

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT***S.B.C. 2004, c. 42****AND****IN THE MATTER OF****DORSET REALTY GROUP CANADA LTD. DBA****DORSET REALTY GROUP****(X000992)****AND****RONALD JOSEPH SCHUSS****(013456)****AND****KIM RONALD SCHUSS****(029064)****AND****DAMIEN JOSEPH PAUL ROUSSIN****(157900)****AND****LEO KA KIT CHAN****(163476)****CONSENT ORDER**

RESPONDENT:

Dorset Realty Group Canada Ltd. dba
Dorset Realty Group ("Dorset Realty
Group")Ronald Joseph Schuss, Associate
Broker, Dorset Realty Group C while
licensed as Managing Broker, Dorset
Realty GroupKim Ronald Schuss, Representative,
Dorset Realty Group

Damien Joseph Paul Roussin,
Managing Broker, Dorset Realty
Group

Leo Ka Kit Chan, Representative,
482258 B.C. Ltd. dba RE/MAX
Commercial Realty, while licensed
with Dorset Realty Group

DATE OF REVIEW MEETING: April 11, 2016

DATE OF CONSENT ORDER: May 2, 2016

CONSENT ORDER REVIEW COMMITTEE: D. Fimrite
S. McGougan, Chair
E. Mignosa

ALSO PRESENT: G. Thiele, Director, Legal Services
P. Gilligan-Hackett, Legal Counsel
for the Real Estate Council

PROCEEDINGS:

On April 11, 2016 the Consent Order Review Committee (the "Committee") resolved to accept the Agreed Statements of Facts, Proposed Acceptances of Findings and Waivers ("ASF's") submitted by Dorset Realty Group, Ronald Joseph Schuss, Kim Ronald Schuss, Damien Joseph Paul Roussin and Leo Ka Kit Chan.

WHEREAS the ASF's, copies of which are attached hereto, have been executed by Dorset Realty Group, Ronald Joseph Schuss, Kim Ronald Schuss, Damien Joseph Paul Roussin and Leo Ka Kit Chan and on behalf of the Council;

NOW THEREFORE, the Committee having made the findings proposed in the attached ASF's, and in particular having found that Dorset Realty Group, Ronald Joseph Schuss, Kim Ronald Schuss, Damien Joseph Paul Roussin and Leo Ka Kit Chan committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Dorset Realty Group, Ronald Joseph Schuss, Kim Ronald Schuss, Damien Joseph Paul Roussin and Leo Ka Kit Chan each be reprimanded;
2. Ronald Joseph Schuss, Kim Ronald Schuss and Damien Joseph Paul Roussin each pay a discipline penalty to the Council in the amount of \$2,000.00 within ninety (90) days of the date of this Order;

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3. Leo Ka Kit Chan pay a discipline penalty to the Council in the amount of \$1,000.00 within ninety (90) days of the date of this Order;
 4. Ronald Joseph Schuss and Damien Joseph Paul Roussin, at their own expense, register for and successfully complete the Broker's Remedial Education Course, as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia in the time period as directed by the Council;
 5. Kim Ronald Schuss and Leo Ka Kit Chan, at their own expense, register for and successfully complete the Strata Management Remedial Education Course, as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia in the time period as directed by the Council; and
 6. Ronald Joseph Schuss, Kim Ronald Schuss, Damien Joseph Paul Roussin and Leo Ka Kit Chan each pay enforcement expenses of this Consent Order to the Council in the amount of \$1,250.00 within sixty (60) days from the date of this Order.

If any of Dorset Realty Group, Ronald Joseph Schuss, Kim Ronald Schuss, Damien Joseph Paul Roussin or Leo Ka Kit Chan fail to comply with any term of this Order, the Council may suspend or cancel their licences without further notice to them, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 2nd day of May, 2016 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE



S. McGougan, Chair
Consent Order Review Committee

Attch:

**IN THE MATTER OF THE REAL ESTATE SERVICES ACT
S.B.C. 2004, c. 42**

IN THE MATTER OF

LEO KA KIT CHAN

(163476)

**AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER**

The following agreement has been reached between Leo Ka Kit Chan ("Mr. Chan") and the Real Estate Council of British Columbia ("Council").

- A. Mr. Chan hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* ("RESA") that he be reprimanded; that he pay a discipline penalty to the Council of \$1,000.00 within ninety (90) days of the Order herein; and that he, at his own expense, register for and successfully complete the Strata Management Services Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period as directed by the Council. Further, he agrees to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,250.00 within sixty (60) days from the date of the Order herein. Mr. Chan further consents to an Order that if he fails to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel his licence without further notice to him pursuant to section 43(3) and 43(4) of the *Real Estate Services Act*.
- B. As a basis for this Order, Mr. Chan acknowledges and agrees that the facts set forth herein are correct:
1. Mr. Chan was at all relevant times licenced as a Representative, Strata at Dorset Realty Group Canada Ltd. (the "Brokerage").
 2. Mr. Chan's licensing history is as follows:

2012-01-18 to	Dorset Realty Group Canada Ltd.	Representative
2012-07-25		Strata

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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2012-07-25 to 2014-01-01	Dorset Realty Group Canada Ltd.	Representative Strata
2014-01-01 to present	482258 B.C. Ltd	Representative Rental, Strata

3. At all times material to the complaint, the Brokerage was party to a Property Management Contract dated January 1, 1999 ("1999 Agreement") with a strata corporation on Star Crescent in New Westminster, BC ("Strata").
4. On January 1, 2013, Mr. Chan succeeded licensee Kim Schuss as the Brokerage licensee who provided strata management services to the Strata further to the 1999 Agreement.
5. After Mr. Chan became the Brokerage licensee who provided strata management services to the Strata, Kim Schuss continued to have some involvement with the Brokerage's provision of strata management services to the Strata, in particular in connection with the Project.
6. Until September 26, 2012 Ronald Joseph Schuss ("Ronald Schuss") was the Managing Broker at the Brokerage who was responsible for supervising the Brokerage licensees who were providing services to the Strata.
7. With effect from September 11, 2012 Damien Joseph Paul Roussin ("Mr. Roussin") was licenced as a managing broker at the Brokerage. Around this time, he became responsible for supervising the Brokerage licensees who were providing services to the Strata.

STRATA MANAGEMENT FEES

8. The 1999 Agreement provided that the Strata would pay the Brokerage strata management fees ("Fees") of \$750.00 per month
9. There was no written Addendum to the 1999 Agreement allowing the Brokerage to charge the Strata for Fees of more than \$750.00 at any time material to the complaint.
10. In the early part of 2013, the Brokerage charged the Strata \$1,500.00 per month for the Fees.
11. Effective April 30, 2013, the Brokerage reduced the Fees charged to the Strata to \$1,500.00 and at year end the Brokerage rebated an amount to the Strata for the difference between the amount budgeted for the Fees and the amount charged by the Brokerage. The Fees charged by the Brokerage continued to exceed the amount provided for in the 1999 Agreement.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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12. Mr. Chan acknowledges that he failed to notice that the Brokerage was charging Fees in excess of what was permitted by the 1999 Agreement.

THE PROJECT

Events Before Mr. Chan Became the Responsible Representative

13. The Strata identified problems with the balconies of certain Strata Lots ("Units") that required remediation.
14. On September 28, 2010 the required number of Strata owners voted in favour of the following resolution:

To approve the [Project] as proposed, and to provide the authority for the Strata Council and Management to engage in the required contracts... up to a maximum 'project budget' of \$ 500,000.00....

15. On February 4, 2011 the Strata's council ("Strata Council") voted to retain [REDACTED] as the contractor ("Contractor") for the Project.
16. The Strata did not enter a formal contract with the Contractor.
17. Active work on the Project began in May, 2011 and continued until the Spring, 2013.
18. The Contractor's quote for the Project, which was dated June 30, 2010 was \$395,500.00 excluding applicable taxes.
19. During the initial stages of the Project, the total projected budget, including engineering supervision and taxes, was \$499,600.00.
20. The Contractor ultimately billed the Strata around \$1,000,000.00 for the Project.
21. The Strata and the Strata Council were aware that the increased cost of the Project was attributable, at least in part, to additional damage to the Strata which was discovered during the Project.
22. As of February 1, 2012 the Brokerage provided an update to the Strata Council which projected that the likely overall cost of the Project had increased to around \$790,000.00.
23. As of the Strata AGM on March 7, 2012, the likely overall cost of the Project was projected at around \$800,000.00.

Overall Cost

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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24. None of the Licensees who are respondents to the complaint have provided documents to show that either the Strata Council or the Strata owners or both were informed after October 11, 2012 about further significant cost overruns on the Project.
25. The Brokerage distributed information to the Strata in connection with the Strata's 2013 AGM which showed the final cost of the Project was \$996,392.92. However, the balance sheet dated August 28, 2013 showed the final cost was \$1,037,274.63. When one of the Complainants asked Kim Schuss at the Strata's 2013 AGM what the final cost of the Project actually was, Kim Schuss did not answer.
26. On September 18, 2013 one of the Complainants e-mailed Mr. Chan in part as follows:

Prior to the AGM we on council had financials showing the expenditure for the balcony project to be \$1,037,274.63. Also, prior to the AGM, Simon and I had both asked Kim what the final figure for the project was and we never got an answer. I put that same question to Kim at the AGM and he again did not give the answer. I am assuming the above figure is the final expenditure as that is the one we are continually seeing on the monthly balance sheets.....

I am sure you can appreciate that we need some explanation of this as well as the ability to view all the documentation for this project.

27. Mr. Chan responded on September 24, 2013. In the response, Mr. Chan does not clearly state the final cost of the Project, but he did write that certain amounts "=\$1040392.35 which is just little bit enough to cover the expense of \$1037274.63" [sic].
28. Mr. Chan acknowledges that the financial information he provided to the Strata was insufficient, particularly in the context of both a costly and complex Project and the Brokerage's failure to provide access to financial documents in conformity with the provisions of section 7 of the 1999 Agreement, as is set out further below.

Payment of Invoices

29. In connection with the Project, the Strata Council learned that around September 5, 2013 the Brokerage had, in error, paid an invoice dated February 15, 2013 ("Invoice") to another the Brokerage client for building repairs and renovations in the amount of \$4,165.25 out of the Strata's funds.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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30. In an e-mail Kim Schuss sent to the Strata Council on October 14, 2013, he wrote that "We did note that one of the invoices to be paid was coded incorrectly to [the Strata] and it has been removed, so the final payout is about \$4,100 less than what was previously stated" [emphasis added].
31. On September 5, 2013, the cheque for the improper payment from trust funds of the Strata held by the Brokerage cleared the relevant account. On October 16, 2013, the Brokerage reimbursed the Strata for the incorrect payment.

DOCUMENT REQUESTS

32. Section 7 of the 1999 Agreement provides in part:

The Manager shall make available for inspection on request of the [Strata] all documents, accounts, and records which it may have as Manager, and any such material shall be made available to any Council Member of the [Strata] on request and upon request of any owner, giving fifteen (15) days notice of their intention to inspect said accounts....

33. Starting in August, 2012, one of the Complainants—a member of the Strata Council at the material time—repeatedly asked on behalf of the Strata Council for access to documents, accounts, and records of the Strata, and in particular documents relating to the Project.
34. On September 17, 2013, Mr. Chan did bring what he said were some of the relevant documents to a meeting of the Strata Council. However, he said he could not leave the documents with the Strata Council.
35. Subsequently, the Brokerage told the Strata Council that the Strata Council would either have to pay \$0.25 per page (estimated to be between \$500.00 and \$1,000.00 overall) to have the requested documents photocopied or to pay the Brokerage \$100 per hour to have someone at the the Brokerage supervise a member of the Strata Council inspecting the documents at the Brokerage's office "as per the strata agreement".
36. The 1999 Agreement does not provide the Brokerage with the authority to charge photocopying fees for providing documents to the Strata or to provide a supervision fee in connection with Strata Council members inspecting Strata documents at the Brokerage's office.
37. Neither Mr. Chan nor Dorset ever provided the documents to the Strata Council in accordance with section 7 of the 1999 Agreement.

Mitigating Factors

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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38. Mr. Chan does not have a discipline history with the Council.
39. Mr. Chan only became the licensee responsible for providing services to the Strata including in connection with the Project on January 1, 2013. By this date, the Project had already been ongoing for a substantial period of time. In the Complaint, the Complainants acknowledged that Mr. Chan had stepped into a difficult situation.

C. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Mr. Chan is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:
 - (a) Mr. Chan committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:
 - a. contrary to section 3-3(c) of the Council Rules acted outside the scope of the authority given by the Strata by charging monthly management fees in excess of the amount provided for in the 1999 Agreement;
 - b. In connection with the Project:
 - i. failed contrary to section 3-3(a) of the Council Rules to act in the best interests of the Strata by:
 1. failing to provide accurate and timely information about the financial status of the Project and to ensure the Strata was informed in a timely way of financial issues relating to the Project, including increased costs;
 2. failing as required by section 7 of the 1999 Agreement to make all relevant documents, accounts, and records of the Strata available for inspection on request by a member of the Strata Council;
2. Mr. Chan hereby waives his right to appeal pursuant to section 54 of the *Real Estate Services Act*.
3. Mr. Chan acknowledges that he has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.

**AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF
FINDINGS AND WAIVER**

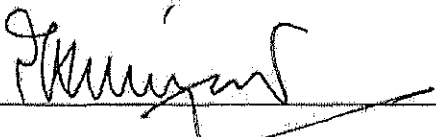
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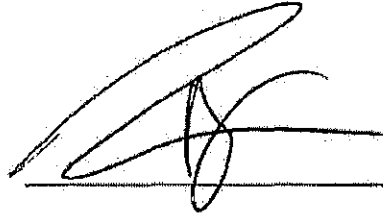
4. Mr. Chan acknowledges and is aware that the Council will publish the Consent Order and penalty herein in its Report from Council newsletter, on the Council's website, and on CanLii, a website for legal research.
5. Mr. Chan acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the *Real Estate Services Act*, to appeal any decision of the Council, including this Agreed Statement of Facts, Proposed Acceptance of Findings, and Waiver and Consent Order.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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6. The Agreed Statement of Facts and Proposed Acceptance of Findings contained herein are made for the sole purpose of resolving a complaint being considered by the Council and for that purpose only. Such agreed statement of facts and proposed acceptance of findings cannot be used in any other proceeding of any kind.


Patrick Gilligan-Hackett, Legal Counsel
Real Estate Council of British Columbia


Leo Ka Kit Chan

As to Part B only (Agreed Statement of Facts)

As to Parts A, B, C (proposed penalty, Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver)

Dated 16 day of Mar, 201⁶₅

Dated 22 day of Dec, 2015

12/11/2015 2012-07-25 to 2014-01-01 Dorset Realty Group Canada Ltd. Changed To: 2459

2014-01-01 to present 482258 B.C. Ltd Changed To: 03

2014-01-01 to present 482258 B.C. Ltd Changed To:

IN THE MATTER OF THE REAL ESTATE SERVICES ACT
S.B.C. 2004, c. 42

IN THE MATTER OF
DORSET REALTY GROUP
(X000992)

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached between Dorset Realty Group Canada Ltd. (the "Brokerage") and the Real Estate Council of British Columbia ("Council").

The Brokerage hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* ("RESA") that it be reprimanded, the Brokerage further consents to an Order that if it fails to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel its licence without further notice to it pursuant to section 43(3) and 43(4) of the *Real Estate Services Act*.

A. As a basis for this Order, the Brokerage acknowledges and agrees that the facts set forth herein are correct:

1. The Brokerage was at all relevant times licenced as a brokerage.

2. The Brokerage's licensing history is as follows:

1975-01-10 to 2005-12-28	Dorset Realty Group Canada Ltd.	Brokerage Trading, Rental
2005-12-28 to 2014-02-11	Dorset Realty Group Canada Ltd.	Brokerage Trading, Rental, Strata
2014-02-11 to Present	Dorset Realty Group Canada Ltd.	Brokerage Trading, Rental, Strata

3. At all times material to the complaint, the Brokerage was party to a Property Management Contract dated January 1, 1999 ("1999 Agreement") with a strata corporation on Star Crescent in New Westminster, BC ("Strata").

4. The 1999 Agreement provided that the Strata would pay the Brokerage strata management fees ("Fees") of \$750.00 per month.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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5. There was no written Addendum to the 1999 Agreement allowing the Brokerage to charge the Strata for Fees of more than \$750.00 at any time material to the complaint.
6. The Brokerage charged the following Fees per month to the Strata:
 - 2004: \$1,177.00;
 - 2005: \$1,125.00;
 - 2006: \$1,175.00;
 - 2007: \$1,220.00;
 - 2008: \$1,320.00;
 - 2009: \$1,375.00;
 - 2010: \$1,420.00; and
 - 2011: \$1,450.00.
7. In addition, in mid-August, 2012, there was an exchange between one of the complainants ("Complainants" or, where appropriate, "Complainants") and Kim Schuss in which the Complainant noted that the Fees charged in 2012 were in excess of the amount in the Strata's budget. Kim Schuss agreed on behalf of the Brokerage not to charge the Fees until the Brokerage had cleared up the Complainant's concern.
8. After this exchange, the Brokerage did not charge the Strata for two months of Fees. Then in October, 2012 the Brokerage charged the Strata for two months of Fees without clearing up the Complainant's concern.
9. With the exception of the temporary adjustment referred to immediately above, the Brokerage charged the Strata Fees of \$1,500.00 per month in 2012 and the early part of 2013.
10. Effective April 30, 2013, the Brokerage reduced the Fees charged to the Strata to \$1,500.00 and at year end the Brokerage rebated an amount to the Strata for the difference between the amount budgeted for the Fees and the amount charged by the Brokerage. The Fees charged by the Brokerage continued to exceed the amount provided for in the 1999 Agreement.
11. When the Brokerage and the Strata entered into the 1999 Agreement, the *Condominium Act*, R.S.B.C.1996, c. 64, regulated condominium/strata developments. In 2000, the *Condominium Act* was repealed and replaced by the *Strata Property Act*, S.B.C. 1998, c. 43. After the *Strata Property Act* came into force, the Brokerage failed to ensure that the parties revised the 1999 Agreement to ensure it complied with the requirements of the *Strata Property Act*.
12. In addition, on January 1, 2006 the strata management provisions of the *Real Estate Services Act*, S.B.C. 2004, c.42 and the associated Council Rules came into force.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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13. At all times material to this complaint after January 1, 2006 the 1999 Agreement:

- contrary to section 5-1(4)(f) of the Council Rules, did not state the current amount of remuneration being paid to the Brokerage;
- contrary to section 5-1(5.1) of the Council Rules, did not include a provision declaring whether the Brokerage would be holding one or more of the following on behalf of the Strata: contingency reserve fund money, operating fund money, special reserve fund money, or other amounts;
- contrary to section 5-1(5.1)(b)(i) of the Council Rules, did not specify any authority for the Brokerage to withdraw amounts from trust accounts maintained for the Strata;
- contrary to section 5-1(5.1)(c) of the Council Rules, did not specify the scope of the Brokerage's authority to sign cheques or invest funds on behalf of the Strata;
- contrary to section 5-1(5.1)(e) of the Council Rules, did not contain a description of the records that were to be kept by the Brokerage on behalf of the Strata; and
- contrary to section 5-1(5.1)(f) of the Council Rules, did not contain a provision with respect to disclosure of information respecting the Strata.

14. The Brokerage does not have a discipline history with the Council.

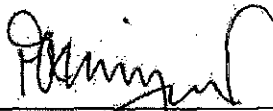
B. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, the Brokerage is prepared to accept the following findings if made against it by the Council's Consent Order Review Committee:
 - (a) The Brokerage, in connection with the Brokerage's provision of strata management services to the Strat, committed professional misconduct within the meaning of section 35(1)(a) of the Act in that it:
 - a. failed contrary to section 5-1(1) of the Council Rules to ensure that there was at the material times a written service agreement in place between the Strata and the Brokerage that contained the content required by sections 5-1(4) and 5-1(5.1) of the Council Rules.
2. The Brokerage hereby waives its right to appeal pursuant to section 54 of the *Real Estate Services Act*.

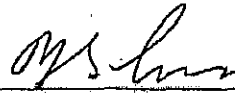
AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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3. The Brokerage acknowledges that it has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. The Brokerage acknowledges and is aware that the Council will publish the Consent Order and penalty herein in its Report from Council newsletter, on the Council's website, and on CanLii, a website for legal research.
5. The Brokerage acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the *Real Estate Services Act*, to appeal any decision of the Council, including this Agreed Statement of Facts, Proposed Acceptance of Findings, and Waiver and Consent Order.
6. The Agreed Statement of Facts and Proposed Acceptance of Findings contained herein are made for the sole purpose of resolving a complaint being considered by the Council and for that purpose only. Such agreed statement of facts and proposed acceptance of findings cannot be used in any other proceeding of any kind.



Patrick Gilligan-Hackett, Legal Counsel
Real Estate Council of British Columbia



Dorset Realty Group Canada Ltd.

As to Part B only (Agreed Statement of Facts)

As to Parts A, B, C (proposed penalty, Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver)

Dated 16 day of March, 2015^{6 8}

Dated 22 day of December, 2015

IN THE MATTER OF THE REAL ESTATE SERVICES ACT
S.B.C. 2004, c. 42

IN THE MATTER OF
RONALD JOSEPH SCHUSS

(013456)

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached between Ronald Joseph Schuss ("Mr. Schuss") and the Real Estate Council of British Columbia ("Council").

A. Mr. Schuss hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* ("RESA") that he be reprimanded; that he pay a discipline penalty to the Council of \$2,000.00 within ninety (90) days of the Order herein; and that he, at his own expense, register for and successfully complete the Broker's Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period as directed by the Council. Further, he agrees to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,250.00 within sixty (60) days from the date of the Order herein. Ronald Schuss further consents to an Order that if he fails to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel his licence without further notice to him pursuant to section 43(3) and 43(4) of the *Real Estate Services Act*.

B. As a basis for this Order, Ronald Schuss acknowledges and agrees that the facts set forth herein are correct:

1. Ronald Schuss was licenced as a Managing Broker, Trading, Rental, Strata at Dorset Realty Group Canada Ltd. (the "Brokerage") for a portion of the time which is material to the complaint.

2. Ronald Schuss's licensing history is as follows:

1961-07-11 to 1966-05-16	B.C. Estates Limited	Representative Trading, Rental
1966-05-16 to 1966-11-07	Dorsan Realty Ltd.	Managing Broker Trading, Rental
1966-11-07 to	Montreal Trust Company	Managing Broker

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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1975-01-10		Trading, Rental
1975-01-10 to 1977-10-13	Dorset Realty Group Canada	Managing Broker Trading, Rental
1977-10-13 to 2000-10-02	Dorset Realty Group Canada	Managing Broker Trading, Rental
2000-10-02 to 2001-03-08	Dorset Realty Group Canada	Associate Broker Trading, Rental
2001-03-08 to 2005-12-28	Dorset Realty Group Canada	Managing Broker Trading, Rental
2005-12-28 to 2012-09-26	Dorset Realty Group Canada	Managing Broker Trading, Rental, Strata
2012-09-26 to Present	Dorset Realty Group Canada	Associate Broker Trading, Rental, Strata

3. At all times material to the complaint, the Brokerage was party to a Property Management Contract dated January 1, 1999 ("1999 Agreement") with a strata corporation on Star Crescent in New Westminster, BC ("Strata").
4. Until September 26, 2012, Ronald Schuss a Managing Broker at the Brokerage who was responsible for supervising the Brokerage licensees who were providing services to the Strata further to the 1999 Agreement.
5. Effective September 11, 2012, Damien Joseph Paul Roussin ("Mr. Roussin") was licenced as a Managing Broker at the Brokerage. Around this time, he became responsible for supervising the licensees who provided strata management services to the Strata further to the 1999 Agreement.
6. Until December 31, 2012, Kim Ronald Schuss ("Kim Schuss") was the Brokerage licensee who provided strata management services to the Strata further to the 1999 Agreement.

THE 1999 AGREEMENT

7. The 1999 Agreement provided that the Strata would pay the Brokerage strata management fees ("Fees") of \$750.00 per month.
8. There was no written Addendum to the 1999 Agreement allowing the Brokerage to charge the Strata Fees of more than \$750.00 at any time material to the complaint.
9. For the following years, the Brokerage charged the Strata Fees per month as follows:

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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- 2004: Information not available;
 - 2005: \$1,125.00;
 - 2006: \$1,175.00;
 - 2007: \$1,220.00;
 - 2008: \$1,230.00;
 - 2009: \$1,375.00;
 - 2010: \$1,420.00; and
 - 2011: \$1,450.00.
10. In addition, in mid-August, 2012 there was an exchange between one of the complainants ("Complainant" or, where appropriate, "Complainants") and Kim Schuss in which the Complainant noted that the Fees charged by the Brokerage in 2012 exceeded the amount provided for in the Strata's budget. Kim Schuss agreed on behalf of the Brokerage not to charge Fees until the Brokerage had cleared up the noted concern.
11. After this exchange, the Brokerage did not charge the Strata for two months of Fees. Then in October, 2012 the Brokerage charged the Strata for two months of Fees without clearing up the noted concern.
12. With the exception of the temporary adjustment referred to immediately above, the Brokerage charged the Strata Fees of \$1,500.00 per month in 2012.
13. When the Brokerage and the Strata entered into the 1999 Agreement, the *Condominium Act*, R.S.B.C. 1996, c. 64, regulated condominium/strata developments. In 2000, the *Condominium Act* was repealed and replaced by the *Strata Property Act*, S.B.C. 1998, c. 43. After the *Strata Property Act* came into force, the Brokerage failed to ensure that the parties revised the 1999 Agreement to ensure it complied with the requirements of the *Strata Property Act*.
14. In addition, on January 1, 2006 the strata management provisions of the *Real Estate Services Act*, S.B.C. 2004, c. 42 and the associated Council Rules came into force.
15. At all times material to this complaint after January 1, 2006 the 1999 Agreement:
- contrary to section 5-1(4)(f) of the Council Rules, did not state the current amount of remuneration being paid to the Brokerage;
 - contrary to section 5-1(5.1) of the Council Rules, did not include a provision declaring whether the Brokerage would be holding one or more of the following on behalf of the Strata: contingency reserve fund money, operating fund money, special reserve fund money, or other amounts;

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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- contrary to section 5-1(5.1)(b)(i) of the Council Rules, did not specify any authority for the Brokerage to withdraw amounts from trust accounts maintained for the Strata;
 - contrary to section 5-1(5.1)(c) of the Council Rules, did not specify the scope of the Brokerage's authority to sign cheques or invest funds on behalf of the Strata;
 - contrary to section 5-1(5.1)(e) of the Council Rules did not contain a description of the records that were to be kept by the Brokerage on behalf of the Strata; and
 - Contrary to section 5-1(5.1)(f) of the Council Rules did not contain a provision with respect to disclosure of information about the Strata.
16. Ronald Schuss acknowledges that if he had been performing his duties as a Managing Broker with sufficient care and attention, he would have been aware both that the Brokerage was charging Fees in excess of the amount provided for in the 1999 Agreement without proper authority, that the 1999 Agreement was out of date, and that the 1999 Agreement did not comply with the Council Rules.

THE PROJECT

Background

17. The Strata identified problems with the balconies of certain Strata Lots ("Units") that required remediation.
18. On September 28, 2010, the required number of Strata owners voted in favour of the following resolution:
- To approve the [Project] as proposed, and to provide the authority for the Strata Council and Management to engage in the required contracts... up to a maximum 'project budget' of \$ 500,000.00....*
19. On February 4, 2011, the Strata's council ("Strata Council") voted to retain City Wide Building Inc. as the contractor ("Contractor") for the Project.
20. The Strata did not enter into a formal contract with the Contractor. In Kim Schuss's response dated December 9, 2013 to the Council's inquiry letter, he wrote that "[t]here was discussion and consideration with the Strata Council regarding the use of additional contract documents and bonding, which were not pursued by the Council".
21. Ronald Schuss acknowledges that if he had been performing his duties as a Managing Broker, and more particularly his duty to supervise Kim Schuss, with sufficient care and attention, he would have ensured that Kim Schuss advised the

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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Strata to seek independent professional advice about whether it would be prudent to protect the Strata's interests by entering into a formal contract with the Contractor.

22. Active work on the Project began in May, 2011 and continued until the Spring, 2013.
23. The Contractor's quote for the Project, which was dated June 30, 2010, was \$395,500.00 excluding applicable taxes.
24. During the initial stages of the Project, the total projected budget, including engineering supervision and taxes, was \$499,600.00.
25. The Contractor ultimately billed the Strata around \$1,000,000.00 for the Project.
26. The Strata and the Strata Council were aware that the increased cost of the Project was attributable, at least in part, to additional damage to the Strata which was discovered during the Project.

Financial Issues with the Project

Payment of Invoices

27. The Strata Council did not review or approve payment of all invoices for the Project.
28. In an e-mail from Kim Schuss to the Strata Council dated August 11, 2012, he wrote that the Brokerage did "not have a standing policy of sending copies of all invoice[s].... over and above the base operating costs".
29. Ronald Schuss acknowledges that if he had been performing his duties as a Managing Broker, and more particularly his duty to supervise Kim Schuss, with sufficient care and attention, he would have ensured that Kim Schuss provided the relevant invoices to the Strata Council for review and approval.
30. Some of the payments referred to immediately above were made out of the Strata's contingency reserve fund.
31. Ronald Schuss acknowledges that if he had been performing his duties as a Managing Broker with sufficient care and attention, he would have ensured that Kim Schuss had not released payments to the Contractor or made payments from the contingency reserve fund without authorization from the Strata Council.

Other issues with the Project

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

Page 6

32. Around May, 2012 the City of New Westminster issued a stop work order that halted work on the Project for approximately three months because the Strata had not obtained a building permit.
33. In a notice to Strata owners dated July 6, 2012, Kim Schuss wrote, among other things, that:

It was originally decided between the Engineers, Contractor, and management that we would not need to apply for a permit as we are 'rehabilitating' the balcony systems and current structures, not adding new construction.

However, it appears in hindsight that we should have obtained this permit, and the engineering consultants are currently dealing with this process. The building permit application process includes a filing process using the required professionals (which have been on site since the start up date), and a fee from the Strata....

34. During the term of the Project, the Contractor's WorkSafe BC coverage and liability insurance expired, leaving the Strata exposed to potential liability. However, the Strata did not suffer any loss or damage as a result of this development.
35. Ronald Schuss acknowledges that if he had been performing his duties as a Managing Broker, and more particularly his duty to supervise Kim Schuss, with sufficient care and attention, he would have ensured Kim Schuss had either taken appropriate steps himself to determine or advised the Strata Council to obtain independent professional advice about whether a building permit was required for the Project, in addition to the independent professional advice it received from the engineer hired by Kim Schuss.

DOCUMENT REQUESTS

36. Section 7 of the 1999 Agreement provides in part:

The Manager shall make available for inspection on request of the [Strata] all documents, accounts, and records which it may have as Manager, and any such material shall be made available to any Council Member of the [Strata] on request and upon request of any owner, giving fifteen (15) days notice of their intention to inspect said accounts....

37. Starting in August, 2012, one of the Complainants—a member of the Strata Council at the material time—repeatedly asked on behalf of the Strata Council for access to the

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

Page 7

documents, accounts, and records of the Strata, and in particular documents relating to the Project.

38. The Brokerage never provided the requested access to the documents to the Strata Council in accordance with section 7 of the 1999 Agreement.
39. Ronald Schuss acknowledges that if he had been performing his duties as a Managing Broker, and more particularly his duty to supervise Kim Schuss, with sufficient care and attention, he would have ensured that the Brokerage took active steps to comply with the document inspection requirements of section 7 of the 1999 Agreement given the request for access to the documents from a Strata Council member.

Mitigating Factors

40. Ronald Schuss does not have a discipline history with the Council.

C. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Mr. Schuss is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:
 - (a) Ronald Schuss, while acting as a managing broker at the Brokerage, committed professional misconduct within the meaning of section 35(1)(a) of the Act in that he:
 - a. failed contrary to section 6(2) of the Act and section 3-1(1)(b) of the Council Rules to ensure that the business of the brokerage was carried out competently and in accordance with the Act and Council Rules by:
 - (i) failing to ensure that there was at the material times a written service agreement in place between the Strata and the Brokerage that contained the content required by sections 5-1(4) and section 5-1(5.1) of the Council Rules;
 - (ii) failing to ensure that Kim Schuss, a licensee providing strata management services to the Strata, performed the delegated duties provided for by the 1999 Agreement competently and without exceeding his authority;
 - (iii) permitting Kim Schuss and the Brokerage or one or both of them to withdraw unauthorized amounts for management fees from the Strata's accounts; and

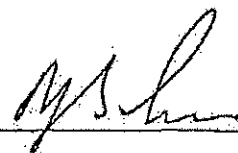
AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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- b. in relation to strata management services Kim Schuss provided to the Strata in connection with the Project, failed contrary to section 6(2) of the Act and section 3-1(1)(c) of the Council Rules to ensure an adequate level of supervision of Kim Schuss by being unaware he was or, in the alternative, failing to prevent him from:
- (i) expending funds from the Strata's contingency reserve fund without prior approval of the Strata Council;
 - (ii) failing as required by section 7 of the 1999 Agreement to make all relevant documents, accounts, and records of the Strata available for inspection on request by a member of the Strata Council.
2. Ronald Schuss hereby waives his right to appeal pursuant to section 54 of the *Real Estate Services Act*.
3. Ronald Schuss acknowledges that he has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. Ronald Schuss acknowledges and is aware that the Council will publish the Consent Order and penalty herein in its Report from Council newsletter, on the Council's website, and on CanLii, a website for legal research.
5. Ronald Schuss acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the *Real Estate Services Act*, to appeal any decision of the Council, including this Agreed Statement of Facts, Proposed Acceptance of Findings, and Waiver and Consent Order.
6. The Agreed Statement of Facts and Proposed Acceptance of Findings contained herein are made for the sole purpose of resolving a complaint being considered by the Council and for that purpose only. Such agreed statement of facts and proposed acceptance of findings cannot be used in any other proceeding of any kind.



Patrick Gilligan-Hackett, Legal Counsel
Real Estate Council of British Columbia



Ronald Joseph Schuss

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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As to Part B only (Agreed Statement of Facts)

As to Parts A, B, C (proposed penalty, Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver)

Dated 16 day of March, 2015⁶ Bo Dated 22 day of December, 2015

12/11/2015 1966-05-16 to 1966-11-07 Dorset Realty Ltd. Changed To: 2459

1966-11-07 to 1975-01-10 Montreal Trust Company Changed To: 03

1975-01-10 to 1977-10-13 Dorset Realty Group Canada Changed To:

1977-10-13 to 2000-10-02 Dorset Realty Group Canada Changed To: COURT

2000-10-02 to 2001-03-08 Dorset Realty Group Canada Changed To: ORDER

2001-03-08 to 2005-12-28 Dorset Realty Group Canada Changed To: PMENDES

2005-12-28 to 2012-09-26 Dorset Realty Group Canada Changed To: PMENDES

**IN THE MATTER OF THE REAL ESTATE SERVICES ACT
S.B.C. 2004, c. 42**

**IN THE MATTER OF
KIM RONALD SCHUSS
(029064)**

**AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER**

The following agreement has been reached between Kim Ronald Schuss ("Mr. Schuss") and the Real Estate Council of British Columbia ("Council").

Mr. Schuss hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* ("RESA") that he be reprimanded; that he pay a discipline penalty to the Council of \$2,000.00 within ninety (90) days of the Order herein; and that he, at his own expense, register for and successfully complete the Strata Management Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period as directed by the Council. Further, he agrees to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,250.00 within sixty (60) days from the date of the Order herein. Mr. Schuss further consents to an Order that if he fails to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel his licence without further notice to him pursuant to section 43(3) and 43(4) of the *Real Estate Services Act*.

A. As a basis for this Order, Mr. Schuss acknowledges and agrees that the facts set forth herein are correct:

1. Mr. Schuss was at all relevant times licenced as a Representative, Trading, Rental, Strata at Dorset Realty Group Canada Ltd. (the "Brokerage").
2. Mr. Schuss's licensing history is as follows:

1981-05-13 to 2005-12-28	Dorset Realty Group Canada Ltd.	Representative Trading, Rental
2005-12-28 to Present	Dorset Realty Group Canada Ltd.	Representative Trading, Rental, Strata

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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3. At all times material to the complaint, the Brokerage was party to a Property Management Contract dated January 1, 1999 ("1999 Agreement") with a strata corporation on Star Crescent in New Westminster, BC ("Strata").
4. Until December 31, 2012, Mr. Schuss was the Brokerage licensee who provided strata management services to the Strata further to the 1999 Agreement.
5. On January 1, 2013, Leo Ka Kit Chan ("Mr. Chan") succeeded Mr. Schuss as the licensee providing strata management services to the Strata further to the 1999 Agreement.
6. Following Mr. Chan's appointment, Mr. Schuss continued to have some involvement with the Brokerage's provision of strata management services to the Strata, in particular in connection with a balcony remediation project ("Project") described more fully below.
7. Until September 26, 2012, Ronald Joseph Schuss ("Ronald Schuss") was the Managing Broker at the Brokerage who was responsible for supervising the the Brokerage licensees who were providing services to the Strata further to the 1999 Agreement.
8. Effective September 11, 2012, Damien Joseph Paul Roussin ("Mr. Roussin") was licenced as a Managing Broker at the Brokerage. Around that time, he became responsible for supervising the Brokerage licensees who were providing services to the Strata further to the 1999 Agreement.

STRATA MANAGEMENT FEES

9. The 1999 Agreement provided that the Strata would pay the Brokerage strata management fees ("Fees") of \$750.00 per month.
10. There was no written Addendum to the 1999 Agreement allowing the Brokerage to charge the Strata Fees of more than \$750.00 at any time material to the complaint.
11. The Brokerage charged the following Fees per month to the Strata:
 - 2004: Information not available;
 - 2005: \$1,125.00;
 - 2006: \$1,175.00;
 - 2007: \$1,220.00;
 - 2008: \$1,320.00;
 - 2009: \$1,375.00;
 - 2010: \$1,420.00; and
 - 2011: \$1,450.00.
12. In addition, in mid-August, 2012 there was an exchange between one of the complainants ("Complainant" or, where appropriate, "Complainants") and Mr.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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Schuss in which the Complainant noted that the Fees charged by the Brokerage in 2012 exceeded the amount provided for in the Strata's budget. Mr. Schuss agreed on behalf of the Brokerage not to charge Fees until the Brokerage had cleared up the noted concern.

13. After this exchange, the Brokerage did not charge the Strata for two months of Fees. Then in October, 2012 the Brokerage charged the Strata for two months of Fees without clearing up the Complainant's concern.
14. With the exception of the temporary adjustment referred to immediately above, the Brokerage charged the Strata Fees of \$1,500.00 per month in 2012.
15. In June, 2012 one of the complainants ("Complainant" or, where appropriate, "Complainants") began to make inquiries to other members of the Strata's council ("Strata Council") in an attempt to locate the Strata's property management agreement with the Brokerage. The members of the Strata Council were unable to locate a copy.
16. The Complainant then asked Mr. Schuss at a meeting of the Strata Council in the Summer, 2012 for a copy of the agreement. Mr. Schuss said he would look into the matter. When the Complainant followed up on this request at the next Strata Council meeting, Mr. Schuss did not provide a copy of the 1999 Agreement.
17. Around October, 2013 the Brokerage provided a copy of the 1999 Agreement to the Strata Council.

THE PROJECT

18. The Strata identified problems with the balconies of certain Strata Lots ("Units") that required remediation.
19. On September 28, 2010, the required number of Strata owners voted in favour of the following resolution:

To approve the [Project] as proposed, and to provide the authority for the Strata Council and Management to engage in the required contracts... up to a maximum 'project budget' of \$ 500,000.00....

20. On February 4, 2011, the Strata Council voted to retain [REDACTED] as the contractor ("Contractor") for the Project.
21. [REDACTED] provided engineering supervision in connection with the Project.
22. The Strata did not enter a formal contract with the Contractor. In Mr. Schuss's response dated December 9, 2013 to the Council's inquiry letter, he wrote that "[t]here was discussion and consideration with the Strata Council regarding the use

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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of additional contract documents and bonding, which were not pursued by the [Strata] Council”.

23. Mr. Schuss did not recommend that the Strata seek independent professional advice about whether it would be prudent to protect the Strata's interests to enter into a formal contract with the Contractor.
24. Active work on the Project began in May, 2011 and continued until Spring, 2013.
25. The Contractor's quote for the Project, which was dated June 30, 2010, was \$395,500.00, excluding applicable taxes.
26. During the initial stages of the Project, the total projected budget, including engineering supervision and taxes, was \$499,600.00.

Financial Issues with the Project

Overall Cost

27. The Contractor ultimately billed around \$1,000,000.00 for the Project.
28. The Strata and the Strata Council were aware that the increased cost of the Project was attributable, at least in part, to additional damage to the Strata which was discovered during the Project.
29. As of February 1, 2012 the Brokerage provided an update to the Strata Council which projected that the likely overall cost of the Project had increased to around \$790,000.00.
30. As of the Strata's AGM on March 7, 2012 the likely overall cost of the Project was projected at around \$800,000.00.
31. None of the Licensees who are respondents to the complaint have provided documents to show that either the Strata Council or the Strata owners or both were informed after October 11, 2012 about further significant cost overruns on the Project.
32. The Brokerage distributed information to the Strata in connection with the Strata's 2013 AGM which showed the final cost of the Project was \$996,392.92. However, the balance sheet dated August 28, 2013 showed the final cost of the Project as \$1,037,274.63. When one of the Complainants asked Mr. Schuss at the Strata's 2013 AGM what the final cost of the Project actually was, Mr. Schuss did not answer.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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Payment of Invoices

33. The Strata Council did not review or approve payment of all invoices for the Project.
34. In an e-mail from Mr. Schuss to the Strata Council dated August 11, 2012, he wrote that the Brokerage did "not have a standing policy of sending copies of all invoice[s].... over and above the base operating costs".
35. In Mr. Roussin's response to the Council dated December 9, 2013, he acknowledges there was no "outright and direct written consent" from the Strata Council for the release of some payments to the Contractor. However, he says the Strata Council and owners were aware the cost of the Project had escalated significantly.
36. Some of the payments referred to immediately above were made out of the Strata's contingency reserve fund.
37. In connection with the Project, the Strata Council learned that around September 5, 2013 the Brokerage had, in error, paid an invoice dated February 15, 2013 ("Invoice") to another client of the Brokerage for building repairs and renovations in the amount of \$4,165.25 out of the Strata's funds.
38. In an e-mail Mr. Schuss sent to the Strata Council on October 14, 2013, he wrote: "We did note that one of the invoices to be paid was coded incorrectly to [the Strata] and it has been removed, so the final payout is about \$4,100 less than what was previously stated".
39. On September 5, 2013, the cheque for the improper payment from trust funds of the Strata held by the Brokerage cleared the relevant account. On October 16, 2013, the Brokerage reimbursed the Strata for the incorrect payment.

Other Issues

40. Around May, 2012, the City of New Westminster issued a stop work order that halted work on the Project for approximately three months because a building permit had not been obtained.
41. In a notice to Strata owners dated July 6, 2012, Mr. Schuss wrote, among other things:

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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It was originally decided between the Engineers, Contractor, and management that we would not need to apply for a permit as we are 'rehabilitating' the balcony systems and current structures, not adding new construction.

However, it appears in hindsight that we should have obtained this permit, and the engineering consultants are currently dealing with this process. The building permit application process includes a filing process using the required professionals (which have been on site since the start up date), and a fee from the Strata....

42. Mr. Schuss failed to advise the Strata either to take appropriate steps itself to determine if a building permit was required for the Project or to require the Contractor to do so.
43. During the Project, the Contractor's WorkSafe BC coverage and liability insurance expired, leaving the Strata exposed to potential liability. However, the Strata did not suffer any loss or damage as a result.
44. Mr. Schuss did not advise the Strata to ensure the Contractor had valid and subsisting WorkSafe BC and insurance coverage for the duration of the Project.

DOCUMENT REQUESTS

45. Section 7 of the 1999 Agreement provides in part as follows:

The Manager shall make available for inspection on request of the [Strata] all documents, accounts, and records which it may have as Manager, and any such material shall be made available to any Council Member of the [Strata] on request and upon request of any owner, giving fifteen (15) days notice of their intention to inspect said accounts....

46. Starting in August, 2012, one of the Complainants—a member of the Strata Council at the material time—repeatedly asked on behalf of the Strata Council for access to documents, accounts, and records of the Strata, and in particular documents relating to the Project.
47. Mr. Schuss failed to make the documents available to the Strata in accordance with the provisions of section 7 of the 1999 Agreement.

MITIGATING FACTORS

48. Mr. Schuss does not have a discipline history with the Council.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

Page 7

B. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Mr. Schuss is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:
 - (a) Mr. Schuss committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:
 - a. contrary to section 3-3(c) of the Council Rules acted outside the scope of the authority given by the Strata by charging monthly management fees in excess of the amount provided for in the 1999 Agreement;
 - b. in connection with the Project:
 - i. failed contrary to section 3-3(a) of the Council Rules to act in the best interests of the Strata and contrary to section 3-3(d) of the Council Rules to advise the Strata to seek independent professional advice on matters outside of his expertise, or one or both of them, by failing to recommend that the Strata seek professional advice about entering into a formal contract with the Contractor to protect the Strata's interests;
 - ii. failed contrary to section 3-3(a) of the Council Rules to act in the best interests of the Strata by:
 1. failing to provide accurate and timely information about the financial status of the Project and to ensure the Strata was informed in a timely way of financial issues relating to the Project, including increased costs;
 2. failing as required by section 7 of the 1999 Agreement to make all relevant documents, accounts, and records of the Strata available for inspection on request by a member of the Strata Council;
 - iii. failed contrary to section 3-3(a) of the Council Rules to act in the best interests of the Strata and contrary section 3-4 of the Council Rules to act with reasonable care and skill by:

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

Page 8

1. failing to advise the Strata to obtain or to ensure the Contractor obtained building permits required for the Project;
 2. failing to advise the Strata to ensure the Contractor had valid and subsisting WorkSafe BC and insurance coverage for the duration of the Project;
- iv. failed contrary to section 3-3(c) to act only within the scope of the authority given by the Strata by:
 1. expending funds from the Strata's contingency reserve fund without prior approval from the Strata Council;
 2. releasing payments to the Contractor without prior approval from the Strata Council.
2. Mr. Schuss hereby waives his right to appeal pursuant to section 54 of the *Real Estate Services Act*.
3. Mr. Schuss acknowledges that he has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. Mr. Schuss acknowledges and is aware that the Council will publish the Consent Order and penalty herein in its Report from Council newsletter, on the Council's website, and on CanLii, a website for legal research.
5. Mr. Schuss acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the *Real Estate Services Act*, to appeal any decision of the Council, including this Agreed Statement of Facts, Proposed Acceptance of Findings, and Waiver and Consent Order.
6. The Agreed Statement of Facts and Proposed Acceptance of Findings contained herein are made for the sole purpose of resolving a complaint being considered by the Council and for that purpose only. Such agreed statement of facts and proposed acceptance of findings cannot be used in any other proceeding of any kind.

Patrick Gilligan-Hackett, Legal Counsel
Real Estate Council of British Columbia

Kim Ronald Schuss

**AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF
FINDINGS AND WAIVER**

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As to Part B only (Agreed Statement of
Facts)

As to Parts A, B, C (proposed penalty,
Agreed Statement of Facts, Proposed
Acceptance of Findings and Waiver)

Dated ____ day of _____, 2015 Dated ____ day of _____,
2015 12/24/2015 2005-12-28 to Present Dorset Realty Group Canada Ltd. Changed To:
2459
2005-12-28 to Present Dorset Realty Group Canada Ltd. Changed To: 03

Signatures page from initial version of proposal attached by agreement to the amended proposal. See attached emails of December 23/24, 2015 between Paul Mendes and Patrick Gilligan.
AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER Hackett

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2. failing to advise the Strata to ensure the Contractor had valid and subsisting WorkSafe BC and insurance coverage for the duration of the Project;
- iv. failed contrary to section 3-3(c) to act only within the scope of the authority given by the Strata by:
 1. expending funds from the Strata's contingency reserve fund without prior approval from the Strata Council;
 2. releasing payments to the Contractor without prior approval from the Strata Council.
2. Kim Schuss hereby waives his right to appeal pursuant to section 54 of the *Real Estate Services Act*.
3. Kim Schuss acknowledges that he has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. Kim Schuss acknowledges and is aware that the Council will publish the Consent Order and penalty herein in its Report from Council newsletter, on the Council's website, and on CanLii, a website for legal research.
5. Kim Schuss acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the *Real Estate Services Act*, to appeal any decision of the Council, including this Agreed Statement of Facts, Proposed Acceptance of Findings, and Waiver and Consent Order.
6. The Agreed Statement of Facts and Proposed Acceptance of Findings contained herein are made for the sole purpose of resolving a complaint being considered by the Council and for that purpose only. Such agreed statement of facts and proposed acceptance of findings cannot be used in any other proceeding of any kind.


Patrick Gilligan-Hackett, Legal Counsel
Real Estate Council of British Columbia


Kim Ronald Schuss

As to Part B only (Agreed Statement of Facts)

As to Parts A, B, C (proposed penalty, Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver)

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF
FINDINGS AND WAIVER

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Dated 16 day of March, 2015 ⁶ *PK*

Dated 22 day of DECEMBER, 2015

IN THE MATTER OF THE REAL ESTATE SERVICES ACT
S.B.C. 2004, c. 42

IN THE MATTER OF
DAMIEN JOSEPH PAUL ROUSSIN

(157900)

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached between Damien Joseph Paul Roussin ("Mr. Roussin") and the Real Estate Council of British Columbia ("Council").

A. Mr. Roussin hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* ("RESA") that he be reprimanded; that he pay a discipline penalty to the Council of \$2,000.00 within ninety (90) days of the Order herein; and that he, at his own expense, register for and successfully complete the Broker's Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period as directed by the Council. Further, he agrees to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,250.00 within sixty (60) days from the date of the Order herein. Mr. Roussin further consents to an Order that if he fails to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel his licence without further notice to him pursuant to section 43(3) and 43(4) of the *Real Estate Services Act*.

B. As a basis for this Order, Mr. Roussin acknowledges and agrees that the facts set forth herein are correct:

1. Mr. Roussin was licenced as a Managing Broker, Trading, Rental, Strata at Dorset Realty Group Canada Ltd. (the "Brokerage") for a portion of the time which is material to the complaint.

2. Mr. Roussin's licensing history is as follows:

2009-12-15 to 2010-01-21	Dorset Realty Group Canada Ltd.	Representative, Rental, Strata
2010-01-21 to 2012-09-11	Dorset Realty Group Canada Ltd.	Representative, Trading, Rental, Strata

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2012-09-11 to
Present

Dorset Realty Group Canada Ltd.

Managing Broker

Trading, Rental, Strata

3. At all times material to the complaint, the Brokerage was party to a Property Management Contract dated January 1, 1999 ("1999 Agreement") with a strata corporation on Star Crescent in New Westminster, BC ("Strata").
4. Effective September 11, 2012, Mr. Roussin was licenced as a Managing Broker at the Brokerage. Around that time, he became responsible for supervising the Brokerage licensees who were providing services to the Strata further to the 1999 Agreement. Mr. Roussin has told the Council that at this time, a balcony remediation project ("Project") at the Strata was nearing completion. The Project is described more fully below.
5. Until September 26, 2012, Ronald Joseph Schuss ("Ronald Schuss") was the Managing Broker at the Brokerage who was responsible for supervising the Brokerage licensees who were providing services to the Strata further to the 1999 Agreement.
6. Until December 31, 2012, Kim Schuss ("Kim Schuss") was the Brokerage licensee who provided strata management services to the Strata further to the 1999 Agreement.
7. On January 1, 2013, Leo Ka Kit Chan ("Mr. Chan") succeeded Kim Schuss as the Brokerage licensee who provided strata management services to the Strata further to the 1999 Agreement.
8. After Mr. Chan became the Brokerage licensee who provided strata management services to the Strata, Kim Schuss continued to have some involvement with the Brokerage's provision of strata management services to the Strata, in particular in connection with the Project.

THE 1999 AGREEMENT

9. The 1999 Agreement provided that the Strata would pay the Brokerage strata management fees ("Fees") of \$750.00 per month.
10. There was no written Addendum to the 1999 Agreement allowing the Brokerage to charge the Strata Fees of more than \$750.00 at any time material to the complaint.
11. The Brokerage charged the following Fees per month to the Strata:
 - 2004: Information not available;
 - 2005: \$1,125.00;
 - 2006: \$1,175.00;
 - 2007: \$1,220.00;
 - 2008: \$1,320.00;

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- 2009: \$1,375.00;
 - 2010: \$1,420.00; and
 - 2011: \$1,450.00.
12. In addition, in mid-August, 2012 there was an exchange between one of the complainants ("Complainant" or, where appropriate, "Complainants") and Kim Schuss in which the Complainant noted that the Fees charged by the Brokerage in 2012 exceeded the amount provided for in the Strata's budget. Kim Schuss agreed on behalf of the Brokerage not to charge Fees until the Brokerage had cleared up the noted concern.
13. After this exchange, the Brokerage did not charge the Strata for two months of Fees. Then in October, 2012 the Brokerage charged the Strata for two months of Fees without clearing up the Complainant's concern.
14. With the exception of the temporary adjustment referred to immediately above, the Brokerage charged the Strata Fees of \$1,500.00 per month in 2012 and the early part of 2013.
15. In Mr. Roussin's response dated December 9, 2013 to a Council inquiry letter, he noted that as the Fees had not been increased after he had become the responsible Managing Broker, the discrepancy between the Fees charged and the "approved budgeted amount" did not come to his attention. He noted that as soon as the discrepancy was brought to his attention by the Complaint, he refunded the "overcharged amount".
16. Effective April 30, 2013, the Brokerage reduced the Fees charged to the Strata to \$1,500.00 and at year end the Brokerage rebated an amount to the Strata for the difference between the amount budgeted for the Fees and the amount charged by the Brokerage. The Fees charged by the Brokerage continued to exceed the amount provided for in the 1999 Agreement.
17. When the Brokerage and the Strata entered into the 1999 Agreement, the *Condominium Act*, R.S.B.C. 1996, c. 64, regulated condominium/strata developments. In 2000, the *Condominium Act* was repealed and replaced by the *Strata Property Act*, S.B.C. 1998, c. 43. After the *Strata Property Act* came into force, the Brokerage failed to ensure that the parties revised the 1999 Agreement to ensure it complied with the requirements of the *Strata Property Act*.
18. In addition, on January 1, 2006 the strata management provisions of the *Real Estate Services Act*, S.B.C. 2004, c.42 and the associated Council Rules came into force.
19. At all times material to this complaint after January 1, 2006 the 1999 Agreement:
- contrary to section 5-1(4)(f) of the Council Rules, did not state the current amount of remuneration being paid to the Brokerage;

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- contrary to section 5-1(5.1) of the Council Rules, did not include a provision declaring whether the Brokerage would be holding one or more of the following on behalf of the Strata: contingency reserve fund money, operating fund money, special reserve fund money, or other amounts;
 - contrary to section 5-1(5.1)(b)(i) of the Council Rules, did not specify any authority for the Brokerage to withdraw amounts from trust accounts maintained for the Strata;
 - contrary to section 5-1(5.1)(c) of the Council Rules, did not specify the scope of the Brokerage's authority to sign cheques or invest funds on behalf of the Strata;
 - contrary to section 5-1(5.1)(e) of the Council Rules, did not contain a description of the records that were to be kept by the Brokerage on behalf of the Strata; and
 - contrary to section 5-1(5.1)(f) of the Council Rules, did not contain a provision with respect to disclosure of information about the Strata.
20. Mr. Roussin acknowledges that if he had been performing his duties as a Managing Broker with sufficient care and attention, he would have been aware both that the Brokerage was charging Fees in excess of the amount provided for in the 1999 Agreement without proper authority, that the 1999 Agreement was out of date, and that the 1999 Agreement did not comply with the Council Rules.

THE PROJECT

Events before Mr. Roussin became the Responsible Managing Broker

21. The Strata identified problems with the balconies of certain Strata Lots ("Units") that required remediation.
22. On September 28, 2010 the required number of Strata owners voted in favour of the following resolution:

To approve the [Project] as proposed, and to provide the authority for the Strata Council and Management to engage in the required contracts... up to a maximum 'project budget' of \$ 500,000.00....

23. On February 4, 2011 the Strata's council ("Strata Council") voted to retain [REDACTED] as the contractor ("Contractor") for the Project.
24. Active work on the Project began in May, 2011 and continued until the Spring, 2013.

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25. The Contractor's quote for the Project, which was dated June 30, 2010, was \$395,500.00 excluding applicable taxes.
26. During the initial stages of the Project, the total projected budget, including engineering supervision and taxes, was \$499,600.00.
27. The Contractor ultimately billed the Strata around \$1,000,000.00 for the Project.
28. The Strata and the Strata Council were aware that the increased cost of the Project was attributable, at least in part, to additional damage to the Strata which was discovered during the Project.

Financial Issues with the Project

Overall Cost

29. None of the Licensees who are respondents to the complaint have provided documents to show that either the Strata Council or the Strata owners or both were informed after October 11, 2012 about further significant cost overruns on the Project.
30. The Brokerage distributed information to the Strata in connection with the Strata's 2013 AGM which showed the final cost of the Project was \$996,392.92. However, the balance sheet dated August 28, 2013 showed the final cost of the Project was \$1,037,274.63. When one of the Complainants asked Kim Schuss at the Strata's 2013 AGM what the final cost of the Project actually was, Kim Schuss did not answer.
31. On September 18, 2013 one of the Complainants e-mailed Mr. Chan in part as follows:

Prior to the AGM we on council had financials showing the expenditure for the balcony project to be \$1,037,274.63. Also, prior to the AGM, Simon and I had both asked Kim what the final figure for the project was and we never got an answer. I put that same question to Kim at the AGM and he again did not give the answer. I am assuming the above figure is the final expenditure as that is the one we are continually seeing on the monthly balance sheets.....

32. Mr. Chan responded on September 24, 2013. In the response, Mr. Chan does not clearly state the final cost of the Project, but he did write that certain amounts "\$1040392.35 which is just little bit enough to cover the expense of \$1037274.63" [sic].

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33. Mr. Roussin acknowledges that if he had been performing his duties as a Managing Broker with sufficient care and attention, he would have ensured that Kim Schuss and/or Mr. Chan provided a comprehensive answer to the Strata about the financial status and final cost of the Project.

Payment of Invoices

34. The Strata Council did not review or approve payment of all of the invoices for the Project.
35. In an e-mail from Kim Schuss to the Strata Council dated August 11, 2012, he wrote that the Brokerage did "not have a standing policy of sending copies of all invoice[s].... over and above the base operating costs".
36. In Mr. Roussin's response to the Council dated December 9, 2013, he admits there was no "outright and direct written consent" from the Strata Council for the release of some payments to the Contractor. However, he says the Strata Council and the Strata owners were aware the cost of the Project had escalated significantly. Further, he said that as he had been appointed Managing Broker when the Project was essentially complete, it would have been unreasonable for him to demand a different payment schedule, so he operated on the premise of implied consent.
37. Some of the payments referred to immediately above were made out of the Strata's contingency reserve fund.
38. In connection with the Project, the Strata Council learned that around September 5, 2013 the Brokerage had, in error, paid an invoice dated February 15, 2013 ("Invoice") to another the Brokerage client for building repairs and renovations in the amount of \$4,165.25 out of the Strata's funds.
39. In an e-mail Kim Schuss sent to the Strata Council on October 14, 2013, he wrote: "We did note that one of the invoices to be paid was coded incorrectly to [the Strata] and it has been removed, so the final payout is about \$4,100 less than what was previously stated".
40. On September 5, 2013, the cheque for the improper payment from trust funds of the Strata held by the Brokerage cleared the relevant account. On October 16, 2013, the Brokerage reimbursed the Strata for the incorrect payment.
41. Mr. Roussin acknowledges that if he had been performing his duties as a Managing Broker with sufficient care and attention, he would have ensured that Kim Schuss,

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Mr. Chan, and/or the Brokerage had not released payments to the Contractor or made payments from the contingency reserve fund without authorization from the Strata Council and would have taken steps to ensure the cheque used to pay the Invoice had been cancelled.

DOCUMENT REQUESTS

42. Section 7 of the 1999 Agreement provides in part:

The Manager shall make available for inspection on request of the [Strata] all documents, accounts, and records which it may have as Manager, and any such material shall be made available to any Council Member of the [Strata] on request and upon request of any owner, giving fifteen (15) days notice of their intention to inspect said accounts....

43. Starting in August, 2012, one of the Complainants—a member of the Strata Council at the material time—repeatedly asked on behalf of the Strata Council for access to the documents, accounts, and records of the Strata, and in particular for access to documents relating to the Project.
44. On September 17, 2013, Mr. Chan brought what he said were some of the relevant documents to a meeting of the Strata Council. However, he said he could not leave the documents with the Strata Council.
45. Subsequently, Mr. Chan told the Strata Council that the Strata Council would either have to pay \$0.25 per page (estimated to be between \$500.00 and \$1,000.00 overall) to have the requested documents photocopied or to pay the Brokerage \$100 per hour to have someone at the the Brokerage supervise a member of the Strata Council inspecting the documents at the Brokerage's office "as per the strata agreement".
46. The 1999 Agreement does not provide the Brokerage with the authority to charge photocopying fees for providing documents to the Strata or to charge a supervision fee in connection with Strata Council members inspecting Strata documents at the Brokerage's office.
47. Mr. Roussin acknowledges that if he had been performing his duties as a Managing Broker with sufficient care and attention, he would have ensured that the Brokerage took active steps to comply with the document inspection requirements of section 7 of the 1999 Agreement given the repeated requests for access to the documents from a Strata Council member.

MITIGATING FACTORS

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- 48. Mr. Roussin does not have a discipline history with the Council.
- 49. Mr. Roussin became a Managing Broker at the Brokerage at a relatively late stage in the Project.

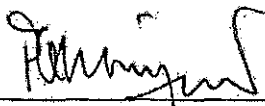
C. Proposed Acceptance of Findings and Waiver

- 1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Mr. Roussin is prepared to accept the following findings if made against him by the Council's Consent Order Review Committee:
 - (a) Mr. Roussin, while acting as a managing broker at the Brokerage, committed professional misconduct within the meaning of section 35(1)(a) of the Act in that he:
 - a. failed contrary to section 6(2) of the Act and section 3-1(1)(b) of the Council Rules to ensure that the business of the brokerage was carried out competently and in accordance with the Act and Council Rules by:
 - (i) failing to ensure that there was at all material times a written service agreement in place between the Strata and the Brokerage that was current and contained the content required by section 5-1(4) and section 5-1(5.1) of the Council Rules;
 - (ii) failing to ensure that licensees providing strata management services to the Strata, being Kim Schuss and Mr. Chan, performed the delegated duties provided for by 1999 Agreement competently and without exceeding their authority;
 - (iii) permitting Kim Schuss, Mr. Chan, and the Brokerage or any or all of them to withdraw unauthorized amounts for management fees from the Strata's accounts;
 - (iv) when he became aware that management fees greater than those provided for in the 1999 Agreement had been and were being withdrawn from the Strata's accounts, failing to remedy the problem.
 - b. in relation to strata management services Kim Schuss and Mr. Chan provided to the Strata in connection with the Project, failed contrary to section 6(2) of the Act and section 3-1(1)(c) of the Council Rules to ensure an adequate level of supervision of Kim Schuss and Mr. Chan by being unaware they were or, in the alternative, failing to prevent them from:
 - (i) expending funds from the Strata's contingency reserve fund without prior approval the Strata Council;

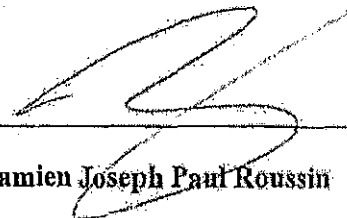
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- (ii) releasing payments to the Contractor without prior approval from the Strata Council;
 - (iii) failing as required by section 7 of the 1999 Agreement to make all relevant documents, accounts, and records of the Strata available for inspection on request by a member of the Strata Council.
- 2. Mr. Roussin hereby waives his right to appeal pursuant to section 54 of the *Real Estate Services Act*.
- 3. Mr. Roussin acknowledges that he has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
- 4. Mr. Roussin acknowledges and is aware that the Council will publish the Consent Order and penalty herein in its Report from Council newsletter, on the Council's website, and on CanLii, a website for legal research.
- 5. Mr. Roussin acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the *Real Estate Services Act*, to appeal any decision of the Council, including this Agreed Statement of Facts, Proposed Acceptance of Findings, and Waiver and Consent Order.
- 6. The Agreed Statement of Facts and Proposed Acceptance of Findings contained herein are made for the sole purpose of resolving a complaint being considered by the Council and for that purpose only. Such agreed statement of facts and proposed acceptance of findings cannot be used in any other proceeding of any kind.



Patrick Gilligan-Hackett, Legal Counsel
Real Estate Council of British Columbia



Damien Joseph Paul Roussin

As to Part B only (Agreed Statement of Facts)

As to Parts A, B, C (proposed penalty, Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver)

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FINDINGS AND WAIVER

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Dated 16 day of March, 2015⁶ 10 Dated 22 day of DECEMBER, 2015