

**NOTICE OF CALL: MARCH 23, 2012  
TAKE NOTICE THAT THE SPECIAL GENERAL MEETING  
OF STRATA PLAN LMS 4456 – "ONE WALL CENTRE"  
LOCATED AT 938 NELSON STREET, VANCOUVER, BC  
WILL BE HELD:**

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**DATE:** Saturday, April 14, 2012

**TIME:** 10:00 a.m. (Registration starts at 9:30 a.m.)

**PLACE:** The Vancouver Sutton Place Hotel – 845 Burrard St. Vancouver, BC  
Room: Chateau Lafitte – meeting room

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An agenda for the meeting is enclosed herewith. Please read this material prior to the meeting and bring it with you to the meeting for reference.

In order to vote, an owner must have paid in full all maintenance fees, fines or other charges owing to the Strata Corporation. Cheques will not be accepted at the meeting unless certified. **If you are uncertain of the status of your strata account please call the Accounts Receivables Desk at (604) 293-2443 between 8:30 a.m. and 4:30 p.m. from Monday to Friday or e-mail [ar@ascentpm.com](mailto:ar@ascentpm.com).**

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**AGENDA**

1. Registration
2. Call to Order
3. Quorum Report
4. Proof of Notice
5. Minutes of AGM on January 28, 2012
6. Council President's Report – see attached
7.  $\frac{3}{4}$  Vote Resolution – see attached (settlement)
8. Adjournment

**Council encourages all owners to attend. If you cannot attend please send proxy in.**

**Proxies can be dropped off with the concierge or sent to the offices of Ascent.**

**PROXY APPOINTMENT**  
*(Section 56)*

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Re: Strata Lot \_\_\_\_\_ of Strata Plan \_\_\_\_\_ LMS 4456

I/We, \_\_\_\_\_, the owner(s)/tenant(s)/mortgagee of the strata lot

described above, appoint \_\_\_\_\_ to act as my/our proxy at the

annual or special general meeting to be held on April 14, 2012.

\_\_\_\_\_  
Signature of Owner/Tenant/Mortgagee

\_\_\_\_\_  
Signature of Owner/Tenant/Mortgagee

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**FOR PROXY USE ONLY: PLEASE INDICATE YOUR VOTE**

¾ Vote Resolution: Settlement

In Favour   ☐   Opposed   ☐   Abstention   ☐

## PRESIDENT'S REPORT ON MEDIATION

### OF THE STRATA'S CLAIM

MARCH 2012

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Dear fellow owners,

I write to advise you that council has negotiated a tentative settlement of the strata corporation's claim against Wall Financial ("WF") and the other defendants to our law suit.

Shortly after our AGM on January 28, Bruno Wall wrote to me to express discontent with the glass we had chosen for our window re-glazing program. Council also became dissatisfied with the chosen glass when direct sunlight reflected off of it, and it changed colour to a florescent green. Bruno later called me to say that he had made some inquiries at City Planning and that he would like the opportunity to apply on behalf of the strata for approval of glass the same or similar to the hotel. To do so, he would require our authorization and the process would take about one more year. I explained to Bruno that the owners had voted in 2010 to apply to the City for glass similar to the hotel and that council had applied for the hotel glass. But, we abandoned that effort when we were told our chances of approval were very low, that the process would delay the re-glazing for one year and that the hotel glass was about \$2 million more than other choices. Bruno said he and his uncle Peter would, nevertheless, like the opportunity to try to get approval and were prepared to spend considerable sums of money to achieve it. He asked if the strata would be prepared to give him the authorization and wait another year for the process to complete. I told Bruno that we were ready to proceed with the re-glazing, and the owners were anxious to complete the work this year. As a result, I explained to Bruno that such authorization could only be part of an offer to take over the project. Bruno thought that taking over the project was a good idea, and he would follow up with his lawyer.

After a couple of false starts, our lawyers arranged a mediation of our law suit for March 10. As you probably know, a "mediation" is a meeting of the parties to a dispute during which the parties try to negotiate a resolution to the dispute with the assistance of a mediator. The reason for the rushed date was the fact that we were about to order our glass and our staging contractor was about to mobilize on site which would eliminate Wall's chance to get the hotel glass for our windows. All six members of council attended so we could make decisions quickly. After introductions and opening statements by the lawyers, Bruno made us an offer whereby the strata and WF would share the cost of the re-glazing on a percentage basis. We rejected that idea, because WF might choose to proceed with glass which would cost about \$2 million more. So, we counter-offered with a fixed number and a host of other safeguards for the owners including WF must use RDH as engineers and as construction managers and must provide 2/5/10 year warranties. Bruno accepted the safeguards and again suggested shared cost, but again we rejected it. In the end, we agreed on the terms set out in the attached minutes of settlement. Our lawyers are finalizing the terms of the formal agreement, and, when the agreement is drafted, we will post it on our website and so advise you by email. Note that one of the terms is confidentiality. We are not permitted to share the terms of the settlement with non-owners without the agreement of WF. We intend to issue a joint press release after the settlement is ratified.

As you can see from the agreement, the strata must contribute \$3.25 million toward the re-glazing, but no more. WF must contribute \$3.65 million plus whatever more is required to fund the re-glazing even if the cost increases due to, say, more expensive glass. WF must also pay for any additional cost charged by our trade contractors due to the delay. Both shares of the re-glazing fund must be paid into the trust account of our lawyer who will dispense it on the certification by RDH as the work progresses. The

agreement gives WF up to one additional year to complete the re-glazing. If WF is not ready to proceed with the re-glazing by February first next year, then the strata may take back the re-glazing project and access all the re-glazing fund.

The strata's share is a little less than the first installment of the special levy which we collected for the re-glazing. As a result, if the owners ratify the agreement, we will not have to pay the second installment on May first, and those owners who paid both installments will have their prepaid second installment returned to them. Also, the strata will save the substantial monies we would have spent on our lawyer preparing for and attending examinations for discovery, interrogatories, and trial which could easily cost over \$500,000. We also avoid the other perils of extended litigation such as delayed trial, losing the case, assessment of damages, assessment of costs, appeals, and the like. Finally, it is remotely possible that WF will succeed in convincing the City to approve the same glass as the hotel, which we all favour, and that WF is prepared to pay the extra cost of using it for the re-glazing. If such should occur, then we owners will be better off, because the building will look great with one colour and further enhance our property values.

I believe that the settlement is fair and in the best interests of the owners. All members of council agreed to these terms and will vote in favour of ratifying acceptance. We recommend you vote in favour. If you cannot attend the meeting, please provide your proxy to another owner or member of council. Thank you.

Yours sincerely,

Bruce Gleig, President

### **3/4 Vote Resolution**

#### **WHEREAS:**

On August 10, 2006, the strata corporation commenced a lawsuit against, among others, the developer, window supplier and warranty provider, for claims arising in respect of a window failure at One Wall Centre (the "Action"). The Action was subsequently authorized by the Owners at a Special General Meeting held on April 14, 2012.

#### **AND WHEREAS:**

On March 10, 2012, the strata corporation attended a mediation session with defendant Bruno Wall, in his personal capacity and in his capacity as a representative of defendants 565387 BC Ltd., 565388 BC Ltd. carrying on business as One Wall Centre Partnership, Calmont Investments Ltd. and Wall Financial Corporation in attendance. The parties reached a settlement of the Action subject to ratification by Wall Financial Corporation (collectively, the "Wall Group") and the Strata Corporation. The settlement terms are reflected in the Minutes of Settlement attached hereto as Schedule "A".

#### **BE IT RESOLVED:**

As a 3/4 vote of the Owners, Strata Council be authorized to enter a formal settlement agreement with the Wall Group settling the claims in dispute in the Action on such terms and conditions as Strata Council considers appropriate and prudent, acting reasonably and in the best interest of the Owners, and shall include the terms and conditions as reflected in the Minutes of Settlement attached hereto as Schedule "A".



Jenkins Marzban Logan LLP  
lawyers

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Memorandum

To: John Singleton/David Whitelaw  
From: Tim Peters  
Date: March 23, 2012  
File No: 5674-001

**Re: One Wall – Minutes of Settlement**

The parties have reached a resolution of Action No. S065140 (the “Action”) on the following terms:

**Settlement Contributions**

- The Strata Corporation will pay the sum of \$3.25 million towards the Window Replacement Program (the “Owners’ Contribution”);
- The Wall Group of Defendants will pay the sum of \$3.65 million towards the Window Replacement Program (the “Wall Contribution”); I think WF will contribute \$3.65
- The Strata Corporation’s total commitment to the Window Replacement Program is capped at the Owner’s Contribution.
- The Wall Group will be responsible for all costs overruns and will be the sole beneficiary of any realized cost savings;
- The Owners’ Contribution and the Wall Contribution (collectively, the “Trust Fund”) will be paid to the trust account of JML by not later than 2 weeks following the Owners’ SGM (which is anticipated to be held during the second week in April, 2012);
- The Trust Funds will be placed in an interest bearing account, with interest accumulating for the benefit of the Window Replacement Program;

**Window Replacement Program**

- The Window Replacement Program will be deferred until 2013. During the deferment period, the Wall Group will make best efforts to seek approval from the City of Vancouver (“COV”) to use replacement windows that match (from an appearance standpoint) the existing hotel windows (the “COV Submissions”);
- The replacement windows, must meet or exceed the specifications currently established by the Strata Corporation’s consultants, having regard to, among other things, the overheating problem; OWC strata to have final approval on window selected (including color and light transmission)
- The Strata Corporation will provide assistance to the Wall Group around the COV Submissions. To that end, it will provide a letter to Wall or the COV (as appropriate) confirming that Wall is authorized to speak on behalf of the Strata Corporation regarding the COV Submissions. The Strata Corporation will also communicate to the COV its support of the COV Submissions. Finally, the Strata Corporation will provide such other support/assistance (save for financial support/assistance) as may reasonably be necessary in furtherance of the COV Submissions;
- The Wall Group has until February 1, 2013 (the “Move Forward Date”) to secure the necessary concessions from the COV, and execute supply and trade contracts to complete the Window



Replacement Program by not later than December 31, 2013. (consider amending to October 31, 2013).

- If the Wall Group is unsuccessful in securing the necessary concessions from the COV (meaning that it will not approve a window system similar in appearance to the hotel windows) by the Move Forward Date, Wall will, at its discretion:
  - Continue with the Window Replacement Program but using a window type and colour as selected by the Strata Corporation; or
  - End its involvement in the Window Replacement Program, in which case, the Strata Corporation will assume conduct of the Window Replacement Program and the Trust Funds will be paid over to the Strata Corporation in full and final settlement of the disputes between the parties.

#### **Trade/Supplier and Consultant Contracts**

- Wall acknowledges that the Owners have executed certain contract(s) in furtherance of the Window Replacement Program and have made certain other commitments to trades and suppliers. The Owners will use best efforts to mitigate damages flowing from any termination of those contract(s) and trade/supplier commitments. The Owners agree to consult with, and seek direction from, Wall on the course of action to be taken with those parties with whom the Owners have contracted. Wall agrees to indemnify the Owners for any losses flowing from the termination of those contract(s).
- Notwithstanding the above, Wall agrees to engage RDH Engineering as the project consultant and RDH Management as the project CM (subject to a review of their respective contracts with the Strata Corporation, with Wall acting reasonably at all times) in furtherance of the Window Replacement Program.
- Wall agrees that it will only execute trade and supplier contracts with parties that have been vetted and recommended by RDH, acting reasonably.
- Wall will designate RDH Engineering as the Payment Certifier for all trade/supplier contracts;

#### **Miscellaneous Terms**

- If Wall undertakes the Window Replacement Program, Wall agrees:
  - to put in place, at its cost, 2/5/10 third party warranty coverage (the "Warranty") for the benefit of Owners and its members;
  - Prior to placing the Warranty, Wall will consult with the Owners, who may, at its discretion, purchase, at its costs, additional coverage;
  - To purchase additional glazing units (50) to be stored, at Wall's cost, offsite to be used by the Owners in the event of breakage. (Apparently, Garibaldi Glass had agreed to store the units at its facility without costs to the owners).
  - To put in place course of construction insurance;
  - To provide notice of all site meetings to the Strata Corporation and permit one council member (or its designate) to attend said meetings;
  - To provide a copy of all site minutes to the Strata Corporation (or its designate);
  - To make all progress payments first from the Wall Contribution (until that fund is exhausted) and then from the Owners' Contribution.



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- To top up the Trust Funds by such amount as and when necessary to fully cover the costs of the Window Replacement Program (including applicable taxes); This should be done within two weeks of executing supply and trade contracts and thereafter when costs go up.
  - The parties to the Action will execute mutual releases, releasing each other from all claims relating to the HVAC and fogging issues;
  - The parties to the Action will execute a CDO, on a without costs basis;
  - The parties agree to keep the terms of the settlement confidential. Any disclosure of the terms to the press or otherwise must be agreed to in writing by Wall and the Strata Corporation, prior to such disclosure;
  - The settlement is subject to ratification by the Owners at a SGM and by Wall Financial at a meeting of its directors. Council represents that it will recommend the settlement to its members. Bruno Wall represents that it will recommend the settlement to its board of directors.