 AM, 107:15-23 (Friedlander); Tr. 2/25 AM, Part 1, 67:11-68:12 (McKelvy). For example: (i) beams and joists were located in different areas than in the design documents, PTX-3235; Tr. 12/9 AM, 121:18-122:1 (Peyton); (ii) concrete ribs and floor slab elements did not align, Tr. 2/26 AM, 49:22-51:24 (Ege); and (iii) there were issues with the rebar steel on the B1 columns. Tr. 12/9 AM, 119:22-120:11 (Peyton). These unforeseen conditions also delayed renovation and increased construction costs. Tr. 12/9 AM, 120:12-121:17 (Peyton); Tr. 12/10 AM, 66:2-68:11 (Peyton); PTXs 707, 734, 3181. Indeed, there were an "inordinate" number of change orders sought for the project, including design bulletins and multiple Requests for

Information ("RFIs"), which caused delays in renovation. Tr. 12/9 AM, 112:1-3, 125:18-126:11 (Peyton); Tr. 2/19 AM, 21:23-22:24; 22:25-23:9; 25:20-26:10 (May); PTX-3212; PTX-3235.

As a result, the budget for Wardman Tower increased significantly: (i) the construction budget rose from $111.5 million to $165 million, Tr. 11/13 PM, 86:12-19, 91:22-92:3 (McKay); (ii) the engineering and architecture fees were over budget by $2 million, Tr. 11/17 AM, 44:17-23, 48:10-16 (Kenney); (iii) the garage costs doubled to $7.9 million, *Id.*; and (iv) the marketing budget increased from $944,000.00 to $5.4 million. Tr. 11/17 AM, 38:7-21, 43:12-24 (Kenney). Rather than accept those budget increases, Developer Defendants cut costs and avoided responsibility all while continuing to market Wardman Tower as the "luxury condominium" it was originally designed and planned to be.

b. Financial Decisions

As the Wardman Tower budget increased, the project faced financial strain and the planned renovation shifted. NASH provided construction debt financing for the Wardman Tower project, which functioned as a loan to be repaid with interest. Tr. 1/8 AM, 72:19-73:18 (VanHorn). NASH provided an initial loan commitment of $82 million, and, in 2018, the loan was renewed and extended with a commitment of $65 million that was intended to be paid down as units were sold. *Id.*; DD18991. Developer Defendants repeatedly renewed, extended, and modified their loan agreement with NASH due to financial constraints caused by budget increases and their inability to pay down the loan. Tr. 1/8 AM, 71:5-12, 117:8-16 (VanHorn). Developer Defendants "reduce[d] the amount [they] were paying down on the [Wardman Tower] loan in order to hold more cash at the property in order to cover our obligations and complete the project." Tr. 1/8 AM, 71:5-12, 117:8-16 (VanHorn).

In response to budget increases, Developer Defendants implemented "value engineering" to cut costs and remove numerous features that had been a part of the original plans including: (i) eliminating the traffic coating in the garage, Tr. 1/12 AM, 40:8-16, 41:1-4 (Splain); (ii) eliminating the sunken gardens and brick driveway, Tr. 11/17 AM, 27:11-25 (McKay); Tr. 2/3 AM, 83:12-17, 87:13-20 (Friedlander); PTX-3411; PTX-827.00310-11; and (iii) failing to implement recommended water testing and repair related to the below-grade walls. PTX-295.00024-25; PTX-889.00006; PTX-898.00032; Tr. 11/17 AM, 143:4-11 (Kenney); Tr. 11/18 PM, 58:18-59:6 (Guedelhoefer). JBG originally relied on ACG and HVAC professionals to design and implement the HVAC system under a "design-bid-build" process. Tr. 2/3 AM, 46:14-19, 47:15-49:12 (Friedlander). To reduce costs, JBG moved to a "design-build" process for the HVAC system and told the new designer to "fit everything within" set plans, a decision that continues to plague unit owners today. Tr. 12/9 AM, 106:20-107:1 (Peyton); Tr. 2/26 AM, 57:1-9 (Ege); PTX-710; Tr. 2/3 AM, 46:14-19, 47:15-49:12 (Friedlander).

The budget increases led to a dispute between Plaza and JBG as Plaza was unable to timely pay its subcontractors because Developer Defendants were so underfunded that, for a significant period, they had stopped paying Plaza. Tr. 12/9 AM, 149:3-24 (Peyton); PTXs 709, 3311, 368. Plaza threatened to stop work at Wardman Tower in October 2017 because it had not been paid and requested an additional $3.2 million for costs related to delays caused by Developer Defendants. PTX-3311; Tr. 12/9 PM, 9:12-10:16 (Peyton); PTX-3181. Plaza later sued to recover the money it was owed. Tr. 12/9 PM, 20:10-21:20 (Peyton); PTX-789. Plaza told unit owner Kevin Meehan that the budgets were severely cut and that there was "only so much [Plaza] can do." Tr. 11/13 AM, 116:11-25 (Meehan).

c. Undercapitalization

NASH Wardman is the entity that is responsible for funding the Wardman Tower project. NASH Wardman had equity of negative $14 million in 2019 and negative $34 million in 2022. Tr. 2/18 PM, 92:1-93:10 (Katz); PTXs 3370, 3374, 3378, 3382. NASH Wardman's warranty reserve, created to fund repairs at Wardman Tower after the owners took possession of units, was exhausted and was not replenished. Tr. 11/13 PM, 71:4-10 (McKay). NASH Wardman's warranty bond is only $6 million and has never increased despite the Wardman Tower project budget almost doubling. Tr. 11/13 PM, 72:1-4 (McKay); Tr. 1/8 PM, 101:10-21 (Heithaus).

As discussed *supra* Section III.A.3.b, NASH Wardman withheld from and delayed payments to Plaza to avoid running out of cash. Tr. 2/18 PM, 76:21, 77:3; 79:10-13 (Katz); PTXs 3339, 3323, 3324. In 2019, NASH Wardman, still the owner of the unsold units, was unable to pay its condo fees as they came due because of a lack of cash reserves. PTX-3323; PTX-3338; PTX-3339. At one point, the outstanding loan balance was $46,690,000.00 and NASH Wardman's cash on hand was only $599,000.00. PTX-3340. JBG SMITH requested a loan modification from NASH to maintain more cash at the property to address construction concerns. Tr. 1/8 AM, 116,4-6 (VanHorn). This lack of capitalization coincided with delays in remedying problems at Wardman Tower and paying Plaza and their subcontractors for work performed. Further, the lack of capitalization persisted after the Transition Study was completed in November 2018 and JBG SMITH was put on notice of their potential liability to the Association for millions of dollars to remedy issues identified in the Transition Study. *See* PTX-1506.

B. Defective Renovation

As discussed *supra* Section III.A.3, the Wardman Tower renovation faced significant planning, budgeting, and financing challenges. All parties acknowledge that financing issues were caused at least in part by unanticipated cost increases and slower unit sales. Tr. 1/8 AM, 71:2-22

(VanHorn). As a result, much of the building suffers from defects for which Plaintiff seeks recovery.

As related to the exterior above-grade walls and the interior below-grade walls, Developer Defendants hired Wiss Janney Elstner Associates, Inc. ("WJE"), a global firm of engineers, architects, and material scientists to evaluate the exterior envelope of the building. Tr. 11/18 AM, 68:10-19 (Kenney). WJE performed water testing to evaluate water infiltration at Wardman Tower. Developer Defendants retained a second firm, Construction Systems Group ("CSG") to peer review WJE's work.

1. Exterior Above-Grade Walls

Plaintiff and Developer Defendants disagree as to the condition of the exterior above-grade walls and Plaintiff's proposed remedy. Plaintiff presented evidence of structural concerns, water infiltration, and a proposed remedy for the exterior above-grade walls. Each will be discussed in turn.

As to structural concerns, the exterior above-grade walls at Wardman Tower are essentially composed of an inner wythe and outer wythe, or vertical layers, with an air space, or collar joint between them. Tr. 11/18 PM, 53:21-54:2, 74:9-77:5, 97:3-98:22 (Guedelhoefer); PTX-898.00045. The two wythes are an interior terracotta speed tile layer and an exterior brick masonry veneer layer. *Id.* The inner wythe and outer wythe are connected by transverse brick headers which run perpendicular across the collar joint. *Id.* The purpose of the transverse bricks is to hold together the interior wythe and exterior wythe in order to transfer loads between them. Tr. 11/19 AM, 77:5-14 (Guedelhoefer). To properly transfer loads between wythes, the transverse brick headers must be embedded with mortar in both layers of the wall. Tr. 11/19 AM, 77:5-78:2 (Guedelhoefer). At the time Wardman Tower was constructed, the 1925 D.C. Building Code was the prescriptive code in effect. Tr. 2/5 PM, 101:19-21 & Tr. 2/9, 7:2-15 (Coggin). The 1925 D.C. Building Code requires that the transverse brick headers be embedded 3.75 inches into the inner wythe. Tr. 2/5 PM, 100:5-101:18 (Coggin). Due to the varying widths of the collar joint, none of the transverse brick headers in the exterior above-grade walls are properly embedded 3.75 inches into the inner wythe. Tr. 11/19 AM, 81:2-82:1 (Guedelhoefer); Tr. 2/5 PM, 101:22-25 (Coggin).

Mr. Guedelhoefer, a consultant with Raths Raths and Johnson ("RRJ") was retained by Plaintiff to evaluate Wardman Tower. In 2021, RRJ made ten openings in the exterior above-grade walls. Tr. 11/19 AM, 9:6-11, 53:17-26 (Guedelhoefer). RRJ's findings confirm the structural concerns with Wardman Tower's above-grade exterior wall. They found that: (i) the speed tiles within the walls were laid both vertically and horizontally, which prevents proper engagement with the transverse brick headers, Tr. 11/19 AM, 70:16-71:6, 82:15-24; 11/18 PM, 77:17-78:14 (Guedelhoefer); PTX-1100.02264, 2267; (ii) all head joints between speed tiles that were inspected lacked mortar or were unfilled with mortar, PTX-1100.02264, 2267, 02093, 2193, 2058, 2475; Tr. 11/19 AM, 12:3-8, 17:10-21, 65:8-66:25, 76:2-8 (Guedelhoefer); and (iii) there is rubble construction in the collar joint which prevents the proper transfer of wall loads from the wythe to the concrete frame of the building. Tr. 11/19 AM, 83:4-84:7 (Guedelhoefer).

This Court notes Developer Defendants' argument that the above-grade walls was "painstakingly fully tuckpointed" and that, according to Mr. Guedelhoefer, there was "no danger of structural collapse." Tr. 11/20 PM, 23:11-24:17 (Guedelhoefer). The logical conclusion is not, however, that the exterior above-grade walls are therefore "completely stable and completely safe." *See* Developer Defendants Post-Trial Brief at 6. Trial evidence makes clear that the exterior above-grade walls are poorly and inconsistently constructed, have diminished capacity to withstand wind loading, and are subject to material degradation. *See* Tr. 11/19 AM, 86:5-87:1 (Guedelhoefer). For the exterior above-grade walls to be properly constructed, the inner layer of speed tile should be mechanically connected to the building's concrete frame, enabling it to transfer wall loads. Tr. 11/18 PM, 54:3-9 (Guedelhoefer); Tr. 11/19 AM, 83:19-84:15 (Guedelhoefer). As constructed, there is no evidence that the speed tile is properly connected to allow a load transfer to the concrete frame. *Id.* Indeed, Plaintiff's evidence indicates the opposite.

As to water intrusion, the exterior above-grade walls at Wardman Tower rely on mortar bonds to prevent moisture from entering interior spaces. PTX-898.00014; PTX-1895.00001; Tr. 11/18 PM, 79:1-25 (Guedelhoefer); Tr. 11/19 AM, 22:18-23:15, 24:1-4, 87:20-88:14 (Guedelhoefer); Tr. 1/29 AM, 112:18-23 (Lstiburek). Issues with water infiltration arise when there are "significant pathways or voids in the wall that allow water to move in or through them." Tr. 2/4 AM, 55:4-7 (Schumacher). At Wardman Tower there are innumerable pathways or voids that allow water to move freely within the wall and reach interior spaces. There are open head joints between speed tiles, rubble construction, debris in the collar joint, and bondline failures that contribute to the water infiltration at Wardman Tower. Tr. 11/19 AM, 16:25-17:21, 23:1-24:4 (Guedelhoefer). Water infiltration through the exterior above-grade walls presents a compounding issue, as water degrades the bricks, mortar, and speed tiles that are necessary to prevent water infiltration. Tr. 11/19 AM, 96:5-17 & Tr. 11/20 AM, 123:17-22 (Guedelhoefer).

Developer Defendants understood that water infiltration was an issue at Wardman Tower and took steps to remedy it. Upon initial inspection, WJE noted extensive bondline failure, open mortar joints, irregular mortar droppings, and debris throughout the collar joint. Tr. 11/17 AM, 67:9-69:6 & Tr. 11/18 AM, 80:3-13 (Kenney); PTX-1103; PTX-295.00010; PTX-898.00015. This led to severe water infiltration at Wardman tower, with WJE stating that the exterior above-grade walls "cannot stop all moisture from reaching the interior," and that "[h]eavy rainfall, especially coupled with driving winds, can still saturate the wall assembly and depending upon the interior and exterior temperature and humidity conditions, voids between the face brick and inner masonry wythes, and developed leakage paths, moisture may still be able to reach the interior of the building." PTX-295.00011; PTX-898.00016. Developer Defendants' remedy, to fully tuckpoint the wall, was insufficient to prevent water infiltration.

In 2014, WJE performed a mock-up of a fully repointed wall on the fifth and sixth floor. PTX-898.00011. To test water infiltration, on July 14 and 16, 2014, WJE executed a spray grid water test. *Id.* The test results from both days showed uncontrolled water infiltration through the exterior above-grade walls where it had been fully tuckpointed. PTX-898.00011-3. Developer Defendants instructed WJE to keep their findings in draft form and chose to continue with their planned remedy of tuckpointing, rather than pursue other options to prevent water infiltration. Tr. 12/11 AM, 92:5-93:21 (Hennemuth); PTX-2845. Relying only on full exterior tuckpointing does not address the gaps that remain in the interior speed tile layer because it is covered in plaster and was not addressed. Tr. 11/17 PM, 66:9-67:4 (Kenney).

In addition to WJE's water infiltration testing, there are two other documented instances of water infiltration through the exterior above-grade wall. First, Plaza and WJE documented water entering Unit 6E through the exterior above-grade wall. Tr. 12/9 PM, 29:18-30:8 (Peyton); PTX-896.078. Developer Defendants made alterations to the interior to prevent water from entering the unit by applying sealant and moving the stud track further away from the exterior wall. PTX-896.0040. While these alterations may prevent water from entering the unit, they do not address the degradation that happens, and will continue to worsen, because water is moving through the wall and degrading the mortar bonds that are necessary to prevent water infiltration. Second, Plaintiff's water testing confirmed that the exterior above-grade walls allow water infiltration. Tr. 11/19 PM, 12:1-13:8 (Guedelhoefer); PTX-186A.000017-32, 42-44. Photos taken after the drywall and windows were installed showed signs of water infiltration and Mr. Davidson observed moisture in the stud cavity and rust stains on the steel studs behind Unit PH2. Tr. 12/16 AM, 11:5-13:1 (Davidson); PTX-938A.00001; Tr. 12/16 AM, 73:1-75:1 (Davidson); PTX-2301A. Inspection behind the drywall also showed water infiltration. PTX-2295.0006-11; PTX-2301.00008. Developer Defendants' evidence that the exterior above-grade walls are structurally sound and that the wall elements are effective at resisting water infiltration is unpersuasive. *See* Tr. 2/10 PM, Part 1, 6:18-7:12, 13:3-14:3 (Coggin).

As to Plaintiff's proposed remedy, Mr. Davidson developed a multi-step process for grouting the wall to address both the structural and water infiltration issues. Tr. 12/16 AM, 81:12-137:3 & Tr. 12/16 PM, 4:12-6:8 (Davidson). The proposed remedy is novel only in its combination of steps and variations of the process have been performed successfully in other instances. Tr. 1/7 AM, 26:10-27:14 (Davidson); Tr. 11/20 AM, 124:16-125:5 (Guedelhoefer). Further, the remedial design is necessary to comply with historical preservation restrictions and has been designed specifically for the needs at Wardman Tower. Tr. 1/6 PM, 63:5-10 & Tr. 1/7 AM, 26:10-27:14 (Davidson). This Court credits Mr. Davidson's testimony that the remedy is necessary to both correct issues with the exterior above-grade walls and to prevent the current issues from inevitably worsening over time. Tr. 12/16 AM, 81:12-137:3 & Tr. 12/16 PM, 4:12-6:8 (Davidson).

2. Exterior Below-Grade Walls

Plaintiff and Developer Defendants agree that the below-grade walls require waterproofing repairs and structural repairs. Parties disagree on the scope of the repairs required.

As to water infiltration, as early as 2013, WJE noted the potential for water infiltration through the below-grade walls. PTX-295.00024-25, 998.00006, 898.00032. WJE recommended water testing the below-grade walls to determine the source of moisture penetration. *Id.* Developer Defendants, however, never performed the recommended testing. Tr. 11/17 AM, 143:4-11

(Kenney). In 2016, Plaza reported "significant water infiltration in the NW wing at the exterior wall" on the B1 level after rainfall. PTX-708. When Developer Defendants learned of the water infiltration, James Myers Company ("JMC") was contracted to make recommendations as to how to appropriately repair the issue. Tr. 2/24 AM, 116:23-117:24 (Schneider). JMC recommended to "excavate the whole thing, expose it all . . . fix the substrate, and put a whole new waterproofing system in, meaning a self-adhered and drainage system." *Id.* In other words, "do it the right way." *Id.* 116:23-118:4. In response, Developer Defendants injected Bentogrout at the perimeter of the northwest wing.[8] Tr. 1/12 PM, 40:6-21, 41:14-42:13 (Splain); PTX-3103. WJE characterized the Bentogrout installation as, "[w]e are all in agreement that this approach may not completely resolve water infiltration to the interior but we understand that given project constraints that this is an appropriate first step." PTX-1870; PTX-708; *see* Tr. 2/26 PM, 86:11-87:2 (Ege). No subsequent measures were taken to remedy the exterior below-grade walls. Tr. 12/11 AM, 144:16-24 (Hennemuth); Tr. 11/17 AM, 19:8-13 (Kenney).

The Parties agree that water leaks and infiltration continue to this day in the below-grade walls. Tr. 2/10 AM, 16:25-17:24 (Coggin); PTXs 3169, 3170, 3274; Tr. 1/29 PM, 22:7-9 (Lstiburek). Plaintiff's expert Mark Coggin and Developer Defendants' expert Joseph Lstiburek both observed water intrusion through the exterior below-grade walls. *Id.* Mr. Guedelhoefer observed that the mortar joints were eroding and that water is infiltrating the below-grade wall. Tr. 11/19 AM, 98:5-99:13, 100:5-101:2 (Guedelhoefer); PTX-1100.2727-28, 2736-37. The below-grade walls have lost the ability to resist water infiltration and that water is "emanating out from the bottom of the speed tile where the collar joint [] stops and then traveling laterally under the spread footer." Tr. 12/15 AM, 53:4-9, 96:19-97:4, 130:21-131:4 (Davidson). Plaintiff's proposed

[8] Bentogrout is a waterproofing product injected from the exterior.

remedy appropriately addresses the waterproofing issues. Tr. 12/15 PM, 49:9-14, 62:4-17 (Davidson).

As to structural repairs, the B1 level was lowered during the Wardman Tower renovation. Tr. 2/12 AM, 84:24-85:22 (Tamaro). Developer Defendants agree that it is necessary to strengthen certain areas of the lowered B1 level but argue that there is no evidence of distress. There are, however, structural issues with the below-grade walls that could lead to damage or collapse because when the B1 level was lowered, the below-grade walls no longer had the proper balance and strength on the interior side of the wall. *Id.* Mr. Guedelhoefer evaluated the soil load on the below-grade walls and similarly concluded that, after the B1 level was lowered, the walls lacked sufficient capacity to bear the current load. Tr. 11/18 PM, 57:12-58:9 (Guedelhoefer); Tr. 11/19 AM, 104:14-105:12 (Guedelhoefer). Plaintiff's proposed remedy appropriately addresses these structural issues. Tr. 12/15 PM, 49:9-14, 62:4-17 (Davidson).

3. Fire Safety

Plaintiff and Developer Defendants agree that fire safety repairs are required at Wardman Tower but disagree on the scope of repairs required.

The Wardman Tower fire alarm system failed to pass an annual test in July 2018. PTX-3278.00013; PTX-3387; Tr. 11/12 AM, 71:20-72:18 (Abbey). As a result, a 24-hour a day fire watch was recommended but the Board, then controlled by JBG SMITH, failed to institute a fire watch until June 2019 when ordered to do so by the D.C. Fire Marshall. Tr. 11/12 AM, 72:19-73:6 (Abbey); Tr. 11/24 AM, 23:24-24:7 (Ellis). The fire alarm system ultimately passed inspection in September 2019. Tr. 11/12 AM, 73:1-8 (Abbey).

Wardman Tower received a certificate of occupancy confirming that it is compliant with applicable codes. 2.11 AM, 86:18-21, 108:06-08, 109:23-110:15 (Grill). There are, however, multiple current issues related to fire safety that have been identified by Plaintiff and acknowledged by Developer Defendants. Per code, there are numerous walls and floors that are "fire-rated assemblies" at Wardman Tower. Tr. 12/16 PM, 95:21-25 (Davidson); Tr. 1/12 AM, 134:1-12 (Splain). These "fire-rated assemblies" are designed to, in case a fire occurs in the building, prevent smoke and fire from spreading throughout the building and require firestopping on penetrations in fire-rated walls and floors. *Id.* Mr. Davidson identified "systemic" firestopping deficiencies in fire-rated assemblies throughout Wardman Tower. Tr. 12/16 PM, 102:6-24; 103:19-24 & Tr. 12/17, 8:9-13:3 (Davidson); PTX-90A.00026-31. Developer Defendant expert Raymond Grill also confirmed that there are multiple instances of improper firestopping at Wardman Tower. Tr. 2/11 AM, 82:1-83:1; 126:25-127:3; 129:4-19 (Grill); PTX-1109.01500. Penetrations in fire-rated assemblies that are not properly fire stopped allow fire and smoke to spread from one area to another and can cause death or injury in the event of residents not being able to evacuate. Tr. 12/16 PM, 95:21-25 (Davidson); Tr. 1/12 AM, 134:1-12 (Splain); Tr. 2/11 AM, 128:1-12 (Grill). Relatedly, the approved plans at Wardman Tower directed sealant to be applied to the floor and ceiling of any fire-rated partition. PTX-2033.00093; Tr. 2/11 AM, 143:22-144:2 (Grill). Mr. Davidson confirmed that the sealant is insufficient or missing in multiple areas and that it is necessary to correct any improperly sealed areas. Tr. 12/17, 19:2-23:8, 23:7-24:9 (Davidson). Parties agree that repairs are required to remedy the firestopping and sealant.

As to the 8th floor at Wardman Tower, Plaintiff's expert Robert Splain found that the fire wrapping on ducts in the ceiling space is improperly joined together. Tr. 1/12 AM, 30:10-16, 139:11-16 (Splain); PTX-90f.00001. Further, Mr. Grill testified that Developer Defendants installed flammable spray foam insulation without protecting it with a thermal barrier and that code-required access doors must be installed to access and maintain fire-dampers. Tr. 1/12 AM, 30:21-31:4, 143:9-144:12 (Splain); Tr. 2/11 AM, 146:3-17 (Grill). Parties agree that repairs are required to remedy the 8th floor ceiling space.

4. HVAC

As part of the renovation at Wardman Tower, Developer Defendants installed a variable refrigerant flow ("VRF") HVAC system using Daikin equipment that relies on ceiling plenums for return air. Tr. 12/3, 117:1-11 (Burton); Tr. 1/22 AM, 77:17-78:10 (Carcaterra). The system includes 9 condensing units, which contain a total of 33 HVAC compressors. Tr. 12/2 PM, 73:20-74:3 (Burton); Tr. 12/8 PM, 99:24-100:7 (Burton). There are 27 HVAC compressors in 8 condensing units on the roof and 6 HVAC compressors in one condensing unit on the B1 level. *Id.* The Daikin-brand compressors at Wardman Tower are "the best that you can get" and typically have a lifespan of 15- to 20-years. Tr. 12/9 PM, 40:24-41:8 (Peyton); Tr. 12/2 PM, 74:24-75:4, 77:4-12 (Burton). The Daikin HVAC system was designed to meet the needs of Wardman Tower, and the design detailed the location of the compressors and air handlers, the proper air flow, and the required length of the piping that carries the air. Tr. 12/2 PM, 44:24-45:4; 46:2-12 (Burton). Compressors were installed at Wardman Tower and the first one failed and needed to be replaced in 2017. Tr. 12/3, 64:4-11 (Burton). From 2017 to 2018, 8 compressors failed and were replaced. Tr. 12/2 PM, 77:16-78:1 (Burton). Those failures occurred in 3 of the 9 condenser units. *Id.* A compressor at Wardman Tower failed as recently as January 2026 and required replacement. Tr. 3/5, 8:5-18 (Abbey). Each compressor replacement costs approximately $30,000.00. Tr. 12/2 PM, 73:4-7 (Burton).

The cause of the compressor failures is related to installation defects, blocked return air paths, and maintenance issues. As to installation defects, the piping lengths and design layout are important in the design process to determine the proper amount of refrigerant to use and pipe length. Tr. 12/2 PM, 85:1-16 (Burton). Improper piping lengths or layouts can cause deficient or excessive refrigerant in the system and lead to premature compressor failures. *Id.* 86:6-23. At Wardman Tower, the installed piping lengths and air handler locations deviated from the plans sent to the manufacturer to develop the system. *Id.* 87:2-15; Tr. 12/3, 58:5-15 (Burton). The locations of the condensing units and the layout of the refrigerant piping on the roof similarly deviated from the plans sent to the manufacturer. Tr. 2/2 AM, 31:6-25 (Carcaterra); PTX-1133A; DD11549-0021. Compressor failures can also be caused by contamination in the refrigeration system during the installation. Tr. 12/2 PM, 90:14-91:11 (Burton). Tests on a failed compressor showed signs of contamination. Tr. 2/25 AM, Part 2, 26:23-28:8 (McKelvy).

As to return air paths, an issue with lack of return air was identified after the HVAC was installed. The planned return air paths were not installed correctly and concrete beams and walls blocked multiple return paths throughout Wardman Tower. Tr. 12/3, 124:4-20, 130:18- 25, 141:15-24, 161:4-7 (Burton); PTX-10B; PTX-52; Tr. 2/25 AM, Part 1, 67:11-68:12 (McKelvy). Developer Defendants identified the issue and added some return openings after construction was complete but failed to address all identified areas. Tr. 2/25 AM, Part 1, 63:4-64:10 (McKelvy); Tr. 2/25 AM, Part 2, 19:1-8 (McKelvy). The lack of proper air flow affected the operation of the HVAC system in multiple units and added unanticipated stress to the HVAC system and motors. Tr. 12/3, 152:16-153:9, 157:19-159:9 (Burton); PTX-3477; Tr. 2/26 PM, 82:4-86:4 (Ege).

As to maintenance issues, there is ample evidence that the HVAC system was not properly maintained during installation and through the period during which JBG SMITH controlled the Board, until November 2019. The air filters were not checked for replacement before units were turned over to residents. PTX-41; PTX-3346.00001. Developer Defendants identified the air filters, clogged with dust from the construction period, as a potential cause of the compressor failure in 2017. *Id.*; *see also* Tr. 12/3, 91:16-92:23 (Burton); Tr. 1/22 PM, 90:10-91:4 (Carcaterra).

Further, compressor failures can contaminate the HVAC system and block electronic expansion valves ("EEVs"). Tr. 12/3, 99:3-100:4 (Burton). Blocked EEVs were shown to cause improper temperature airflow in multiple units. Tr. 12/3, 94:23-99:2 (Burton). Finally, the system was designed to include disposable filter racks on the air handlers which were not installed. Tr. 12/3, 110:10-111:17 (Burton). Developer Defendants were responsible for these installation defects, blocked return air paths, and maintenance issues. As a result, multiple compressors failed, and continue to fail, and unit owners experience issues with airflow in their units and the common areas of Wardman Tower. PTX-2722.00001; Tr. 2/2 AM, 65:6-13, 67:7-72:13, 76:1-10, 80:15-81:9 (Carcaterra). Unit owners testified to the lack of airflow, lack of temperature control within units, and temperature fluctuations related to weather events. Tr. 11/12 AM, 82:5-85:13, 102:3-21 (Abbey); PTX-528A; Tr. 11/13 AM, 89:16-91:1 (Meehan); Tr. 1/13 AM, 155:12-156:4 (Hale); Tr. 11/24 AM, 151:5-15-18, 153:9-25 (Gallo); Tr. 12/9 AM, 34:11-22 (Zax); Tr. 11/24 AM, 28:20-30:9, 35:1-24 (Ellis); Tr. 11/13 AM, 85:17-87:12 (Meehan).

Relatedly, Plaintiff and Developer Defendants agree that the placement of thermostats in the units can inhibit temperature control and should be moved accordingly. Tr. 12/2 PM, 60:23-62:7; 46:13-19, 59:22-60:18, 62:8-63:24 (Burton); Tr. 11/13 AM, 89:16-91:7 (Meehan); Tr. 1/22 PM, 53:16-55:11 (Carcaterra). Each unit has two separate temperature zones controlled by separate air handlers and supplied by separate thermostats. Tr. 12/2 PM, 60:23-62:7 (Burton). The placement of some thermostats caused them to be influenced by air that is controlled by separate thermostats, contributing to issues with temperature control. *Id.* To this end, thermostats should be relocated, and vents should be adjusted to provide adequate temperature control. *Id.*; Tr. 1/22 PM, 70:14-71:10 (Carcaterra).

5. Electrical

Plaintiff and Developer Defendants agree that electrical repairs are required at Wardman Tower. Parties disagree on the scope of repairs that is required.

The purpose of the electrical code is to establish minimum requirements to safeguard people and property from electrical hazards. Tr. 2/4 PM, 66:13-22 (Paone). Plaintiff's expert Jeff Marsh confirmed that there were electrical code violations on every floor at Wardman Tower and that they present unsafe conditions. Tr. 12/10 AM, 102:21-104:15, 119; Tr. 12/10 PM, 27:10-24, 34:25-35:5, 48:9-14 & Tr. 12/10 AM, 97:6-16 (Marsh). Developer Defendants' expert Elisa Paone agreed that the electrical conditions at Wardman Tower create life safety concerns. Tr. 2/4 PM, 52:19-53:4 (Paone). The code violations include improperly secured electrical equipment, open knockouts, exposed wiring, unsupported cables, and missing junction box covers. Tr. 12/10 AM, 102:21-104:15, 119:16-120:1 & Tr. 12/19 PM, 9:25-10:2 (Marsh). In total, there were more than eighty violations of code or industry standard identified at Wardman Tower that require remediation. Tr. 2/4 AM, 101:5-7 & 2/4 PM, 55:16-56:8, 60:16-20 (Paone). Ms. Paone agreed with the proposed scope of repair for over 75 percent of repairs identified by Plaintiff's expert Mr. Marsh. Tr. 2/4 PM, 59:21-60:6 (Paone).

Mr. Marsh further testified that the electrical system at Wardman Tower was not installed according to plans and specifications. Tr. 12/10 PM, 20:24-21:11; 25:12-15 (Marsh). He identified, for example: (i) improper wiring at specific outlets; (ii) exposed, unterminated wires that were tested and proved to be energized; and (iii) that thirty percent of lugs on panel boards were improperly torqued. Tr. 12/10 PM, 14:3-17:8, 44:16-45:25, 40:6-41:9; Tr. 12/10 AM, 113:19-114:14, 131:6-14 (Marsh). Improper wiring presents an electrocution risk and improperly torqued lugs on panel board presents a fire risk. Tr. 12/8 AM, 35:20-36:18 (Burton); Tr. 12/10 PM, 40:6-41:9 (Marsh); Tr. 12/10 AM, 90:9-13 (Marsh). Indeed, Plaintiff's expert David Burton testified that, during an HVAC inspection at Wardman Tower, a technician received an electric shock from an improperly energized box and sought medical help. Tr. 12/8 AM, 35:20-37:23 (Burton). Based on his inspection and 30 years of experience, Mr. Marsh expected the electrical system at Wardman Tower to be worse in concealed spaces, such as behind drywall, than in the inspected areas that were easily viewable. Tr. 12/10 AM, 140:4-25 (Marsh).

6. Elevators and Elevator Penthouse

Plaintiff and Developer Defendants agree that full modernization of the traction elevators is required.

At Wardman Tower, there are three traction elevators and one hydraulic elevator. Tr. 11/24 PM, 99:20-100:5 (Mirch). The hydraulic elevator was installed during renovation for access to the newly constructed garage. Tr. 2/12 PM, 55:3-6 (Whitehurst). No repairs are required for the hydraulic elevator. As to the traction elevators, Developer Defendants performed maintenance and cosmetic repairs to the traction elevators during renovation. Tr. 11/25 PM, 78:12-79:15 (Mirch). However, the traction elevators' operating equipment is decades old, and some parts are in their original condition, as they were installed in 1947. Tr. 11/25 AM, 7:23-25, 15:16-16:2, 27:22-28:7; 43:24-46:10 & Tr. 11/25 PM, 26:19-27:12, 40:20-25 (Mirch); PTX-662; PTX-3261.00120-22; Tr. 2/12 PM, 77:22-78:4 (Whitehurst); Tr. 2/12 PM, 80:11-15 (Whitehurst). Tr. 11/25 AM, 8:1-2, 45:23-46:10 (Mirch). Their elevator doors get stuck due to a lack of door restrictors, Tr. 11/25 AM, 38:17-39:20 (Mirch), and multiple residents and employees have been trapped inside them. PTX-3270.00001; Tr. 12/1 AM, 111:17-112:12 (Kelly); Tr. 11/24 AM, 40:14-41:9 (Ellis' grandson); Tr. 12/9 AM, 44:9-12 (Zax); Tr. 1/13 AM, 144:21-145:3 (Hale); Tr.11/12 AM, 122:9-15 (Abbey). As such, because the traction elevators' equipment is past its useful life and certain component parts are no longer available, full modernization is required. Tr. 11/25 AM, 7:18-19 (Mirch); 11/25 PM, 44:3-45:19 (Mirch); PTX-1084. Tr. 2/12 PM, 91:6-9 (Whitehurst).

Further, there is water intrusion from the Elevator Penthouse and Vestibule which can cause key components to rust. Tr. 11/25 AM, 8:23-9:19, 70:18-23, 93:6-9 & Tr. 11/25 PM, 4:24-5:10, 51:20-52:14 (Mirch); Tr. 2/12 PM, 81:20-25, 87:12-15 (Whitehurst); PTX-1094.00326-329; PTX-3261.00041, 83, 87-88,100-104. There are gaps in the elevator vestibule that permit water infiltration, Tr. 1/12 AM, 75:10-21 (Splain); PTX-90D.00006-7, and the elevator vestibule floor slopes downward toward the elevators allowing water to flow into the elevator shaft. Tr. 1/12 AM, 76:2-77:11; PTX-90D.00009-11; Tr. 11/12 AM, 114:3-15, 115:19-116:19, 118:21-119:15 (Abbey); PTX-2283; PTX-556R.

7. Floors

Plaintiff and Developer Defendants agree that the vinyl and stone flooring on the B1 level requires replacement. Developer Defendants argue that replacement is required for aesthetic reasons rather than structural or performance issues.

As to the stone flooring, Mr. Davidson and Developer Defendants' expert Richard Vivenzio testified that a sounding test revealed many sections of the floor were not properly set, Tr. 2/10 PM, 65:13-15 (Vivenzio); Tr. 12/16 PM, 68:20-69:12 (Davidson); PTX-90A.000023, the flooring was installed with improper grout joints, Tr. 2/10 PM, 63:24-64:12 (Vivenzio), and there are multiple areas with cracking and lippage, documented as early as 2017. Tr. 12/16 PM, 64:4-68:9 (Davidson); PTX-90A.000019-22; Tr. 2/11 AM, 42:15-43:1 (Vivenzio). As such, the installed stone flooring on the B1 level needs to be fully replaced. Tr. 2/11 AM, 44:2-8 (Vivenzio); Tr. 12/16 PM, 71:22-24 (Davidson).

Additionally, the vinyl floor on the B1 level is cracked, Tr. 2/11 AM, 44:13-45:9 (Vivenzio); Tr. 12/16 PM, 73:6-15, 75:19-76:2 (Davidson); PTX-90A.000024, and a waterproofing membrane is required to be installed to prevent moisture from seeping through the floor. Tr. 12/16 PM, 75:3-76:2 (Davidson); PTX-3099A. As such, the vinyl flooring needs to be fully replaced. Tr. 2/11 AM, 44:13-45:9 (Vivenzio); Tr. 12/16 PM, 73:6-15, 75:19-76:2 (Davidson); PTX-90A.000024.

As to the wood floors, testimony at Trial demonstrated that the installation was sufficient and does not require repair. Tr. 2/26 AM, 105:21-106:8, 120:3-122:4 (Ege).

8. Roof

Plaintiff and Developer Defendants agree that the roof at Wardman Tower requires repair. The Parties disagree as to the scope of repairs required.

The roof at Wardman Tower is a low-slope roof designed to drain water using its slope and drainage system. Tr. 1/12 PM, 6:14-18 (Splain); Tr. 2/24 PM, 4:19-5:6, 28:20-29:2 (Schneider). Multiple issues occurred during installation: (i) design changes reduced the proper slope, created "damming" on the roof, and prevented water from properly flowing to the roof drains, Tr. 2/24 AM, 128:7-130:13 & Tr. 2/24 PM, 41:5-19, 42:20-23, 50:1-15 (Schneider); PLAZA 2101; (ii) the conditions that existed during installation did not match the original drawings, Tr. 2/24 PM, 39:18-41:19, 46:9-18 (Schneider); PTX-1688; (iii) the Paracoat protection system was improperly installed, Tr. 1/12 AM, 31:13-32:7; Tr. 1/12 PM, 17:2-9, 17:10-19:12 (Splain); and (iv) the roof counterflashing was improperly installed. Tr. 3/4 AM, 119:14-23 (Nolan); Tr. 1/12 PM, 10:11-13:4 (Splain).

As a result, there are now several problems with the roof. Water on the roof does not drain properly and ponds. Tr. 1/12 PM, 16:23-17:1 (Splain). Developer Defendants were aware of water ponding as early as 2016. PTX-924.00010; PTX-911.00008; Tr. 2/24 PM, 36:17-37:9, 47:23-48:8 (Schneider); PTX-1688; PTX-3469.00003-4. Industry standards dictate that standing water should not remain on a low slope roof for more than 48 hours. Tr. 1/12 PM, 19:22-20:2 (Splain); Tr. 2/24 PM, 30:11-21 (Schneider). Water has been observed ponding in several locations on the roof for far longer than 48 hours, including near unobstructed drains. Tr. 1/12 PM, 13:17-25, 14:9-15, 20:17-20, 31:6-22 (Splain); PTX-90G.00010-17, 29-44; Tr. 2/24 PM, 52:14-53:23 (Schneider). Damages to the roof due to ponding water include staining, a delaminating cap sheet, and damage to the roof membrane. Tr. 1/12 PM, 14:19-17:1, 24:23-25:2 (Splain).; PTX-90G.00008, 11-13. Further, the improperly installed counterflashing allows water to be absorbed through the masonry walls and under the roof membrane. Tr. 3/4 AM, 119:14-23 (Nolan); Tr. 1/12 PM, 10:11-13: 4 (Splain). The manufacturer warranty for the roof membrane excludes damage "caused by ponding of water or other conditions resulting from improper drainage." DD19032; Tr. 1/13 AM, 137:1-6 (Splain). Those conditions are present on the roof at Wardman Tower.

Plaintiff performed nuclear backscatter, capacitance, and sampling to confirm that many areas throughout the roof are wet. PTX-1164.00032; Tr. 1/12 AM, 31:15-32:7 & Tr. 1/12 PM, 29:24-31:22, 33:20-35:4 (Splain). There is a recurring water bubble below the membrane of the roof, between the cap sheet and the bitumen roof. PTX-3398; Tr. 1/12 PM, 5:17-6:1 (Splain); Tr. 2/11 AM, 25:23-26:14 (Vivenzio); Tr. 3/4 PM, 55:25-56:9 (Nolan); (2.10 PM 22: 09-11). The Wardman Tower roof and the counterflashing require replacement. Tr. 1/12 AM, 32:8-16 & Tr. 1/12 PM, 5:6-11, 12:22-25 (Splain).

9. Parking Garage

Plaintiff and Developer Defendants agree that the parking garage at Wardman Tower requires repair. Parties disagree as to the scope of repairs required.

Wardman Tower has an underground parking garage, built by Developer Defendants and Plaza as part of the renovation, located under the driveway and consisting of levels P1 and P2. Tr. 1/12 AM, 34:5-24 (Splain); Tr. 12/15 AM, 73:13-76:15 (Davidson). Cracks have developed in the perimeter walls, ceilings, and the concrete floor slabs on both the P1 and P2 levels. Tr. 1/12 AM, 26:8-25, 34:17-37:1 (Splain); PTX-1534A; Tr. 11/18 PM, 59:10-60:1 & Tr. 11/19 AM, 52:12-25 & Tr. 11/19 PM, 41:7-24 (Guedelhoefer); Tr. 2/10 AM, 22:21-23:5 (Coggin); Tr. 3/3 AM, 119:12-

17 (Nolan); 12/9 AM, 45:1-7 (Zax); Tr. 11/12 AM, 108:1-109:9 (Abbey); Tr. 11/24 AM, 43:13-44:23 (Ellis); 11/13 AM, 110:20-111:2 (Meehan). The cracks are allowing water to leak into the parking garage which can degrade the reinforcing steel and affect the structure of the parking garage. *Id.* Additionally, unsealed penetrations including in the air shafts, fans, and access panels are allowing water to leak into the parking garage. Tr. 1/12 AM, 26:8-25, 48:2-53:22, 54:22-55:12 (Splain); PTX-90C.00002-9; Tr. 2/10 AM, 22:10-20 (Coggin). Finally, the approved plans called for the P1 level to have a traffic coating to prevent water from leaking between levels. Tr. 1/12 AM, 40:12-41:4 (Splain). The traffic coating was value-engineered out to save money on the Wardman Tower project. Tr. 3/3 AM, 107:3-17 (Nolan); 2/26 PM, 51:3-8 (Ege); PLAZA 2106. Installing a traffic coating would prevent water from penetrating the floor slab. Tr. 1/12 AM, 27:1-13, 41:1-42:10 (Splain).

10. Concrete Structure

Plaintiff and Developer Defendants agree that the concrete structure at Wardman Tower requires repair. Parties disagree as to the scope of repairs required.

Multiple parts of the concrete beams, slabs, and columns at the B1/B2 and 3-8 levels require repair. PTXs 246, 112, 123; Tr. 11/19 PM, 53:25-54:3 (Guedelhoefer). The repairs are required because Developer Defendants either did not follow normal industry practices during renovation or failed to repair damaged elements of the building's original concrete structure during renovation. Tr. 11/18 PM, 55:7-16 (Guedelhoefer); PTX-1100.00266-70; Tr. 11/19 PM, 17:8-21:8 (Guedelhoefer). For example, there is exposed rebar throughout the building, cracked or degraded columns on the B1 level, and columns in the upper floors with visible cracking and exposed rebar. Tr. 2/11 PM, 67:8-18, 68:8-13 & Tr. 2/12 AM, 101:1-20, 105:18-24 (Tamaro); PTX-1100.00218-22, 285-287, 321, 323-326, 398, 400, 404-12; Tr. 11/19 PM, 21:9-26:10, 32:7-33:20 (Guedelhoefer).

The hotel unit, on floors one and two, is a part of the original Wardman Tower construction. Given the documented issues with the original structure that were not repaired during renovation, it is likely that similar deficiencies exist on floors one and two. Tr. 11/19 PM, 16:16-17:7, 35:1-36:1, 56:9-20 & Tr. 11/20 AM, 81:8-19 (Guedelhoefer); Tr. 2/12 AM, 107:9-15 (Tamaro). During the renovation process, Plaza raised concerns that remediation was not being done on floors one and two that could impact the overall structure. Tr. 12/9 PM, 31:18-32:10 (Peyton); Tr. 2/12 AM, 107:9-15 (Tamaro). Developer Defendants, however, did not investigate the potential issues on floors one and two or perform repairs during the renovation on those floors. Tr. 11/18 PM, 54:20-55:6 (Guedelhoefer).

11. Quarter-Round Balconies

Plaintiff and Developer Defendants agree that the quarter-round balconies, currently accessible, should not be accessible to unit owners due to safety conditions. Parties disagree as to the repair that is required.

Prior to the Wardman Tower renovation, the quarter-round balconies were inaccessible to unit owners. Tr. 1/12 PM, 45:17-24 (Splain); PTX-2020.00049. During renovation, however, Developer Defendants replaced the windows at the quarter-round balconies with doors to make them accessible. *Id.* Developer Defendants' contractors recommended adding glass railings to the balconies to address safety concerns and comply with building code requirements because, as is, the balconies' low walls are unsafe and not code compliant. Tr. 1/12 AM, 32:19-33:11 (Splain); Tr. 2/11 AM, 37:13-17 (Vivenzio); Tr. 1/12 PM, 69:16-21 (Splain); PTX-889.00005. Developer Defendants decided instead to make the balconies inaccessible to residents but did not inform potential unit owners during the purchasing process. Tr. 12/11 AM, 146:21-147:7 (Hennemuth); PTX-1038.00001.

Developer Defendants depicted the balconies as accessible, PTX-517.00022, and gave unit owners keys to access them. Tr. 11/24 AM, 38:6-24 (Ellis); Tr. 1/13 PM, 5:1-9 (Hale). Unit owners were never told they could not use their balconies. Tr. 11/10, 192:17-22 (Abbey); Tr. 1/13 PM, 5:1-9 (Hale). Indeed, unit owners purchased units in part because of the balconies, which for some was their only access to outdoor space. Tr. 11/10, 191:20-192:8 (Abbey); PTX-517.00022. Plaintiff's recommendation addresses the quarter-round balconies' deficiency by adding glass railings on the balconies for code compliance. PTX-90H.000040-41; Tr. 1/12 PM, 47:5-16 (Splain); *see also* Tr. 2/11 AM, 38:9-15 (Vivenzio).

12. Windows

Approximately 1,000 windows were installed during the Wardman Tower renovation. Tr. 2/2 PM, 175: 1-3 (Friedlander). The flashing on the windows at Wardman Tower was installed incorrectly. Tr. 1/13 AM, 135:25-136:13 (Splain); PTX-152.00003. The purpose of the flashing is to redirect any water toward the outside. Tr. 1/12 AM, 91:2-92:25 (Splain). Part of the flashing, the back dam, redirects water into a sill pan and toward the exterior of the building rather than the interior. Tr. 1/12 AM, 94:9-95:24, (Splain). The back dam is turned in the wrong direction, downwards, which directs water into the interior. Tr. 1/13 AM, 135:25-136:13 (Splain); PTX-152.00003.

C. Alleged Misrepresentations

The issues that persist at Wardman Tower due to defective renovation are tied directly to misrepresentations that were made to unit owners. Developer Defendants misrepresented the conditions at Wardman Tower and failed to disclose known issues to unit owners. Further, Developer Defendants' misrepresentations and failures to disclose were shown to be material, and unit owners, represented by Plaintiff, relied on those misrepresentations.

Wardman Tower was marketed as "well-built" and the result of a "painstaking restoration," with "the most modern systems and conveniences expected in today's premier homes." PTX-787.00014-15. JBG directed Sotheby's, its realtor at the time, to place an advertisement in the *Washingtonian* calling Wardman "[u]nquestionably the most luxurious condominium building in Washington, D.C." DD19001; Tr. 1/8 AM, 132:24-133:6 (VanHorn). Most fundamentally, and at the highest level, Developer Defendants marketed a luxury condominium to purchasers and future unit owners. The conditions at Wardman Tower do not accord with what would be expected in a "luxury condominium" building.

Developer Defendants made multiple misrepresentations in the POSs given to purchasers. The purpose of a POS is to provide purchasers with an accurate disclosure of all material facts related to the Wardman Tower building, including any issues structural or otherwise. JBG drafted and issued different versions of POSs to residents, with varying language about the building's condition. *See e.g.*, PTX-834; PTX-827; PTX-841; PTX-569. Indeed, on several occasions, JBG would provide purchasers with outdated versions of the POS where the actual applicable version included material differences from the version purchasers were given. PTX-3285; Tr. 11/10, 193:23-194:5 (Abbey); Tr. 11/13 AM, 81:3-12 (Meehan). Unit owners did not receive the most current versions of the POS prior to closing and were left in the dark as to the material representations made in it. Tr. 1/13 AM, 148:11-13 (Hale).

All versions of the POS represented that the building "has been or will be gutted and renovated." *E.g.*, PTX-834.00008; PTX-827.00008. Unit owners relied on the "gut renovation" and "gutted and renovated" language when deciding to purchase their units. Tr. 11/24 AM, 130:25-131:4 (Gallo); Tr. 1/13 AM, 149:2-19 (Hale). They understood the "gutted and renovated" language to mean the interior would be "all new," Tr. 11/10 PM, 196:23-197:17 (Abbey) including new elevators. Tr. 11/24 AM, 131:21-132:7 (Gallo); PTX-569.00012. However, the elevators were not replaced or part of the gut renovation; they were only given cosmetic upgrades, a material fact that JBG omitted from earlier versions of the POS. PTX-1926.00001. In a later version of the POS, the language was updated to state that "[t]he elevators serving the Condominium were retained with significant upgrades to their cabs, doors, rollers, and repairs to and/or replacement of the operating equipment," and "[a]ll other components of the Condo[] [we]re newly installed." *E.g.*, PTX-841.00011. Again, the elevators were only subject to cosmetic upgrades. PTX-1926.00001.

All versions of the POS represented that the Wardman Tower project included sunken gardens and a brick driveway, *E.g.*, PTX-324.00311-12; PTX-827.00310-11, a feature that was important to unit owner Carolyn Abbey. Tr. 11/10, 199:25-200:12 (Abbey). However, those features had already been cut from the renovation plan when Carolyn Abbey received a POS indicating those features were included. PTX-827.00310-11. Further, the early versions of the POS stated the anticipated completion of construction would be in the "Summer of 2016." *E.g.*, PTX-834.00008, PTX-827.00008. Unit owners relied on this representation, which was consistent with JBG agents' statements, when deciding to close on their units. Tr. 11/13 AM, 82:23-83:15 (Meehan); Tr. 11/10, 195:24-197:17 (Abbey); Tr. 12/9 AM, 24:1-25:1 (Zax). Developer Defendants did not complete construction in any part of 2016.

There were also multiple misrepresentations in the POSs as to the useful life of common elements. All POS versions included reserve schedules informing purchasers about the expected remaining life of various building components. PTX-827.00185-86; Tr. 11/17 PM, 52:18-20 (Kenney). The reserve schedules provided in the POSs estimated a 15-year life for the traction elevators. PTX-827.00185-86. The Parties agree, less than 15 years later, that full modernization is required because the traction elevators' equipment is past its useful life and certain component parts are no longer available. Tr. 11/25 AM, 7:18-19 (Mirch); 11/25 PM, 44:3-45:19 (Mirch); PTX-1084. Tr. 2/12 PM, 91:6-9 (Whitehurst).

The reserve schedules provided in the POSs estimated a 50-year life for the roof, exterior masonry walls, and below-grade waterproofing. PTX-827.00185-86. However, in 2014, WJE "correctly estimate[d]" the reserve schedule determining a 20-year life for the roof and a 30-year life for the exterior walls. PTX-873.00004; PTX-882. Developer Defendants, however, included reserve schedules in the POSs with a 50-year life for both the roof and the exterior walls. PTX-3436. As to the roof, Developer Defendants' expert Richard Vivenzio testified that the 50-year life for the roof may have been a "typo" and anticipated a 15 to 20-year life for the roof. Tr. 2/11 AM, 36:22-37:12 (Vivenzio). As to the exterior masonry walls, Developer Defendants provided no explanation for changing the estimate to a 50-year life in the POS despite WJE estimating a 30-year life.

Developer Defendants hired Construction Systems Group ("CSG") to peer review WJE's work. In 2014, CSG told JBG that it "should be noted in the [POS] that [the exterior wall] may allow water entry during excessive wind driven rain events." PTX-702.00003. Developer Defendants never included that disclosure in any POS. As discussed *supra* Section III.B.1, WJE informed Developer Defendants that, even after tuckpointing, the wall "cannot stop all moisture from reaching the interior," and that "[h]eavy rainfall, especially coupled with driving winds, can still saturate the wall assembly and depending upon the interior and exterior temperature and humidity conditions, voids between the face brick and inner masonry wythes, and developed leakage paths, moisture may still be able to reach the interior of the building." PTX-295.00011; PTX-898.00016. Later versions of the POS stated that certain portions of the exterior walls were sold "as is" but failed to identify which portions. PTX-841-00011. Developer Defendants never disclosed in any POS that the exterior walls have issues with water infiltration. Unit owners' reliance on the reserve schedules informed their decisions to purchase units at Wardman Tower. Tr. 11/10, 199:19-24 (Abbey); Tr. 1/13 PM, 72:15-73:6 (Dixon); Tr. 11/24 AM, 127:20-128:8, 131:5-20 (Gallo). Developer Defendants in fact referred unit owners to the reserve schedules and stood behind the representations made therein. Tr. 11/24 AM, 139:25-140:11 & Tr. 11/24 PM, 42:9-43:4 (Gallo).

There are additional issues that Developer Defendants failed to disclose to unit owners. For example, the exterior above-grade walls lack insulation despite the purchase agreements stating that "[e]xterior walls will be insulated." DD18751-0651. In 2017, when the Wardman Tower sales agent learned that the exterior above-grade walls lacked insulation, she responded by telling Developer Defendants that it "will bring up a ton of questions and concerns." PTX-3224.00001. Unit owners understood there would be insulation in the above-grade exterior walls when they purchased their units. Tr. 11/10, 189:10-190:19 (Abbey); Tr. 11/24 AM, 32:21-34:4 (Ellis). Further, as discussed *supra* Section III.B.3, there were numerous issues with firestopping and fire safety that were not disclosed to purchasers.

Finally, as discussed *supra* Section III.B, the evidence at Trial showed that numerous areas at Wardman Tower were defectively renovated. Developer Defendants failed to disclose those areas of defective renovation to purchasers, even as they continued to market and sell units to new purchasers. Those areas of defective renovation include fire safety issues, non-code-compliant quarter-round balconies, issues with the HVAC system, ongoing water intrusion, and unexamined structural conditions on floors one and two.

D. Plaza

Plaza Construction D.C., LLC. ("Plaza") was hired as the general contractor for the Wardman Tower project on June 8, 2015. PTX-1918. Plaza's scope included the interior buildout of floors 3-8, plumbing, electrical, fire safety, HVAC and other interior work. Tr. 12/9 AM, 100:21-101:12 (Peyton); Tr. 3/4 AM, 95:8-15 (Nolan). Additionally, Plaza's scope included building the new parking garage, doing sitework, repairing the roof, and lowering and completing work on the B1 level. *Id.* Plaza was also responsible for any work reflected in a change order, owner directive, or other type of written order. Tr. 3/4 AM, 91:18-92:4 (Nolan). Plaza was not responsible for any work related to the exterior façade of the building, the installation of exterior doors and windows, the restoration of balconies, demolition to the interior condo spaces and structural repairs in the building. Tr. 12/9/25 AM 102:7-18 (Peyton); Tr. 2/26/26 AM 42:3-44:4, 46:18-47:16 (Ege). Plaza's work at Wardman Tower occurred primarily between 2014 and 2017, Tr. 2/3/26 AM 39:15-40:8 (Friedlander); Tr. 3/3/26 AM 27:7-23 (Nolan), but due to ongoing issues, extended to well after November 2017. Tr. 12/10 AM, 73:22-75:5 (Peyton); PTX-789.

Plaza entered a contract with NASH Wardman to perform specified new construction as to the interior renovation at Wardman Tower. PTX-1918; Tr. 12/9/25 AM 95:20-97:16, 100:21-101:21 (Peyton). Plaza did not enter a contract with Plaintiff. Plaza's contract was based on the January 5, 2015 conformed bid set of drawings. PTX-1918.00193 to 1918.00225; Tr. 12/11/25 PM 18:1-3 (Hennemuth); Tr. 2/3/26 AM 36:14-38:5 (Friedlander); Tr. 2/26/26 AM 79:24-80:6 (Ege); Tr. 3/3/26 AM 46:12-47:8 (Nolan). Plaza's contract changed primarily through two mechanisms: bulletins and requests for information ("RFIs"). A bulletin is a change to the construction documents that are formalized, approved, and sent to the contractor for pricing, before being sent to the developer for final approval, much like a change order. Plaza-14; Tr. 2/3/26 AM 30:21-31:4, 41:7-16 (Friedlander). An RFI occurs when a contractor has a question about information on the contract drawings or a question about a field condition that exists in a different way than what the drawings show and requests that the architect provide guidance. Tr. 2/3/26 AM 40:11-41:6 (Friedlander).

Plaza was not responsible for the design decisions at Wardman Tower. Rather, Plaza was responsible for implementing the designs provided by Developer Defendants and their contractors. For example, Todd Friedlander, an employee of the contracted architectural firm ACG, reviewed submittals, responded to RFIs, issued bulletins, signed off on change orders, and coordinated design decisions at Wardman Tower with sub-consultants. (Tr. 12/11/25 PM 19:8-12 Hennemuth; DD18750; Tr. 2/3/26 AM 27:14-31:8, 79:22-80:19 Friedlander; Tr. 2/26/26 AM 54:21-24 Ege). ACG also developed the layout for the plumbing and for the mechanical systems. (Tr. 2/3/26 AM 33:20-34:2 Friedlander).

As to the RFI process, Plaza would submit and RFI and wait for approval and written direction from Developer Defendants before performing any work. Plaza submitted almost one thousand RFIs to resolve conflicts in the drawings and specifications and received over 267 change orders in completing its work under their contract. Tr. 2/19/26 AM 24:2-11 May; Tr. 3/4/26 AM 126:15-20 (Nolan). Tr. 12/9/25 AM 122:8-123:4 (Peyton). All of their work was done at the direction of Developer Defendants.

IV. MOTION FOR JUDGMENT ON PARTIAL FINDINGS

On January 29, 2026, at the close of Plaintiff's case, Developer Defendants filed their Motion for Judgment on Partial Findings ("Motion for Judgment") under Rule 52(c). Plaintiff incorporated their Opposition in their Post-Trial Brief on April 6, 2026. Developer Defendants incorporated their Opposition in their Post-Trial Brief Reply on April 20, 2026. On February 20, 2026, Developer Defendants filed their Partial Motion to Dismiss Third Amended Complaint. On February 20, 2026, Development Services filed their Motion to Dismiss Third Amended Complaint. Prior to addressing Plaintiff's claims in this case, this Court will address Developer

Defendants' Motion for Judgment. The following applies only to Plaintiff's case-in-chief, and to the issues raised in Developer Defendants' Motion for Judgment. Each issue raised by Developer Defendants will be addressed in turn.

As to their Motion for Judgment, Developer Defendants argue the Court should reject Plaintiff's claims including: (i) Plaintiff's Consumer Protection Procedures Act (CPPA, as codified at D.C. Code §§ 28-3901 *et seq.*) claim for lack of standing; (ii) any claim for damages related to Plaintiff's proposal for repair of the above-ground exterior masonry wall; and (iii) any claims against JBG/Development Services, LLC, JBG SMITH, and JBG SMITH Properties, LP. Mot. at 1. Developer Defendants additionally requested their Motion for Judgment be considered as a Motion for Reconsideration with respect to their opposition to the Court's Order Granting Plaintiff's Motion to Amend and the addition of JBG/Development Services, LLC as a named Defendant. *Id.* at 31.

As to Developer Defendants' Partial Motion to Dismiss, Developer Defendants incorporate arguments set forth in their Partial Motion for Judgment that Plaintiff lacks standing to assert its claims under Counts III, IV, VII, and IX. As to Development Services' Motion to Dismiss, Development Services incorporates the arguments set forth in Developer Defendants' Motion for Judgment. Development Services argue that Plaintiff's Counts III, IV, and IX are time-barred and that Plaintiff lacks standing to assert its claims against Development Services under Counts III, IV, and IX. Upon review of the Motions to Dismiss, the Court notes that the arguments set forth are duplicative of Developer Defendants' arguments in their Motion for Judgment. The Court will discuss those arguments below. As such, and for the reasons given below, this Court finds good cause to deny Developer Defendants' Partial Motion to Dismiss and Development Services' Motion to Dismiss.

A. Legal Standard

1. Motion for Judgment on Partial Findings

Rule 52(c) "provides for judgment based on partial findings, the bench trial equivalent of its more well-known cousin, a motion for judgment as a matter of law (or a directed verdict) under Rule 50(a)." *Sanchez v. Sundely LLC*, 322 A.3d 529, 535 n.3 (D.C. 2024) (quoting *Stop Ill. Health Care Fraud, LLC v. Sayeed*, 957 F.3d 743, 748 (7th Cir. 2020)). Under D.C Civil Rule 52(c), "[i]f a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue." D.C. Super. Ct. Civ. R. 52(c). Further, when considering a motion made under Rule 52(c), "the court must weigh the evidence, resolve any conflicts in it, and decide where the preponderance lies." *Headfirst Baseball LLC v. Elwood*, 239 F. Supp. 3d 7, 12 (D.D.C. 2017).

2. Motion for Reconsideration

Rule 59(e) allows a "motion to alter or amend a judgment . . . no later than 28 days after the entry of the judgment." D.C. Super. Ct. Civ. R. 59(e). "The burden is on the moving party to show that reconsideration is appropriate and that harm or injustice would result if reconsideration were denied." *United States ex rel. Westrick v. Second Chance Body Armor, Inc.*, 893 F. Supp. 2d 258, 268 (D.D.C. 2012).

"[I]t is well-established that motions for reconsideration, whatever their procedural basis, cannot be used as an opportunity to reargue facts and theories upon which a court has already ruled, nor as a vehicle for presenting theories or arguments that could have been advanced earlier." *Ali v. Carnegie Institute of Washington*, 309 F.R.D. 77, 81 (D.D.C. 2015). Raising "arguments that should have been, but were not, raised in" the original filing "is, frankly, a waste of the limited time and resources of the litigants and the judicial system." *Estate of Gaither v. District of*

Columbia, 771 F. Supp. 2d 5, 9-10 (D.D.C. 2011); *see Caisse Nationale de Credit Agricole v. CBI Industries, Inc.*, 90 F.3d 1264, 1270 (7th Cir. 1996) ("Reconsideration is not an appropriate forum for . . . arguing matters that could have been heard during the pendency of the previous motion."). Rule 59(e) is available "to correct manifest errors of law or fact" or to prevent "manifest injustice". *Dist. No. 1—Pac. Coast Dist., Marine Eng'rs Beneficial Ass'n v. Travelers Cas. & Sur. Co.*, 782 A.2d 269, 278-79 (D.C. 2001).

3. Motion to Dismiss

A complaint must contain a "short and plain statement . . . showing that the pleader is entitled to relief." D.C. Super. Ct. R. Civ. P. 8(a). The Court construes Rule 8(a) "consistent with Federal Rule 8(a) as interpreted by the Supreme Court of the United States." *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543 (D.C. 2011). Rule 8(a) "does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). "To survive a motion to dismiss a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." *Id.* (internal quotation marks and citation omitted). In evaluating the complaint, the Court must "draw all inferences from the factual allegations of the complaint in the plaintiff's favor." *Carlyle Inv. Mgmt., LLC v. Ace Am. Ins. Co.*, 131 A.3d 886, 894 (D.C. 2016) (citation omitted). At bottom, the "complaint must plead . . . factual content that" would allow "the court to draw the reasonable inference that defendant is liable for the misconduct alleged." *Poola v. Howard Univ.*, 147 A.3d 267, 276 (D.C. 2016) (cleaned up).

B. Plaintiff Has Standing to Sue for CPPA Claim

Developer Defendants assert that Plaintiff's CPPA claim (Count VI) fails because Plaintiff: (i) sued on its own behalf, not as a representative of any unit owner; (ii) does not have statutory standing as an association to pursue a CPPA claim; (iii) does not have constitutional associational standing to pursue a CPPA claim; and (iv) does not have standing to bring a claim in its own right. Mot. at 3-4. The Court rejects these arguments and finds that: (i) Plaintiff sued on behalf of two or more unit owners; (ii) Plaintiff has standing as an association to pursue a CPPA claim; (iii) Plaintiff has constitutional associational standing to bring a CPPA claim; and (iv) Plaintiff has standing to bring a claim in its own right. For the reasons set forth below, this Court finds against Developer Defendants.

1. Plaintiff Filed Suit on Behalf of Two or More Unit Owners

As a threshold issue, the D.C. Condominium Act (as codified at D.C. Code § 42.1901.01 *et seq.*) affords a basis for a Condominium Unit Owners Association ("Association") to pursue numerous construction defect and misrepresentation claims, including a CPPA claim. Under the D.C. Condominium Act, "the 'self-government of the condominium' is in the hands of the unit owners' association. The association has broad powers to protect its members' property interests in the condominium." *Quincy Park Condo. Unit Owners' Ass'n v. D.C. Bd. Of Zoning Adjustment*, 4 A.3d 1283, 1290 (D.C. 2010) (citing D.C. Code § 42-1903.01(a)). To this point, the D.C. Condominium Act provides an Association the "[p]ower to institute, defend, or intervene in litigation or administrative proceedings in the name of the unit owners' association on behalf of the unit owners' association or 2 or more unit owners on any matter that affects the condominium." D.C. Code § 42.1903.08(a)(4). The Board may "convene in executive session to consider pending or anticipated litigation." D.C. Code § 42.1903.03(b)(5)(A)(iii). Further, an officer or member of the Board shall, "[i]n the performance of duties . . . exercise the care required of a fiduciary to the unit owners." D.C. Code § 42.1903.08(d).

Developer Defendants argue that Plaintiff filed suit as an Association, and not on behalf of unit owners, because Plaintiff "never identified any particular members on whose behalf it was pursuing individual claims and did not name any individual members as additional plaintiffs."

Mot. at 2. They assert that "Karen Dixon confirmed that the Association was the 'client for the litigation and moreover, for that reason, information about the case was not even shared beyond the Board.'" Mot. at 3 (citing Tr. 1/14 AM, 120:1-19 (Dixon)). They therefore contend that, because Plaintiff failed to name any specific unit owners as plaintiffs, Plaintiff's CPPA claim was filed on behalf of the Association itself rather than "on behalf of two or more members" as the D.C. Condominium Act authorizes.[9]

As stated in the Complaint, this case was filed by Plaintiff, as the unit owners' association, "on its own behalf and on behalf of two or more unit owners." Compl. at 1. The D.C. Condominium Act provides an Association the "[p]ower to institute, defend, or intervene in litigation or administrative proceedings in the name of the unit owners' association on behalf of the unit owners' association or 2 or more unit-owners on any matter that affects the condominium" unless expressly prohibited by the condominium instruments.[10] D.C. Code § 42.1903.08(a)(4). Here, four unit-owners authorized a resolution in 2020 to permit the Association Board to file suit against Defendants on behalf of the unit owners. PTX-1082.00002. Importantly, members of the Board owe a fiduciary duty to all unit owners. D.C. Code § 42.1903.08(d). Developer Defendants argue that individual members are often named as additional plaintiffs in actions against condominium developers but produce no authority that affirmatively requires individual members to be named,[11]

[9] Developer Defendants concede that "[t]he Condominium Act broadly authorizes Associations to bring actions on its own behalf or to pursue claims "on behalf of two or more unit owners" and that "[i]t is perfectly appropriate for the Association to bring certain claims on its own behalf." Mot. at 2-3.

[10] Here, the Condominium instruments give Plaintiff the authority to sue on behalf of unit owners. PTX-569.

[11] Developer Defendants point to *Saucier v. Countrywide Home Loans*, 64 A.3d 428 (D.C. 2013); *Unit Owners Ass'n of 2337 Champlain St. Condo. v. 2337 Champlain St. LLC*, 314 A.3d 1198 (D.C. 2024); *Fort Lincoln Civic Ass'n, Inc. v. Fort Lincoln New Town Corp.*, 944 A.2d 1055 (D.C. 2008); and *Campbell v. Fort Lincoln New Town Corp.*, 55 A3d 379 (D.C. 2012) as cases involving both an Association and unit owners as Plaintiffs. This Court finds those cases unpersuasive here.

and this Court is not aware of any such authority. On this point alone, this Court finds that Plaintiff's CPPA claim was brought on behalf of unit owners.

Trial evidence further supports the finding that Plaintiff's CPPA claim was brought on behalf of unit owners. Plaintiff called seven unit owners in support of the litigation as witnesses in their case-in-chief. Six of those witnesses purchased their unit at Wardman Tower prior to 2020, when this litigation commenced. The decision to pursue litigation, and Plaintiff's CPPA claim, was therefore affirmatively on behalf of at least two unit owners. Witness testimony further demonstrates that Plaintiff is pursuing a CPPA claim on behalf of two or more unit owners, as stated in their Complaint and as authorized by the D.C. Condominium Act. *See* D.C. Code § 42.1903.08(a)(4).

Maryland law is instructive on this issue.[12] In *Milton Co. v. Council of Unit Owners of Bentley Place Condo.*, the Maryland court stated that the Maryland Condominium Act, which is analogous to the D.C. Condominium Act, "clearly permits a[n] [association] to act in a representative capacity for two or more unit owners." 729 A.2d 981, 989 (Md. 1999). The purpose was to "avoid a multiplicity of suits." *Id.* The Maryland court held that "the [association] could sue on behalf of the unit owners for claims . . . that were common to many individual units" despite Petitioners' argument that "no individual unit owner was named as a party to the suit and only a few of the 240 unit-owners testified at trial." *Id.* at 988-99. In that case, Plaintiff was awarded damages on multiple claims, including violation of the Maryland Consumer Protection Act.

Regardless, if Plaintiff's Complaint was required to be pled as Developer Defendants argue, under Rule 21, "[o]n motion or on its own, the court may at any time, on just terms, add or

[12] The D.C. Condominium Act provides that, "[i]n the application or construction of the provisions of this chapter, the courts of the District of Columbia shall give due regard to judicial decisions and rulings in states that have enacted the Uniform Condominium Act or any other condominium statute that contains provisions similar to the provisions of this chapter." D.C. Code § 42-1901.08

drop a party." D.C. Super. Ct. Civ. R. 21. Rule 15(b)(1) provides that, "if, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits." D.C. Super. Ct. Civ. R. 15(b)(1). Here, the evidence is clear that Plaintiff's claim is brought on behalf of two or more unit owners. This Court has the power to grant a motion by Plaintiff to amend their Complaint to add named unit owners, as Defendants argue is necessary, and such amendment would not result in prejudice to Defendants. This Court therefore finds that Plaintiff filed suit properly under the D.C. Condominium Act on behalf of two or more unit-owners.

2. Plaintiff Has Standing as an Association to Bring A CPPA Claim

The CPPA is a "comprehensive statute designed to provide procedures and remedies for a broad spectrum of practices which injure consumers." *District Cablevision Ltd. P'ship v. Bassin*, 828 A.2d 714, 722-23 (D.C. 2003) (quoting *Atwater v. District of Columbia Dep't of Consumer & Reg. Affairs*, 566 A.2d 462, 465 (D.C. 1989)). As such, the CPPA is meant to be "construed and applied liberally to promote its purpose." D.C. Code § 28-3901(c). "While the CPPA enumerates a number of specific unlawful trade practices . . . the enumeration is not exclusive." *District Cablevision Ltd. P'ship* 828 A.2d at 723. "A main purpose of the CPPA is to 'assure that a just mechanism exists to remedy all improper trade practices.'" *Id.* (quoting D.C. Code § 28-3901 (b)(1))." Trade practices that violate other laws, including the common law, also fall within the purview of the CPPA. *Id.*; *see Osbourne v. Capital City Mortg. Corp.*, 727 A.2d 322, 325-26 (D.C. 1999) ("The CPPA's extensive enforcement mechanisms apply not only to the unlawful trade practices proscribed by § 28-3904, but to all other statutory and common law prohibitions."). The burden of proof for claims of unintentional misrepresentations under the CPPA is preponderance of the evidence. *D.C. v. Facebook, Inc.*, 340 A.3d 1, 10 (D.C. 2025) clarifying *Frankeny v. Dist. Hosp. Partners, LP*, 225 A.3d 999, 1005 (D.C. 2020) (held generally that the "burden of proof for CPPA claims is clear and convincing evidence" without distinguishing between intentional and unintentional misrepresentations).

Generally, to establish a claim under the CPPA, the claimant must show the existence of a consumer-merchant relationship. *See Snowder v. District of Columbia*, 949 A.2d 590, 599 (D.C. 2008). A consumer is "a person who . . . does or would purchase, lease (as lessee) or receive consumer goods and services." D.C. Code § 28-3901(a)(2)(A). "Consumer goods and services" includes real estate transactions. D.C. Code § 28-3901(a)(7), (c). A merchant is broadly defined as "a person . . . who in the ordinary course of business does or would sell, lease(to), or transfer, either directly or indirectly, consumer goods or services or a person who in the ordinary course of business does or would supply the goods or services which are or would be the subject matter of a trade practice." D.C. Code § 28-3901(a)(3). A merchant is not limited to the actual seller of goods or services but also includes those connected with the supply side of a consumer transaction. *See Adam A. Weschler & Son, Inc. v. Klank*, 561 A.2d 1003, 1004 (D.C. 1989) (citing *Howard v. Riggs Nat'l Bank*, 432 A.2d 701, 709 (D.C. 1981)). The CPPA sets forth numerous types of communications and acts that are deemed to be unfair or deceptive trade practices. Such practices include a "misrepresent[ion] as to a material fact which has a tendency to mislead." D.C. Code § 28-3904(e).

Here, Developer Defendants argue that the Court should grant judgment against Plaintiff on their CPPA claim because Plaintiff lacks statutory standing as it is not a "consumer" under D.C. Code § 28-3901(a)(2). As discussed *supra* Section IV.B.1, the D.C. Condominium Act affords a statutory basis for the Association to pursue a CPPA claim on behalf of two or more unit-owners.

Plaintiff satisfied their burden in demonstrating that their CPPA claim was brought on behalf of unit owners.

Developer Defendants rely on a footnote in *Unit Owners Ass'n of 2337 Champlain St. Condo* where the D.C. Court of Appeals stated that the "Association itself did not purchase anything from either of the developer defendants [and] [i]t therefore has no claims against those defendants for common law fraud or the alleged statutory violations arising from the condominium sales." *Unit Owners Ass'n of 2337 Champlain St. Condo v. 2337 Champlain St. LLC*, 314 A.3d 1198, 1211 n.19 (D.C. 2024). This is both dicta and inapposite to the instant litigation. In *Champlain*, the Court stated at the outset of its decision that "we find it necessary to consider only the Developers' contention that the claims against them are time-barred." *Id.* at 1211. Footnote 19 is therefore dicta as it is "entirely unnecessary for the decision of the case . . . [and] [has] no effect as indicating the law of the District." *Albertie v. Louis & Alexander Corp.*, 646 A.2d 1001, 1005 (D.C. 1994). Also, *Champlain* is distinguishable in its facts. There, the underlying issue was whether the association was bound by bylaw amendments passed by the developer. *Champlain*, 314 A.3d 1198 at 1202-03. Here, Plaintiff has filed suit on behalf of its members and seeks recovery under the CPPA for misrepresentation related to common elements, a posture clearly contemplated by the D.C. Condominium Act and the CPPA. This Court therefore finds that Plaintiff has statutory standing to bring a CPPA claim on behalf of its members.

3. Plaintiff Has Constitutional Associational Standing to Bring CPPA Claim

"The District of Columbia's local courts, 'established by Congress pursuant to Article I, are not constitutionally bound by the requirements of Article III.'" *Animal Legal Defense Fund v. Hormel Foods*, 258 A.3d 174, 181 (D.C. 2021) (quoting *District of Columbia v. Walters*, 319 A.2d 332, 338 n.13 (D.C. 1974)). While the D.C. Courts generally adhere to Article III's requirements, "that prudential judgment is subject to legislative override." *Earth Island Inst. v. Coca-Cola Co.*, 321 A.3d 654, 662 (quoting *Animal Legal Defense Fund v. Hormel Foods*, 258 A.3d 174, 181 (D.C. 2021). Under Article III, an association has standing to bring suit on behalf of its members when: (i) its members would have standing to sue in their own right; (ii) the interests at stake are germane to the organization's purpose; and (iii) neither the claim asserted nor the relief requested requires individual members' participation in the lawsuit. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000) (citing *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)). The third prong has been interpreted as a prudential requirement. *United Food & Commer. Workers Union Local 751 v. Brown Group*, 517 U.S. 544, 555 (1996). The third prong "may guard against the hazard of litigating a case to the damages stage only to find the plaintiff lacking detailed records or the evidence necessary to show the harm with sufficient specificity" or "may hedge against any risk that the damages recovered by the association will fail to find their way into the pockets of the members on whose behalf injury is claimed." *United Food & Commer. Workers Union Local 751 v. Brown Group*, 517 U.S. 544, 556 (1996).

Developer Defendants argue that Plaintiff must prove constitutional associational standing in addition to statutory standing to bring a CPPA claim on behalf of unit owners. Mot. at 4. They do not contest that Plaintiff would meet the first two factors, that the Association's members would have standing to sue in their own right or that the interests at stake are germane to the Association's purpose; they argue that Plaintiff's CPPA claim requires that the unit owners participate because their damages claim would need to be individualized. Mot. at 4-5. It follows, according to Developer Defendants, that each unit owner would have to establish standing to bring a CPPA claim in their own right in accordance with D.C. Code § 28-3905(k)(1)(A), and that Plaintiff failed to do so.

First, the D.C. Court of Appeals has not affirmatively held that an association is required to demonstrate constitutional associational standing in addition to statutory standing under D.C. Code § 42.1901.01.[13] As discussed *supra* Section IV.B.2, Plaintiff has established statutory standing to sue on behalf of its members. Moreover, there is no applicable case law to support Developer Defendants' argument. The D.C. Council expressed its intention to override the third factor in this context through legislation that allows associations to sue "on any matter that affects the condominium" under the D.C. Condominium Act. D.C. Code § 42-1903.08(a)(4). The District of Columbia's local courts, "established by Congress pursuant to Article I, are not [constitutionally] bound by the requirements of Article III." *Animal Legal Def. Fund v. Hormel Foods Corp*., 258 A.3d 174, 181 (D.C. 2021) (citing *District of Columbia v. Walters*, 319 A.2d 332, 338 n.13 (D.C. 1974)). It is well settled that the D.C. Council has the authority to remove prudential limits on standing. *Id.* Therefore, even if constitutional associational standing were required, the third factor has been overridden by the D.C. Council and does not apply.

Second, if the third factor did apply, Plaintiff would satisfy it. Developer Defendants' argument here turns on the fact that Plaintiff's members have varying ownership interests and dues assessments. Mot. at 6. Developer Defendants rely on *Saucier v. Countrywide Home Loans*, in which the D.C. Court of Appeals found that an association satisfied the third factor because each individual member shared a 2.38% interest in the association. 64 A.3d 428, 447-48 (D.C. 2013). Developer Defendants argue that because the Wardman Tower unit owners do not own identical shares, they therefore must show individualized proof for each unit owners' damages. Maryland law is instructive here. In *Milton Co. v. Council of Unit Owners of Bentley Place Condo.*, the

[13] In a similar case, under a different statute, the D.C. Court of Appeals found that tenant organizations had statutory standing under D.C. Code § 42-3401.03(18) even absent constitutional associational standing. *See Richman Towers Tenants' Association v. Richman Towers LLC*, 17 A.3d 590, 593 (D.C. 2011). Importantly, the statutory standing requirements under D.C. Code § 42-3401.03(18) differ from the statutory standing requirements in the instant case.

Maryland Court found that, under the Maryland Condominium Act, "each unit owner who purchases a condominium property obtains an undivided percentage ownership interest in the common elements. Thus, each unit owner is able to assert individual ownership in the entire common elements." 708 A.2d 1047, 1053 (Md. Ct. Spec. App. 1998), *aff'd*, 729 A.2d 981 (Md. 1999). The Maryland Court further stated that "[s]ince each has an ownership interest in the entire common elements, any single unit owner or group of owners may bring suit and seek the entire damage to the common elements."[14] *Id.* Similarly, here, despite Plaintiff's members having varying ownership interests and dues assessments, each owns an equal, undivided share of the common elements. Therefore, the damages each member may be able to claim are not individualized and the third factor is satisfied.

Finally, Plaintiff's CPPA claim relates to common elements that are collectively owned and cannot be divided or sold individually by a single owner. *See* D.C. Code § 42-1902.11(g). The injury here is collective as to the repair of the common elements and damages will flow to unit owners through the Association as Plaintiff. Therefore, there is no risk that a unit owner will lack "evidence necessary to show the harm with sufficient specificity" or that "the damages recovered will fail to find their way into the pockets of the members on whose behalf injury is claimed." *See United Food & Commer. Workers Union Local 751 v. Brown Group*, 517 U.S. 544, 556 (1996). If there were any question as to whether differing ownership interests matter, and there is not, the differing interest of each unit owner is known and quantifiable and are included in the POS.[15] PTX-569.00101-02. This Court finds that Plaintiff does not have to additionally establish constitutional

[14] The *Milton Co.* Court additionally cited with approval *Starfish Condo. Ass'n v. Yorkridge Serv. Corp.* for the proposition that individual unit owners' entitlement to damages should not be limited by their percentage ownership. 708 A.2d at 1053 (citing 458 A.2d 805, 812 (Md. 1983)).

[15] D.C. Code § 42-1902.11 provides that "[t]he declaration may allocate to each unit . . . an undivided interest in the common elements proportionate to either the size or par value of each unit. Otherwise, the declaration shall allocate to each such unit an equal undivided interest in the common elements." D.C. Code § 42-1902.11(a-b).

associational standing to sue on behalf of its members. Regardless, if constitutional associational standing were required, Plaintiff satisfies the requirements to bring their CPPA claim.

4. Plaintiff Has the Requisite Statutory and Constitutional Standing to Sue in Its Own Right

"[T]o satisfy Article III's standing requirements, a plaintiff must show (i) it has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (ii) the injury is fairly traceable to the challenged action of the defendant; and (iii) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

Here, Developer Defendants argue that Plaintiff lacks statutory and constitutional standing to bring claims on its own behalf. As discussed *supra* Section IV.B.2, the D.C. Condominium Act allows an association to sue "*in the name of the unit owners' association on behalf of the unit owners' association* or 2 or more unit owners on any matter that affects the condominium." D.C. Code § 42-1903.08(a)(4) (emphasis added). Plaintiff therefore has statutory standing to sue in its own right. As to constitutional standing, the D.C. Court of Appeals found in *Saucier v. Countrywide Home Loans* that an association established Article III standing because the association: (i) suffered an injury-in-fact when the association paid for a common element repair with fees paid by unit owners; (ii) the injury was fairly traceable to information likely to have been known by defendants but not disclosed; and (iii) the injury would be redressed if plaintiffs prevailed. 64 A.3d 428, 447-48 (D.C. 2013). Similarly, here, Plaintiff's evidence shows that: (i) the Association paid for repairs to common elements, including but not limited to repairs to the elevator and the HVAC system; (ii) those repairs were fairly traceable to information likely to have been known by Developer Defendants and not disclosed; and (iii) the injury would be redressed if

Plaintiff prevails. Therefore, this Court finds that Plaintiff has constitutional standing to bring claims in its own right.

C. Plaintiff Presented Sufficient Evidence to Justify Award for Damages Related to the Above-Grade Exterior Wall

Developer Defendants argue that Plaintiff has not provided sufficient evidence that it should receive an award for damages related to the above-grade wall. They argue that Plaintiff's claims are unduly speculative and unreasonable because: (i) it is speculative whether Wardman Tower unit owners would agree to implement the proposed remedy; (ii) Plaintiff failed to demonstrate that the Historic Preservation Review Board ("HPRB") would approve the repair; (iii) there is no precedent to prove that the proposed repair would work; and (iv) the economic waste doctrine precludes recovery because the cost of the repair is disproportionate to the alleged injury. Mot. at 10. Developer Defendants further argue that any claims based on alleged misrepresentation or warranties regarding the wall should fail because the Limited Warranty in the POS excludes the original elements, including the exterior wall. *Id.* at 15. For the reasons set forth below, the Court rejects Developer Defendants' arguments.

1. Plaintiff's Above-Grade Walls Damages Claim is Not Speculative

"The general rule regarding damages is that the plaintiff must prove that the damages were in fact the direct result of the injuries caused by the defendant" and "plaintiff must prove the amount of those damages suffered as a result of defendant's conduct with reasonable certainty." *Manes v. Dowling*, 375 A.2d 221, 224 (D.C. 1977) (citing D. Dobbs, Handbook for the Law of Remedies § 3.3 at 148 (1973). In general, a plaintiff is not required to prove their damages "precisely" or "with mathematical certainty." *District of Columbia v. Howell*, 607 A.2d 501, 506 (D.C. 1992). Nevertheless, a plaintiff must provide "some reasonable basis upon which to estimate damages." *Id*. A verdict for damages may not be based solely on speculation. *See Zoerb v. Barton Protective Servs*., 851 A.2d 465, 470 (D.C. 2004).

Developer Defendants argue that Plaintiff's claims related to the above-grade walls should fail because it is speculative whether unit owners would ever agree to implement Mr. Davidson's proposed remedy. Mot. at 11. They point to Karen Dixon's testimony that "factions" developed between unit owners regarding the litigation and Alexander Gallo's testimony that there was no consensus among unit owners that the proposed repairs would be implemented. *Id.* (citing Tr. 1/14 AM, 105:19-106:25 (Dixon); Tr. 11/24 PM, 67:24-68:16 (Gallo)). Developer Defendants also argue that Mr. Shovlin's inclusion of a cost estimate to apply a sealant to the exterior brick as a "contingency" shows the unreasonableness of Mr. Davidson's proposed repair. *Id.* (citing Tr. 1/15 PM, 5:9-16, 37:7-13 (Shovlin)).

Developer Defendants' argument conflates Plaintiff's duty to prove damages with reasonable certainty and Plaintiff's post-litigation actions to remedy the injury. They cite *President, Directors of Georgetown Coll. v. Wheeler* for the proposition that damages should be rejected if they are "based on pure speculation." A.3d 280, 293 (D.C. 2013). In that case, the D.C. Court of Appeals rejected a jury verdict for damages of $19,450.00 in excess of the damages amount the expert testified as necessary because, without any evidentiary support, the excess damages amount was speculative. *Id.* at 293-294. That case is plainly inapplicable to Developer Defendants' argument as the only issue here is whether Plaintiffs have proved their damages claim with reasonable certainty, which they clearly have; there is no requirement that Plaintiff show proof of actual intent to implement the proposed damages remedy post-litigation to maintain a viable damages claim. As to the testimony regarding the alternative sealant remedy, Mr. Shovlin did not opine on the engineered proposals or their efficacy. Mr. Davidson testified as to the building construction and repair and concluded the alternative sealant remedy would be ineffective given the condition of the brick and mortar. As such, this Court finds Developer Defendants' argument unpersuasive.

2. HPRB Approval is Not Required to Maintain the Claim for Damages

Under the Historic District Protection Act (D.C. Code § 6-11-1, *et seq.*), "the HPRB is empowered to '[d]esignate and maintain a current inventory of historic landmarks.'" *Embassy Real Estate Holdings, LLC v. Mayor's Agent for Historic Preservation*, 944 A.2d 1036, 1044 (D.C. 2008) (citing D.C. Code § 6-1103(c)(3)). The HPRB is responsible for "[a]dvis[ing] the Mayor on the compatibility with the purposes of [the Act] of the applications pursuant to § 6-1104 through 6-1108 [for demolition, alteration, division, new construction, and preliminary review]." *Id.* (citing D.C. Code § 6-1103 (c)(l)). Developer Defendants argue that Plaintiff did not present evidence that the HPRB would approve Mr. Davidson's proposed remedy to the above-grade walls citing the number of holes required to be drilled in the mortar, potential risks of wall "blow out," and that the work is irreversible as reasons that Plaintiff's damages claims for the above-grade wall should be denied. *Id.* at 12-13.

In their Post-Trial Brief, Developer Defendants build on this argument, citing *Metro. Baptist Church v. D.C. Dep't of Consumer & Reg. Affairs – HPRB* to argue that Plaintiff's claim is unripe because it depends on future government action, *i.e*. HPRB approval. 718 A.2d 119 (D.C. 1998). To this point, *Metro. Baptist Church* is inapplicable. In that case, the D.C. Court of Appeals held unripe a First Amendment claim against HPRB because the plaintiff, arguing that HPRB's permit requirements violated their First Amendment rights, had not applied for said permit. *Id.* at 131. Therefore, there was no live dispute between Plaintiff and HPRB. *Id.* The holding in *Metro. Baptist Church* is entirely irrelevant to Plaintiff's claim here for damages against Developer Defendants.

It is undisputed that Wardman Tower is designated as a historic property and that any modification to the exterior would require HPRB approval. Mr. Davidson acknowledged Wardman Tower's historic designation and testified that his proposed remedy was designed to maintain the exterior brick in accordance with historic preservation restrictions. Tr. 1/6 PM, 63:5-10 (Davidson); Tr. 1/7 AM, 26:10-27:14 (Davidson). He contemplated multiple remedies and specifically did not recommend more traditional remedies given their inapplicability to a historically preserved building. *Id.* He designed the remedy to drill through the mortar, rather than the brick, because the mortar could be patched without altering the exterior appearance of Wardman Tower. Tr. 1/7 PM, 20:6-21:11 (Davidson). As to the potential "blow out" of the above-grade wall, he did not believe it was a risk if the repair was done correctly. Tr. 1/6 PM, 29:1-23 (Davidson). Finally, Mr. Davidson's remedy does not alter Wardman Tower's exterior thus there is no permanent change to it, and Developer Defendants did not present evidence that HPRB approval would be either required or denied. To be sure, Wardman Tower's prior renovation included many changes that are permanent in a similar nature to Mr. Davidson's proposed remedy and were made without modification to the building's exterior. As such, this Court finds Developer Defendants' argument unpersuasive.

3. Plaintiff Presented Evidence of the Reliability of the Proposed Remedy

Developer Defendants argue that Mr. Davidson's design to repair the above-grade walls should be rejected because it lacks precedent. Mot. at 13. They distinguish Mr. Davidson's previous projects from the proposed remedy at Wardman Tower to argue that the remedy is unreliable and that Plaintiff lacks a legally sound, reliable basis for the proposed damages related to the above-grade wall. *Id.*

On May 28, 2025, the Court denied Developer Defendants Motion to Preclude Testimony and Reports by Mr. Davidson. The Court found that Mr. Davidson's testimony met the standards of Rule 702 and *Daubert*, and that the Court would weigh issues of credibility and reliability at Trial as the finder of fact. Pretrial Order at 3 (May 28, 2025). Mr. Davidson testified that his proposed remedy was based on work that he had done previously and well-known standards in the industry. Tr. 12/16 AM, 131:3-7 (Davidson). His opinion was that his nine-step remedy was the best approach based on his experience and the historic preservation restrictions at Wardman Tower. Mr. Davidson acknowledged that Wardman Tower presented unique circumstances and presented a tailored remedy to the issues presented by the above-grade wall. Tr. 12/16 AM, 81:16-82:6. Given Mr. Davidson's testimony, and the evidence presented at Trial, this Court finds that Mr. Davidson presented credible testimony and evidence that his proposed remedy is sound and based on methods that are well-established and dependable. As such, this Court finds Developer Defendants' argument unpersuasive.

4. The Economic Waste Doctrine is Inapplicable at This Stage in Litigation

The Second Restatement of Contracts states that an award involving "economic waste" should not be made to a plaintiff. Restatement (Second) of Contracts § 348 (A.L.I. 1981). Economic waste occurs when "such a large part of the cost to remedy the defects consists of the cost to undo what has been improperly done that the cost to remedy the defects will be clearly disproportionate to the probable loss in value to the injured party." *Id.* When a court applies the economic waste doctrine, "the measure of damages is not the cost of replacing the defective work, but is the difference between the value that the work would have had if performed according to the contract and the value of the work as actually performed." *Fortune v. Evans*, 58 A.2d 919, 920 (D.C. 1948). The burden to show that the cost of correction constitutes economic waste, through evidence of the market value of the completed project and deviation from the cost of completion, is on the breaching party. *Andrulis v. Levin Constr. Corp.*, 628 A.2d 197, 207-08 (Md. 1993); *see also Legacy Builders LLC v. Andrews*, 335 P.3d 1063, 1070 (Wyo. 2014) (stating "it is the defendant's burden to challenge the reasonableness or disproportionality of the plaintiff's method and, where appropriate, to present evidence supporting an alternative measure of damages."). Developer Defendants argue that the damages sought by Plaintiff to remedy the above-grade walls constitute economic waste as Plaintiff seeks more than $115 million to repair the above-grade wall, more than the aggregate purchase price for all units of $110 million. Mot. at 14. Therefore, according to Developer Defendants, the Court should apply the economic waste doctrine and find against Plaintiff.

The procedural history shows that it is inappropriate to consider the economic waste doctrine in Developer Defendants' Motion for Judgment.[16] Plaintiff argues that Developer Defendants waived the economic waste defense because it was raised too late in this litigation. Plaintiff Post-Trial Brief at 63. Developer Defendants assert correctly that they raised the defense in response to the operative complaint. Developer Defendants Post-Trial Response at 15. However, that filing was on February 20, 2026, in response to Plaintiff's Third Amended Complaint, after Plaintiff had rested its case-in-chief. As such, Plaintiff had no opportunity to develop or present evidence responsive to the defense. Further, Developer Defendants carry the burden to demonstrate that Plaintiff's claimed damages constitute economic waste. *Andrulis v. Levin Constr. Corp.*, 628 A.2d 197, 207-08 (Md. 1993); *see also Legacy Builders LLC v. Andrews*, 335 P.3d 1063, 1070 (Wyo. 2014). Therefore, this Court finds that it is inappropriate to consider the economic waste defense under Developer Defendants' Rule 52(c) Motion for Judgment.

5. The Limited Warranty in the Public Offering Statement Does Not Preclude the Above-Grade Wall Claims

The D.C. Condominium Act provides a warranty against structural defects, stating that "[a] declarant shall warrant against structural defects in . . . all of the common elements for 2 years."

[16] Developer Defendants' post-trial economic waste argument is discussed below in Section V.A.2.

D.C. Code § 42-1903-16(a)(2)(b). A "structural defect" is defined as "a defect in a component that constitutes a portion or all of either a unit or the common elements that [r]educes the stability or safety of the unit or common elements below standards commonly accepted in the real estate market or [r]estricts the normally intended use of all or part of the common elements of a unit and which requires repair, renovation, restoration, or replacement to serve the purpose for which it was intended." D.C. Code § 42-1903-16(j)(6)(A-B). The POS provided to unit owners at the time of purchase includes a Limited Warranty that excludes "any structural defect in any element or component not installed by Declarant or any work not performed by Declarant." PTX-0827.00083. Further, the Limited Warranty states that it "shall not expand nor limit the warranty obligations under Section 42-1903.16 of the [D.C. Condominium Act]." PTX-0827.00085.

Developer Defendants argue that the Limited Warranty expressly excludes from warranty the original elements, such as the exterior wall, save any work done by Developer Defendants. Mot. at 15. Therefore, would-be unit owners were on notice that there was no warranty as to the above-grade wall, an original element. Further, any alleged misrepresentation regarding the replacement reserve schedule and the estimated remaining life of the brick masonry repointing was only an estimate and did not give rise to any representation or warranty. Mot. at 16 (citing PTX-0569.00018). As to the Limited Warranty, the express terms state that it shall not expand or limit the warranty obligations under the D.C. Condominium Act. PTX-0827.00085. The D.C. Condominium Act states that "[a] declarant shall warrant against structural defects in . . . all of the common elements for 2 years." D.C. Code § 42-1903-16(a)(2)(b). Developer Defendants rely on the Limited Warranty clause that excludes "any structural defect in any element or component not installed by Declarant or any work not performed by Declarant." PTX-0827.00083. Here, however, it is undisputed that Developer Defendants repointed the above-grade walls' brick masonry to remedy water infiltration. Plaintiff's claim as to the above-grade walls relates to water infiltration and structural integrity. As such, the exclusions to the Limited Warranty are inapplicable to Plaintiff's claims regarding the above-grade walls.

As to material misrepresentations, Plaintiff introduced evidence that the above-grade walls have structural concerns, including that they lack capacity to withstand wind loading, Tr. 11/19 AM, 86:5-87:1 (Guedelhoefer), and reoccurring water intrusion and infiltration. Tr. 11/19 PM, 12:1-13:8 (Guedelhoefer); Tr.12/16 AM, 73:1-75:1 (Davidson). Developer Defendants included a 50-year remaining life for the above-grade walls in the POS, which unit owners relied on in purchasing their units, but was misleading. Tr. 11/10, 199:19-24 (Abbey); Tr. 1/13 PM, 72:15-73:6 (Dixon); Tr. 11/24 AM, 127:20-128:8, 131:5-20 (Gallo). In 2014, WJE estimated a 30-year life for the exterior above-grade walls. PTX-882. In 2016, Developer Defendants gave ACG a reserve schedule with a 30-year life for the exterior above-grade walls. PTX-3439. However, Developer Defendants later included in the POS the reserve schedule to show a 50-year remaining life for the exterior above-grade walls. Tr. 2/3 PM, 34:20-35:10 (Friedlander); PTX-3436. Under the CPPA, "a consumer only needs to establish that the merchant made a material misrepresentation under § 28-3904(e) or failed to make a material disclosure under § 28-3904(f)." *Frankeny v. Dist. Hosp. Partner, LP*, 255 A.3d 999, 1004 (D.C. 2020). "[A] misrepresentation or omission is 'material' if a reasonable person 'would attach importance to its existence or nonexistence in determining his or her choice of action in the transaction' or 'the maker of the representation knows or has reason to know' that the recipient likely 'regard[s] the matter as important in determining his or her choice of action.'" *Id.* (quoting *Saucier v. Countrywide Home Loans*, 64 A.3d 428, 442 (D.C. 2013). Here, Plaintiff presented evidence of material misrepresentation as to the remaining life of the brick masonry repointing and as to the condition of the above-grade wall.[17] As such, this Court finds Developer Defendants' argument unpersuasive.

D. Plaintiff Presented Sufficient Evidence to Find JBG SMITH, JBG SMITH Properties, LP, and JBG/Development Services, LLC Liable.

Developer Defendants argue that the Court should enter judgment against Plaintiff on all damages claims against JBG SMITH, JBG SMITH Properties, LP, and JBG/Development Services LLC because: (i) the ownership structure creates no path for liability via veil piercing; (ii) Plaintiff failed to prove the elements required for veil piercing; (iii) the Trial Record does not support a finding of successor liability; and (iv) the Trial Record does not support a finding of direct liability. This Court will address Plaintiff's theories of liability *infra* Section V.B. For the purpose of Developer Defendants' Motion for Judgment, and for the reasons set forth *infra* Section V.B, this Court finds Developer Defendants' argument unpersuasive. Plaintiff established: (i) a viable path for veil piercing to hold JBG SMITH liable for the acts of NASH Wardman and Development Services, *see infra* Section V.B.iv; (ii) proved the elements required for veil piercing. *Id.*; (iii) presented evidence to support successor liability finding, *see infra* Section V.B.ii; and (iv) presented evidence to support a finding of direct liability. *Id.* This Court therefore finds against Developer Defendants

E. JBG/Development Services, LLC Was Properly Added as Named Defendant in Granting Plaintiff's Motion to Amend

Developer Defendants argue in their Rule 59(e) Motion for Reconsideration that claims against JBG/Development Services, LLC ("Development Services") should be dismissed because Plaintiff did not carry its burden under Rule 15(c). Mot. at 31. On January 19, 2026, the Court

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[17] For example, Plaintiff presented evidence that it would cost $3 million to repoint the brick masonry. Unit owners would likely regard the matter as important in determining his or her choice of action. *See District of Columbia v. Facebook, Inc.*, 340 A.3d 1, 4-5 (D.C. 2025).

granted Plaintiff's Motion to Amend and add Development Services as Defendant. Order (Jan. 19, 2026). The Court found that Plaintiff met their burden under Rule 15(c) because: (i) the claim against Development Services arose out of the conduct set forth in Plaintiff's original pleading; (ii) Development Services was timely included to receive such notice that it was not prejudiced in maintaining its defense; and (iii) that, but for a mistake concerning identity, Development Services knew or should have known that the action would have been brought against it. *Id.* at 4-6. The Court cited evidence that Development Services was a wholly owned subsidiary of a defendant in the case, that Development Services had no employees, property, or email server of its own, and that Developer Defendants blanket denial of allegations regarding Development Services contributed to Plaintiff's confusion about the proper defendant. *Id.* at 6. As such, this Court found that the claims against Development Services are timely as they relate back to the filing of the original complaint under D.C. Superior Court rule 15(c).

Under Rule 59(e), "[r]econsideration is properly granted 'to correct clear error, prevent manifest injustice or review the court's decision in light of the availability of new evidence." *In re Est. of Derricotte*, 885 A.2d 320, 324-25 (D.C. 2005). Here, Developer Defendants fail to present new evidence or a change in controlling law. *See generally* Mot. There is no showing of a manifest error of law or fact, or manifest injustice. *See Dist. No. 1—Pac. Coast Dist., Marine Eng'rs Beneficial Ass'n*, 782 A.2d at 278-79. Rather, Developer Defendants offer largely the same arguments, that there was no "mistake of identity" or evidence that Development Services should have known it was an intended defendant. These arguments were addressed in the Court's January 19, 2026 Order. Therefore, this Court denies Developer Defendants' Motion for Reconsideration.

V. POST-TRIAL FINDINGS AND CONCLUSIONS OF LAW

A. Standing and Economic Waste Defense

1. Plaintiff has Requisite Standing to Bring All Claims

Developer Defendants argue that Plaintiff lacks standing, as an association, to bring the following claims: negligent misrepresentation (Count III); violation of the CPPA (Count IV); violation of the D.C. Condominium Act (Count VII); breach of contract (Count VIII); and strict liability (Count IX). As discussed *supra* Section IV.B, Plaintiff has satisfied the standing requirements to bring all claims. Plaintiff has statutory standing to bring claims on its own behalf and on behalf of two or more unit-owners under the D.C. Condominium Act. D.C. Code § 42-1903.08(a)(4) ("The unit owners' association shall have the power to institute, defend, or intervene in litigation or administrative proceedings in the name of the unit owners' association on behalf of the unit owners' association or 2 or more unit-owners on any matter that affects the condominium.") Plaintiff is not required to demonstrate Article III associational standing in addition to statutory standing under D.C. Code § 42.1901.01 but, nonetheless, would satisfy standing requirements. *See Milton Co. v. Council of Unit Owners of Bentley Place Condo.*, 708 A.2d 1047, 1053 (Md. Ct. Spec. App. 1998), *aff'd*, 729 A.2d 981 (Md. 1999); *Starfish Condo. Ass'n v. Yorkridge Serv. Corp.*, 458 A.2d 805, 812 (Md. 1983). Finally, Plaintiff satisfies Article III standing requirements to bring claims in its own right. *See Saucier v. Countrywide Home Loans*, 64 A.3d 428, 447-48 (D.C. 2013). This Court therefore finds that Plaintiff has standing to bring all claims alleged.

2. Developer Defendants' Economic Waste Defense Fails

As explained *supra* Section IV.C.4, economic waste occurs when "such a large part of the cost to remedy the defects consists of the cost to undo what has been improperly done that the cost to remedy the defects will be clearly disproportionate to the probable loss in value to the injured party." Restatement (Second) of Contracts § 348 (A.L.I. 1981). When a court applies the economic waste doctrine, "the measure of damages is not the cost of replacing the defective work, but is the difference between the value that the work would have had if performed according to the contract and the value of the work as actually performed." *Fortune v. Evans*, 58 A.2d 919, 920 (D.C. 1948). The burden to show that the cost of correction constitutes economic waste, through evidence of the market value of the completed project and deviation from the cost of completion, is on the breaching party. *Andrulis v. Levin Constr. Corp.*, 628 A.2d 197, 207-08 (Md. 1993); *see also Legacy Builders LLC v. Andrews*, 335 P.3d 1063, 1070 (Wyo. 2014) (stating "it is the defendant's burden to challenge the reasonableness or disproportionality of the plaintiff's method and, where appropriate, to present evidence supporting an alternative measure of damages.")

Developer Defendants raised economic waste as a defense on February 20, 2026 after Plaintiff rested its case-in-chief. Plaintiff had no opportunity to develop or present evidence responsive to the economic waste defense. However, the question of waiver is immaterial because, as discussed below, the economic waste doctrine does not apply and, if it did, Developer Defendants failed to meet their burden to present evidence supporting an alternative measure of damages. Developer Defendants claim that damages sought by Plaintiff to remedy the above-grade walls exceed the aggregate purchase price for all units, is a factual assertion and only the first step in the inquiry. *See* Developer Defendants Post-Trial Brief at 28.

First, the economic waste doctrine does not apply to Plaintiff's claims. "[W]here a building such as a homestead is used for a purpose personal to the owner, the damages ordinarily include an amount for repairs, even though this might be greater than the entire value of the building." Restatement (First) of Torts § 929, cmt. b; *Superior Constr. Co. v. Elmo*, 102 A.2d 739, 742 (Md. 1954). Trial testimony shows that unit owners purchased their units to live there and chose

Wardman Tower based on its unique qualities. Plaintiff is therefore seeking damages to restore Wardman Tower for "reason[s] personal," resulting in the cost for repairs as the appropriate measure of damages. *See Superior Constr. Co.*, 102 A.2d at 742.

Developer Defendants rely on *Bannum, Inc. v. 2210 Adams Place, N.E., LLC* to argue that the damages result from below-specification construction work and therefore diminution in value is the appropriate measure of damages. 4 A.3d 431, 438 (D.C. 2010); Developer Defendants Post-Trial Reply at 16. Their argument fails. First, while below-specification construction work is relevant to Plaintiff's claims, Plaintiff is pursuing multiple tort claims including negligent renovation and repair. Plaintiff is therefore seeking "the reasonable cost of restoring the property as nearly as reasonably possible to its condition" absent the alleged negligence. *See Maloof v. United States*, 242 F. Supp. 175, 176 (D. Md. 1965). Second, the facts in *Bannum, Inc.* are incongruent to this case. In *Bannum*, *Inc.*, the plaintiff sued because defendant made alterations to a leased building and failed to restore the building to pre-lease conditions after the lease was terminated. 4 A.3d at 438. The court applied the economic waste doctrine because the plaintiff suffered no injury.[18] *Id.* Conversely, in this case, Plaintiff alleges that Developer Defendants failed to properly complete the contracted work for the above-grade walls, and that the work is necessary both as to contracted terms and the structural integrity of Wardman Tower. Plaintiff's alleged injury is clear. As such, this Court finds that the economic waste defense does not apply to Plaintiff's claims.

Third, if the economic waste doctrine did apply, Developer Defendants failed to meet their burden. Developer Defendants have the burden to present evidence supporting an alternative

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[18] In fact, the *Bannum* Court found that plaintiff *benefited* from the alterations and relied on the building alterations for its continuing business in the building. *See Bannum, Inc.*, 4 A.3d at 438 (stating "the current configuration of the premises . . . depends entirely on keeping [the] alterations intact.")

measure of damages. *Andrulis v. Levin Constr. Corp.*, 628 A.2d 197, 207-08 (Md. 1993); *see also Legacy Builders LLC v. Andrews*, 335 P.3d 1063, 1070 (Wyo. 2014). Here, Developer Defendants state only that the diminution in value "could possibly be calculable from the actual market data in the record: the proportionate purchase prices paid by those with full knowledge of all the claims compared to the prices paid before the litigation." Developer Defendants Post-Trial Brief at 9. Even this claim regarding a "possible calculation" is caveated with an acknowledgment that "much of the reduction in price [is] based on the saturation of the market" and potentially impacted by the pendency of the litigation. *Id.* at 9 n.6. This argument fails to address Developer Defendants' burden to present evidence of an alternative measure of damages when seeking the application of the economic waste doctrine. Namely, Developer Defendants fail to address how the claimed renovation defects affect the value of Wardman Tower units. Developer Defendants presented no testimony from any witness to substantiate their claim that the value of the units is related to the defects claimed at Trial. The Court will not speculate by "supply[ing] the missing evidence of values" or "assume that the [c]ontract price represents the value of [units]." *Andrulis v. Levin Constr. Corp.*, 628 A.2d 197, 207-08 (Md. 1993) (stating that, when considering economic waste, a trial court should not "supply the missing evidence of values by substitution the reaction of a hypothetical buyer . . . [n]or assume that the Contract price represents the value of the premises.) In short, this Court has no reliable method for awarding damages based on diminution in value. As such, this Court finds against Developer Defendants' economic waste defense because they failed to satisfy their burden by presenting *any* evidence of diminution in value.[19]

[19] Perhaps acknowledging their deficiency, Developer Defendants argue that it is Plaintiff's burden to present evidence of diminution in value. Developer Defendants Post-Trial Reply at 16. Developer Defendants, not Plaintiff, claimed economic waste. It is well settled that the economic waste doctrine is an affirmative defense and that the party claiming the defense bears the burden. *Andrulis v. Levin Constr. Corp.*, 628 A.2d 197, 207-08 (Md. 1993); *see also Legacy Builders LLC v. Andrews*, 335 P.3d 1063, 1070 (Wyo. 2014). Further, Plaintiff had no opportunity to present any evidence at all related to economic waste because it was raised by Developer Defendants after Plaintiff rested its case-in-chief.

B. Developer Defendants' Scope of Liability

1. Liability under the CPPA

Generally, to establish a claim under the CPPA, the claimant must show the existence of a consumer-merchant relationship. *See Snowder v. District of Columbia*, 949 A.2d 590, 599 (D.C. 2008). A consumer is "a person who . . . does or would purchase, lease (as lessee) or receive consumer goods and services." D.C. Code § 28-3901(a)(2)(A). A merchant is broadly defined as "a person . . . who in the ordinary course of business does or would sell, lease (to), or transfer, either directly or indirectly, consumer goods or services or a person who in the ordinary course of business does or would supply the goods or services which are or would be the subject matter of a trade practice." D.C. Code § 28-3901(a)(3). "Consumer goods and services" includes real estate transactions. D.C. Code § 28-3901(a)(7), (c). A merchant is not limited to the actual seller of goods or services but also includes those connected with the supply side of a consumer transaction. *See Adam A. Weschler & Son, Inc. v. Klank*, 561 A.2d 1003, 1004 (D.C. 1989) (citing *Howard v. Riggs Nat'l Bank*, 432 A.2d 701, 709 (D.C. 1981)).

Developer Defendants are a merchant under the CPPA and are therefore subject to liability under the CPPA. Developer Defendants, including JBG SMITH and Development Services, are merchants under the CPPA because they are "connected with the supply side of a consumer transaction." *See Howard v. Riggs Nat'l Bank*, 432 A.2d 701, 709 (D.C. 1981). "Consumer goods and services" relevant to a consumer transaction includes real estate transactions. D.C. Code § 28-3901(a)(7), (c). Here, real estate transactions occurred when Wardman Tower units were sold to purchasers. Developer Defendants were involved in the sales of the Wardman Tower units, both directly and indirectly. *See supra* Section III. Accordingly, this Court finds that Developer Defendants, including JBG SMITH and Development Services, are merchants under the CPPA and are therefore subject to liability under the CPPA.

2. JBG SMITH May be Held Liable Under a Theory of Direct Liability

"It is a general principle of corporate law . . . that a parent corporation . . . is not liable for the acts of its subsidiaries." *United States v. Best Foods*, 524 U.S. 51, 61 (1998). A parent may, however, be directly liable for their subsidiaries' actions when "the alleged wrong can seemingly be traced to the parent through the conduit of its own personnel and management and the parent is directly a participant in the wrong complained of." *Id.* at 64. A parent that "provide[s] active, daily supervision and control over . . . activities of [its] subsidiary" should not escape liability. *Id.* at 66 n.12.

It is helpful to first identify the parties and timeline relevant to Plaintiff's argument that JBG SMITH is directly liable for the actions of Development Services as its subsidiary. Development Services was formed in 2001 under JBG to perform "third-party development services." Development Services did not, and does not to this day, have any of its own employees, offices, equipment, or address. Tr. 12/1 AM, 97:1-8, 25; 98:1-18 (Kelly). In 2014, Development Services was engaged under a Project Management Agreement ("PMA") by NASH Wardman as project manager for the Wardman Tower construction, renovation, and conversion. PTX-329.00131. In turn, Development Services entered an Employee Sharing Agreement ("ESA") which led to employees of JBG and JBG SMITH carrying out the renovation of Wardman Tower. *Id.* In 2017, when JBG SMITH was formed, Development Services became a subsidiary of JBG SMITH, Tr. 11/20 PM, 45:1-16, 22-25 (Heithaus) and continued to provide the same services at Wardman Tower, honoring its existing contracts and obligations under the PMA. Tr. 12/1 AM, 60:17-23,79:23-80:7,122:6-10 (Kelly).

The Court finds that JBG SMITH may be held directly liable for the acts and omissions of its subsidiary Development Services because it "provided active, daily supervision and control over" the activities of Development Services. *Best Foods*, 524 U.S. at 66 n.12. The fact that

Development Services does not have any of its own employees, offices, equipment, or address, and that every employee who worked under the Development Services name was an employee of JBG or JBG SMITH, is not in itself enough to find direct liability. Tr. 12/1 AM, 97:1-8, 25; 98:1-18 (Kelly). The evidence at Trial, however, is clear that JBG and JBG SMITH directed the construction, marketing, sales, and management of Wardman Tower despite the PMA naming its subsidiary Development Services as the project manager. Further, JBG and JBG SMITH controlled the actions of NASH Wardman, the entity on the other side of the PMA. JBG SMITH cannot avoid liability when it is the entity that bears the responsibility for the decisions and actions that led to this litigation.

As an initial matter, JBG SMITH cannot avoid liability for actions taken by Development Services before July 2017. Developer Defendants argue that JBG SMITH cannot be held directly liable for the acts of Development Services because Wardman Tower received its certificate of occupancy in July 2017 and JBG SMITH was formed on July 17, 2017. DD18727. Their argument fails for two reasons. First, JBG SMITH remained directly involved in Wardman Tower's physical construction and otherwise after 2017. JBG SMITH controlled the Board until November 2019, after the formation of JBG SMITH, PTX-3386; Tr. 1/7 PM, 72:3-8, 13-16, (Heithaus); Tr. 12/1 PM, 11:22-12:24 (Chang), and its employees oversaw the sales process of at least 19 units, which included drafting and issuing POSs. DD18751; DD18991. JBG SMITH continued significant involvement in the Wardman Tower project after 2017 and remains involved to this day. Second, JBG SMITH assumed the liabilities of Development Services after it became a subsidiary of JBG SMITH in 2017. A successor company may be held liable for the debts of its predecessor if it "expressly or impliedly agrees to assume . . . debts." *Debnam v. Crane Co.*, 976 A.2d 193, 197 n. 3 (D.C. 2009). JBG SMITH is the successor to JBG. Tr. 12/1 AM, 76:1-23 (Kelly); PTX-

3337.00002. After the 2017 merger, all JBG employees either became JBG SMITH employees or were terminated, with the same employees continuing their work at Wardman Tower under the JBG SMITH umbrella. Tr. 12/1 AM, 113:22-25 (Kelly); Tr. 12/1 AM, 74:3-24 (Kelly). JBG SMITH assumed Development Services' obligations and liabilities when it became a JBG SMITH subsidiary. Tr. 11/20 PM, 47:1-6 (Heithaus); Tr. 12/01 AM, 58:10-25 (Kelly). Further, JBG SMITH represented itself as a continuation of JBG to unit owners. Tr. 11/12 AM, 44:15-45:11 (Abbey) (testifying that residents contacted JBG SMITH employees at the same email addresses after the merger and maintained the same points of contact). Development Services "continued to provide the same services [at Wardman Tower] post-[merger] as it had pre-[merger]," because "[a]nything that it had a contract to do, it had to continue to honor that contract." Tr. 12/1 AM, 63:11-15 (Kelly). For these reasons, and as discussed below, JBG SMITH may be held liable for actions taken by Development Services at Wardman Tower before July 2017.

Developer Defendants argue that NASH Wardman, rather than JBG SMITH and Development Services, should be liable to Plaintiff. This argument fails because JBG, via the JBG Member of NASH Wardman, was designated as the Operating Member. PTX-329.00020. As the Operating Member, JBG managed the daily operations, oversight, and administration of the Wardman Tower project. While Development Services was assigned the duty of managing the construction, renovation, marketing, and sales of the Wardman Tower project, JBG was responsible for ensuring Development Services compliance. PTX-329.00131; Tr. 11/13 PM, 16:15-17:20 (McKay). The trial evidence made clear that JBG, and later JBG SMITH, are the entities at the center of the Wardman Tower project.

This Court finds that JBG SMITH may be held directly liable for the actions of Development Services because JBG, and later JBG SMITH, directly participated in the actions at

Wardman Tower that led to this litigation: (i) JBG and JBG SMITH, through Development Services, was in charge of the construction, marketing, and unit sales of Wardman Tower; (ii) JBG SMITH employees directed the Wardman Tower project for years after 2017; (iii) JBG SMITH held itself out to the public, unit owners, and potential unit owners as the developer responsible for Wardman Tower; (iv) JBG SMITH executives understood Wardman Tower to be a JBG project and assumed Development Services' liabilities; (v) JBG SMITH profited from Development Services' work and treated payments to Development Services as a "source of revenue."

JBG and JBG SMITH directed the construction, marketing, and unit sales of Wardman Tower. NASH Wardman neither directed the Wardman Tower project nor maintained its own offices, employees, or property. Tr. 11/13 AM, 148:1-149:12 (McKay). Its principal place of business was JBG's headquarters, as of 2023, its Executive Committee had never met, and its Operating Committee stopped meeting formally around 2017. Tr. 11/13 PM, 5:6-13, 10:23-11:14, 12:5-17 (McKay). NASH Wardman did not prepare any contracts, marketing materials, or POSs related to the Wardman Tower project. Tr. 11/13 AM, 149:9-12 & Tr. 11/13 PM, 5:17-6:14, 18:24-19:3, 64:19-66:5 (McKay). Rather, JBG was the entity that directed NASH Wardman. For example, JBG managed NASH Wardman's bank accounts, bonds, and records. Tr. 11/13 PM, 76:8-9 (McKay); Tr. 1/8 PM, 99:20-100:18 (Heithaus).

Development Services also did not direct the Wardman Tower project and had none of its own employees. Tr. 12/1 AM, 97:1-8, 25; 98:1-18 (Kelly); Tr. 1/7 PM, 64:1-66: 22 (Heithaus). Rather, all personnel who worked under the Development Services name were JBG SMITH employees, were paid by JBG SMITH, and were directed by JBG SMITH employed superiors. Tr. 12/1 AM, 97:1-8, 98:1-18 (Kelly); Tr. 11/20 PM, 46:1 -9 & Tr. 1/7 PM, 68:23-70:1 (Heithaus). To this end, JBG and JBG SMITH: (i) set budgets, approved plans, and approved change orders on the Wardman Tower project, Tr. 2/26 PM, 91:6-92:5 (Ege); Tr. 2/3 AM, 30:11-14, 31:21-25 (Friedlander); Tr. 12/9 AM, 146:4-7 (Peyton); Tr. 12/1 PM, 15:9-16:2 (Chang); Tr. 1/8 AM, 14:3-15:2 (VanHorn); PTX-114; (ii) oversaw general contractor Plaza and worked with Plaza employees daily on work being completed at Wardman Tower, Tr. 12/9 AM, 99:13-25,111:4-16 (Peyton); Tr. 2/26 PM, 54:23-55:3 (Ege); Tr. 12/9 AM, 102:24-103:6 (Peyton); (iii) were listed on the governing plans and change orders as the owner of the Wardman Tower project, *See* PTXs 1048, 2006, 2007, 2010, 2013, 2018, 2020, 2025, 2032, 2033, 2034; PLAZA 14. *See also* PTX-112.00003, 7, 24; PTX-114.00004; (iv) directed the sales and marketing of units, and the drafting and distribution of the POSs, Tr. 11/13 PM, 64:12-25, 65:24-66:5 (McKay); Dep. Tr., 105:4-8 (Reynolds); and (v) staffed the Board with JBG SMITH employees and controlled the Board until November 2019.

After 2017, when JBG SMITH was formed, at least 19 units at Wardman Tower were sold. DD18751; DD18991. JBG SMITH employees continued to direct the Wardman Tower project, both in sales and renovation by: (i) directing close-out and "punch list" work at Wardman Tower, DD18991-0236; PTX-859S; (ii) serving as the main point of contact for Wardman Tower resident concerns, Tr. 11/24 AM, 17:19-21:12, 20:22-21:7, 22:8-10 (Ellis); Tr. 11/12 AM, 31:11-20 (Abbey); PTXs 556L, 859L; Tr. 11/13 AM, 113:6-116:8 (Meehan); PTX-3242 (promising to "resolve all [HVAC] concerns"); Tr. 12/9 AM, 30:6-18, 39:7-25 (Zax); PTXs 2781, 2731 (promising to "make repairs to the HVAC system, [fire alarms], and elevators"); Tr. 12/2 AM, 95:2-9 (Chang made sure "homeowners knew that we were working through" all issues and "that these systems were addressed appropriately"); Tr. 1/8 AM, 149:11-22 (VanHorn) ("we" will "complete [work] to a satisfactory level"); and (iii) seeking to file an insurance claim for water leaking into Wardman Tower. PTX-2675. To this point, the draft Wardman Business Plans for fiscal years 2022 and 2023 refer to the group directing Wardman Tower as a "team of JBGS development professionals to lead the [Wardman] project in terms of sales and marketing, construction, financial asset management, and legal." PTX-3385; PTX-3394.

JBG SMITH held itself out to the public, unit owners, and potential unit owners as the developer responsible for Wardman Tower. Initial unit purchasers met sales agents at the JBG headquarters. Tr. 11/10, 187:6-17 (Abbey) (testifying that she visited the JBG headquarters at least three times because that was where the Wardman sales office was located); Tr. 1/13 AM, 142:20-143:3 (Hale). JBG SMITH accepted an industry award for Wardman, stating in a press release it had "restored this historic property" and that "Wardman Tower exemplif[ies] our commitment and strategic placemaking approach to . . . multifamily properties" in the D.C. area. PTX-722. JBG SMITH relied on their name and reputation to reassure buyers in the purchase process. PTX-3225.00001.

Internally, JBG SMITH executives and Plaza employees understood Wardman Tower to be a JBG project and that JBG SMITH assumed Development Services' liabilities. JBG SMITH executives stood behind the work at Wardman Tower and are proud to have worked on the project. Tr. 12/1 AM, 115:14-21 (Kelly) (testifying that he "stands behind" the work at Wardman Tower); Tr. 1/8 PM, 36:3-37:18 (VanHorn) (testifying that "JBG SMITH as a company . . . w[as] proud to work on th[e] project" and he stands behind JBG SMITH's work at Wardman Tower.) JBG SMITH assumed Development Services' obligations and liabilities when it became a JBG SMITH subsidiary. Tr. 11/20 PM, 47:1-6 (Heithaus); Tr. 12/01 AM, 58:10-25 (Kelly). Plaza employees testified that they considered JBG to be its client and the property's owner. Tr. 12/9 AM, 99:13-25,111:4-16 (Peyton); Tr. 2/26 PM, 54:23-55:3 (Ege).

In return for directing the Wardman Tower project, JBG SMITH profited from their work. In its 10-K filing to the SEC, JBG SMITH stated that it relied on the income of its subsidiaries, including Development Services. PTX-3148.9. Further, JBG SMITH stated that "the fees [JBG SMITH] earns in connection with providing these services will enhance our overall returns, provide additional scale and efficiency in our operating, development and acquisition businesses and generate capital which we can use to absorb overhead and other administrative costs of the platform." *Id.* To this end, payments to Development Services were applied to JBG SMITH's balance sheet and serve as a "source of revenue." Tr. 12/1 AM, 96:14-25, 99:19-100:14 (Kelly).

Developer Defendants' primary opposition to Plaintiff's argument in favor of direct liability is that any actions by Development Services should be attributed to NASH Wardman under the "borrowed servant" doctrine. Under D.C. law, "a person [who is] generally the servant of one master [i.e., the general employer,] can become the 'borrowed' servant of another [i.e., the special employer]." *Bradley v. United States*, 619 F. Supp. 3d 141, 170 (D.D.C. 2022) (citing *Dellums v. Powell*, 566 F.2d 216, 220, 184 U.S. App. D.C. 324 (D.C. Cir. 1977)). If the "borrowed servant commits a tort while carrying out the bidding of the [special employer], vicarious liability for that tort attaches to the [special employer] and not to the general [employer]." *Id.* "To determine whether the person was a 'borrowed servant[,]' courts look to 'whether the [special] employer had the power to control and direct [the employee] in the performance of [his or her] work.'" *Id.* (citing *Harris-DeVaughn v. United States*, 241 F. Supp. 3d 186, 189 (D.D.C. 2017)). A general employer must entirely "relinquish[] control" of the employee's actions for liability to attach to the special employer rather than be "a joint master." *Id.* Moreover, "there is a presumption that an actor remains in his general employment." *Id.* (citing *Dellums*, 566 F.2d at 221).

As detailed above, JBG and JBG SMITH did not "relinquish control" of Development Services' employee's actions. To the contrary, JBG and JBG SMITH controlled every aspect of Development Services, from being the employer of individuals who worked under the Development Services name to directing them in day-to-day operations at Wardman Tower. In return for this responsibility, JBG and JBG SMITH profited from Development Services' work, all while trading on the JBG name to the public. In any event, evidence at Trial proved that JBG and JBG SMITH also directed NASH Wardman's actions. Tr. 11/13 PM, 40:3-14 (McKay) (testifying that NASH's role was that of a "capital partner" who provided funds to support JBG's project execution); *Id.*, 21:2-17 (testifying that NASH made no distinctions between JBG entities). In every aspect, JBG and JBG SMITH were a direct participant in the issues relevant to Plaintiff's complaint. JBG and JBG SMITH directed and controlled the renovation of Wardman Tower, the communications with potential purchasers, the sales process with unit owners, the finances and bookkeeping, and the management of the building. Accordingly, this Court finds that Developer Defendants may be held directly liable for the actions of its subsidiaries, including Development Services.

3. JBG SMITH May be Held Liable under the *Respondeat Superior* Doctrine and Agency Principles

Under the *respondeat superior* doctrine and agency principles, an employer may be held liable for the acts their employees committed within the scope of their employment, even absent grounds to pierce the corporate veil. *Boykin v. District of Columbia*, 484 A.2d 560, 561-62 (D.C. 1984) (citing *Penn Central Transportation Co. v. Reddick*, 398 A.2d 27, 29 (D.C. 1979). In determining whether an employer is liable for the unlawful acts of its employee, courts consider: "(1) the selection and engagement of the servant, (2) the payment of wages, (3) the power to discharge, (4) the power to control the servant's conduct, (5) and whether the work is part of the regular business of the employer." *LeGrand v. Ins. Co. N. Am.*, 241 A.2d 734, 735 (D.C. 1968). Further, "[s]tanding alone, none of these *indicia*, excepting (4), seem controlling in the determination as to whether such relationship exists. The decisive test . . . is whether the employer has the *right to control and direct the servant in the performance of his work and the manner in which the work is to be done*." *Dovell v. Arundel Supply Corporation*, 361 F.2d 543, 544 (D.C. Cir. 1966) (emphasis original).

For the reasons discussed *supra* Section V.B.2, this Court finds that JBG SMITH may be held liable for the unlawful acts its employees committed while working on the Wardman Tower project. Evidence at Trial shows that: (i) JBG SMITH chose the personnel that worked on the Wardman Tower project; (ii) JBG SMITH paid the wages of employees that worked on the Wardman Tower project; (iii) JBG SMITH had the power to hire and fire employees, and did so; (iv) JBG SMITH directed the performance and manner of work of employees on the Wardman Tower project; and (v) the work was part of the regular course of business for JBG SMITH. Most importantly, as discussed *supra* Section V.B.2, JBG SMITH's actions most clearly satisfy the fourth factor because it had the right to control and direct the servant in the performance of his work and the manner in which the work is to be done. Accordingly, this Court finds that JBG SMITH may be held liable under the *respondeat superior* doctrine and agency principles for the unlawful acts its employees committed while working on the Wardman Tower project.

4. JBG SMITH May be Held Liable Under a Theory of Veil Piercing

"Ordinarily, a defendant corporation's contacts with a forum may not be attributed to . . . affiliated corporations. An exception exists, however, where affiliated parties are 'alter egos' of a corporation over which the Court has personal jurisdiction; in that case the corporation's contacts may be attributed to the affiliated party for jurisdictional purposes." *Shapiro, Lifschitz & Schram* *v. R.E. Hazard, Jr. Ltd Pshp.*, 24 F. Supp. 2d 66, 69 (D.D.C. 1998); *see also Material Supply Int'l. Inc. v. Sunmatch Indus. Co.*, 62 F. Supp. 2d 13, 19 (D.D.C. 1999).

"In order to demonstrate an alter ego relationship, and thereby justify piercing the corporate veil, a plaintiff must show: '(1) such a unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist; and (2) if the acts are treated as those of the corporation alone, an inequitable result will follow.'" *Brink v. Const'l Cas. Co.*, No.11-cv-01733-EGS-ZMF, 2021 U.S. Dist. LEXIS 256051, at *17-18 (D.D.C. Dec. 27, 2021) (citing *Labadie Coal Co. v. Black*, 672 F.2d 92, 96, 217 U.S. App. D.C. 239 (D.C. Cir. 1982). "[T]he primary focus of the alter ego analysis is to ascertain whether the parent corporation so dominated the subsidiary corporation as to negate its separate personality." *Johnson-Tanner v. First Cash Fin. Servs., Inc.*, 239 F. Supp. 2d 34, 40 (D.D.C. 2003). The standard applies to piercing the corporate veil between two corporations. *Id.* (citing *IMark Mktg. Servs., LLC v. Geoplast S.p.A.*, 753 F. Supp. 2d 141, 150 (D.D.C. 2010)).

To determine unity of interest and ownership, D.C. courts consider a range of factors. "No single factor controls," and "the factor which predominates will vary in each case." *Wall v. Fishman*, 2025 U.S. Dist. LEXIS 82557, at *15 (D.D.C. Mar. 27, 2025) (citing *McWilliams Ballard Inc. v. Broadway Mgmt. Co.*, 636 F. Supp. 2d 1 (D.D.C. 2009)). Courts consider: "(1) the nature of the corporate ownership and control; (2) failure to maintain corporate minutes or adequate records; (3) failure to maintain the corporate formalities; (4) a commingling of funds and other assets; (5) diversion of corporate funds or assets to other uses; and (6) use of the same office or business location." *Labadie Coal Co. v. Black*, 672 F.2d 92, 97-99 (D.C. Cir. 1982). "It is clearly not necessary that all of these factors be present in a given case to justify piercing the veil." *Id.* at 97. "The inequitable result prong typically requires a showing that adherence to [the] corporate form in this instance could . . . lead to an evasion of legal obligations.'" *Brink*, 2021 LEXIS 256051, at *10 (citing *Bufco Corp. v. N.L.R.B.*, 147 F.3d 964, 969, 331 U.S. App. D.C. 150 (D.C. Cir. 1998)).

a. JBG SMITH's Liability via NASH Wardman Tower Residential LLC

Plaintiff argues that NASH Wardman is the alter ego of JBG SMITH. The issue before the Court is whether it is appropriate to pierce the corporate veil to hold JBG SMITH liable for the acts of NASH Wardman in the present litigation. As discussed *supra* Section V.B.2, NASH Wardman had no role in the renovation, marketing, or sale of units on the Wardman Tower project. Rather, JBG SMITH was the driving force behind the Wardman Tower project. This Court finds that NASH Wardman is the alter ego of JBG SMITH and that piercing the corporate veil is appropriate because: (i) NASH Wardman and JBG SMITH comingled employees and property; (ii) NASH Wardman and JBG SMITH failed to observe corporate formalities; and (iii) the Wardman Tower project was inadequately capitalized. Each will be discussed in turn below.

"The pattern of intermingling the identities and property of the two corporations and disregarding some corporate formalities is probative evidence that the two corporations did not have separate identities." *Vuitch v. Furr*, 482 A.2d 811, 827 (D.C. Cir. 1984); *see* 1 William Meade Fletcher *et al.*, *Fletcher, Cyclopedia of Corporations*, § 25 (Perm. ed. 1983) (where several corporations have the same officers or shareholders or both, the cumulative effect of the operation of business can have a probative effect on the issue of piercing the veils of both). JBG SMITH and NASH Wardman comingled both employees and property. NASH Wardman did not have its own offices, employees, email accounts, personal property or equipment, Tr. 11/13 AM, 148:1-149:12 (McKay), and its principal place of business and corporate address was listed as JBG's headquarters. Tr. 11/13 PM, 5:6-13, 10:23-11:14, 12:5-17 (McKay). JBG and JBG SMITH hired, fired, and paid all personnel that worked on the Wardman Tower project, Tr. 2/26 PM, 91:6-92:5

(Ege); Tr. 2/3 AM, 30:11-14, 31:21-25 (Friedlander); Tr. 12/9 AM, 146:4-7 (Peyton); Tr. 12/1 PM, 15:9-16:2 (Chang); Tr. 1/8 AM, 14:3-15:2 (VanHorn); PTX-114, and those employees worked under the direction of JBG and JBG SMITH supervisors. Tr. 12/1 AM, 97:1-8, 98:1-18 (Kelly); Tr. 11/20 PM, 46:1 -9 & Tr. 1/7 PM, 68:23-70:1 (Heithaus). NASH Wardman did not prepare any contracts, marketing materials, or POSs on the Wardman Tower project; again, JBG and JBG SMITH employees under the direction of JBG and JBG SMITH supervisors carried out those responsibilities. Tr. 11/13 AM, 149:9-12 & Tr. 11/13 PM, 5:17-6:14, 18:24-19:3, 64:19-66:5 (McKay). This factor weighs heavily in favor of piercing the corporate veil as JBG SMITH "so dominate[d] [NASH Wardman] 'as in reality to negate its separate personality.'" *Vally Finance, Inc. v. United States*, 629 F.2d 162, 172 (D.C. Cir. 1980) (quoting *Quinn v. Butz*, 510 F.2d 743, 758 (D.C. Cir. 1975).

As to disregarding corporate formalities, there are numerous examples of actions taken by JBG SMITH and NASH Wardman that tend towards unity of interest and ownership between the corporations. Anderson Cooper Group ("ACG") was hired to be the architect for the Condominium renovation in November 2013. DD18750. The contract with ACG was signed by NASH Wardman, "c/o the JBG Companies." *Id*. Importantly, at this time, NASH Wardman had not yet been formed. PTX-329. NASH Wardman was formed on December 9, 2013, the month after the contract with ACG was purportedly signed by NASH Wardman, "c/o the JBG Companies." *Id*. NASH Wardman's Operating Committee was required to meet no less than monthly under NASH Wardman's LLC agreement, PTX-329.00027, but stopped formally meeting in 2017. Tr. 11/13 PM, 5:6-13, 10:23-11:14, 12:5-17 (McKay). The Operating Committee's only involvement in overseeing the Wardman Tower project was to recommend that the Executive Committee approve the annual business plans, prepared by Development Services. Tr. 11/13 PM, 9:14-21, 12:15-13:10

(McKay). As of 2023, NASH Wardman's Executive Committee had never formally met; they made decisions through written notices and over email. Tr. 11/13 PM, 12:5-17 (McKay). Thomas McKay, NASH's representative on the Executive Committee, testified that he could not name the JBG members of the committee, that all business plans were approved by email, and that every resolution put before the Executive Committee was passed. Tr. 11/13 PM, 12:5-8, 13:8-14:22 (McKay). Additionally, there were no final business plans prepared in 2021 and 2022. *Id.*, 26:20-27:7. As discussed below, Plaintiff's claims in part turn on misrepresentations made in the POSs given to unit owners. The signature of Rafael Muniz, an employee of JBG, is on all POSs despite the fact that he left JBG early in the project. *Id.*; Tr. 12/9 AM, 109:8-12 (Peyton).

Developer Defendants argue that the formal relationship between NASH Wardman and JBG SMITH demonstrates that NASH Wardman was not dominated by JBG SMITH stating for example, changes to the business plans required Executive Committee approval and that JBG was required to operate within the approved business plan. Developer Defendants Post-Trial Reply at 19. However, these formal relationships were the very corporate formalities that were undermined given JBG SMITH's continued control of NASH Wardman. *See Labadie Coal Co. v. Black*, 217 U.S. App. D.C. 239, 244, 672 F.2d 92, 97 (1982) (The inquiry ultimately turns on whether the corporation is, *in reality*, "an alter ego or business conduit of the person in control." (emphasis added)). Consequently, this factor weighs heavily in favor of piercing the corporate veil. The evidence presented at Trial demonstrates a significant comingling of employees and property and a failure to observe numerous corporate formalities. The unity of interest and ownership prong is therefore satisfied.

Considerations of justice and equity can justify piercing the corporate veil. Courts have "rejected the contention that in order to pierce the corporate veil there must be a showing of fraud directly tainting the obligation on which the plaintiff is suing." *Lawlor v. District of Columbia*, 758 A.2d 964, 976 (D.C. Cir. 2000) (citing *Vuitch*, 482 A.2d at 815). "[A]n entity's 'insolvency or undercapitalization is often an important' means of demonstrating that 'use of the corporate form [would] promote injustice or wrong.'" *Leake v. Alex Gen. Constr., LLC*, No. 23-3465, 2025 U.S. Dist. LEXIS 88232, at *14 (D.D.C. May 8, 2025) (quoting *Vuitch*, 482 A.2d at 819). "That is, it is an abuse of the corporate form for an entity to be so chronically undercapitalized that it is unable to satisfy its debts or a judgment against it." *Id.* (citing 1 William Meade Fletcher *et al.*, *Fletcher, Cyclopedia of Corporations*, § 41.33 (Perm. ed. 2024)).

The Wardman Tower project was chronically undercapitalized. In 2017, Plaza threatened to stop work because it had not been paid. Tr. 12/9 PM, 9:12-10:16 (Peyton); PTX-3311. Because Plaza was not being paid, Plaza's subcontractors were not paid and threatened to file liens against the property. PTX-3315, PTX-706. By 2019, the Wardman Tower project had become insolvent and had equity of negative $14 million. Tr. 2/18 PM, 92:1-93:10 (Katz); PTXs 3370, 3374, 3378, 3382. As a result, JBG SMITH was unable to pay condo fees as they came due and, at one point, had an outstanding loan balance of $46,690,000.00 but only $599,000.00 cash on hand. PTX-3323; PTX-3338; PTX3339; PTX-3340. JBG SMITH sought loan modifications from NASH Wardman to hold more cash on the property. Tr. 1/8 AM, 116:4-6 (VanHorn). By 2022, the Wardman Tower project equity was negative $34 million. Tr. 2/18 PM, 92:1-93:10 (Katz); PTXs 3370, 3374, 3378, 3382.

The timing of the Wardman Tower project's undercapitalization is significant. The Transition Study was completed in November 2018, identifying numerous areas that required additional funds to properly renovate the building. PTX-1506. Soon after, the Developer Defendant controlled Board declined to authorize additional investigation of the buildings' renovation issues. Tr. 11/12 AM, 66:11-25 (Abbey); *see* Tr. 11/17 AM, 95:6-8 (McKay). In November 2020, the unit owner-controlled Board authorized a more thorough analysis of the buildings' ongoing issues which identified significant concerns with the Wardman Tower renovation and led to this litigation. Tr. 1/13 PM, 83:19-85:2 & Tr. 1/14 AM, 16:14-17:22 (Dixon). The Wardman Tower project's undercapitalization only worsened as Developer Defendants were put on notice of potential liabilities totaling millions of dollars, identified both in the 2019 Transition Study and 2020 resident-authorized study. NASH Wardman's initial warranty reserve had been exhausted, Tr. 11/13 PM, 71:4-10 (McKay); Tr. 11/17 AM, 55:1-11 (McKay), and its $6 million warranty bond had never been increased despite the project budget doubling. Tr. 11/13 PM, 72:1-4 (McKay); Tr. 1/8 PM, 101:10-21 (Heithaus).

Developer Defendants argue that undercapitalization is only relevant as to whether NASH Wardman was set up from the outset for improper purposes. Developer Defendants Post-Trial Reply at 19 (citing 1 William Meade Fletcher *et al.*, *Fletcher, Cyclopedia of Corporations*, § 41.33 (Perm. ed. 2024). While inadequate capitalization at the outset is relevant to the unity of interest and ownership prong, chronic undercapitalization is relevant to the inequitable result prong. *See Leake, LLC*, 2025 U.S. Dist. LEXIS 88232, at *14 (citing *Vuitch*, 482 A.2d at 819). Here, there is ample evidence that the Wardman Tower project had been chronically undercapitalized and that the undercapitalization only worsened as Developer Defendants became aware of increasing potential liabilities. The Wardman Tower's undercapitalization demonstrates that "use of the corporate form [would] promote injustice or wrong." *Vuitch*, 482 A.2d at 819. The inequitable result prong is therefore satisfied. Accordingly, this Court finds that NASH Wardman is the alter ego of JBG SMITH, and it is therefore justified to pierce the corporate veil and hold JBG SMITH liable for the acts of NASH Wardman.

b. JBG SMITH's Liability via JBG/Development Services LLP

Plaintiff argues that Development Services is the alter ego of JBG SMITH and seeks to pierce the corporate veil to hold JBG SMITH liable for the acts of Development Services. As discussed *supra* Section V.B.2, Development Services had no role independent of JBG and JBG SMITH in the renovation, marketing, or sale of units on the Wardman Tower project. Rather, JBG SMITH was the driving force behind the Wardman Tower project. This Court finds that Development Services is the alter ego of JBG SMITH and that piercing the corporate veil is appropriate because: (i) Development Services and JBG SMITH comingled employees and property; (ii) Development Services and JBG SMITH failed to observe corporate formalities; and (iii) there was a comingling of funds between Development Services and JBG SMITH. Each will be discussed in turn below.

Development Services was a shell under which JBG SMITH directed and controlled the Wardman Tower project. JBG SMITH and Development Services comingled employees and property. Similar to NASH Wardman, Development Services had no employees, offices, equipment, nor its own address. Tr. 12/1 AM, 97:1-8, 25; 98:1-18 (Kelly); Tr. 1/7 PM, 64:1-66: 22 (Heithaus). The work assigned to Development Services was completed by employees of JBG affiliates and under the oversight of JBG and JBG SMITH. JBG and JBG SMITH employees directed every aspect of the Wardman Tower project. Tr. 2/26 PM, 91:6-92:5 (Ege); Tr. 2/3 AM, 30:11-14, 31:21-25 (Friedlander); Tr. 12/9 AM, 146:4-7 (Peyton); Tr. 12/1 PM, 15:9-16:2 (Chang); Tr. 1/8 AM, 14:3-15:2 (VanHorn); PTX-114. All personnel who worked under the Development Services name were JBG SMITH employees, were paid by JBG SMITH, and were directed by JBG SMITH superiors. Tr. 12/1 AM, 97:1-8, 98:1-18 (Kelly); Tr. 11/20 PM, 46:1 -9 & Tr. 1/7 PM, 68:23-70:1 (Heithaus). Consequently, this factor weighs heavily in favor of piercing the corporate veil. The evidence presented at Trial demonstrates a significant comingling of employees and property and that JBG SMITH dominated Development Services in every way. *See Vally Finance*, 629 F.2d at 172.

As to disregarding corporate formalities, Development Services was not distinguishable from JBG and JBG SMITH. NASH employee Thomas McKay, who helped negotiate the NASH Wardman joint venture, testified that he did not know how JBG distinguished internally between JBG entities and that he understood NASH Wardman to be a partnership with NASH and JBG. Tr. 11/13 PM, 17:25-18:14, 21:6-17 (McKay). Gabriel Katz, another NASH employee, testified that he referred to JBG as a general entity and did not consider the specifics of Development Services' relationship with that entity. Tr. 2/18 PM, 16:25-17:10 (Katz). As discussed *supra* Section V.B.2, JBG and JBG SMITH employees were responsible for every action taken under the name of Development Services, and those actions were directed and done by JBG and JBG SMITH employees. Consequently, this factor weighs in favor of piercing the corporate veil. The evidence presented at Trial demonstrates a failure to observe corporate formalities, persistent throughout the Wardman Tower project, in that numerous partners could not distinguish between JBG entities or define their role on the project.

As to a comingling of funds, the PMA required Development Services to be paid "Development Management Fees" for its work on the Wardman Tower project. PTX-329.00155. Those payments, however, did not go to Development Services. Rather, they were paid to JBG/Development Group LLC which exists under the JBG SMITH umbrella. DD18731; Tr. 11/13 PM, 75:22-76:9 (McKay). Payments to Development Services went to JBG SMITH's balance sheet and served as a "source of revenue." Tr. 12/1 AM, 96:14-25, 99:19-100:14 (Kelly). In sum, Development Services had no employees, property, or an address of its own. Revenue generated by Development Services did not benefit that entity; rather, JBG SMITH used Development

Services as a shell to direct and control the Wardman Tower project and profit from the contractual agreement entered into under the Development Services name. Indeed, the PMA between JBG and Development Services, executed on January 31, 2014, was signed by Brian Coulter, a JBG executive, on behalf of both parties. PTX-329. The unity of interest and ownership prong is therefore satisfied.

Given Development Services' lack of independence on the Wardman Tower project, and the control that JBG SMITH exerted in directing its employees, financing, and decision-making, it would be unjust to hold only Development Services liable for its actions. The inequitable result prong is therefore satisfied. Accordingly, this Court finds that Development Services is the alter ego of JBG SMITH and it is therefore justified to pierce the corporate veil and hold JBG SMITH liable for the acts of Development Services.

C. Plaintiff's Claims for Liability for Defective Renovation of Wardman Tower

1. Economic Loss Doctrine

As a preliminary matter, Developer Defendants argue that the economic loss doctrine bars all tort claims by Plaintiff, including negligent construction and negligent repair (Counts I-II), strict liability against Developer Defendants (Count IX), and negligent misrepresentation against Developer Defendants (Count III).[20] The economic loss doctrine is an affirmative defense. *White v. WCP Fund I, LLC* (*In re ETS of Wash., LLC*), 2022 Bankr. LEXIS 96, at *15 (Bankr. D.D.C. Jan 14, 2022) (stating, "the economic loss doctrine [is an] affirmative defense."). An affirmative defense is subject to "waiver if not raised in the answer or timely asserted thereafter." *Stone v. McConkey*, 761 A.2d 276, 277 (D.C. 2000). Rule 8 requires that affirmative defenses be pled in an initial responsive pleading. D.C. Super. Ct. Civ. R. 8(c). Developer Defendants raised the

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[20] Plaintiff's claims for negligent misrepresentation against Developer Defendants are discussed below in Section V.D.

economic loss doctrine for the first time in their Post-Trial Brief, filed on April 6, 2026.[21] On May 28, 2025, the Court stated that, "[n]o party may assert any claim or defense at trial other than described in the Joint Pretrial Statement, unless the party makes a showing of good cause or excusable neglect." Pretrial Order at 2. Here, Developer Defendants failed to raise economic loss as a defense until *after* Trial had concluded in their Post-Trial Brief. *See* Developer Defendants Post-Trial Brief at 19. They failed to make any showing of good cause or excusable neglect. To permit Developer Defendants to argue the economic loss rule at this late stage would prejudice Plaintiff as Plaintiff was not afforded the opportunity to develop or present opposing evidence at Trial.[22] Therefore, the affirmative defense of economic loss is waived and not applicable to Plaintiff's tort claims against Developer Defendants.[23]

Regardless, Developer Defendants' argument for the economic loss doctrine fails because it does not apply to Plaintiff's claims. "Generally, under the 'economic loss' rule, a plaintiff who suffers only pecuniary injury as a result of the conduct of another cannot recover those losses in tort." *Aguilar v. RP MRP Wash. Harbour, LLC*, 98 A.3d 979, 982 (D.C. 2014) (citing *Apollo Group, Inc. v. Avnet, Inc.*, 58 F.3d 477, 479 (9th Cir. 1995)). Courts have recognized an exception to the economic loss doctrine, when a "special relationship" between parties "provide[s] an

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[21] Developer Defendants failed to raise the economic loss doctrine as a defense in any Answer they filed, in their Motion for Summary Judgment, or in the Joint Pre-Trial Statement. Their Answer to the Third Amended Complaint was filed as recently as February 23, 2026.

[22] Illustrative of this point, Plaintiff did not even brief the economic loss doctrine as applied to their claims against Developer Defendants in their Post-Trial Brief because, to that point, it had never been raised by Developer Defendants. Plaintiff first raised their arguments against the application of the economic loss doctrine as applied to Developer Defendants in their Post-Trial Reply Brief filed on April 20, 2026.

[23] Relatedly, Developer Defendants argue that Plaintiff's breach of contract claim cannot be recast as a tort claim. This argument fails because Plaintiff's tort claims are not duplicative of its breach of contract claim. Developer Defendants "possessed a duty, independent of the Sales Contract, to make truthful representations about the Property." *See Jacobson v. Hofgard*, 168 F. Supp. 3d 187, 200 (D.D.C.). Further, Plaintiff, on behalf of the unit owners, is in formal contractual privity with only NASH Wardman rather than the JBG entities. As in *Milton Co. v. Council of Unit Owners of Bently Place Condo.*, Plaintiff may be awarded damages for both breach of contract and negligence claims against Developer Defendants arising from construction defects. 729 A.2d 981, 983 (Md. 1999).

independent duty of care," often described as an "intimate nexus." *Aguilar*, 98 A.3d at 984. In short, the question is whether Developer Defendants had an independent duty of care, outside of contract, to Plaintiff. *Whitt v. Am. Prop. Constr., P.C.*, 157 A.3d 196, 205 (D.C. 2017). In *Agilar*, the court analyzed whether the defendants had an "obligation . . . to care for [the plaintiffs'] economic well-being" or an "obligation" that "implicate[d] appellants' economic expectancies." 98 A.3d at 985. In *Whitt*, the court found that a special relationship was established given "extensive activity over a prolonged period, and the provisions of the permit specifically protecting appellant from the effects of [the] conduct." *Whitt*, 157 A.3d at 206.

This Court finds that there is sufficient evidence to establish a special relationship between unit owners, represented by Plaintiff, and Developer Defendants. Unit owners were in formal contractual privity with NASH Wardman, but NASH Wardman did not draft business plans, POSs, or prepare or distribute any marketing materials related to the Wardman Tower. *Id.*, 149:9-12; Tr. 11/13 PM, 5:17-6:14, 18:24-19:3, 64:19-66:5 (McKay). Rather, JBG SMITH, via Development Services, engaged with unit owners over multiple years regarding the sales, marketing, renovation, and management of Wardman Tower. JBG and JBG SMITH employees directed the sales and marketing of units. For example: (i) a JBG SMITH executive was responsible for a marketing article in the *Washingtonian* about Wardman Tower. DD19001; Tr. 1/8 AM, 132:24-133:6 (VanHorn); (ii) initial unit purchasers met sales agents at JBG's corporate headquarters because that was where the sales office was located. Tr. 11/10, 187:6-17 (Abbey); Tr. 1/13 AM, 142:20-143:3 (Hale); (iii) JBG SMITH employees oversaw the sales process of at least 19 units. DD18751; DD18991; (iv) JBG SMITH gave prospective buyers "quick access to the top of JBG" to give them "the right level of confidence." PTX-3225; (v) JBG SMITH executives made "buyer calls" to multiple buyers prior to sale. Tr. 11/13 PM, 36:6-37:16 (McKay); and (vi) in 2018, unit owners sent a letter to the JBG SMITH CEO, Matthew Kelly, documenting renovation concerns at Wardman Tower. PTX-2745A.

The Wardman Tower renovation started in 2014 and, as late as 2022, JBG SMITH representatives and their agent assured unit owner Kenneth Gallo about the condition of Wardman Tower. Tr. 11/24 AM, 134:2-14; 140:2-11 (Gallo). Kenneth Gallo testified that he only "got comfortable" with his purchase decision after repeated assurances. *Id.* As in *Whitt*, the relationship with unit owners, as represented by Plaintiff, was ongoing over an extended period of time. 157 A.3d at 206. This "extensive activity over a prolonged period" is enough to establish a special relationship and to put Developer Defendants on notice that their failure to properly renovate Wardman Tower could implicate the economic expectancies of the unit owners. *Id.* Accordingly, this Court finds that Developer Defendants waived the economic loss doctrine by failing to raise the defense prior to their Post-Trial Brief. Regardless, the economic loss doctrine does not apply to Plaintiff's tort claims because there is a special relationship established that created an "obligation . . . to care for [the plaintiff's] economic well-being" or an "obligation" that "implicate[d] appellants' economic expectancies." *Aguilar*, 98 A.3d at 985.

2. Breach of Statutory Warranty Against Structural Defects Against NASH Wardman Tower Residential, LLC (Declarant) and Wardman Tower Residential, LLC (Counts V-VI)

D.C. Code § 42-1903.16 requires a declarant to warranty against structural defects. A "structural defect" is defined as a defect that "[r]educes the stability or safety of the unit or common elements below standards commonly accepted in the real estate market" or "[r]estricts the normally intended use of all or part of the common elements of a unit and which requires repair, renovation, restoration, or replacement to serve the purpose for which it was intended." D.C. Code § 42-1903.16(j)(6)(A-B). Further, there is a rebuttable presumption that a condition is a structural defect when there is a failure to comply with the building code at the time of construction and the "failure to comply . . . results in demonstrable harm to the health or safety of a unit owner, lawful unit inhabitant, or guest or [t]he units are conveyed prior to the issuance of a certificate of occupancy." D.C. Code § 42-1903.16(a-1).

Plaintiff asserts that NASH Wardman and WT LLC warranted the units and common elements of the Condominium against structural defects. Third Amended Complaint at 179-80. Plaintiff alleges that NASH Wardman and WT LLC breached the warranty with respect to the: (i) above-grade walls; (ii) below-grade walls; (iii) fire safety system; (iv) HVAC system; (v) electrical system; (vi) elevators; (vii) flooring; (viii) roof; (ix) parking garage; (x) concrete structure; (xi) quarter-round balconies; and (xii) windows. NASH Wardman and WT LLC concede that the common elements are warranted under D.C. Code § 42-1903.16 but do "not uniformly agree that the issues identified in various building elements are 'structural defects' subject to the warranty."[24] Developer Defendants Post-Trial Brief at 5. Regardless, they concede liability for the following, whether covered by the structural warranty or otherwise: the below-grade wall, the fire safety system, the HVAC system, the electrical system, the elevators, the stone and vinyl flooring, the roof, the parking garage, the building's concrete structure, and the quarter-round balconies.[25] NASH Wardman and WT LLC deny liability for the above-grade walls and the windows.

Plaintiff contends, and NASH Wardman and WT LCC concede, that elements of the Condominium are warranted against structural defects under D.C. Code § 42-1903.16. NASH Wardman and WT LLC argue that the above grade walls were not warranted because the "Limited Warranty" provided to purchasers in the POS excluded "any structural defect in any element or

[24] NASH Wardman and WT LLC fail to identify which building elements that they agree are "structural defects" and which they contend are not.

[25] NASH Wardman and WT LLC contest the scope of repair and damages claimed by Plaintiff and concede only $8,818,368.00 in damages. Scope and damages are discussed below.

component not installed by Declarant or any work not performed by Declarant." PTX-3285. Their argument is unpersuasive for two reasons. First, the Limited Warranty is distinct from the statutory warranty under D.C. Code § 42-1903.16. The Limited Warranty's express terms state that it shall neither expand nor limit the warranty obligations under the D.C. Condominium Act. PTX-0827.00085. Therefore, the material question is whether the above-grade walls are subject to the statutory warranty. Second, both Plaintiff and Developer Defendants presented uncontroverted evidence that the Developer Defendants repointed the brick masonry on the above grade walls to remedy water infiltration. Plaintiff's argument is that tuckpointing was an insufficient renovation to remedy structural defects in the above grade wall which resulted in water infiltration. Therefore, even if the Limited Warranty applied, the above grade walls would be subject to a warranty claim. As such, Plaintiff's structural defect claims, including claims related to the above-grade wall, are subject to warranty under D.C. Code § 42-1903.16.

Plaintiff contends that Developer Defendants breached the statutory warranty as to all defects claimed except for the above-grade walls and windows. Developer Defendants argue that the statutory warranty is the proper channel to pursue damages and accept some costs as reasonable and appropriate. Developer Defendants' Post-Trial Brief at 5. They contend, however, that the issues identified are not structural defects. *Id.* Rather, they simply "agree[] to fund a proper repair." *Id.*

This Court finds that the Developer Defendants breached the statutory warranty under D.C. Code § 1903.16 as to the: (i) exterior above-grade walls; (ii) exterior below-grade walls; (iii) fire safety system; (iv) HVAC system; (v) electrical system; (vi) elevators; (vii) vinyl and stone floors; (viii) roof; (ix) parking garage; (x) concrete structure; (xi) quarter-round balconies; and (xii) windows. As a preliminary matter, Developer Defendants' argument regarding structural defects is inconsistent. On the one hand, Developer Defendants argue that the statutory warranty is the proper channel to pursue damages and accept liability for those damages. On the other hand, they argue that the issues identified are not structural defects. It is unclear to this Court how Developer Defendants accept liability under the statutory warranty, which assigns liability for structural defects, if those issues identified and conceded by Developer Defendants are not in fact structural defects. For this reason alone, this Court finds that there are structural defects as to the: (i) exterior below-grade walls; (ii) fire safety system; (iii) HVAC system; (iv) electrical system; (v) elevators; (vi) vinyl and stone floors; (vii) roof; (viii) parking garage; (ix) concrete structure; and (x) quarter-round balconies. Regardless, each issue identified is a structural defect, as detailed below.

As to the exterior above-grade walls, Developer Defendants deny that it presents structural concerns or that, in its current condition, water infiltrates the wall. Regarding structural concerns, this Court credits Plaintiff's evidence that the transverse brick headers are not properly embedded throughout the exterior above-grade walls which impedes the walls' ability to properly transfer loads between the interior and exterior wythe. Tr. 11/19 AM, 77:5-14 (Guedelhoefer); Tr. 11/19 AM, 77:5-78:2 (Guedelhoefer); Tr. 11/19 AM, 81:2-82:1 (Guedelhoefer); Tr. 2/5 PM, 101:22-25 (Coggin). Further, this Court credits Plaintiff's evidence that (i) the speed tiles within the walls were laid both vertically and horizontally, which prevents proper engagement with the transverse brick headers, Tr. 11/19 AM, 70:16-71:6, 82:15-24; 11/18 PM, 77:17-78:14 (Guedelhoefer); PTX-1100.02264, 2267; (ii) all head joints between speed tiles that were inspected lacked mortar or were unfilled with mortar, PTX-1100.02264, 2267, 02093, 2193, 2058, 2475; Tr. 11/19 AM, 12:3-8, 17:10-21, 65:8-66:25, 76:2-8 (Guedelhoefer); and (iii) there were areas of rubble construction in the collar joint which prevents the proper transfer of wall loads from the wythe to the concrete frame of the building. Tr. 11/19 AM, 83:4-84:7 (Guedelhoefer).

Regarding water intrusion, this Court credits Plaintiff's evidence that open head joints between speed tiles, rubble construction, debris in the collar joint, and bondline failures that contribute to the water infiltration at Wardman Tower. Tr. 11/19 AM, 16:25-17:21, 23:1-24:4 (Guedelhoefer). Developer Defendants' own water tests on the fully tuckpointed wall resulted in continued water infiltration through the exterior above-grade walls, demonstrating that it was an insufficient approach to remedying the water infiltration. PTX-898.00011-3; Tr. 11/17 PM, 66:9-67:4 (Kenney). Plaintiff's water tests showed the same result. Tr. 11/19 PM, 12:1-13:8 (Guedelhoefer); PTX-186A.000017-32, 42-44. More recently, there have been multiple documented instances of water infiltration through the exterior above-grade walls. Tr. 12/9 PM, 29:18-30:8 (Peyton); PTX-896.078; Tr. 11/19 PM, 12:1-13:8 (Guedelhoefer); PTX-186A.000017-32, 42-44. Evidence of moisture in the stud cavity, rust stains on steel studs, and water degradation behind the drywall persuasively reinforce both Developer Defendants' and Plaintiff's water testing results which showed water infiltration. PTX-597.00029-30; Tr. 12/15 AM, 75:13-80:1 (Davidson); Tr. 12/16 AM, 11:5-13:1 (Davidson); PTX-938A.00001; Tr. 12/16 AM, 73:1-75:1 (Davidson); PTX-2301A; PTX-2295.0006-11; PTX-2301.00008. Mr. Davidson's proposed remedy is viable in that variations of the remedy have been performed successfully in other instances, and that the remedial design is necessary to comply with historical preservation restrictions. Tr. 12/16 AM, 81:12-137:3 & Tr. 12/16 PM, 4:12-6:8 (Davidson); Tr. 1/7 AM, 26:10-27:14 (Davidson); Tr. 11/20 AM, 124:16-125:5 (Guedelhoefer); Tr. 1/6 PM, 63:5-10 & Tr. 1/7 AM, 26:10-27:14 (Davidson). For these reasons, this Court finds substantial evidence that there are structural defects in the exterior above-grade walls and that Developer Defendants breached the statutory warranty under D.C. Code § 1903.16.

As to the exterior below-grade walls, Developer Defendants concede that water leaks and infiltration continue to this day in the below-grade walls, Tr. 2/10 AM, 16:25-17:24 (Coggin); PTXs 3169, 3170, 3274; Tr. 1/29 PM, 22:7-9 (Lstiburek), and certain areas of the lowered B1 level must be strengthened. *Id.* Mr. Davidson testified that the below-grade walls have lost the ability to resist water infiltration and that water is "emanating out from the bottom of the speed tile where the collar joint [] stops and then traveling laterally under the spread footer." Tr. 12/15 AM, 53:4-9, 96:19-97:4, 130:21-131:4 (Davidson). Mr. Tamaro testified that the structural issues with the below-grade walls could lead to damage or collapse. Tr. 2/12 AM, 84:24-85:22 (Tamaro). Mr. Guedelhoefer testified that engineers at Raths, Raths & Johnson ("RRJ") evaluated the soil load on the below-grade walls and found that, after the B1 level was lowered, the walls lacked sufficient capacity to bear the current load. Tr. 11/18 PM, 57:12-58:9 (Guedelhoefer); Tr. 11/19 AM, 104:14-105:12 (Guedelhoefer). For these reasons, this Court finds substantial evidence that there are structural defects in the exterior below-grade walls and that Developer Defendants breached the statutory warranty under D.C. Code § 1903.16.

As to the fire safety system, Developer Defendants concede that fire safety repairs are required at Wardman Tower to remedy issues with the firestopping and sealant and the 8th floor ceiling space. Mr. Davidson identified "systemic" firestopping deficiencies in fire-rated assemblies throughout Wardman Tower. Tr. 12/16 PM, 102:6-24; 103:19-24 & Tr. 12/17, 8:9-13:3 (Davidson); PTX-90A.00026-31. Mr. Grill confirmed that there are multiple instances of improper firestopping at Wardman Tower. Tr. 2/11 AM, 82:1-83:1; 126:25-127:3; 129:4-19 (Grill); PTX-1109.01500. The sealant is insufficient or missing in multiple areas and that it is necessary to correct any improperly sealed areas. Tr. 12/17, 19:2-23:8, 23:7-24:9 (Davidson). Regarding the 8th floor ceiling space, Developer Defendants installed flammable spray foam insulation without protecting it with a thermal barrier and that code-required access doors must be installed to access and maintain fire-dampers. Tr. 1/12 AM, 30:21-31:4, 143:9-144:12 (Splain); Tr. 2/11 AM, 146:3-17 (Grill). For these reasons, this Court finds substantial evidence that there are structural defects in the fire safety system and that Developer Defendants breached the statutory warranty under D.C. Code § 1903.16.

As to the HVAC system, Developer Defendants concede that the placement of thermostats in units can inhibit temperature control and should be addressed. Tr. 12/2 PM, 60:23-62:7; 46:13-19, 59:22-60:18, 62:8-63:24 (Burton); Tr. 11/13 AM, 89:16-91:7 (Meehan); Tr. 1/22 PM, 53:16-55:11 (Carcaterra). However, there are significant issues with the HVAC system at Wardman Tower including compressor failures, installation defects, blocked return air paths, and maintenance issues, particularly in the CU-W3 and CU-B1 condensing units, which house multiple compressors. Tr. 12/8 AM, 62:3-6 (Burton). The Daikin-brand compressors installed at Wardman Tower in 2016 are "the best that you can get" and typically have a lifespan of 15- to 20-years. Tr. 12/9 PM, 40:24-41:8 (Burton); Tr. 12/2 PM, 74:24-75:4 (Burton); Tr. 12/3, 64:4-11 (Burton). The first compressor failure and replacement occurred in 2017. Tr. 12/3, 64:4-11 (Burton). From 2017 to 2018, 8 compressors failed and were replaced. Tr. 12/2 PM, 77:16-78:1 (Burton). Issues that contributed to these failures include that: (i) there were deviations in piping lengths when comparing the plans sent to the manufacturer to the floorplans and locations of the air handlers, Tr. 12/2 PM, 87:2-15 (Burton); Tr. 12/3, 58:5-15 (Burton); (ii) tests on a failed compressor showed signs of contamination, Tr. 2/25 AM, Part 2, 26:23-28:8 (McKelvy); (iii) the planned return air paths were not installed correctly and concrete beams and walls blocked multiple return paths throughout Wardman Tower, Tr. 12/3, 124:4-20, 130:18- 25, 141:15-24, 161:4-7 (Burton); PTX-10B; PTX-52; Tr. 2/25 AM, Part 1, 67:11-68:12 (McKelvy), and (iv) air filters were not checked for replacement before units were turned over to residents. PTX-41; PTX-3346.00001. Developer Defendants were responsible for these installation defects, blocked return air paths, and maintenance issues. For these reasons, this Court finds substantial evidence that there are structural defects in the HVAC system and that Developer Defendants breached the statutory warranty under D.C. Code § 1903.16.

As to the electrical system, Developer Defendants concede that electrical repairs are required at Wardman Tower. There are electrical code violations on every floor at Wardman Tower and the code violations present unsafe conditions. Tr. 12/10 AM, 102:21-104:15, 119; Tr. 12/10 PM, 27:10-24, 34:25-35:5, 48:9-14 & Tr. 12/10 AM, 97:6-16 (Marsh). Developer Defendants expert witness Elisa Paone agreed that the electrical conditions at Wardman Tower create life safety concerns. Tr. 2/4 PM, 52:19-53:4 (Paone). The code violations include improperly secured electrical equipment, open knockouts, exposed wiring, unsupported cables, and missing junction box covers. Tr. 12/10 AM, 102:21-104:15, 119:16-120:1 & Tr. 12/19 PM, 9:25-10:2 (Marsh). In total, there were more than 80 violations of code or industry standard identified at Wardman Tower that require remediation. Tr. 2/4 AM, 101:5-7 & 2/4 PM, 55:16-56:8, 60:16-20 (Paone). Elisa Paone agreed with the proposed scope of repair for over 75 percent of repairs identified by Plaintiff. Tr. 2/4 PM, 59:21-60:6 (Paone). For these reasons, this Court finds substantial evidence that there are structural defects in the electrical system and that Developer Defendants breached the statutory warranty under D.C. Code § 1903.16.

As to the elevators, Developer Defendants concede that full modernization of the traction elevators is required as the traction elevator equipment is past its useful life. The traction elevators' operating equipment is decades old, and some parts are in their original condition, as installed in 1947. Tr. 11/25 AM, 7:23-25, 15:16-16:2, 27:22-28:7; 43:24-46:10 & Tr. 11/25 PM, 26:19-27:12, 40:20-25 (Mirch); PTX-662; PTX-3261.00120-22; Tr. 2/12 PM, 77:22-78:4 (Whitehurst); Tr. 2/12 PM, 80:11-15 (Whitehurst). Tr. 11/25 AM, 8:1-2, 45:23-46:10 (Mirch). The traction elevators' doors get stuck due to a lack of door restrictors, Tr. 11/25 AM, 38:17-39:20 (Mirch), and multiple residents and employees have been trapped on them. PTX-3270.00001; Tr. 12/1 AM, 111:17-112:12 (Kelly); Tr. 11/24 AM, 40:14-41:9 (Ellis' grandson); Tr. 12/9 AM, 44:9-12 (Zax); Tr. 1/13 AM, 144:21-145:3 (Hale); Tr.11/12 AM, 122:9-15 (Abbey). Developer Defendants concede that full modernization of the traction elevators is required and that the traction elevator equipment is past its useful life. For these reasons, this Court finds substantial evidence that there are structural defects in the elevator system and that Developer Defendants breached the statutory warranty under D.C. Code § 1903.16.

As to the stone and vinyl floors, Developer Defendants concede that the vinyl and stone flooring on the B1 level requires replacement. As to the stone flooring, Plaintiff's expert Richard Vivenzio testified that: (i) a sounding test revealed many sections of the floor were not properly set, Tr. 2/10 PM, 65:13-15 (Vivenzio); Tr. 12/16 PM, 68:20-69:12 (Davidson); PTX-90A.000023; (ii) the flooring was installed with improper grout joints, Tr. 2/10 PM, 63:24-64:12 (Vivenzio); and (iii) there are multiple areas with cracking and lippage, documented as early as 2017. Tr. 12/16 PM, 64:4-68:9 (Davidson); PTX-90A.000019-22; Tr. 2/11 AM, 42:15-43:1 (Vivenzio). As to the vinyl flooring, he testified that the vinyl floor on the B1 level is cracked Tr. 2/11 AM, 44:13-45:9 (Vivenzio); Tr. 12/16 PM, 73:6-15, 75:19-76:2 (Davidson); PTX-90A.000024, and a waterproofing membrane is required to prevent moisture from seeping through the floor. Tr. 12/16 PM, 75:3-76:2 (Davidson); PTX-3099A. As such, the installed stone flooring and vinyl flooring both need to be fully replaced. Tr. 2/11 AM, 44:2-8 (Vivenzio); Tr. 12/16 PM, 71:22-24 (Davidson); Tr. 2/11 AM, 44:13-45:9 (Vivenzio); Tr. 12/16 PM, 73:6-15, 75:19-76:2 (Davidson);

PTX-90A.000024. As to the wood floors, testimony at Trial demonstrated that the installation was sufficient and does not require repair. Tr. 2/26 AM, 105:21-106:8, 120:3-122:4 (Ege). For these reasons, this Court finds substantial evidence that there are structural defects in the stone and vinyl flooring and that Developer Defendants breached the statutory warranty under D.C. Code § 1903.16.

As to the roof, Developer Defendants concede that the roof at Wardman Tower requires repair due to water damage. Plaintiff's expert Robert Splain testified that water on the roof does not drain properly and ponds. Tr. 1/12 PM, 16:23-17:1 (Splain). He performed nuclear backscatter, capacitance, and sampling to confirm that many areas throughout the roof are continuously wet. PTX-1164.00032; Tr. 1/12 AM, 31:15-32:7 & Tr. 1/12 PM, 29:24-31:22, 33:20-35:4 (Splain). Furthermore, water has been observed ponding in several locations on the roof for longer than 48 hours. Tr. 1/12 PM, 13:17-25, 14:9-15, 20:17-20, 31:6-22 (Splain); PTX-90G.00010-17, 29-44; Tr. 2/24 PM, 52:14-53:23 (Schneider). Industry standards dictate that standing water should not remain on a low slope roof for more than 48 hours. Tr. 1/12 PM, 19:22-20:2 (Splain); Tr. 2/24 PM, 30:11-21 (Schneider). Therefore, the Wardman Tower roof and the counterflashing require replacement. Tr. 1/12 AM, 32:8-16 & Tr. 1/12 PM, 5:6-11, 12:22-25 (Splain). For these reasons, this Court finds substantial evidence that there are structural defects with the roof and that Developer Defendants breached the statutory warranty under D.C. Code § 1903.16.

As to the parking garage, Developer Defendants concede that the parking garage at Wardman Tower requires repair. Cracks have developed in the perimeter walls, ceilings, and the concrete floor slabs on both the P1 and P2 levels. Tr. 1/12 AM, 26:8-25, 34:17-37:1 (Splain); PTX-1534A; Tr. 11/18 PM, 59:10-60:1 & Tr. 11/19 AM, 52:12-25 & Tr. 11/19 PM, 41:7-24 (Guedelhoefer); Tr. 2/10 AM, 22:21-23:5 (Coggin); Tr. 3/3 AM, 119:12-17 (Nolan). The cracks are allowing water to leak into the parking garage which can degrade the reinforcing steel and affect the structure of the parking garage. *Id.* Additionally, unsealed penetrations including in the air shafts, fans, and access panels are also allowing water to leak into the parking garage. Tr. 1/12 AM, 26:8-25, 48:2-53:22, 54:22-55:12 (Splain); PTX-90C.00002-9; Tr. 2/10 AM, 22:10-20 (Coggin). For these reasons, this Court finds substantial evidence that there are structural defects in the parking garage and that Developer Defendants breached the statutory warranty under D.C. Code § 1903.16.

As to the concrete structure, Developer Defendants concede that the concrete structure at Wardman Tower requires repair. Multiple parts of the concrete beams, slabs, and columns at the B1/B2 and 3-8 levels require repair because, during renovation, Developer Defendants either did not follow normal industry practices or failed to repair damaged elements of the building's original concrete structure. PTXs 246, 112, 123; Tr. 11/19 PM, 53:25-54:3 (Guedelhoefer); Tr. 11/18 PM, 55:7-16 (Guedelhoefer); PTX-1100.00266-70; Tr. 11/19 PM, 17:8-21:8 (Guedelhoefer). For example, there is exposed rebar throughout the building, as well as cracked or degraded columns on the B1 level and in the upper floors. Tr. 2/11 PM, 67:8-18, 68:8-13 & Tr. 2/12 AM, 101:1-20, 105:18-24 (Tamaro); PTX-1100.00218-22, 285-287, 321, 323-326, 398, 400, 404-12; Tr. 11/19 PM, 21:9-26:10, 32:7-33:20 (Guedelhoefer). For these reasons, this Court finds substantial evidence that there are structural defects in the concrete structure and that Developer Defendants breached the statutory warranty under D.C. Code § 1903.16.

As to the quarter-round balconies, Developer Defendants concede that the quarter-round balconies, while currently accessible, should not be accessible to unit owners. They present safety issues and do not comply with building code requirements because, as is, the balconies' walls are too low. Tr. 1/12 AM, 32:19-33:11 (Splain); Tr. 2/11 AM, 37:13-17 (Vivenzio); Tr. 1/12 PM, 69:16-21 (Splain); PTX-889.00005. For these reasons, this Court finds substantial evidence that there are structural defects in the quarter-round balconies and that Developer Defendants breached the statutory warranty under D.C. Code § 1903.16.

As to the windows, approximately 1,000 windows were installed during the Wardman Tower renovation. Tr. 2/2 PM, 175: 1-3 (Friedlander). The flashing on the windows at Wardman Tower was installed incorrectly. Tr. 1/13 AM, 135:25-136:13 (Splain); PTX-152.00003. The purpose of the flashing is to redirect any water toward the outside. Tr. 1/12 AM, 91:2-92:25 (Splain). Part of the flashing, the back dam, redirects water into a sill pan and toward the exterior of the building rather than the interior. Tr. 1/12 AM, 94:9-95:24, (Splain). The back dam is turned in the wrong direction, downwards, which directs water into the interior. Tr. 1/13 AM, 135:25-136:13 (Splain); PTX-152.00003

During the Wardman Tower renovation, Developer Defendants failed to properly construct numerous elements. The evidence at Trial demonstrated that Developer Defendants are responsible for structural defects to the: (i) exterior above-grade walls; (ii) exterior below-grade walls; (iii) fire safety system; (iv) HVAC system; (v) electrical system; (vi) elevators; (vii) floors; (viii) roof; (ix) parking garage; (x) concrete structure; (xi) quarter-round balconies; and (xii) windows. Accordingly, this Court finds that NASH Wardman and WT LLC are liable for breaching the statutory warranty under D.C. Code § 1903.16 and enters Judgment in favor of Plaintiff on these claims.

3. Negligent Construction and Negligent Repair Against Developer Defendants (Counts I-II)

To prevail on a negligence claim, a plaintiff must demonstrate "a duty of care owed by the defendant to the plaintiff, a breach of that duty by the defendant, and damage to the interests of the plaintiff, proximately caused by the breach." *Turner v. District of Columbia*, 532 A.2d 662, 666

(D.C. 1987) (quoting *District of Columbia v. Cooper*, 483 A.2d 317, 321 (D.C. 1984)). "'Where a particular statutory or regulatory standard is enacted to protect persons in the plaintiff's position or to prevent the type of accident that occurred, and the plaintiff can establish his relationship to the statute, *unexplained* violation of that standard renders the defendant negligent as a matter of law.'" *Ceco Corp. v. Coleman*, 441 A.2d 940, 945 (D.C. 1982) (quoting *Richardson v. Gregory*, 281 F.2d 626, 629 (D.C. 1960)). "If a party charged with statutory or regulatory negligence produces competent evidence tending to explain or excuse [their] violation . . . the violation is evidence of negligence, but not negligence as a matter of law." *Ceco Corp. v. Coleman*, 441 A.2d 940, 945 (D.C. 1982) (citing *Hecht Co. v. McLaughlin*, 214 F.2d 212, 215-16 (D.C. 1954)).

Plaintiff asserts that the evidence at Trial demonstrates numerous D.C. code violations and dangerous conditions in Developer Defendants' renovation work. Plaintiff Post-Trial Brief at 29. The evidence conclusively establishes that Developer Defendants failed to perform work with the ordinary degree of care and skill used by developers and general contractors in the industry. *Id.* Developer Defendants concede that a duty exists to perform the construction and repair non-negligently. They, however, assert that: (i) the economic loss rule bars Plaintiff's negligence claims; (ii) each unit owner waived and released all claims other than the statutory warranty claim in their Sales Agreements; and (iii) the evidence demonstrates that the standard of care was not breached. Developer Defendants Post-Trial Brief at 15.

First, as discussed *supra* Section V.C.1, the economic loss doctrine is waived and inapplicable to Plaintiff's claims. Second, the relevant language in the Sales Agreements, signed by unit owners, states in full,

> SELLER LIMITS ITS OBLIGATIONS UNDER THE LIMITED WARRANTY TO REPAIR AND REPLACEMENT. UNDER NO CIRCUMSTANCES WILL SELLER, OR ITS OFFICERS, MANAGERS, EMPLOYEES, AGENTS OR CONTRACTORS, BE LIABLE FOR ANY OTHER DAMAGES AND SUCH

> PARTIES ARE HEARBY RELEASED FROM LIABILITY FOR ANY AND ALL SUCH DAMAGES, EXCEPT TO THE EXTENT THIS DISCLAIMER AND RELEASE IS LIMITED BY APPLICABLE LAW.

DD 18751-0006. The language, which appears in the "Warranties" section of the Sales Agreements, makes clear that it imposes a limit only on warranty claims for repair and replacement. It does not apply to Plaintiff's contract, tort, or statutory claims and is irrelevant to Plaintiff's negligence claims here.

Developer Defendants owed a duty of care to Plaintiff to perform the renovation at Wardman Tower with an ordinary degree of care and skill used by developers and general contractors in the industry. *See Bell v. Jones*, 523 A.2d 982, 988 (D.C. 1986). Here, evidence at Trial demonstrates that Developer Defendants breached their duty of care to Plaintiff by negligently constructing and renovating Wardman Tower. There are more than 80 violations of an applicable code or industry standard in the electrical system at Wardman Tower that should be remedied. Tr. 2/4 AM, 101:5-7 & 2/4 PM, 55:16-56:8, 60:16-20 (Paone). Developer Defendants installed flammable spray foam insulation without protecting it with a thermal barrier contrary to code. Tr. 1/12 AM, 143:9-144:12 (Splain); Tr. 2/11 AM, 135:12-23 (Grill); Tr. 2/2 AM, 42:8-16 (Carcaterra). Multiple railings near rooftop mechanical units at Wardman do not comply with code and need to be remediated. Tr. 1/12 PM, 26:7-27:12 (Splain); PTX-90G.000025-26. The walls on the quarter-round balconies are unsafe and violate building codes. Tr. 1/12 AM, 32:19-33:11 (Splain); Tr. 2/11 AM, 37:13-17 (Vivenzio). As to these areas, Developer Defendants breached their duty of care to Plaintiff. Plaintiff is now responsible for the cost of those repairs, as demonstrated at Trial.

Developer Defendants owed Plaintiff a duty of care and breached that duty in their construction and repair of Wardman Tower. That breach caused Plaintiff's injury, the cost of the repairs. Accordingly, this Court finds that Developer Defendants are liable under Plaintiff's negligent construction and negligent repair claims and enters Judgment in favor of Plaintiff on these claims.

4. Strict Liability Against Developer Defendants (Count IX)

To recover on a claim for strict liability, a plaintiff must show that: "(i) the seller was engaged in the business of selling the product that caused the harm; (ii) the product was sold in a defective condition unreasonably dangerous to the consumer or user; (iii) the product was one which the seller expected to and did reach the plaintiff consumer or user without any substantial change from the condition in which it was sold; and (iv) the defect was a direct and proximate cause of the plaintiffs injuries." *Wetzel v. Capital City Real Estate, LLC*, 73 A.3d 1000, 1006 (D.C. 2013) (quoting *Word v. Potomac Elec. Power Co.*, 742 A.2d 452, 459-60 (D.C. 1999)). "Not only the seller, but any party that was an 'integral part of the overall producing and marketing enterprise that placed the defective product into the stream of commerce' may be found strictly liable." *Id.* (quoting *Berman v. Watergate West, Inc*., 391 A.2d 1351, 1359 (D.C. 1978)). Real estate is a "product" for strict liability purposes. *See Berman*, 391 A2d at 1357; *Wetzel*, 73 A.3d at 1006.

Plaintiff argues that: (i) Developer Defendants were each engaged in the business of selling units in the Condominium; (ii) the Condominium was sold in defective condition unreasonably dangerous to the unit owners due to the condition of the electrical system, the firestopping, the columns and beams on floors one and two, and the elevators; (iii) the units and building's common elements entered the stream of commerce as expected and without substantial change; and (iv) the building's defects are a direct and proximate cause of Plaintiff's injuries. Developer Defendants concede that they were engaged in the business of selling units at the Condominium and that the units and building's common elements entered the stream of commerce as expected and without substantial change but challenge whether the Condominium was sold in a defective condition that was unreasonably dangerous to the unit owners.

As to defective condition, a defective product is one that is "not reasonably fit for its intended purpose or not of merchantable quality." *Blower v. Stewart-Warner Corp.*, 563 A.2d 344, 346 (D.C. 1989). As discussed *supra* Section V.C.2, numerous common elements were defective and not reasonably fit for their intended purpose. As to those common elements being unreasonably dangerous, Plaintiff argues that "the building's electrical system poses a risk of fire, electric shock and electrocution on every floor; (ii) the firestopping is systemically deficient; (iii) the columns and beams on floors one and two are of unknown structural integrity; and (iv) the elevators are outdated, dangerous and prone to trapping residents." Plaintiff Post-Trial Brief at 30-31. Plaintiff presented no evidence of injury from the defects outside of individuals being stuck in elevators on several occasions. PTX-3270.00001. Further, as Developer Defendants argue, residents have continuously lived in their units and, on some occasions, rented their units to third parties. Developer Defendants Post-Trial Brief at 17-18; Tr. 11/12 PM, 89:13-92:15 (Abbey). Here, while common elements have been shown to be defective and warrant liability under alternative claims, Plaintiff has failed to demonstrate that the defects are unreasonably dangerous to unit owners as required for liability under Plaintiff's strict liability claim.[26] Accordingly, this Court finds that Developer Defendants are not liable under Plaintiff's strict liability claim and enters Judgment in favor of Developer Defendants on this claim.

D. Plaintiff's Claims for Misrepresentation

Plaintiff's claims related to negligent misrepresentations, CPPA violations, and Condominium Act violations rely largely on the same contentions. Plaintiff argues that: (i)

[26] Unit owners' actions preceding and during this litigation further reinforce that the Condominium's defects are not unreasonably dangerous beyond their expectations.

Developer Defendants made numerous misrepresentations in the POS regarding the "gut renovation," the useful life of the elevators, the useful life of the exterior wall and roof, and exterior wall water infiltration, and to purchasers regarding the insulation, firestopping, and marketing; (ii) those misrepresentations were material because they concern the nature, condition, and quality of the building in which purchasers were investing millions of dollars; and (iii) purchasers relied to their detriment on representations in the POS and assurances from Developer Defendants in deciding to purchase their units. Plaintiff Post-Trial Brief at 39. Developer Defendants argue that: (i) purchasers were warned that they should rely only on the written warranties; (ii) purchasers were given the opportunity to identify anything upon which they relied that existed or occurred outside of the terms of the sales contract, and none did so; (iii) the POS stated that the useful life and other estimates should not be relied on and were only estimates; and (iv) the statements at issue were neither false nor misleading. Developer Defendants Post-Trial Brief at 24.

1. Violation of the Consumer Protection Procedures Act Against Developer Defendants (Count IV)

The CPPA is a "comprehensive statute designed to provide procedures and remedies for a broad spectrum of practices which injure consumers." *District Cablevision Ltd. P'ship v. Bassin*, 828 A.2d 714, 722-23 (D.C. 2003) (quoting *Atwater v. District of Columbia Dep't of Consumer & Reg. Affairs*, 566 A.2d 462, 465 (D.C. 1989)). As such, the CPPA is meant to be "construed and applied liberally to promote its purpose." D.C. Code § 28-3901(c). "While the CPPA enumerates a number of specific unlawful trade practices . . . the enumeration is not exclusive." *District Cablevision Ltd. P'ship* 828 A.2d at 723." A main purpose of the CPPA is to 'assure that a just mechanism exists to remedy all improper trade practices.'" *Id.* (quoting D.C. Code § 28-3901 (b)(1))." Trade practices that violate other laws, including the common law, also fall within the purview of the CPPA. *Id.*; *see Osbourne v. Capital City Mortg. Corp.*, 727 A.2d 322, 325-26 (D.C.

1999) ("The CPPA's extensive enforcement mechanisms apply not only to the unlawful trade practices proscribed by § 28-3904, but to all other statutory and common law prohibitions."). The burden of proof for claims of unintentional misrepresentations under the CPPA is preponderance of the evidence. *D.C. v. Facebook, Inc.*, 340 A.3d 1, 10 (D.C. 2025) clarifying *Frankeny v. Dist. Hosp. Partners, LP*, 225 A.3d 999, 1005 (D.C. 2020) (held generally that the "burden of proof for CPPA claims is clear and convincing evidence" without distinguishing between intentional and unintentional misrepresentations).

Plaintiff alleges that Developer Defendants violated the CPPA by misrepresenting and/or failing to disclose material facts. *See generally* Third Amended Complaint. The CPPA makes it unlawful to engage in an unfair or deceptive trade practice, including to: "(e) misrepresent as to a material fact which has a tendency to mislead;" or "(f) fail to state a material fact if such a failure tends to mislead." D.C. Code §§ 28-3904(e), (f). The District of Columbia Court of Appeals has established that an alleged trade practice is considered in terms of how the practice would be viewed and understood by a reasonable consumer. *See Saucier*, 64 A.3d at 442. To prevail on a claim under Sections 28-3904(e) and (f), a plaintiff must establish that the defendant made a material misrepresentation or failed to disclose a material fact but does not need to prove that the misrepresentation or failure to disclose was intentional. *Id.*; *Fort Lincoln Civic Ass'n, Inc. v. Fort Lincoln New Town Corp.*, 944 A.2d 1055, 1073 (D.C. 2008). A misrepresentation or failure to disclose is "material" if "a reasonable [person] would attach importance to its existence or nonexistence in determining [their] choice of action in the transaction in question'" or if "the maker of the representation knows or has reason to know" that the recipient likely "regard[s] the matter as important in determining his or her choice of action." *Id.* (quoting THE RESTATEMENT OF THE LAW (SECOND) TORTS § 538(2)).

a. Developer Defendants' Misrepresentations and Failures to Disclose

The evidence of Developer Defendants' misrepresentations and omissions is largely interwoven. This Court finds that Developer Defendants made multiple misrepresentations and disclosure failures, beginning with the marketing of Wardman Tower as a "luxury" condominium. Wardman Tower was marketed as "well-built" and the result of a "painstaking restoration," with "the most modern systems and conveniences expected in today's premier homes." PTX-787.00014-15. JBG directed Sotheby's, its realtor, to place an advertisement in the *Washingtonian* magazine calling Wardman "[u]nquestionably the most luxurious condominium building in Washington, D.C." DD19001; Tr. 1/8 AM, 132:24-133:6 (VanHorn). Andrew VanHorn, a JBG and JBG SMITH employee involved in the renovation and sales of units at Wardman Tower, testified that model units were staged with the "luxury package of finishes" with "the expectation" to "help up the selling price" and "smooth over" shortcomings. Tr. 1/8 AM, 90:13-91:10 (VanHorn).

While the term "luxury" may not have a statutory definition under the CPPA, the term does have real, recognizable meaning to a reasonable consumer. *See Earth Island Inst. v. Coca-Cola Co.*, 321 A.3d 654, 663, 668 (D.C. 2024) (stating that "vague and ambiguous statements, incapable of being strictly true or false, may yet be actionable as misrepresentations" in violation of the CPPA). The result of Wardman Tower being marketed as "luxury" created an impression in unit owners' minds of what they could expect at Wardman Tower when purchasing a unit that, on average, cost $3,376,055.19. DD18751. Based on this impression, a unit owner would expect, at a minimum, to be purchasing a unit in a building with functional elevators, a reliable HVAC system, water-tight exterior walls, and a reliable fire safety system, among other things. Unit owner Helen Zax testified that, at the very least, she expected the "basics" including "an operating HVAC system, a fire and life safety system that's operational, elevators that don't have waterfalls" and “to be able to move in and not have to move out” multiple times for repairs. Tr. 12/9 AM, 50:1-9 (Zax). Unit owners did not, however, receive the “luxury” condominiums they were promised. Developer Defendants concede that repairs are needed to the exterior below-grade walls, the fire safety system, the HVAC system, the electrical system, the elevators and elevator penthouse, the vinyl and stone flooring, the roof, the parking garage, the concrete structure, and the quarter-round balconies. *See generally* Developer Defendants Post-Trial Brief. A reasonable consumer would expect a multi-million dollar “luxury” condominium to be, if not free from any defect, free from significant defects to basic elements in the building that impact their daily lives and require significant repairs.

This Court finds that Developer Defendants made multiple specific misrepresentations in the POSs given to purchasers. All versions of the POS represented that the building “has been or will be gutted and renovated.” *E.g.*, PTX-834.00008; PTX-827.00008. However, the elevators were not replaced or part of the gut renovation. Indeed, they were only subject to cosmetic upgrades. PTX-1926.00001. All versions of the POS represented that the Wardman Tower project included sunken gardens and a brick driveway. *E.g.*, PTX-324.00311-12; PTX-827.00310-11. However, those features had already been cut from the renovation plan when unit owners received POSs that reflected their inclusion. PTX-827.00310-11. The early versions of the POSs also stated that anticipated completion of construction would be in the “Summer of 2016.” PTX-834.00008; PTX-827.00008. This proved to be false as construction continued past 2017.

The POSs included reserve schedules informing purchasers about the expected remaining life of various building components, to help them plan for future repairs. PTX-827.00185-86; Tr. 11/17 PM, 52:18-20 (Kenney). The POSs misrepresented the useful life of the elevators, the exterior walls, and the roof. As to the elevators, the POSs reflected a 15-year life for the traction elevators. PTX-827.00185-86. Parties now agree, less than 15 years after the POSs were issued, that full modernization is required because the traction elevators' equipment is past its useful life and that certain component parts are no longer available. Tr. 11/25 AM, 7:18-19 (Mirch); 11/25 PM, 44:3-45:19 (Mirch); PTX-1084. Tr. 2/12 PM, 91:6-9 (Whitehurst). As to the exterior walls and the roof, the POSs reflected a 50-year life for both. PTX-827.00185-86. In 2014, however, WJE recommended a 30-year life for the exterior walls, before a full repoint of the masonry would be required, and a 20-year life for the roof. PTX-873.00004; PTX-882. Developer Defendants' own expert Richard Vivenzio testified that the 50-year life for the roof may have been a "typo" and anticipated a 15- to 20-year life for the roof. Tr. 2/11 AM, 36:22-37:12 (Vivenzio). Developer Defendants provided no explanation for changing the estimate for the exterior walls to a 50-year life in the POS despite WJE estimating a 30-year life.

The POSs also failed to disclose conditions known to Developer Defendants related to water infiltration through the exterior wall. In 2014, CSG, hired by JBG to peer review WJE's work, informed JBG that it "should be noted in the [POS] that [the exterior wall] may allow water entry during excessive wind driven rain events." PTX-702.00003. Further, WJE informed JBG that, even after tuckpointing, the wall "cannot stop all moisture from reaching the interior," and that "[h]eavy rainfall, especially coupled with driving winds, can still saturate the wall assembly and depending upon the interior and exterior temperature and humidity conditions, voids between the face brick and inner masonry wythes, and developed leakage paths, moisture may still be able to reach the interior of the building." PTX-295.00011; PTX-898.00016. The POSs did not include any disclosure related to water infiltration through the exterior walls.

The purpose of a POS is to provide purchasers with an accurate disclosure of all material facts. The POSs provided to purchasers, who are now unit owners, misrepresented the conditions at Wardman Tower in multiple ways. A reasonable consumer would interpret the POS language "has been or will be gutted and renovated" to include a replacement of elevators or, at a minimum, upgrades to elevators beyond cosmetic upgrades. To the contrary, the evidence at Trial showed that Developer Defendants only made cosmetic upgrades to the elevators. PTX-1926.00001. Even more clearly, a reasonable consumer would expect a purchase based on a POS that detailed sunken gardens and a brick driveway to include those features. *E.g.*, PTX-324.00311-12; PTX-827.00310-11. As to the reserve schedules in the POSs, Developer Defendants misrepresented the remaining useful life of the elevators, exterior walls, and roof. The useful life of the traction elevators was inaccurate, and Developer Defendants knowingly inflated the useful life of the exterior walls and roof against the recommendations of their own hired consultant WJE. Finally, WJE and CSG informed Developer Defendants that the exterior walls were susceptible to water infiltration and recommended that it be noted in the POS. Developer Defendants omitted that information from every POS.

Finally, Developer Defendants made several omissions as to the conditions at Wardman Tower as renovation was ongoing and units were being sold. For example, eight unit-owners closed on their units during the time that the fire alarm system could not pass inspection. PTX-29; PTX-3278.00013; PTX-3387; Tr. 11/12 AM, 71:20-72:18 (Abbey). Despite the fact that the quarter-round balconies are unsafe and not code compliant due to the balconies' low walls, unit owners were given keys to access the quarter-round balconies and unit owners testified that they were never told that they could not use them. Tr. 11/24 AM, 38:6-24 (Ellis); Tr. 1/13 PM, 5:1-9 (Hale); Tr. 11/10, 192:17-22 (Abbey). The fact that the exterior above-grade walls lack insulation was never disclosed despite the purchase agreements stating that "[e]xterior walls will be insulated." DD18751-0651. In fact, in 2017, when the Wardman Tower sales agent learned that the exterior above-grade walls lacked insulation, she responded by telling Developer Defendants that it "will bring up a ton of questions and concerns" among prospective purchasers. PTX-3224.00001.

Developer Defendants' misrepresentations began with marketing Wardman Tower as a "luxury" condominium. A reasonable consumer would expect that they were purchasing a unit in a building that, at the very least, had the "basics." Wardman Tower continues, to this day, to suffer from numerous problems with basic common elements, problems that would not be expected to be present in a "luxury" condominium. The evidence at Trial demonstrates that, over time, Developer Defendants knew or should have known that Wardman Tower suffered from numerous defects and failed to inform purchasers, now unit owners, of those defects. Further, the misrepresentations in the POSs provided to unit owners created an impression that multiple important common elements had a remaining useful life that exceeded the known remaining useful life. For these reasons, this Court finds substantial evidence to establish that Developer Defendants made misrepresentations and omissions in its communications with unit owners, represented by Plaintiff.

b. The Misrepresentations and Failures to Disclose Were Material

As provided above, a misrepresentation or failure to disclose is material under the CPPA if a reasonable consumer would attach importance to its existence or nonexistence in determining his or her choice of action in the transaction in question; or if the maker of the representation knows or has reason to know that the recipient likely regards the matter as important in determining his or her choice of action. *Saucier*, 64 A.3d at 442. The Developer Defendants' misrepresentations and omissions were clearly "material."

In *Saucier*, the District of Columbia Court of Appeals provided guidance on what constitutes a material omission in violation of D.C. Code § 28-3904(f), as a material omission is less evident than a material misrepresentation in violation of D.C. Code § 28-2904(e). *See Saucier*, 64 A.3d at 442-45. In *Saucier*, defendants failed to disclose a notice which was intended to make a potential condominium unit purchaser aware of possible financing choices. *Id.* at 444. The Court found that the notice was "material" because "a significant number of unsophisticated consumers could find the information in the notice important in determining a course of action." *Id.* at 444-45.

Here, the Trial evidence illustrates that unit owners considered the misrepresentations and omissions by Developer Defendants regarding Wardman Tower as a "luxury" condominium to be material. A reasonable consumer would consider the misrepresentations and omissions similarly. At Trial, unit owner after unit owner testified that they believed that they were purchasing a luxury condominium and that they relied on representations by Developer Defendants in making their decision to purchase a unit at Wardman Tower. Tr. 12/9 AM, 12:17-13:8, 50:1-9 (Zax); Tr. 11/24 AM, 13:19-14:2 (Ellis); Tr. 11/10, 185:18-186:5 (Abbey); Tr. 11/13 AM, 75:8-18 (Meehan); Tr. 1/13 AM, 145:13-146:4 (Hale); Tr. 1/14 AM, 47:4-15 (Dixon). Unit owner Carolyn Abbey testified that the sunken gardens and brick driveway were important to her and that she purchased her unit in part because of the quarter-round balcony, which would be her only outdoor space. Tr. 11/10, 191:20-192:8, 199:25-200:12 (Abbey); PTX-517.00022. Unit owner Helen Zax testified that, at the very least, she expected a luxury condominium to have the "basics" including "an operating HVAC system, a fire and life safety system that's operational, elevators that don't have waterfalls" and "to be able to move in and not have to move out" multiple times for repairs. Tr. 12/9 AM, 50:1-9 (Zax). Indeed, she moved out of her unit more than six times due to issues at

Wardman Tower. Tr. 12/09 AM, 25:4-13 (Zax). Unit owners Kenneth Gallo and Marcia Hale testified that they relied on the "gut renovation" and "gutted and renovated" language when deciding to purchase units, in part because they wanted to purchase a luxury condominium that was fully renovated and like new. Tr. 11/24 AM, 130:25-131:4 (Gallo); Tr. 1/13 AM, 149:2-19 (Hale). Unit owner Kevin Meehan testified that, based on the representations made during his purchase, his "expectation[] was that [Wardman Tower] would be a high-end luxury building." Tr. 11/13 AM, 75:8-18 (Meehan). The Court finds that a reasonable consumer who is purchasing a condominium unit for, on average, $3,376,055.19, would surely consider whether or not the condominium is a "luxury" condominium an important factor. DD18751.

Developer Defendants were also aware that unit owners were likely to regard Wardman Tower as a "luxury" condominium as important in purchasing a unit. Andrew VanHorn, a JBG and JBG SMITH employee involved in the renovation and sales of units at Wardman Tower, testified that model units were staged with the "luxury package of finishes" with "the expectation" to "help up the selling price" and "smooth over" shortcomings. Tr. 1/8 AM, 90:13-91:10 (VanHorn). As late as 2019, prospective purchasers were given "quick access to the top of JBG" to "give them the right level of confidence in the building." PTX-3225.00001. In an email with unit owner Helen Zax, JBG SMITH employee Christina Chang assured Helen Zax that JBG SMITH was moving quickly to make repairs at Wardman Tower "to ensure the building operates as a luxury condominium." PTX-2731. When asked what she meant by "luxury condominium," Christina Chang testified that she defined "luxury condominium as, "a condominium where you enjoy living in your condominium. You love everything inside of it; that the space is yours; that you love the flooring; that you love your home," and that "it can be to the eye of the beholder." Tr. 12/2 PM, 32:18–33:1; 32:22-33:1 (Chang). Her definition was so broad as to give no meaning to the word “luxury” and is fundamentally inconsistent with Wardman Tower continuously being marketed as the “pinnacle of luxury.” Further, even by her own definition, which could include almost any condominium and runs contrary to how a reasonable consumer understands the term, Wardman Tower failed to meet that standard.

A reasonable consumer could also attach importance to representations made in the POSs received by purchasers when deciding to close on a unit. As shown at Trial and discussed above, many unit owners relied on representations in the POS they received which, ultimately, proved to be false. Unit owners testified that they relied on language in the POS they received that Wardman Tower had been fully gutted and renovated. Tr. 11/13 AM, 82:23-83:15 (Meehan); Tr. 11/10, 195:24-197:17 (Abbey); Tr. 12/9 AM, 24:1-25:1 (Zax); Tr. 11/24 AM, 130:25-131:4 (Gallo); Tr. 1/13 AM, 149:2-19 (Hale). Carolyn Abbey testified that she relied on a statement in their POS that the anticipated completion of construction would be in the “Summer of 2016.” Tr. 11/10, 195:24-197:17 (Abbey). Kenneth Gallo testified that he relied on the language about the elevator upgrades. Tr. 11/24 AM, 131:21-132:7 (Gallo); PTX-569.00012. Unit owners Carolyn Abbey, Karen Dixon, and Kenneth Gallo testified that they relied on the reserve schedules when deciding to close on their units. Tr. 11/10, 199:19-24 (Abbey); Tr. 1/13 PM, 72:15-73:6 (Dixon); Tr. 11/24 AM, 127:20-128:8, 131:5-20 (Gallo). The emphasis that unit owners placed on the POSs is underscored by the purpose of a POS: to provide purchasers with an accurate disclosure of all material facts.

As important as misrepresentations made by Developer Defendants are the failures to disclose numerous issues at Wardman Tower while unit sales continued. Developer Defendants failed to disclose possible water infiltration, as recommended by WJE and CSG. PTX-702.00003; PTX-295.00011; PTX-898.00016. Eight unit-owners closed on their units during the time that the fire alarm system could not pass inspection. PTX-29; PTX-3278.00013; PTX-3387; Tr. 11/12 AM, 71:20-72:18 (Abbey). Unit owners were given keys to the quarter-round balconies despite them being unsafe and not code compliant. Tr. 11/24 AM, 38:6-24 (Ellis); Tr. 1/13 PM, 5:1-9 (Hale); Tr. 11/10, 192:17-22 (Abbey). The above-grade walls lacked insulation, an issue that the Wardman Tower sales agent responded to by stating that it "will bring up a ton of questions and concerns" among prospective purchasers. PTX-3224.00001. This Court finds that a reasonable consumer would attach significance to these issues in deciding whether to purchase a luxury condominium.

The liberally construed CPPA requires only that a reasonable consumer would "attach importance" to the existence or nonexistence of a fact in determining a choice of action; not that the fact is the most important part of the determination. *See Saucier*, 64 A.3d at 442. Further, the CPPA is not limited to explicit verbal falsehoods; it extends to practices that convey misleading information "by implication." *Ctr. for Inquiry Inc. v. Walmart, Inc.*, 283 A.3d 109, 118 (D.C. 2022). Here, the Court finds that a reasonable consumer would find Developer Defendants' misrepresentations and omissions as to Wardman Tower being a "luxury" condominium material. This Court's finding is reinforced by specific misrepresentations and omissions, in the POSs and otherwise, that unit owners relied on in deciding to purchase a unit at Wardman Tower.

c. The Misrepresentations and Failures to Disclose Tended to Mislead

This Court finds that Developer Defendants' misrepresentations and omissions had a tendency to mislead a reasonable consumer into purchasing a unit at Wardman Tower with inaccurate information and expectations. The record is replete with testimony from unit owners that they weighed the benefits of different condominiums and apartments across Washington D.C. before settling on Wardman Tower. Tr. 11/10, 184:7-186:8 (Abbey); Tr. 11/13 AM, 71:2-21 (Meehan); Tr. 11/14 AM, 12:21-13:21 (Ellis); Tr. 11/14 AM, 118:20-119:17; Tr. 12/9 AM, 12:6-13:10 (Zax); Tr. 1/13 AM, 143:4-9 (Hale); Tr. 1/13 PM, 47:8-48:4 (Dixon). As discussed above, in making their decision to purchase a unit at Wardman Tower, unit owners relied on Developer Defendants' representations. Unit owners stated that they wanted to purchase a condominium that would be low maintenance and would be "like new" due to the gut renovation. Tr. 11/10 AM, 185:11-17 (Abbey) (stating that she "wanted something that would have been much lower maintenance" than her previous house); Tr. 12/9 AM, 13:9-14 (Zax) (stating that the recency of renovation and that Wardman Tower would be "gutted and that it would be all new" were important considerations); Tr. 11/24, 119:21-25 (Ellis) (stating that he was looking for a condominium that was "less maintenance"). These reasonable expectations stem nearly entirely from Developer Defendants' categorical misrepresentations and omissions. The Court finds that a reasonable consumer would be similarly misled if Developer Defendants presented them with the same misrepresentations and omissions prior to purchasing a unit at Wardman Tower.

During unit owners' search for a condominium, Developer Defendants made material misrepresentations and omissions to prospective purchasers, creating a net impression which was incomplete and excluded the true conditions at Wardman Tower. A reasonable consumer could find this information to be important in determining where to purchase a condominium, particularly if they are interested in a low maintenance, fully renovated, like new condominium. Accordingly, this Court finds that Developer Defendants are liable for violations of D.C. Code § 28-3904(e) and (f) and enters Judgment in favor of Plaintiff on these claims.

2. Negligent Misrepresentation Against Developer Defendants (Count III)

To recover on a claim for negligent misrepresentation, a plaintiff must show: "(i) that [the defendant] made a false statement or omitted a fact that he had a duty to disclose; (ii) that it involved a material issue; and (iii) that [the plaintiff] reasonably relied upon the false statement or omission to his detriment." *Sundberg v. TTR Realty, LLC*, 109 A.3d 1123, 1129 (D.C. 2015) (quoting *Kumar v. District of Columbia Water & Sewer Auth.*, 25 A.3d 9,15 (D.C. 2011)). A misrepresentation is "material" if it would be "likely to induce a reasonable person to manifest his assent, or if the maker knows that it would be likely to induce the recipient to do so." *Id.* A complaint alleging negligent misrepresentation need not allege that the defendant had knowledge of the falsity of the representation or the intent to deceive. *Sundberg*, 109 A.3d at 1131. A seller of real property has "a duty independent of the Sales Contract to make truthful representations about the Property to potential buyers." *Jacobson v. Hofgard*, 168 F. Supp. 3d 187, 200 (D.D.C. 2016); *see Remeikis v. Boss & Phelps, Inc.*, 419 A.2d 986, 990 (D.C. 1980); *Ehrlich v. Real Estate Com.*, 118 A.2d 801, 802 (D.C. 1955) ("When a person undertakes to make a statement in a business transaction, either voluntarily or in response to inquiries, he is bound not only to state truly what he tells, but also not to suppress or conceal any facts within his knowledge which would materially qualify those stated.")

As a preliminary matter, as discussed *supra* Section V.C.1, the economic loss doctrine does not apply to Plaintiff's negligent representation claim because the affirmative defense is waived and not applicable to Plaintiff's tort claims against Developer Defendants. Furthermore, if the economic loss doctrine did apply, this Court finds that there is a special relationship between Developer Defendants and unit owners, as represented by Plaintiff. Additionally, as to Plaintiff's negligent misrepresentation claim, Developer Defendants had "a duty independent of the Sales Contract to make truthful representations about the Property to potential buyers." *Jacobson v. Hofgard*, 168 F. Supp. 3d 187, 200 (D.D.C. 2016). This duty extends to the statutory duty as required by the D.C. Condominium Act requiring that the "public offering statement shall disclose fully and accurately the characteristics of the condominium and the units therein offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium." D.C. Code § 42-1904.04(a). Accordingly, for all of the reasons listed above, the economic loss doctrine does not apply to Plaintiff's negligent misrepresentation claim.

As discussed *supra* Section V.D.1, Developer Defendants made numerous false statements that it had a duty to disclose. *See* D.C. Code § 42-1904.04(a). They formally misrepresented: (i) the remaining useful life of the elevators, roof, and exterior walls, PTX-827.00185-86; (ii) that Wardman Tower "ha[d] been or will be gutted and renovated," *E.g.*, PTX-834.00008; PTX-827.00008; (iii) that Wardman Tower included sunken gardens and a brick driveway, PTX-324.00311-12; PTX-827.00310-11; and (iv) that Wardman Tower construction would be complete by the "Summer of 2016." PTX-834.00008; PTX-827.00008. Again, as discussed *supra* Section V.D.1, those misrepresentations were material and unit owners testified that they relied on them in making their decision to purchase units at Wardman Tower.

Developer Defendants also made informal misrepresentations to unit owners. For example, in addition to those discussed *supra* Section V.D.1, unit owner Kenneth Gallo testified that he only "got comfortable" with his purchase decision in 2022 after repeated assurances from the Developer Defendants and their agent that they "stood behind the building" and its condition. Tr. 11/24 AM, 134:2-14; 140:2-11 (Gallo). Here, reliance and causation exist because Mr. Gallo, as a purchaser, was assured by Developer Defendants that previously identified issues had been resolved and he subsequently relied on those assurances in purchasing a unit at Wardman Tower. *See Parr v. Ebrahimian*, 70 F. Supp. 3d 123, 132-33 (D.D.C. 2014). Further, as late as 2019, prospective purchasers were given "quick access to the top of JBG" to "give them the right level of confidence in the building." PTX-3225.00001. At this time, numerous defects were known by Developer Defendants and not communicated to prospective purchasers.

This Court finds that Developer Defendants negligently misrepresented the conditions at Wardman Tower both formally through the POSs and informally through verbal assurances. Developer Defendants had an independent duty to make truthful representations about Wardman Tower. Developer Defendants' misrepresentations were material in nature. The evidence at Trial conclusively shows that unit owners relied on those misrepresentations in deciding to purchase units at Wardman Tower and that Developer Defendants should have reasonably recognized that unit owners would rely on those misrepresentations. Accordingly, this Court finds that Developer Defendants are liable for negligent misrepresentation and enters Judgment in favor of Plaintiff on this claim.

3. Misleading Statement or Omission in Public Offering Statement Against NASH Wardman Tower Residential, LLC (Declarant) and Wardman Tower Residential, LLC (Count VII)

Under the D.C. Condominium Act, a declarant must issue a public offering statement in order to sell a condominium. D.C. Code § 42-1904.04 provides that the POS must, among other things, "fully and accurately" "disclose . . . the characteristics of the condominium and the units therein offered," including "all unusual and material circumstances or features affecting the condominium." D.C. Code § 42-1904.04(a). D.C. Code § 42-1904.02(d) creates a private right of action against "[a] declarant" who makes "any false or misleading statement in a public offering statement" or omits "a material fact with respect to the portion of the public offering statement that he or she prepared or caused to be prepared." *Id.* § 42-1904.02(d); *Parr v. Ebrahimian*, 70 F. Supp. 3d 123, 137 (D.D.C. 2014). To bring a claim, "a plaintiff condominium owner or owners' association [may] file[] a claim relating to the public offering statement under § 42-1904.04(a)" to "allege [the] mere failure of the developer to disclose in its public offering statement a material and unusual feature affecting the condominium." *Fort Lincoln Civic Ass'n v. Fort Lincoln New Town Corp.*, 944 A.2d 1055, 1074 (D.C. 2008). Further, "under D.C. Code § 42-1904.04(a), consistent with the plain and ordinary meaning of the words used, a plaintiff may merely prove a failure to disclose material information." *Id.* at 1073. To prevail on a claim under the D.C. Condominium Act, a plaintiff "must demonstrate that the declarant's misrepresentation or omission caused the plaintiff to suffer injury beyond the mere violation of a statutory right." *Parr*, 70 F. Supp 3d at 138.

Here, Plaintiff properly brings their claim as the condominium owners' association, as contemplated by D.C. Code § 42-1904. *See Fort Lincoln Civic Ass'n*, 944 A.2d at 1074. Plaintiff brings their claim against Developer Defendants, NASH Wardman and WT LLC. NASH Wardman is the declarant of the Condominium as Wardman Tower Residential Condominium. WT LLC is the declarant of the Master Condominium, which includes the both the Wardman Tower Condominium and Hotel.[27] As noted *supra* Section V.D.1-2, Developer Defendants affirmatively misrepresented in all POSs issued to unit owners that Wardman Tower "ha[d] been or will be gutted and renovated," *E.g.*, PTX-834.00008; PTX-827.00008 and that it included sunken gardens and a brick driveway. PTX-324.00311-12; PTX-827.00310-11. Developer Defendants further misrepresented the remaining useful life of the elevators, roof, and exterior walls, PTX-827.00185-86 and when the condominium construction would be complete. PTX-834.00008; PTX-827.00008. In addition, there were multiple omissions related to, but not limited to, evidence of water infiltration, the inadequacy of the fire safety system, and lack of insulation at Wardman Tower. Furthermore, Developer Defendants failed to provide updated versions of the POS to multiple purchasers. Tr. 11/10, 193:23-194:5 (Abbey); Tr. 11/13 AM, 81:3-12 (Meehan); Tr. 1/13 AM, 148:11-13 (Hale). D.C. Code § 42-1904.02(b) requires that Developer Defendants

[27] Plaintiff, as Association, owns a 75.27% interest in the Master Condominium and is obligated to pay for 75.27% of the Master Condominium's expenses. PTX-569.00262, 275, 282, 286-87. In 2014, WT LLC transferred the Condominium to NASH Wardman.

provide purchasers with the most up-to-date versions of the POS. D.C. Code § 42-1904.02(b). As such, Developer Defendants failed to "fully and accurately" "disclose . . . the characteristics of the condominium and the units therein offered," including "all unusual and material circumstances or features affecting the condominium" as required under the D.C. Condominium Act. D.C. Code § 42-1904.04(a).

As note *supra* Section V.D.1-2, these misrepresentations were clearly material as unit owners testified that they relied on the POS in deciding to purchase a unit at Wardman Tower. Tr. 11/13 AM, 75:8-18, 82:23-83:15 (Meehan); Tr. 11/10, 185:18-186:5, 195:24-197:17 (Abbey); Tr. 12/9 AM, 12:17-13:8, 24:1-25:1, 50:1-9 (Zax); Tr. 11/24 AM, 130:25-131:4, 131:21-132:7 (Gallo); Tr. 1/13 AM, 145:13-146:4, 149:2-19 (Hale); Tr. 11/24 AM, 13:19-14:2 (Ellis); Tr. 1/14 AM, 47:4-15 (Dixon). As to injury, Developer Defendants concede that repairs to Wardman Tower are required and estimate the cost at $8,818,368.00. Developer Defendants Post-Trial Brief at 6. Developer Defendants concede that the traction elevators require full modernization, repairs to the below-grade walls and roof are required, and there is currently an issue with water infiltration in the below-grade wall. These concessions were misrepresented in the POS and unit owners, represented by Plaintiff, have suffered injury being the cost of repair.[28]

This Court finds that the Developer Defendants failed to "fully and accurately" "disclose . . . the characteristics of the condominium and the units therein offered," including "all unusual and material circumstances or features affecting the condominium." D.C. Code § 42-1904.04(a). Plaintiff properly brought their claim, the misrepresentations made in the POSs were material and unit owners, represented by Plaintiff, proved that they suffered injury. Accordingly, this Court

[28] In addition, Developer Defendants concede that repairs are needed to the fire safety system, the HVAC system, the electrical system, the stone and vinyl flooring, the parking garage, the building's concrete structure, the quarter-round balconies, and the building's grounds.

finds that NASH Wardman and WT LLC are liable for making misleading statements and omissions in the POS under D.C. Code § 42-1904.04 and enters Judgment in favor of Plaintiff on this claim.

E. Plaintiff's Remaining Claims Against Developer Defendants

1. Breach of Contract Against NASH Wardman Tower Residential, LLC (Count VIII)

A successful breach-of-contract claim requires: "(1) a valid contract between the parties; (2) an obligation or duty arising out of the contract; (3) a breach of that duty; and (4) damages caused by breach." *Tsintolas Realty Co. v. Mendez*, 984 A.2d 181, 187 (D.C. 2009).

Every contract includes an implied covenant of good faith and fair dealing. *Allworth v. Howard Univ*., 890 A.2d 194, 201 (D.C. 2006). The meaning of "good faith" varies with the context. *Wright v. Howard Univ.*, 60 A.3d 749, 754 (D.C. 2013) (citing *Restatement (Second) of Contracts* § 205, cmt. a (1981))." Good faith performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party; it excludes a variety of types of conduct characterized as involving 'bad faith' because they violate community standards of decency, fairness or reasonableness." *Id.* (quoting *Restatement (Second) of Contracts* § 205, cmt. a (1981)). "Bad faith requires more than mere negligence; examples include lack of diligence, purposeful failure to perform, and interference with the other party's ability to perform." *Allworth v. Howard Univ.*, 890 A.2d 194, 202 (D.C. 2006). Fair dealing means reasonable conduct that is not arbitrary and capricious. *Id*. "To state a claim for breach of the implied covenant of good faith and fair dealing, a plaintiff must allege either bad faith or conduct that is arbitrary and capricious." *Wright*, 60 A.3d at 754 (citing *Alden v. Georgetown Univ*., 734 A.2d 1103, 1112 n.11 (D.C. 1999)).

Here, Plaintiff's Third Complaint includes a breach of contract claim based on a material breach of implied and express covenants. Third Amended Complaint at 182-183. Unit owners, as represented by Plaintiff, are in formal contractual privity with NASH Wardman as the sales contract is between those two parties. This Court finds that Plaintiff has waived its breach of contract claim. Although Plaintiff asserted claim in its Third Amended Complaint and presented evidence related to the claim at Trial, Plaintiff failed to address or brief this claim in its Post-Trial Brief. It is well understood that when a party fails to address an argument or claim in its briefing, the Court may treat that argument or claim as conceded or abandoned. *Hopkins v. Women's Div., Bd. Of Global Ministries*, 238 F. Supp. 2d 174, 178 (D.D.C. 2002) ("It is well understood in this Circuit that when a plaintiff files an opposition to a motion to dismiss addressing only certain arguments raised by the defendant, a court may treat those arguments that the plaintiff failed to address as conceded.") Accordingly, this Court finds that NASH Wardman is not liable under Plaintiff's breach of contract claim and enters Judgment in favor of NASH Wardman on this claim.

2. Breach of Fiduciary Duty Against Developer Defendants (Count X)

"A plaintiff alleging a breach of fiduciary duty must show: (1) the existence of a fiduciary relationship with the defendant; (2) breach of a duty imposed by that fiduciary relationship; and (3) an injury caused by such breach." *Caesar v. Westchester Corp.*, 280 A.3d 176, 186 (D.C. 2022). D.C. Code § 42-1903.08(d) provides that "an officer or member of the executive board shall exercise the care required of a fiduciary to the unit owners." D.C. Code § 42-1903.08(d). The fiduciary obligation includes both a duty of care and a duty of loyalty. *Quincy Park Condo. Unit Owners' Ass'n v. D.C. Bd. Of Zoning Adjustment*, 4 A.3d 1283, 1290 (D.C. 2010). The duty of care requires that board members act prudently and on an informed basis. *See id.* The duty of loyalty requires that board members place the interests of the association and its members above their own. *See id.*; *Willens v. 2720 Wisconsin Ave. Coop. Ass'n*, 844 A.2d 1126, 1136 (D.C. 2004).

Under the D.C. Condominium Act, the association has "broad powers to protect its member's property interests in the condominium" and, in performing these duties, must exercise the care required of a fiduciary to the unit owners. *Quincy Park Condo. Unit Owners' Ass'n*, 4 A.3d at 1290. The "broad powers" include the power and duty to: (i) adopt budgets and collect assessments; (ii) regulate the use, maintenance, repair, replacement, and modification of common elements; (iii) cause additional improvements to be made to common elements; (iv) institute and defend litigation on behalf of the association; and (v) hire and discharge managing agents and contractors. D.C. Code § 42-1903.08(a)(2)-(7).

D.C. Code § 42-1902.09 provides that "all decisions and actions of the unit owners' association and its executive board shall be reviewable by a court using the 'business judgment' standard." D.C. Code § 42-1902.09; *Willens v. 2720 Wis. Ave. Coop. Ass'n*, 844 A.2d 1126, 1137 (D.C. 2004). The business judgment rule "is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Willens*, 844 A.2d at 1137. However, the business judgment rule is rebutted, and does not apply, "if the directors are interested or lack independence relative to the decision, do not act in good faith, act in a manner that cannot be attributed to a rational business purpose or reach their decision by a grossly negligent process that includes the failure to consider all material facts reasonably available." *Willens*, 84 A.2d at 1137 (quoting *Brehm v. Eisner*, 746 A.2d 244, 264 n.66 (Del. 2000)).

Here, members of the Wardman Tower Board owe a fiduciary duty to the Association and its unit owners. D.C. Code § 42-1903.08(d). JBG SMITH and Development Services, under the PMA, staffed the Board with JBG SMITH employees. PTX-3386; Tr. 1/7 PM, 72:3-8, 13-16 (Heithaus); Tr. 12/1 PM, 11:22-12:24 (Chang). Developer Defendants controlled the Board from the Association's formation through November 2019.[29] PTX-3386; Tr. 1/7 PM, 72:3-8, 13-16 (Heithaus); Tr. 12/1 PM, 11:22-12:24 (Chang). The fiduciary duties owed extended to NASH Wardman and WT LLC, as declarants of the Residential and Master Condominiums, and JBG SMITH and Development Services, as the entities that directed the affairs of those declarants. At least five JBG and JBG SMITH employees were directed by their JBG and JBG SMITH supervisors to sit on and run the Board. PTX-3386; Tr. 1/7 PM, 72:3-8, 13-16 (Heithaus); Tr. 12/1 PM, 11:22-12:24 (Chang). These employees served as Board members while continuing their responsibilities on the Wardman Tower project as salaried employees of JBG and JBG SMITH. Tr. 12/2 AM, 24:3-25:10 (Chang).

Evidence at Trial shows that the business judgment rule should not apply to decisions made by the Developer Defendant controlled Board because the appointed Board members were "interested or lack[ed] independence relative to the decision." *Willens*, 844 A.2d at 1137. The issue is not solely that the Developer Defendant appointed Board members were JBG and JBG SMITH employees and that they continued work on the Wardman Tower project while serving on the Board, though that is true. The problem is that these Board members took actions that were in the primary interest of the Developer Defendants, acted as a fiduciary to the Developer Defendants, and failed to adequately perform their fiduciary duties owed to the Association and unit owners. Christina Chang, a JBG employee who was directed to sit on the Developer Defendant controlled board, testified that she "w[ore] multiple hats" while sitting on the Wardman Tower Board. Tr. 12/2, AM, 24:3-25:10. She described her role on the Board as, "I'm a fiduciary for the board of

[29] Developer Defendants argue that they did not intend to control the Board because they appointed a unit owner to the Board. 01/08 AM Tr. at 120:14-121:11 (VanHorn). It is disingenuous to argue that the Board was not de facto controlled by Developer Defendants when the majority of Board members were appointed by Developer Defendants, therefore giving those Board members a voting majority. It is undisputed that Developer Defendants controlled the Board until November 2019. PTX-3386; Tr. 1/7 PM, 72:3-8, 13-16 (Heithaus); Tr. 12/1 PM, 11:22-12:24 (Chang).

directors" and "I'm also a fiduciary for our stakeholders and our investors," referring to JBG SMITH. Tr. 12/2, AM, 24:3-9 (Chang). In 2018, for example, after attending a Board meeting where the Association directed the property manager to submit warranty items for payment, she emailed her superiors at JBG SMITH asking for "a good rationale for not agreeing to [payment]." PTX-2723. She described this as "finding that correct balance" between competing interests. Tr. 12/2, AM, 24:3-25:10 (Chang). Her statement that she was acting as a "fiduciary for [JBG SMITH's] stakeholders" while on the Board, and acting in a position of control, demonstrates that she was an interested Board member. Tr. 12/2, AM, 24:3-9 (Chang). Her actions and testimony demonstrated that she acted in the best interests of Developer Defendants at the expense of the Association and unit owners.

In addition to Christina Chang's decision-making as a Board member, the Developer Defendant controlled Board made numerous decisions against the interests of the Association and unit owners, demonstrating failure to act with loyalty and in good faith. First, Thomas Downey Limited ("TDL") issued its Transition Study in November 2018, documenting 132 issues at Wardman Tower including many of the issues relevant to the present litigation. PTX-1506. The Transition Study was based only on documents and a visual examination of exposed areas at Wardman Tower. *Id.* While Developer Defendants "largely agreed with the items that were in the transition study," the Developer Defendant controlled board declined to authorize the additional investigations that the Transition Committee recommended. Tr. 11/13 PM, 95:6-8 (McKay); Tr. 11/12 AM, 66:11-25 (Abbey). Second, in early 2018, Wardman Tower's fire alarm system did not pass its annual inspection, and, in July 2018, the building's general manager recommended a fire watch, which the Developer Defendant controlled board declined to authorize. PTX-3278.00013; PTX-3387; Tr. 11/12 AM, 71:20-72:18 (Abbey). The Developer Defendant controlled board did not institute a fire watch until June 2019 when it was ordered by the D.C. Fire Marshal. It had inexplicably left unit owners to live in a building with an inoperable fire alarm system for fifteen months. Tr. 11/12 AM, 72:19-73:6 (Abbey); Tr. 11/24 AM, 23:24-24:7 (Ellis).

The record shows that, at the time of these actions, the Wardman Tower project was facing significant undercapitalization and Developer Defendants were seeking to substantially cut the project's budget. For example, NASH Wardman had negative equity of minus $14 million in 2019. Tr. 2/18 PM, 92:1-93:10 (Katz); PTXs 3370, 3374, 3378, 3382. Underscoring this point, when the Transition Study was issued, Developer Defendants still owned 14 units at Wardman Tower and would have been responsible for at least 45% of the repair costs via assessments. PTX-29; PTX-569.00101-02. If repairs were delayed, allowing time for more units to be sold to fund the repairs, Developer Defendants would face a smaller share of the repair costs. Notably, in 2019, the Developer Defendants were unable to pay its condo fees as they came due because of a lack of cash reserves. PTX-3323; PTX-3338; PTX-3339. This Court finds that the Developer Defendant controlled Board regularly acted in the interest of Developer Defendants to minimize expenditures on the Wardman Tower project and against the interests of the Association and unit owners. Evidence at Trial shows that the Developer Defendant appointed Board members were "interested or lack[ed] independence relative to the decision." *Willens*, 844 A.2d at 1137. Therefore, this Court finds that the business judgment rule is rebutted.

Absent the business judgment rule, the Court must evaluate whether Developer Defendants' conduct while controlling the Board was fair and reasonable. This Court finds that it was not. Developer Defendants were aware of the serious defects at Wardman Tower and failed to adequately address them. As examples, Developer Defendants were aware of water infiltration through the exterior walls and failed to perform additional testing or appropriately remedy the issue, as recommended by their consultants. PTX-295.00024-25, 998.00006, 898.00032. Tr. 11/17 AM, 143:4-11 (Kenney); Tr. 2/26 PM, 86:11-87:2 (Ege); PTX-708. Developer Defendants were aware of the failing HVAC system, issues with the fire safety system, and outdated elevator system and similarly failed to adequately remedy these issues. Tr. 2/25 AM, Part 1, 63:4-64:10 (McKelvy); Tr. 2/25 AM, Part 2, 19:1-8 (McKelvy); PTX-3278.00013; PTX-3387; Tr. 11/12 AM, 71:20-72:18 (Abbey); Tr. 12/1 AM, 111:17-112:12 (Kelly); Tr. 11/24 AM, 40:14-41:9 (Ellis' grandson); Tr. 12/9 AM, 44:9-12 (Zax); Tr. 1/13 AM, 144:21-145:3 (Hale); Tr.11/12 AM, 122:9-15 (Abbey). Rather than act in the best interest of the Association and unit owners, Developer Defendants used their control of the Board to minimize their own expenditures on the Wardman Tower project, even denying additional investigations after the Transition Study identified 132 issues at Wardman Tower based only on documents and a visual examination of the exposed areas at Wardman Tower. Tr. 11/13 PM, 95:6-8 (McKay); Tr. 11/12 AM, 66:11-25 (Abbey); PTX-1506. As to injury, if the Developer Defendant controlled Board had acted to fix the known renovation defects when they learned of them and authorized additional investigations into those areas, the remediation would have been much less expensive as the Wardman Tower renovation was still ongoing at that time. Tr. 1/14 PM, 77:22–78:2 (Shovlin). This Court finds that Developer Defendants, in controlling the Board, breached their fiduciary duties and caused injury to the Association and unit owners.

From the Association's formation through November 2019, Developer Defendants controlled the Board at Wardman Tower. Under D.C. Code § 42-1903.08(d), members of the Board owed fiduciary duties to the Association and its unit owners. The record shows that the Developer Defendants' appointed Board members were interested and lacked independence while on the Board. *See Willens*, 844 A.2d at 1137. While owing fiduciary duties to the Association and unit owners, these Board members made repeated decisions that were to the financial benefit of their employer, JBG SMITH, and to the detriment of the Association and unit owners. The business judgment rule is therefore rebutted. The Developer Defendant controlled Board's did not act fairly or reasonably as their actions were often against the interests of the Association and unit owners. Lastly, their actions injured the Association and unit owners by significantly increasing the cost to remedy defects by delaying repairs until after the Wardman Tower renovation was complete. Accordingly, this Court finds that Developer Defendants are liable for breaching their fiduciary duties to the Association and unit owners while controlling the Board and enters Judgment in favor of Plaintiff on this claim.

F. Negligent Construction and Renovation Against Plaza (Count XI)

To prevail on a negligence claim, a plaintiff must demonstrate "a duty of care owed by the defendant to the plaintiff, a breach of that duty by the defendant, and damage to the interests of the plaintiff, proximately caused by the breach." *Turner v. District of Columbia*, 532 A.2d 662, 666 (D.C. 1987) (quoting *District of Columbia v. Cooper*, 483 A.2d 317, 321 (D.C. 1984)). "'Where a particular statutory or regulatory standard is enacted to protect persons in the plaintiff's position or to prevent the type of accident that occurred, and the plaintiff can establish his relationship to the statute, *unexplained* violation of that standard renders the defendant negligent as a matter of law.'" *Ceco Corp. v. Coleman*, 441 A.2d 940, 945 (D.C. 1982) (quoting *Richardson v. Gregory*, 281 F.2d 626, 629 (D.C. 1960)). "If a party charged with statutory or regulatory negligence produces competent evidence tending to explain or excuse [their] violation . . . the violation is evidence of negligence, but not negligence as a matter of law." *Ceco Corp. v. Coleman*, 441 A.2d 940, 945 (D.C. 1982) (citing *Hecht Co. v. McLaughlin*, 214 F.2d 212, 215-16 (D.C. 1954)).

Unlike Developer Defendants, Plaza appropriately pled the economic loss doctrine as an affirmative defense. "Generally, under the 'economic loss' rule, a plaintiff who suffers only pecuniary injury as a result of the conduct of another cannot recover those losses in tort." *Aguilar v. RP MRP Wash. Harbour, LLC*, 98 A.3d 979, 982 (D.C. 2014) (citing *Apollo Group, Inc. v. Avnet, Inc*., 58 F.3d 477, 479 (9th Cir. 1995)). Courts have recognized an exception to the economic loss doctrine, when a "special relationship" between parties "provide[s] an independent duty of care," often described as an "intimate nexus." *Aguilar*, 98 A.3d at 984. In *Agilar*, the court analyzed whether the defendants had an "obligation . . . to care for [the plaintiffs'] economic well-being" or an "obligation" that "implicate[d] appellants' economic expectancies." 98 A.3d at 985. In *Whitt*, the court found that a special relationship was established given "extensive activity over a prolonged period, and the provisions of the permit specifically protecting appellant from the effects of [the] conduct." *Whitt*, 157 A.3d at 206.

Plaintiff argues that Plaza had an independent statutory duty to renovate Wardman Tower in accordance with D.C. Code, including duties designed to protect condo purchasers and occupants from unreasonably dangerous conditions. Plaintiff's Post-Trial Brief at 47-48. Plaintiff argues that this duty in itself is an exception to the economic loss rule. To this point, Plaintiff cites Maryland law that held, "the duty of builders and architects to use due care in the design, inspection, and construction of a building extends to those persons foreseeably subjected to the risk of personal injury because of a latent and unreasonably dangerous condition resulting from that negligence." *Council of Co-Owners Atlantis Condominium, Inc. v. Whiting-Turner Contracting Co.*, 517 A.2d 336, 338, 344 (Md. 1986). Courts in the District of Columbia have not affirmatively held purely economic loss is recoverable in tort where a "defect creates a substantial and unreasonable risk of death or personal injury," as Plaintiff argues. *Lloyd v. General Motors*

Corp., 916 A.2d 257, 264 (Md. 2007) (citing *Atlantis Condominium*, 517 A.2d at 345). Rather, courts in the District of Columbia have rooted the inquiry in whether a "special relationship" between parties "provide[s] an independent duty of care." *Aguilar*, 98 A.3d at 984. This Court need not affirmatively rule on whether Maryland law applies here. Rather, as discussed below, any duty created, via the special relationship between Developer Defendants and Plaintiff or otherwise, begins and ends with Developer Defendants.

It is undisputed that there were no contractual relationships between unit owners and Plaza. Tr. 2/26 PM, 29:11-14 (Ege). Plaza entered a contract with NASH Wardman in 2015 as general contractor to perform specified new construction in interior renovation at Wardman Tower. PTX-1918; Tr. 12/9/25 AM 95:20-97:16, 100:21-101:21 (Peyton). Plaintiff argues that a special relationship was formed between Plaza and unit owners because Plaza directly communicated with residents about the project and Plaza's subcontractors also worked directly with residents. Tr. 2/26 PM, 52:22-54:5 (Ege); PTX-579; Tr. 11/13 AM, 116:9-25 (Meehan); Tr. 11/13 AM, 10:15-11:1 (Abbey); Tr. 12/9 AM, 81:11-82:15 (Zax); Tr. 2/19 AM, 126:14-127:7 (May); PTX-556J; Tr. 2/25 AM, Part 2, 41:1-6 (McKelvy); PTX-3481. Further, Plaintiff argues that there was an "intimate nexus" because Plaza knew unit owners would be harmed by a failure to exercise due care and unit owners relied on Plaza to perform competently.

The evidence at Trial, however, does not support this finding of an "intimate nexus" or "special relationship." Rather that relationship ran directly to Developer Defendants, who were ultimately responsible for marketing, selling, renovating, and managing Wardman Tower. In *Aguilar*, employees of retail establishments in the Washington Harbour complex sought to recover lost wages from the owner and the manager of the property. 98 A.3d at 980. The court found that "there was no mutually agreed upon relationship between the parties . . . [r]ather, it was [plaintiffs'] employers who had a direct relationship with [plaintiffs] as commercial tenants." *Id.* at 986. Here, like *Aguilar*, there is an intermediary party in Developer Defendants who contracted with both parties. Jennifer May, a Plaza employee, testified that Plaza would direct the unit owner back to Developer Defendants if a unit owner tried to approach Plaza with a request or complaint. Tr. 2/19/26 AM 26:21-27:20 (May). Plaza employee Peter Ege testified that Plaza only communicated with unit owners directly if directed by Developer Defendants to enter a unit after the unit owner raised a complaint. Tr. 2/26/26 PM 29:15-30:21 (Ege). Plaintiff points to the fact that Plaza issued a community newsletter to unit owners but, as Plaza notes, the newsletter was issued on behalf of Developer Defendants to provide construction updates and did not include any contact information for Plaza or any of Plaza's subcontractors. PTX-556J; Tr. 1/13 PM 38:7-39:11 (Hale).

Any independent duty created by a substantial and unreasonable risk of death or personal injury runs to Developer Defendants, not Plaza. Developer Defendants, rather than Plaza, were responsible for the design decisions at Wardman Tower. Plaza, in turn, was responsible for implementing the designs provided by Developer Defendants and their contractors. All changes to construction were approved by Developer Defendants. Plaza-14; Tr. 2/3 AM 30:21-31:4, 40:11-41:16 (Friedlander). For example, Todd Friedlander, an employee of the contracted architectural firm ACG employed by Developer Defendants, reviewed submittals, responded to RFIs, issued bulletins, signed off on change orders, and coordinated design decisions at Wardman Tower with sub-consultants. Tr. 12/11 PM, 19:8-12 (Hennemuth); DD18750; Tr. 2/3 AM, 27:14-31:8, 79:22-80:19 (Friedlander); Tr. 2/26 AM, 54:21-24 (Ege). This Court finds that there is not a "special relationship" or "close nexus" between Plaza and unit owners, as represented by Plaintiff and that the economic loss doctrine bars Plaintiff's recovery against Plaza. Accordingly, this Court finds that Plaza is not liable under Plaintiff's negligent construction and renovation claim and enters Judgment in favor of Plaza on this claim.

VI. DAMAGES

A. This Court Awards $118,695,171.00 in Compensatory Damages

In construction defect cases, the proper measure of damages is the cost of repairing the defective work. *See Milton Co. V. Council of Unit Owners of Bentley Place Condo.*, 708 A.2d 1047, 1050 (Md. Ct. Spec. App. 1998), *aff'd*, 729 A.2d 981 (Md. 1999) (affirming jury award for cost-of-repair damages itemized by building component and including direct construction costs, general conditions, and contingencies). "A plaintiff need prove damages only with reasonable certainty." *NCRIC, Inc. v. Columbia Hosp. for Women Med. Ctr., Inc*., 957 A.2d 890, 902 (D.C. 2008). While a damages award "may not be based on speculation or guesswork, it may be a just and reasonable estimate based on relevant data." *Id.* However, "mathematical precision is not required." *Id.* at 903; *see also Sears, Roebuck & Co. v. Goudie*, 290 A.2d 826, 833 (D.C. 1972) (affirming damages where "proof of the actual amount . . . may have lacked mathematical precision" but methodology was "sufficiently precise to prove damages"). The D.C. Court of Appeals has held that only "a reasonable basis for approximation" is required to recover damages, recognizing that rigid exactitude is neither achievable nor expected. *See, e.g.*, *Trs. of Univ. of D.C. v. Vossoughi*, 963 A.2d 1162, 1174 n.14 (D.C. 2009).

Plaintiff's evidence of damages clearly meets the reasonable certainty standard. Plaintiff has delineated the cost of the proposed repairs and shown in great detail that the proposed repairs will redress the identified harms, which are fully explained throughout this Order. Daniel Shovlin, the Vice President and Director of Operations at Faithful and Gould[30] ("F+G") testified on behalf

[30] Faithful and Gould's name changed to AtkinsRealis, where Mr. Shovlin is currently employed. Tr. 1/14 PM, 8:14-9:7 (Shovlin).

of Plaintiff as to cost estimates to repair the identified issues at Wardman Tower. This Court credits F+G's AACE Class 4 Estimate as appropriate to estimate the cost to repair the defective construction at Wardman Tower. Tr. 1/20 AM, 53:19-54:4 (Shovlin); Tr. 1/20 PM, 5:25-6:5 (Shovlin). F+G's cost estimate appropriately details the fair market value of the scope of work if it were bid out in a competitive process among contractors. Tr. 1/14 PM, 27:4-22, 30:9-12, 81:3-21 (Shovlin). Developer Defendants concede that all building components require some level of repair, with the exception of the exterior above-grade walls and windows, but disagree as to Plaintiff's scope and cost of repair.[31] Evidence at Trial showed that Developer Defendants' proposed remedies would fail to address the issues that plague the Wardman Tower project. Their minimal proposed scope of repair, and insufficient cost estimates, are indicative of their continued effort to inadequately fund the Wardman Tower project. If Developer Defendants had properly renovated and repaired Wardman Tower during the condominium conversion, the cost of repair would have been far less. Tr. 1/14 PM, 77:22–78:2 (Shovlin).

F+G's cost estimate totals $161,738,279.00 and includes: (i) direct construction costs of $83,783,279.00; (ii) general requirements of $21,618,140.00; (iii) general conditions of $13,430,680.00; (iv) other project costs of $35,204,354.00 (including moving and temporary housing costs); and (v) a 5% project contingency of $7,701,823.00. Tr. 1/15 AM, 88:4-9 (Shovlin); Tr. 01/15 PM, 39:6-43:10 (Shovlin). Additionally, Plaintiff's expert David Mirch, testified that the elevator modernization estimate of $1,126,200.00 was fair and reasonable. PTX-1084; Tr. 11/25 PM, 44:3-45:19 (Mirch).

[31] Developer Defendants' expert Ayo Idowu testified as to cost estimation. This Court found his testimony unpersuasive, as his analysis was necessarily incomplete because Developer Defendants did not provide him sufficient information to form a practical counter argument to Mr. Sholvin's estimations. His analysis and cost estimations are therefore unreliable.

As to Plaintiff's direct construction cost estimate, this Court finds F+G's cost estimates persuasive given evidence presented at Trial (*see* Tr. 1/15 PM, 39:6-43:10 (Shovlin); Tr. 1/14 PM 86:10-87:5 (Shovlin)), with the exception of the exterior above-grade walls. This Court finds that Plaintiff's cost estimate related to the exterior above-grade walls is excessive given the nature of the repair. F+G estimated that the direct construction costs related to the exterior above-grade walls total $60,297,754.00. The proposed repair for the exterior above-grade walls is novel only in its combination of steps and variations of the process have been performed successfully in other instances. Tr. 1/7 AM, 26:10-27:14 (Davidson); Tr. 11/20 AM, 124:16-125:5 (Guedelhoefer). As such, this Court finds that $36,178,652.00 in direct construction costs related to the exterior above-grade walls is appropriate. Consequently, Plaintiff's total damages for direct construction costs are $59,664,117.00.[32]

As to Plaintiff's cost estimates for indirect costs, including general requirements, general conditions, other project costs including moving and temporary housing, this Court finds F+G's cost estimates persuasive given evidence presented at Trial. General requirements are costs to facilitate work by the trade contractors and cleaning costs. Tr. 1/14 PM, 63:19-64:20 (Shovlin). General conditions are the indirect costs required to manage and supervise the project by the general contractor or construction manager, including staffing costs for positions such as superintendent, construction manager, and project manager. Tr. 2/17 PM, 39:15-20 (Idowu); 1/14 PM, 68:11-69:21; 69:22-70:11 (Shovlin). Other project costs include the costs of moving and temporary housing, permits, fees, and contingencies. Tr. 1/15 AM, 40:23-41:12 (Shovlin). F+G estimated that indirect costs, including general requirements, general conditions, and other project costs, will total 84% of the direct construction costs. Tr. 1/15 AM, 88:4-9 (Shovlin); Tr. 01/15 PM,

[32] This direct construction cost total excludes the cost for elevator repairs and modernization and the reduction for wood flooring repairs, which are discussed below.

39:6-43:10 (Shovlin). Given the reduction in total damages for direct construction costs, this Court finds it appropriate to reduce indirect costs accordingly. Consequently, Plaintiff's total damages for indirect costs is $50,117,909.00.

As to Plaintiff's estimate for project contingency, this Court finds that a 5% project contingency is appropriate to account for regulatory changes, scope deviations, and market volatility. Tr. 1/15 AM, 86:21-87:13 (Shovlin). Direct costs and indirect costs total $109,782,086.00. Therefore, the 5% project contingency totals $5,489,104.00. Consequently, Plaintiff's damages increase to $115,271,190.00.

With respect to the wood flooring, this Court finds that F+G's cost estimate should be reduced by $7,402,743.00 as Plaintiff proposed in their post-trial briefing. Mr. Shovlin testified at Trial that removing the remediation of the wood flooring from the total damages would reduce the recovery amount, including direct costs, indirect costs, and contingencies, by $7,402,743.00. Tr. 1/15 AM, 90:7-91:21 (Shovlin). Consequently, Plaintiff's damages decrease to $107,868,448.00.

Finally, Plaintiff's and Developer Defendants' experts agreed that full elevator modernization is required and the elevator modernization estimate of $1,126,200.00 is fair and reasonable. PTX-1084; Tr. 11/25 PM, 44:3-45:19 (Mirch). This Court agrees. Consequently, Plaintiff's damages increase to $108,994,648.00.

Additionally, Mr. Shovlin testified that, because their estimates are as of June 2023, the Building Cost Index ("BCI") should be applied to reflect the increase in building costs from June 2023 to June 2023. Tr. 1/14 PM, 39:6-10 (Shovlin). The BCI is widely used in the construction industry and shows that prices for building projects rose 8.9% from June 2023 to January 2026. Tr. 1/14 PM, 34:14-35:3; 39:6-10 (Shovlin). This Court therefore finds that Plaintiff's damages should be increased by 8.9% to reflect the current cost of construction and building materials. Consequently, Plaintiff's total damages are $118,695,171.00 to reflect the 8.9% BCI escalator.

B. This Court Awards Statutory Damages under the CPPA

Under the CPPA, a plaintiff may recover treble damages "or $1,500 per violation, whichever is greater." D.C. Code § 28-3905(k)(2)(A)(i). "The purpose of the treble damages provision of the CPPA is remedial." *Modern Mgmt. Co. v. Wilson*, 997 A.2d 37, 56 (D.C. 2010). Treble damages "are not a substitute for punitive damages and the heightened proof requirements for punitive damages do not apply." *Id.* at 57 (quoting *Dist. Cablevision Ltd. P'ship*, 828 A.2d at 727). Further, "the treble damages provision of the CPPA . . . authorizes the court to treble damages without the plaintiff having to establish anything beyond the CPPA violation itself." *Id.*; *see also Byrd v. Jackson*, 902 A.2d 778, 782 (D.C. 2006) (quoting *Dist. Cablevision Ltd. P'ship*, 828 A.2d at 729) (holding that the defendant's "false advertising of his services alone sufficed to justify the trebling" because "the CPPA authorizes [the] court[] to treble damages without further findings" once any damage to the consumer has been established). When trebling damages, courts consider the economic and non-economic harms suffered by the plaintiff. *See Modern Mgmt. Co.*, 997 A.2d at 57.

Here, Developer Defendants concealed the true condition of Wardman Tower, resulting in harm to Plaintiff totaling $118,695,171.00. Unit owners, as represented by Plaintiff, purchased multi-million dollar condominiums at Wardman Tower that were promised to be the pinnacle of luxury. In reality, what they received was anything but the pinnacle of luxury. Plaintiff, an Association made up of just 32 unit owners, endured over five years of litigation to hold Developer Defendants to account for the damage they caused. Developer Defendants' decisions to cut corners on the Wardman Tower project resulted in unit owners moving in and out of their units multiple times so repairs could be completed, the Association paying significantly for repairs that should have been addressed in the original construction and renovation, and bearing the cost of this litigation. As unit owner and former Board president Ms. Dixon testified, unit owners were "stretched in ways they did not anticipate given what [they] bought into" by the scale of necessary investigation and required repairs at Wardman Tower. Tr. 1/14 AM, 18:1-24 (Dixon). In response, Developer Defendants have prolonged this litigation for years despite conceding many of the building defects at issue. Consequently, this Court finds that treble damages are appropriate under the CPPA.

The Court finds that Plaintiff has met its burden to show that it is entitled to treble damages as Developer Defendants are liable for CPPA violations for misrepresentations and omissions under D.C. Code § 28-3904(e) and (f). Unit owners, as represented by Plaintiff, suffered actual damages that total $118,695,171.00. Consequently, this Court finds in favor of Plaintiff and awards treble damages.

C. This Court Withholds Judgment on Attorney's Fees and Costs

The CPPA entitles a prevailing plaintiff to recover "[r]easonable attorney's fees." D.C. Code § 28-3905(k)(2)(A)(i)-(B). Here, Plaintiff requests attorney's fees under the CPPA. Plaintiff Post-Trial Brief at 67. "The determination of reasonableness of attorneys['] fee[s] lies within the trial court's sound discretion." *Sagalyn v. Foundation for Preservation of Historic Georgetown*, 691 A.2d 107, 115 (D.C. 1997) (citing *Hampton Courts v. District of Columbia Rental Hous. Comm'n*, 599 A.2d 1113, 1115 (D.C. 1991). Plaintiff has not, to date, briefed this Court as to reasonable attorney's fees. This Court cannot, therefore, "compute the number of hours reasonably expended on the litigation, excluding any claimed hours that are excessive, redundant, or unnecessary." *District of Columbia v. Jerry M.*, 580 A.2d 1270, 1281 (D.C. 1990). Plaintiff shall submit their brief in support of reasonable attorney's fees within 30 days of this Order.

Accordingly, it is this 31st day of July, 2026, hereby,

ORDERED that **JUDGMENT** as to Counts I, II, III, IV, and X is entered against Defendants NASH Wardman Tower Residential LLC, JBG SMITH Properties, JBG SMITH Properties LP, Wardman Tower Residential LLC, and JBG/Development Services, LLP (collectively, "Developer Defendants") and in favor of Plaintiff; and it is further

ORDERED that **JUDGMENT** as to Counts V, VI, and VII is entered against NASH Wardman Tower Residential LLC and Wardman Tower Residential LLC and in favor of Plaintiff; and it is further

ORDERED that **JUDGMENT** as to Count VIII is entered against Plaintiff and in favor of NASH Wardman Tower Residential LLC; and it is further

ORDERED that **JUDGMENT** as to Count IX is entered against Plaintiff and in favor of Developer Defendants; and it is further

ORDERED that **JUDGMENT** as to Count XI is entered against Plaintiff and in favor of Plaza Construction D.C. LLC; and it is further

ORDERED that Developer Defendants' Partial Motion to Dismiss Third Amended Complaint is **DENIED**; and it is further

ORDERED that JBG/Development Services, LLP's Motion to Dismiss Third Amended Complaint is **DENIED**; and it is further

ORDERED that Developer Defendants' Motion for Judgment on Partial Findings is **DENIED**; and it is further

ORDERED that within sixty (60) days Developer Defendants shall pay $356,085,513.00[33] in damages to Plaintiff; and it is further

[33] This amount is the total damages finding of $118,695,171.00 trebled.

ORDERED that Plaintiff shall submit their brief in support of reasonable attorney's fees within thirty (30) days of this Order, by August 31, 2026.

IT IS SO ORDERED.

Judge Yvonne Williams

Date: July 31, 2026

Copies to:

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