

**Builders Lien Act  
(Section 7 (10))**

**CERTIFICATE OF COMPLETION**

We, RDH Building Engineering Limited, of 224 West 8<sup>th</sup> Avenue – Vancouver, British Columbia certify that, for the purposes of the Builders Lien Act, the following contract was completed on March 04, 2003.

Street address or other description of the land affected by the improvement:

Newport on Main  
Building A: 3480 Main Street  
Building B: 225 East 19<sup>th</sup> Ave.  
Building C: 228 East 18<sup>th</sup> Ave.  
Building D: 235 East 19<sup>th</sup> Ave., Building E: 245 East 19<sup>th</sup> Ave.,  
Building F: 248 East 19<sup>th</sup> Ave., Building G 238 East 18<sup>th</sup> Ave.  
Vancouver, B.C.

Brief description of the improvement:

Exterior Envelope Rehabilitation

Brief description of the contracts, including the date of the contract and the names of the parties to it:

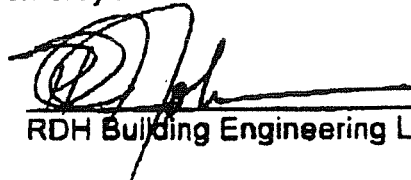
Exterior Envelope Rehabilitation – CCDC II Contract between

The Owners, LMS 1000

and

PR Pomeroy Restoration & Construction Ltd.

Signed:

  
RDH Building Engineering Ltd.

Date:

03 - 04 - 03  
(month, day, year)



**WILLIS CANADA INC.  
1500-1095 WEST PENDER STREET  
VANCOUVER, BC V6E 2M6**

***DECLARATIONS***

Policy No. WCI 1069-003

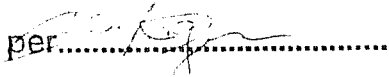
**THE INSURANCE COMPANY(IES) SIGNATORY HERETO  
(HEREINAFTER CALLED THE INSURER(S))  
FOR THEIR RESPECTIVE INTEREST  
BY THIS POLICY AGREE TO PROVIDE WARRANTY COVERAGE TO:**

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<b>NAME OF STRATA CORPORATION/HOLDER:</b>	"Newport on Main" Strata Plan LMS 1000
<b>ADDRESS:</b>	3480 Main Street Vancouver, BC V5N 3N2
<b>COMMENCEMENT DATE:</b>	March 4, 2003
<b>EXPIRY DATE:</b>	
<b>MATERIALS AND LABOUR: WATER PENETRATION:</b>	March 4, 2005 5 Years/ 10 Years March 4, 2008 (balcony surfaces, deck surfaces, and walkways) March 4, 2013 (elsewhere)
<b>LIMIT OF LIABILITY:</b>	\$6,112,005
<b>SCOPE OF REPAIRS:</b>	Building Envelope Renovation Performed under contract by PR Pomeroy Restoration & Construction Ltd.
<b>INSURER:</b>	<b>Commonwealth Insurance Company</b> 595 Burrard Street, Suite 1500 Box 49115 Bentall Tower Three Vancouver, BC

IN WITNESS WHEREOF, the Insurer, has duly executed this Policy. PROVIDED, however, that this Policy is not valid unless signed by an authorized representative of the Insurer.

WILLIS CANADA INC.

per  .....

\_\_\_\_\_  
Authorized Representative

Effective March 4, 2003  
Date

## LIMITS OF LIABILITY – STANDARD WARRANTY COVERAGE

1. Pursuant to the cover set out in the Insuring Agreement the Insurer shall be responsible for no more than the amount stated in the Declarations section of this Policy.
2. If a strata consists of one or more Residential Building in a single strata plan, the limits of coverage stated in the Declarations section of this Policy apply with respect to the cost of the Building Envelope Renovation of each Residential Building as specified in the Declarations.
3. In calculating the cost of claims for standard limits under coverage, the Insurer will include:
  - (a) the cost of repairs;
  - (b) the cost of investigation, engineering and design required for repairs;
  - (c) the cost of supervising repairs, including the cost of professional review of the repairs;
  - (d) the cost of investigation, engineering and design required for alleged claims and complaints.
4.
  - (a) If repairs are required under a Labour and Materials Warranty or Water Penetration Warranty and damage to the Residential Building, or a portion of it or the extent of the repairs renders the Residential Building or portion of it uninhabitable, the Labour and Materials Warranty or Water Penetration Warranty must cover reasonable living-out expenses incurred by the Holder, or, in the case of a strata corporation or other corporation, members of that strata corporation or other corporation;
  - (b) The maximum amount is \$100 per day (or the paid amount, whichever is less) for the reimbursement of the actual accommodation expenses incurred by a Holder or member of a Holder strata corporation at a hotel, motel or other rental accommodation up to the day the Residential Building or portion of it is ready for occupancy, subject to the owner receiving 24 hours advance notice that the Residential Building will be ready for occupancy on that day.

## INSURING AGREEMENT

The Insurer will pay on behalf of the Holder/Strata Corporation/Members of a Strata Corporation during the periods of insurance noted (subject to the terms, conditions, limits, definitions and exclusions contained herein) for:

### 1. LABOUR AND MATERIALS WARRANTY

The coverage for the Labour and Materials Warranty is:

- (a) in the first twenty-four (24) months from the Commencement Date:

- (i) coverage for any Defect in labour and materials on a Building Envelope Renovation; and
- (ii) subject to definition, non-compliance with Building Code;
- (b) non-compliance of a Building Code is considered a Defect covered by this Policy if the non-compliance:
  - (i) constitutes an unreasonable health or safety risk; or
  - (ii) has resulted in, or is likely to result in, material damage to the Building Envelope of a Residential Building.

## 2. WATER PENETRATION WARRANTY

The coverage for Water Penetration Warranty is:

- (a) in the first \* one hundred twenty (120) months from the Commencement Date:
    - (i) coverage for further Defects in the Building Envelope which permits Unintended Water Penetration that causes or is likely to cause material damage to the Building Envelope of each applicable face of the Residential Building.
- \* sixty (60) months in respect of balcony surfaces, deck surfaces, and walkways

## 3. LIVING OUT ACCOMMODATION EXPENSES

The living out accommodation expenses actually incurred by the Holder/Strata Corporation/Members of that Strata Corporation at a hotel, motel or other rental accommodation due to repair work that renders the Residential Building or portion of it uninhabitable.

## 4. REPAIR/REPLACEMENT OF DEFECTS

Any repairs or replacement of Defects pursuant to this Policy shall be covered against Defect in labour and material until the later of one (1) year from the date of completion of the repair or replacement or to the Expiry Date of the applicable Policy coverage.

## EXCLUSIONS – PERILS

This Policy does not cover:

1. Unless specifically noted in the Declarations, this Policy does not cover Water Penetration on the face of a Residential Building where:
  - (a)
    - (i) less than 60% of the Cladding Surface of a Residential Building underwent Building Envelope Renovation;
    - (ii) less than 60% of the Cladding Surface of a face of a Residential Building underwent Building Envelope Renovation;
  - (b) caused by flood;
  - (c) caused by breakage of or leakage from plumbing lines or systems;
  - (d) caused by irrigation systems;

- (e) caused by broken windows;
  - (f) caused by fire sprinkler systems.
2. Loss or damage caused directly or indirectly by work performed by any person or party beyond that set out in the HPO Building Envelope Renovation Schedule. This exclusion does not apply to work performed pursuant to paragraph 5 of the Insuring Agreement section of this Policy.
  3. Weathering, normal wear and tear, deterioration or deflection consistent with normal industry standards.
  4. Normal shrinkage of materials caused by drying after construction.
  5. Loss or damage arising from non-residential purposes.
  6. Loss or damage that is caused by or made worse by a Holder/Strata Corporation/Owners of a Strata Corporation or any third party, including:
    - (a) negligent or improper maintenance or operation;
    - (b) failure to comply with the warranty requirements of the manufacturers of material, equipment, appliances or fixtures;
    - (c) unreasonable refusal to permit the Insurer, Building Envelope Consultant, Building Envelope Renovator or the respective authorized representatives access to the Residential Building at all reasonable times to:
      - (i) monitor the Building Envelope Renovation or its components;
      - (ii) inspect for required maintenance;
      - (iii) investigate complaints or claims, or
      - (iv) undertake repairs under the Labour and Materials, Design Defect or Water Penetration Warranty;
    - (d) materials or work supplied by anyone other than the Building Envelope Renovator, Building Envelope Consultant or the employees, agents or subcontractors of either;
    - (e) failure to take timely action to prevent or mitigate loss or damage, including the failure to give prompt notice to the Insurer of a Defect or discovered loss or a potential Defect or loss.
  7. Loss or damage that is caused by rodents, insects or other animals unless the damage results from non-compliance with Building Code by the Building Envelope Renovator, its employees, agents or subcontractors.
  8. Accidental loss or damage from acts of nature including, but not limited to, fire, explosions, smoke, water escape, glass breakage, windstorm, hail, lightning, falling trees, aircraft, vehicles, flood, earthquake, avalanche, landslide and changes in the level of the underground water table which are not foreseeable by the Building Envelope Renovator, Building Envelope Consultant, or the employees, agents or subcontractors of either.
  9. Bodily injury.
  10. Subsidence of the land around the Residential Building or along utility lines.

11. Diminution in the value of property.
12. The actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of Pollutants, including, without limitation, any liability arising from uninhabitability or health risk attributable to Pollutants, contaminants or irritants (including, without limitation, the presence or consequence of radon gas or formaldehyde) or attributable to the presence of or proximity to hazardous or toxic materials.
13. Any government direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants.
14. Abnormal loading on floors, that exceeds design loads.
15. Loss or damage to building components and products where:
  - (a) the component or product has a manufacturer's warranty; and
  - (b) the manufacturer's warranty has been transferred to the Holder/Strata Corporation/Owners of a Strata Corporation (automatically or through necessary action by the Building Envelope Renovator or Holder/Strata Corporation/Owners of a Strata Corporation); and
  - (c) the provisions, terms and conditions applying to the manufacturer's warranty (i.e.: maintenance requirements) have been provided to the Holder/Strata Corporation/Owners of a Strata Corporation in order to understand the Warranty and undertake any action as in required by the warranty;
  - (d) the Holder/Strata Corporation/Owners of a Strata Corporation fails to comply with the provisions, terms and conditions applying to the manufacturer's warranty.
16. Implied or expressed warranties or representations made by a Building Envelope Renovator or Building Envelope Consultant, the employees, agents or subcontractors of either to a Holder/Strata Corporation/Owners of a Strata Corporation except as set out in this Policy.

#### **EXCLUSIONS – PROPERTY**

This Policy does not cover:

1. Labour, materials or design supplied by the Holder/Strata Corporation/Owners of a Strata Corporation.
2. Loss or damage to real or personal property which is not part of the Residential Building.
3. Landscaping (hard and soft) including plants, fencing, detached patios, planters, gazebos and similar structures.
4. Non-residential structures.
5. Any commercial use area and any construction associated with commercial use.



6. Roads, curbs, lanes, driveways or walkways.
7. Site grading, surface drainage, except as required by Building Code.
8. The operation of municipal services, including sanitary and storm sewers.
9. Septic tanks and fields.
10. The quantity or quality of water.
11. A water well.

## **MEDIATION**

1. If a dispute between the Insurer and Holder/Strata Corporation/Owners of a Strata Corporation arising under this Policy cannot be resolved by informal negotiation within a reasonable time, the Holder/Strata Corporation/Owners of a Strata Corporation may, at the Holder/Strata Corporation/Owners of a Strata Corporation sole election, require that the dispute be referred to Mediation by delivering to the Insurer a written request to Mediate.
2. If the Holder/Strata Corporation/Owners of a Strata Corporation delivers a request to Mediate under subsection (1), the Insurer and the Holder/Strata Corporation/Owners of a Strata Corporation must attend a Mediation Session in relation to the dispute.
3. In addition to the requirements of subsection (2), the Insurer or Holder/Strata Corporation/Owners of a Strata Corporation may invite to participate in the Mediation any other party to the dispute who may be liable.
4. Within twenty-one (21) days after the Holder/Strata Corporation/Owners of a Strata Corporation has delivered a request to Mediate under subsection (1), the parties must, directly or with the assistance of an independent, neutral person or organization, jointly appoint a mutually acceptable Mediator.
5. If the parties do not jointly appoint a mutually acceptable Mediator within the time required by subsection (4), the Holder/Strata Corporation/Owners of a Strata Corporation may apply to a roster Organization which must appoint a Mediator taking into account:
  - (a) the need for the Mediator to be neutral and independent;
  - (b) the qualifications of the Mediator;
  - (c) the Mediator's fees;
  - (d) the Mediator's availability;
  - (e) any other consideration likely to result in the selection of an impartial, competent and effective Mediator.

6. Promptly after a Roster Organization selects the Mediator under subsection (5), the Roster Organization must notify the parties in writing of that selection.
7. The Mediator selected by a Roster Organization is deemed to be appointed by the parties effective the date of the notice sent under subsection (6).
8. The date, time and place of the first Mediation Session must be scheduled by the Mediator, and the first Mediation Session must occur within twenty-one (21) days of the appointment of the Mediator.
9. Despite subsection (2), a party may attend a Mediation Session by representative if:
  - (a) the party is under legal disability and the representative is that party's guardian *ad litem*;
  - (b) the party is not an individual; or
  - (c) the party is a resident of a jurisdiction other than British Columbia and will not be in British Columbia at the time of the Mediation Session.
10. A representative who attends a Mediation Session in the place of a party referred to in subsection (9):
  - (a) must be familiar with all relevant facts on which the party, on whose behalf the representative attends, intends to rely, and
  - (b) must have full authority to settle, or have immediate access to a person who has full authority to settle, on behalf of the party on whose behalf the representative attends.
11. A party or representative who attends the Mediation Session may be accompanied by counsel.
12. Any other person may attend a Mediation Session if that attendance is with the consent of all parties or their representatives.
13. At least seven (7) days before the first Mediation Session is to be held, each party must deliver to the Mediator a statement briefly setting out:
  - (a) the facts on which the party intends to rely, and
  - (b) the matters in dispute.
14. Promptly after receipt of all of the statements required to be delivered under subsection (13), the Mediator must send each party's statement to each of the other parties.
15. Before the first Mediation Session, the parties must enter into a retainer with the Mediator which must:
  - (a) disclose the cost of the Mediation service, and
  - (b) provide that the cost of the Mediation will be paid:
    - (i) equally by the parties, or
    - (ii) on any other specified basis agreed by the parties.

16. The Mediator may conduct the mediation in any manner he or she considers appropriate to assist the parties to reach a resolution that is timely, fair and cost-effective.
17. A person must not disclose, or be compelled to disclose, in any proceeding oral or written information acquired or an opinion formed, including, without limitation, any offer or admission made in anticipation of or during a Mediation Session.
18. Nothing in subsection (17) precludes a party from introducing into evidence in a proceeding any information or records produced in the course of the Mediation that are otherwise producible or compellable in those proceedings.
19. A Mediation Session is concluded when:
  - (a) all issues are resolved;
  - (b) the Mediator determines that the process will not be productive and so advises the parties or their representatives; or
  - (c) the Mediation Session is completed and there is no agreement to continue.
20. If the Mediation resolves some but not all issues, then at the request of all parties the Mediator may complete a report setting out any agreements that the parties to the Mediation have made as a result of the Mediation, including, without limitation, any agreements made by the parties on any of the following:
  - (a) facts;
  - (b) issues;
  - (c) future procedural steps.

## DEFINITIONS

1. **Building Code** means:
  - (a) the British Columbia Building Code established under the *Municipal Act*; or
  - (b) the Vancouver Building Bylaw established under the *Vancouver Charter*.
2. **Building Envelope** means the assemblies, components and materials of a Residential Building that are intended to separate and protect the interior space of the Residential Building from the adverse effects of exterior climatic conditions. For the purposes of coverage under this policy, Building Envelope also means balcony surfaces, deck surfaces, and walkway surfaces forming part of the Building Envelope Renovation.
3. **Building Envelope Consultant** means a person, including an architect or professional engineer, who investigates defects in the Building Envelope of a Residential Building and provides plans, specifications or other advice on the design, evaluation or construction of a Building Envelope Renovation or who is engaged to supervise the work of a Building Envelope Renovator making a Building Envelope Renovation.

4. **Building Envelope Renovation** means the design and construction work on a Residential Building:
  - (a) to repair Defects or deficiencies in the Building Envelope which allow Unintended Water Penetration, or
  - (b) to repair damage caused by Unintended Water Penetration.
5. **Building Envelope Renovator** means a residential renovator who is licensed under the *Homeowner Protection Act* to engage in, arrange for or manage all, or substantially all, of a Building Envelope Renovation.
6. **Cladding Surface** means components of a Residential Building which are exposed to the outdoor environment and are intended to provide protection against wind, water or vapour but does not include:
  - (a) roof surfaces of the Residential Building, or
  - (b) a window unless the Building Envelope Renovation includes:
    - (i) the replacement of the window with a new window or other material; or
    - (ii) the removal, modification and re-installation of the modified window.

For the purposes of coverage under this policy, Cladding Surface also means balcony surfaces, deck surfaces, and walkway surfaces forming part of the Building Envelope Renovation.

7. **Commencement Date** means the date at which Substantial Completion takes place and that all conditions set by the Insurer have been met.
8. **Common Property** has the same meaning as in the *Condominium Act* but does not include land.
9. **Defect or Defects** means any design or construction that:
  - (a) is contrary to the Building Code; or
  - (b) requires repair or replacement due to the default or negligence of:
    - (i) a Building Envelope Renovator or person for whom the Building Envelope Renovator is responsible at law; or
    - (ii) a Building Envelope Consultant or person for whom the Building Envelope Consultant is responsible at law.
10. **Defects in the Building Envelope** means defects that result in the failure of the Building Envelope to perform its intended function.
11. **Duly Authorized Representative** means any representative authorized by the Insurer to undertake work or perform functions on its behalf.
12. **Dwelling Unit** means a Residential Building, or a portion of a building that:

- (a) is intended for residential occupancy;
  - (b) is a single, self-contained residence usually containing cooking, eating, living, sleeping and sanitary facilities; and
  - (c) may contain a secondary suite if permitted by local bylaws.
13. **Expiry Date** means the date referenced on the Declaration Page and Insuring Agreement Sections of this Policy, after which coverage terminates.
14. **Face**, if used in reference to a Residential Building, means the entire surface area of the exterior of one of the elevations of the Residential Building, including all elements and components of the Residential Building that are supported by or attached to the exterior of that elevation, but does not include roof surfaces or window surfaces unless, in the case of the window surfaces, the Building Envelope Renovation includes:
- (a) the replacement of the window with a new window or other material; or
  - (b) the removal, modification and re-installation of the modified window.
15. **HPO Building Envelope Renovation Schedule** means the form completed by various parties that provides a record of information concerning building envelope renovations that are governed by the requirements of the *Homeowner protection Act* and regulations.
16. **Holder**, when used in reference to a Residential Building, means:
- (a) if a strata plan respecting the land on which the Residential Building is situated has been deposited with the registrar of the land title office for the district in which that land is situated, the strata corporation for the strata plan;
  - (b) a person who has a life interest in the Residential Building and whose interest is registered against the title to the land on which the Residential Building is situated in the land title office for the district in which the land is situated;
  - (c) a person registered in the land title office for the district in which that land is situated as the purchaser under the last registered agreement for sale of the land on which the Residential Building is situated; or
  - (d) if non of paragraph (a), (b) or (c) apply, the person registered in the land title office as the registered owner in fee simple of the land on which the Residential Building is situated.
17. **Insurer** means the company or companies noted on the Declarations Page of this Policy that have agreed to provide the coverages set forth in this Policy.
18. **Insuring Agreements** means the general coverages provided by this Policy set forth in the Insuring Agreements Section of this Policy.
19. **Labour and Materials** means covering Defects in labour or materials used in a Building Envelope Renovation.

20. **Load Bearing** means those structures or components subjected to or designed to carry loads in addition to its own dead load, but does not include a wall element subject only to wind or earthquake loads in addition to its own dead loads.
21. **Mediation** means a collaborative process in which two (2) or more parties meet and attempt, with the assistance of a Mediator, to resolve issues in dispute between them.
22. **Mediation Session** means a meeting between two (2) or more parties to a dispute during which they are engaged in Mediation.
23. **Mediator** means a neutral and impartial facilitator with no decision making power who assists parties in negotiating a mutually acceptable settlement of issues in dispute between them.
24. **Pollutants** means any solid liquid, gaseous or thermal irritant or contaminant, including petroleum products, radon gas, smoke, vapour, soot, fumes, acids, alkalids, chemicals and waste; waste shall include, without limitation, materials to be recycled, reconditioned or reclaimed.
25. **Roster Organization** means any body designated by the Attorney General to select Mediators for the purposes of Mediation.
26. **Subrogation** means the lawful substitution of a third party in place of a party having claim against another party. This means the Insurer having the right to be substituted for a party it has compensated or will compensate and the party then suing or taking other such action against any party whom the compensated party could have sued or taken action against, as deemed appropriate by the Insurer.
27. **Substantially Complete** means that the Building Envelope Renovation as described in the attached Building Envelope Renovation Schedule can be completed at a cost of not more than the sum of:
- (a) 3% of the first \$500,000 of the cost of the Building Envelope Renovation as set out in the Building Envelope Renovation Schedule;
  - (b) 2% of the next \$500,000 of the cost of the Building Envelope Renovation as set out in the Building Envelope Renovation Schedule;
  - (c) 1% of the balance of the cost of the Envelope Renovation as set out in the Building Envelope Renovation Schedule.
28. **Technical Inspection Service** means the party or parties engaged by the Insurer or its Authorized Representative to provide such examination of plans, specifications, bills of quantities and other documentation as well as field visits or reports in relation to projects as the Technical Inspection Service and Insurers may require. The duties of the Technical Inspection Service are restricted to advising Insurers on the relative level of risk they can expect under the Warranty.
29. **Time Clause** means that the dates and times referred to in the Declarations section of this Policy are effective 12:01 AM, Standard Time at the address of the Holder.

30. **Unintended Water Penetration** means water penetration:

- (a) caused by Defects in the Building Envelope; and
- (b) not caused by flooding, breakage of or leakage from plumbing lines or systems, irrigation systems, fire sprinkler systems or broken windows.

## CONDITIONS

### 1. NOTICE TO INSURER

- (a) Within a reasonable time after the discovery of a Defect covered by a Labour and Materials Warranty or a Water Penetration Warranty, and before the expiry of the coverage that Labour and Materials Warranty or Water Penetration Warranty, a Holder/Strata Corporation/Owners of a Strata Corporation must give the Insurer and the Building Envelope Renovator written notice of that Defect which includes particulars of Defect in reasonable detail.
- (b) Included in the notice, the Holder/Strata Corporation/Owners of a Strata Corporation must supply the Insurer with:
  - (i) the Warranty number; and
  - (ii) any relevant documentation, correspondence and information available as reasonably required by the Insurer.

### 2. RESPONDING PARTY

The Holder/Strata Corporation/Owners of a Strata Corporation will provide written notice to the Insurer involving a discovered Defect or loss or a potential Defect or loss.

### 3. DUTY TO MITIGATE

- (a) The Holder/Strata Corporation/Owners of a Strata Corporation is/are required to mitigate any damage caused by Defects in Materials or Labour or Design or Water Penetration as set out in this Policy.
- (b) The duty of the Holder/Strata Corporation/Owners of a Strata Corporation to mitigate is met through timely notice in writing to the Insurer.
- (c) If the Defect requires immediate attention, the Holder/Strata Corporation/Owners of a Strata Corporation must take all reasonable steps to limit the damage.
- (d) To the extent that damage to the Residential Building is caused or made worse by the failure of the Holder/Strata Corporation/Owners of a Strata Corporation to take reasonable steps to mitigate as set out in this section, such damage is excluded from coverage, as applicable.

### 4. CLAIMS PROCESS

- (a) The Insurer shall, upon receipt of notice, promptly make reasonable attempts to contact the Holder/Strata Corporation/Owners of a Strata Corporation to arrange for investigation of the

claim. The Insurer shall make all reasonable efforts to avoid delay in responding to a claim, evaluating a claim and scheduling any repairs. Such repairs shall be undertaken in a timely manner, with reasonable consideration for weather, availability of materials and scheduling of crews. All repairs or replacements made under this Policy shall be completed using materials and labour conforming with Building Code and industry standards.

- (b) The Holder/Strata Corporation/Owners of a Strata Corporation must co-operate in every reasonable effort to investigate the claim, including, without limitation, granting every reasonable access to the Residential Building at all reasonable times to:
  - (i) monitor the Building Envelope Renovation or its components;
  - (ii) inspect for required maintenance;
  - (iii) investigate complaints or claims; or
  - (iv) undertake repairs under the Labour and Materials, Design or Water Penetration Warranty.
- (c) Any reports produced as a result of the activities referred to in paragraph (b) will be provided to the Holder/Strata Corporation/Owners of a Strata Corporation on request.
- (d) The Holder/Strata Corporation/Owners of a Strata Corporation must supply the Insurer with notice as set out in paragraph 1 of this Section.
- (e) Where, following evaluation of a claim, it is determined that the claim is not valid or not covered under the Labour and Materials, Design Defect or Water Penetration Warranty, the Insurer must notify the Holder/Strata Corporation/Owners of a Strata Corporation of the decision in writing, setting out the reasons for the decision.
- (f) The notice under paragraph (e) must also set out the rights of the parties under the third party dispute resolution process set out in the Mediation Section of this Policy.

## 5. TRANSFERABILITY

- (a) A Warranty pertains solely to the Residential Building for which it provides coverage and no notice to the Insurer is required on a change of ownership.
- (b) All of the unused benefits under Warranty are automatically transferred to a subsequent Holder/Strata Corporation/Owners of a Strata Corporation on a change of ownership.

## 6. DISCLOSURE OF CLAIMS HISTORY

- (a) On receipt of an inquiry from a Holder/Strata Corporation/Owners of a Strata Corporation regarding the claims experience of a Residential Building to which a Labour and Materials Warranty or a Water Penetration Warranty applies, the Insurer must provide the Holder/Strata Corporation/Owners of a Strata Corporation with a history of claims.
- (b) The history of claims referred to in paragraph (a) must include, for each claim, not less than the following information for both the Residential Building and, if applicable, the associated common property:
  - (i) the type of claim that was made;
  - (ii) the resolution of the claim;
  - (iii) the type of repair performed;
  - (iv) the date of the repair;
  - (v) the cost of the repair.



## 7. SUBROGATION

Where the Insurer makes payment or assumes liability for any payment or repair under this Policy:

- (a) The Insurer is Subrogated to all rights of recovery of the Holder/Strata Corporation/Owners of a Strata Corporation against any person or persons who may have caused or contributed to the requirement for the payment or repair under this Policy or whom the Holder/Strata Corporation/Owners of a Strata Corporation could have sued or taken action against.
- (b) The Insurer may bring action at its own expense, in the name of the Holder/Strata Corporation/Owners of a Strata Corporation or of the Insurer, to enforce such rights.
- (c) Where the Insurer has pursued Subrogated rights, the Holder/Strata Corporation/Owners of a Strata Corporation shall fully support and assist the Insurer in the pursuit of those rights, if the Insurer pursues such rights.

## 8. ACTION TAKEN

Where the Insurer has determined that:

- (a) a claim under the Policy exists, and
- (b) the responsibility for the claim is with or appears to be with the Building Envelope Renovator, and
- (c) the contract between the Owner and the Building Envelope Renovator contains warranty clauses that oblige the Building Envelope Renovator to repair any work performed after Substantial Completion for a period of time, and
- (d) the Owner is provided a surety bond to remedy a default in the performance of the contractual obligations of the Building Envelope Renovator referred to in paragraph (c);

the Owner will, at the direction of the Insurer or its Authorized Representative:

- (a) provide the Surety written notice of a claim or a potential claim, in accordance with the terms and conditions set out in the surety bond;
- (b) take other action as deemed necessary in the pursuit of recovery under the surety bond for the benefit of the Insurer where there is requirement for the payment or repair under this Policy.

Nothing in the forgoing shall reduce the Insurer's obligations under paragraphs 1, 2, 3 and 4 of this Section.

## 9. TECHNICAL INSPECTION SERVICES

The Holder/Strata Corporation/Owners of a Strata Corporation will not exercise or seek to exercise any remedies whether directly or indirectly against any Insurer, its Authorized Representative or the Technical Inspection Services in respects of the acts or omissions of the Technical Inspection Service.

## 10. IMPLIED/EXPRESSED WARRANTIES OR REPRESENTATIONS

Implied or expressed warranties or representations made by the Building Envelope Renovator to the Holder/Strata Corporation/Owners of a Strata Corporation are not binding upon the Insurer, except as set out in legislation or regulation.

## 11. DELAY OR REPAIR PERMITTED

After the expiry of the Labour and Materials portion of the coverage, the Insurer may defer Defect repairs in the Building Envelope until material loss or damage or adverse effect occurs to the Residential Building, provided such occurs on or prior to the applicable Expiry Date. Where damage has not occurred at the applicable Expiry Date, but where it is likely that premature damage to the Residential Building will result from the Defect the Insurer shall repair the Defect.

## 12. MISREPRESENTATION

This Policy will be voidable solely in the event of material misrepresentation or misdirection by the Holder/Strata Corporation/Owners of a Strata Corporation. Such voidability does not transfer to subsequent Holders/Owners of a Strata Corporation.

## 13. FRAUDULENT ACTS

If any claim is fraudulent, or if fraudulent means or devices are used by the Holder/Strata Corporation/Owners of a Strata Corporation or any persons acting on behalf of and with the consent or knowledge of the Holder/Strata Corporation/Owners of a Strata Corporation, in order to gain benefit under this Policy or if any damage be occasioned by the wilful act of or with the connivance of the Holder/Strata Corporation/Owners of a Strata Corporation, all benefits under this Policy to the Holder/Strata Corporation/Owners of a Strata Corporation will be forfeited.