

12.1

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT
DOCKET # 2577CV01253

K. F., a minor, by his mother,
SANDRA FERNANDEZ DE VILLAVICENCIO,
and SANDRA FERNANDEZ DE VILLAVICENCIO,
individually

Plaintiffs,

v.

CUBE 3 STUDIO LLC,

Defendant

**MEMORANDUM IN SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

Plaintiffs' claims are barred by the 6-year statute of repose in G.L. c. 260, §2B. In Counts I ("Negligence"), II ("Loss of Consortium of a Minor Child"), III ("Negligent Infliction of Emotional Distress"), and VI ("Intentional Infliction of Emotional Distress") of the Complaint, Plaintiffs allege damages caused by Defendant CUBE 3 Studio LLC's ("CUBE 3") design or general administration of an improvement to the real property located at 552 Victory Road in Quincy, Massachusetts (the "Property"). The statute of repose in G.L. c. 260, §2B prohibits actions commenced more than 6 years after the earlier of "(1) the opening of the improvement to use; or (2) substantial completion of the improvement and the taking of possession for occupancy by the owner." The certificate of occupancy for the Property was issued in July 2017. Substantial completion was certified in April and May 2018. The Plaintiffs began residing in a unit within the

Property in the summer of 2018. Because the Complaint was not filed until November 2025, all issues in dispute under Counts I, II, III, and VI are barred by the statute of repose.

STANDARD OF REVIEW

Summary judgment shall be granted where there are no material facts in dispute, and the moving party is entitled to judgment as a matter of law. *Cassesso v. Comm'r of Correction*, 390 Mass. 419, 422 (1983); *Cnty National Bank v. Dawes*, 369 Mass. 550, 553 (1976); Mass. R. Civ. P. 56(c). The moving party bears the burden of affirmatively demonstrating the absence of a triable issue and that the moving party is entitled to judgment as a matter of law. *Pederson v. Time, Inc.*, 404 Mass. 14, 16-17 (1989). With respect to any claim on which the party moving for summary judgment does not have the burden of proof at trial, it may demonstrate the absence of a triable issue either by submitting affirmative evidence that negates an essential element of the opponent's case or "by demonstrating that proof of that element is unlikely to be forthcoming at trial." *Flesner v. Technical Commc'ns Corp.*, 410 Mass. 805, 809 (1991); *accord Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 716 (1991).

ARGUMENT

A. Counts I, II, III and VI of the Complaint are barred by the statute of repose, M.G.L. c. 260, § 2B.

The Plaintiffs' Complaint was filed on November 10, 2025, more than six years after substantial completion, the issuance of certificates of occupancy, and actual possession and residential use of the Marina Bay property. Therefore, the statute of repose in G. L. c. 260, § 2B bars Counts I, II, III and VI¹ of the Complaint, which allege various damages caused by CUBE

¹ In Count VI ("Intentional Infliction of Emotional Distress"), the Plaintiffs allege "[t]his count is pled in the alternative and addresses outrageous, intentional conduct distinct from negligence." *Compl.* ¶ 74. It should be noted that, insofar as this count

3's deficiency or neglect as the architect of the Meriel Marina Bay construction and development project (the "Project").

G.L. c. 260, §2B provides, in relevant part:

Action of tort for damages arising out of any deficiency or neglect in the design, planning, construction or general administration of an improvement to real property, other than that of a public agency as defined in section thirty-nine A of chapter seven shall be commenced only within three years next after the cause of action accrues; provided, however, that **in no event shall such actions be commenced more than six years** after the earlier of the dates of: (1) the opening of the improvement to use; or (2) substantial completion of the improvement and the taking of possession for occupancy by the owner.

G.L. c. 260, §2B (emphasis added). The improvement being open to use alone is enough to trigger the statute of repose. Applying prong (1) of the statute, the Appeals Court has held, "the question whether an improvement has been substantially completed is immaterial to the determination of the date on which the statute of repose begins to run if the improvement has already been opened to use." *Coca-Cola Bottling Co. of Cape Cod v. Weston & Sampson Eng'rs, Inc.*, 45 Mass. App. Ct. 120, 125 (1998). More broadly, evidence of substantial completion and the certificate of occupancy establish "opening of each individual building to its intended use, or the substantial completion of the individual building and the taking of possession for occupancy by the owner or owners" and triggers the six-year period of the statute of repose. *D'Allessandro v. Lennar Hingham Holdings, LLC*, 486 Mass. 150, 158 (2020).

Here, all triggering events initiating the statute of repose period occurred more than six years before the filing date of the Complaint. The certificate of occupancy was issued on July 31, 2017. Exh. A, Certificate of Occupancy. Substantial completion of the Project occurred in the

focuses on insurance rights, it is addressed in the accompanying Defendant's Motion for Judgment on the Pleadings. To the extent that Count VI addresses "damages arising out of any deficiency or neglect in the design, planning, construction or general administration of an improvement to real property" within the meaning of G.L. c. 260, §2B, it is subject to summary judgment as argued herein.

first half of 2018, as attested by its architect of record, CUBE 3, the general contractor and the owner, on April 23, 2018, April 27, 2018, and May 3, 2018, respectively. Exh. B, Certificate of Substantial Completion; Exh. F, Affidavit of A. Bancroft. The final contract settlement and change order for the Project was executed on November 13, 2018, also more than six years before the beginning of the instant action. The final change order specifically notes that “[t]he Contract Time will be unchanged” and “[t]he Date of Substantial Completion as of the date of this Change Order therefore is unchanged.” Exh. E, Final Contract Settlement and Change Order. The complaint states that the Plaintiffs resided “from the summer of 2018 through October 2024,” indicating that the property was open for use during the summer of 2018. Complaint, at ¶ 3. Therefore, the six-year statute of repose period expired in July 2023 at the earliest and in the beginning of the fall of 2024 at the latest. The Complaint in the instant case was filed on November 10, 2025. Complaint, Paper No. 1.

B. The statute of repose cannot be tolled, extended or otherwise circumvented.

The Plaintiffs suggest that various events or doctrines may toll or modify the statute of repose, including “concealment of defects” and “refusal to remediate.” Complaint, at ¶ 53. According to the Complaint, “[a]ny applicable statutes of limitations are tolled by the discovery rule and by the defendant’s fraudulent concealment, and the continuing-tort doctrine applies to the ongoing exposures and injuries through 2024.” Complaint, at ¶ 8. Also, the Plaintiffs allege, “[p]ursuant to G.L. c. 260, § 12, all limitation and repose periods are tolled by fraudulent concealment.” Complaint, at ¶ 66.

Applicable case law does not permit any of these exceptions to the statute of repose. The Supreme Judicial Court has held:

Unlike statutes of limitation, statutes of repose may not be “tolled” for any reason, as “tolling” would deprive the defendant of the certainty of the repose deadline and

thereby defeat the purpose of a statute of repose. See *Protective Life Ins. Co. v. Sullivan*, *supra* at 631 n. 19, 682 N.E.2d 624, citing *Sullivan v. Iantosca*, 409 Mass. 796, 798, 569 N.E.2d 822 (1991). The only way to satisfy the “absolute time limit” of a statute of repose is to “commence” the action prior to the expiration of that time limit. *McGuinness v. Cotter*, *supra*. See *Aldrich v. ADD Inc.*, 437 Mass. 213, 221, 770 N.E.2d 447 (2002).

Nett v. Bellucci, 437 Mass. 630, 635 (2002).

Other jurisdictions have occasionally tolled their statutes of repose for continuous negligence, treating a series of wrongs as a single continuing wrong. The SJC specifically rejected this approach in a case regarding the seven year statute of repose within G. L. c. 260, § 4, holding, “[w]e conclude that Massachusetts law is to the contrary and, even were there negligence, the plaintiff no longer has a viable cause of action for any act or omission that occurred seven years before she filed suit.” *Rudenauer v. Zafiropoulos*, 445 Mass. 353, 357 (2005).

“A statute of repose eliminates a cause of action at a specified time, regardless of whether an injury has occurred or a cause of action has accrued as of that date.” *Bridgwood v. A.J. Wood Constr., Inc.*, 480 Mass. 349, 352 (2018). “Simply put, after six years, [G. L. c. 260, § 2B,] completely eliminates a cause of action against certain persons in the construction industry.” *Bridgwood v. A.J. Wood Constr., Inc.*, 480 Mass. 349, 354 (2018), citing *Klein v. Catalano*, 386 Mass. 701, 702 (1982).

In Count IV of the Complaint, titled “Fraudulent Concealment and Misrepresentation,” Plaintiff asserts G.L. c. 260, § 12 in order to toll the statute of repose. The Complaint states, “[p]ursuant to G.L. c. 260, § 12, all limitation and repose periods are tolled by fraudulent concealment.” Complaint, at ¶ 66. “Massachusetts does not recognize an independent claim for fraudulent concealment. Rather, G.L. c. 260, § 12, tolls the statute of limitations for a cause of action if an alleged wrongdoer concealed its existence through some affirmative act done with the intent to deceive.” *Niedner v. Ortho-McNeil Pharm., Inc.*, 90 Mass. App. Ct. 306, 313 (2016).

In addition to citing G.L. c. 260, § 12 and expressly stating “fraudulent concealment,” the Plaintiffs use the terms misrepresentation, misled and similar words to describe the same phenomenon. For example, in Paragraph 67, the Complaint alleges “misrepresentations about building safety,” and in Paragraph 26, the Complaint alleges, specifically “[t]hroughout the six-year period, the plaintiffs were repeatedly misled, including denial of any mold in building end of 2022, by management and representatives associated with the defendant.” All of these allegations lead to Paragraph 66 in Count IV of the Complaint, stating “[P]ursuant to G.L. c. 260, § 12, all limitations and repose period are tolled by fraudulent concealment.”

Contrary to the Plaintiffs’ claim, G.L. c. 260, § 12 is inapplicable to the statute of repose at issue, G.L. c. 260, § 2B. The Supreme Judicial Court has expressly held that fraudulent concealment does not toll the statute of repose:

[W]e have consistently enforced statutes of repose according to their plain terms, despite the hardship they may impose on plaintiffs. Unlike statutes of limitation, statutes of repose cannot be ‘tolled’ for any reason. For example, although G. L. c. 260, § 7, tolls any applicable statute of limitations until a minor plaintiff reaches majority, it does not toll the statute of repose. **The statute of repose eliminates a plaintiff’s cause of action even in cases of fraudulent concealment.** In addition, the statute of repose is not subject to the “relation back” concept that permits adding a defendant by amending the complaint after the expiration of the repose period. **Simply put, after six years, [G. L. c. 260, § 2B,] completely eliminates a cause of action against certain persons in the construction industry.**

Bridgwood v. A.J. Wood Constr., Inc., 480 Mass. 349, 353–54 (2018) (internal citations removed and emphasis added). More broadly, the Appeals Court has held: “[T]here is no equitable estoppel or tolling of the statute of repose, except as specifically provided by statute. Statutes of repose are harsh. Notwithstanding compelling equitable considerations, statutes of repose are not tolled.” *Blaney v. Lowell Gen. Hosp.*, 76 Mass. App. Ct. 910, 911 (2010). Therefore, Count IV of the Complaint and the above stated background allegations which seek to toll the statute of repose by

asserting fraudulent concealment, including alleged acts of misleading and misrepresentation by CUBE 3, cannot survive a motion for judgment on the pleadings.

Thus, the Plaintiffs arguments that the statute of repose at issue can be tolled, changed or otherwise circumvented contradict overwhelming binding authority and must fail. Because the Complaint was not filed until on or about November 10, 2025, Counts I, II, III and VI of the Complaint are barred by the statute of repose. Specifically, within the Complaint:

- a. Count I alleges the “Negligence/Architectural Malpractice” of CUBE 3;
- b. Count II alleges “Loss of Consortium of a Minor Child (G.L. c. 231 §85X), stating “this claim is derivative of Count I and seeks distinct consortium damages”; Complaint, at ¶ 44;
- c. Count III alleges “Negligent Infliction of Emotion Distress,” asserting “the defendant's negligent design, concealment of defects, and refusal to remediate caused the plaintiffs severe emotional distress”; Complaint, at ¶ 53; and
- d. Count VI alleges “Intentional Infliction of Emotional Distress,” asserting “[t]his count is pled in the alternative and addresses outrageous, intentional conduct distinct from negligence.” Complaint, at ¶ 74. It should be noted that, insofar as this count focuses on insurance rights, it is addressed in the accompanying Defendant’s Motion for Judgment on the Pleadings.

Therefore, G.L. c. 260, § 2B expressly applies, being concerned with “[a]ction of tort for damages arising out of any deficiency or neglect in the design, planning, construction or general administration of an improvement to real property.” With regard to Counts I, II, III, and VI, there are no material facts in dispute, and CUBE 3 is entitled to judgment as a matter of law. Counts I, II, III, and VI (to the extent Count VI concerns professional design negligence) should be dismissed as barred by the statute of repose.

CONCLUSION

Defendant CUBE 3 respectfully requests summary judgment on the grounds that Counts I, II, III, and VI (to the extent Count VI concerns design negligence claims) are barred by the statute of repose.

Date: January 20, 2026

Respectfully submitted,
The Defendant,
CUBE 3 Studio LLC
By its Attorneys,

/s/ Michael P. Schaefer
Michael P. Schaefer, Esq.,
BBO No. 711910
MG+M, The Law Firm
125 High Street
Oliver Street Tower, 6th Floor
Boston, MA 02110
(617)406-4593
mschaefer@mgmlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2026, I served a true and accurate copy of the foregoing document upon the named plaintiffs via email and first-class mail as follows:

Sandra Fernandez De Villavicencio, *Individually*
K. F., c/o Sandra Fernandez De Villavicencio
550 Liberty Street, Unit 905
Braintree, MA 02184
sandrev14@yahoo.com

/s/ Michael Schaefer

Michael Schaefer

EXHIBIT A



City of Quincy

Certificate of Occupancy

Thomas P. Koch
 Mayor

Jay Duca
 Building Commissioner

In accordance with 780 CMR, Chapter 1 sec. 111.1(The Eighth Edition of the Massachusetts State Building Code), this certificate of occupancy is issued to the premise or structure or part thereof as herein identified.

Issued to	Marina Bay Residences, LLC						Permit No.
							B-15-492
Located at	552 Victory Road						Certificate Expiration
							N/A
Use Group and Occupancy	Parking G1	Parking G2	1 st Floor	2 nd Floor	3 rd Floor	4 th Floor	5 th Floor
	S-2 Garage	S-2 Garage	B Leasing Office Lobby	A-3 Amenities R-2 Apartments	R-2 Apartments	R-2 Apartments	R-2 Apartments
Allowable Occupant Load			49	Amenities 120 40 Units 2 Model Units	45 Units	51 Units	51 Units
Type of Construction	IA	IA	IA	VA	VA	VA	VA
Special Stipulations and Conditions	187 Units Total and 2 Model Units Planning Board Case # 2012-14						
Signature of Building Inspector				Date of Inspection:			
				July 31, 2017			
Signature of Building Commissioner				Date of Issuance:			
				July 31, 2017			

EXHIBIT B



AIA Document G704™ - 2000

Certificate of Substantial Completion

PROJECT:
(Name and address)

PROJECT NUMBER:
CONTRACT FOR: General Construction
CONTRACT DATE:

OWNER: ☒

ARCHITECT: ☒

CONTRACTOR: ☒

TO OWNER:
(Name and address)

TO CONTRACTOR:
(Name and address)

FIELD: ☐

OTHER: ☐

PROJECT OR PORTION OF THE PROJECT DESIGNATED FOR PARTIAL OCCUPANCY OR USE SHALL INCLUDE:

The Work performed under this Contract has been reviewed and found, to the Architect's best knowledge, information and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated above is the date of issuance established by this Certificate, which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

Warranty

Date of Commencement

Cube 3 Studio LLC

ARCHITECT

BY James A. Spiegel AIA

04.23.2018

DATE OF ISSUANCE

A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of this final Certificate of Payment or the date of final payment.

Cost estimate of Work that is incomplete or defective: \$492,538.00

The Contractor will complete or correct the Work on the list of items attached hereto within Zero (0) days from the above date of Substantial Completion.

Callahan Inc

CONTRACTOR

BY Doug Morrison

DATE

4/27/2018

The Owner accepts the Work or designated portion as substantially complete and will assume full possession at (date). (time) on

Marina Bay Residences LLC

OWNER

BY David Perry

DATE

5/3/18

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance shall be as follows:

(Note: Owner's and Contractor's legal and insurance counsel should determine and review insurance requirements and coverage.)

SITE WORK	LOW 500 LOT @ 10 SPACES	\$ 5,500.00	clean-up and restoration work
	OCR LOT 'XIT	\$ 9,800.00	regrade and pave to drain to CB
	HAUL Rd VERLAY LIMITS	\$ 8,500.00	end of street requires clean cut and overlay pavement
	ELEVATION/ PREP AT GUTTER CURB	\$ 3,500.00	clean up and fill loose voids
	TRANSITION TO SIDEWALK OLD/NEW	\$ 1,500.00	elevation changes and trip hazards
	COLD SEAMS	\$ 5,500.00	center of roadway has cold seam
	THERMOPLASTIC CROSS WALKS	\$ 6,500.00	new crosswalk in base
	TEARDROP IRRIGATION SLIPS	\$ 22,568.00	paid by owner to MB Access
	TEARDROP CURB REPAIR	\$ 12,750.00	paid by owner to MB Access
	SEAWALL CAP	\$ 6,500.00	not yet completed at north end
		\$ 82,618.00	
MISC SITE	VERSA LOK TRANSITIONS AT BOARDWALK	\$ 3,000.00	wood to block variance
	CIP STAIRS AT BOARD	\$ 1,000.00	poor transition
	RAIL POST HOLES AT REMOVED CORES	\$ 600.00	grind clean and fill
	CITY PUNCH LIST	\$ 5,000.00	swap covers at sewer, drain, ocs
	PEDESTRIAN DRAIN COVERS AT SIDEWALKS	\$ 600.00	install pedestrian safe covers
		\$ 10,200.00	
LANDSCAPE	WEST COURTYARD COMPLETION	\$ 25,000.00	pavers and plantings remain
	EAST CY FENCES	\$ 12,000.00	not installed
	WATER FEATURE	\$ 5,500.00	not yet operated
	CLEAN UP	\$ 2,500.00	walls and decks
	PARKING ISLAND SB AT HAUL	\$ 3,500.00	west side requires completion
	500 AT 550 BULB OUT	\$ 1,500.00	requires completion
	DIE OFF		warranty?
	BIKE RACKS AT 552	\$ 1,200.00	not yet installed
	OCR EDGE AT 552	\$ 3,000.00	completion of plantings /grading/MULCH
	SPRING COMPLETIONS		
	IRRIGATION AT 550	\$ 6,000.00	not yet operated
		\$ 60,200.00	
MASONARY	REPAIR/COMPLETION OF CY CAPSTONES	\$ 3,800.00	
	SB GARAGE WINDOW SILL SURFACES	\$ 3,200.00	
CAULKING	UNDER STOREFRONTS	\$ 4,000.00	
	WEST 550 AT GRADE WALLS	\$ 2,500.00	windows and trim
	EXPANSION JTS	\$ 1,200.00	caulked in all locations
	PAVER TO DRAIN AT CY	\$ 6,000.00	shown in design
	TRAFFIC COATINGS sb UPPER RAMP		
	PARKING LOBBY FLOORS PREP	\$ 1,200.00	patching before coatings is typical
	STRIPPING	\$ 1,500.00	INTERIOR PARKING
		\$ 16,400.00	

HVAC	CONTROL WIRE COMPLETION (eg CABS/FANS)	\$ 6,000.00	ongoing issues
	AIR BALANCING REPORTS	\$ 6,000.00	not received
	FRESH AIR MU	\$ 2,000.00	remaining questions
	CO SYSTEM COMPLETE AND OPERATIONS SoO	\$ 2,000.00	awaiting completion
	CABINET HEATER CONTROLS COMPLETED	\$ 3,500.00	
	AIR CONDITIONING AT P4 AND P5	\$ 40,000.00	
	NB LEASING LOUVERS LEAK AT SF	\$ 3,500.00	
			\$ 63,000.00
PLUMBING	STATE ISSUES	\$ 2,500.00	
	GAS/GRILLS AT SB	\$ 1,800.00	
	RETAIL GAS PIPE AT NB	\$ 45,000.00	
	ADA SHOWER HEADS/HANDLES	\$ 11,000.00	
	WATER FOUNTAIN AT SB CARDIO		\$ 60,300.00
ELECTRIC	HEAT TRACE CIRCUIT DISTRIBUTION NB	\$ 36,000.00	
			\$ 36,000.00
MILLWORK	SCREW COVERS/PARTS/TOUCH UP	\$ 900.00	
	FASTEN LIT MIRRORS	\$ 600.00	
	HARDWARE KEY CORING	\$ 400.00	
			\$ 1,900.00
ROOF	REPAIRS FOR WARRANTY	\$ 3,000.00	
	COPING COLOR MISTAKES	\$ 6,000.00	
	TERMINATIONS AT LOW ROOFS/RETAIL	\$ 2,500.00	
			\$ 11,500.00
ELEVATOR	CERTIFICATE ADDRESS CORRECTION 550	\$ 60.00	
	LAMP SB CAR 2	\$ 360.00	
			\$ 420.00
			\$ 342,538.00

Value for the ongoing repair work related
to leaks at building facades \$150,000.00

Total Value of open/incomplete work to be
held - \$492,538.00

EXHIBIT C

Docketed 10/6/2025

219

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT DEPARTMENT
C.A. NO. 2182CV01044

MARINA BAY RESIDENCES, LLC,
Plaintiff,

v.

CUBE 3 STUDIO, LLC et al.,
Defendants.

CALLAHAN, INC.,
Third-Party Plaintiff,

v.

EXTERIOR DESIGNS, INC. et al.,
Third-Party Defendants

EXTERIOR DESIGNS, INC.,
Plaintiff-in-Counterclaims

v.

CALLAHN, INC.,
Defendant-in-Counterclaims

EXTERIOR DESIGNS, INC.
Plaintiff-in-Crossclaims

v.

SHAWNLEE CONSTRUCTION, LLC et al.,
Defendant-in-Crossclaims

EXTERIOR DESIGNS, INC.,
Fourth-Party Plaintiff

v.

COPPOLA CONSTRUCTION &
REMODELING CORP., et al.,
Fourth-Party Defendants.

**JOINT MOTION FOR ENTRY OF SEPARATE AND FINAL JUDGMENT AND
APPROVAL OF SETTLEMENT AS BEING IN GOOD FAITH**

Plaintiff Marina Bay Residences, LLC (“Plaintiff”) and Defendant Cube 3 Studio LLC (“Cube 3”) hereby move this Honorable Court, pursuant to Mass. R. Civ. P. 54(b), for an order of separate and final judgment dismissing with prejudice all claims against Cube 3 in this matter. Further, Plaintiff and Cube 3 request this Court approve their proposed settlement as being in good faith, pursuant to M.G.L. Chapter 231B. In support thereof, the parties assert the following:

1. This matter arises out of a complaint (“Complaint”) filed by the Plaintiff against Cube 3 and co-Defendant Callahan, Inc., (“Callahan”) on November 18, 2021. Subsequently, nineteen additional parties were named in third-, fourth-, and fifth-party complaints.
2. The Complaint concerns a real property development called Meriel Marina Bay (the “Project”), located at and around 552 Victory Road in Quincy, Massachusetts, consisting of residential apartments and retail space. In its Complaint, Plaintiff asserted: 1) breach of contract against Callahan (Count One); 2) negligence against Callahan (Count Two); 3) breach of contract against Cube 3 (Count Three); and 4) professional negligence against Cube 3 (Count 4).
3. In its Complaint, Plaintiff alleges water intrusion occurred at the Project and that the water intrusion resulted from construction, design, and product defects. Callahan served as general contractor, and Cube 3 served as the architect of record for the Project. Cube 3 denies all liability to Plaintiff.
4. On March 8, 2022, Callahan filed a cross-claim against Cube 3 asserting claims for contribution and common law indemnity. Cube 3 denies all liability to Callahan.
5. On October 27, 2022, Harvey Industries, Inc., filed a cross-claim against Cube 3 asserting a claim for contribution. Cube 3 denies all liability to Harvey.

6. This case is currently scheduled for jury trial on August 3, 2026, with a Pre-Trial Conference on July 13, 2026.
7. Plaintiff and Cube 3 have engaged in lengthy settlement discussions (including a mediation with all parties in December 2024 and again in May 2025), and they have reached an agreement in good faith to resolve the claims asserted by Plaintiff against Cube 3. Plaintiff and Cube 3 have executed a confidential settlement and release agreement (the “Settlement Agreement,” a copy of which can be produced to the Court for an *in camara* inspection, if requested), which enters into effect upon the Court finding that the settlement was entered in good faith and entering a separate and final judgment in favor of Cube 3. Plaintiff’s claims against Callahan remain for later adjudication along with the third-, fourth-, and fifth-party claims.
8. As to the Settlement Agreement being in good faith, M.G.L. Chapter 231B, § 4 (“Chapter 231B”) provides, in pertinent part, “[w]hen a release . . . is given in good faith to one of two or more persons liable in tort for the same injury . . . [i]t shall discharge the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.” “This rule, which is intended to encourage settlement, represents the realization that a joint tortfeasor will be unlikely to settle if he remains open to contribution claims.” Chapman v. Bernard’s, Inc., 198 F.R.D. 575, 577 (D. Mass. 2001) (applying Massachusetts law), *citing* Sullivan v. Bankhead Enter., Inc., 108 F.R.D. 378, 381 (D. Mass. 1985).
9. Chapter 231B “does not define good faith, but Massachusetts courts have stated that a lack of good faith under § 4 ‘includes collusion, fraud, dishonesty, and other wrongful conduct.’” Chapman, *supra* at 577; *citing* Noyes v. Raymond, 28 Mass. App. Ct. 186, 190 (1990).

10. There was no collusion, fraud, dishonesty or other wrongful conduct involved in the settlement negotiations between Plaintiff and Cube 3. Instead, the Settlement Agreement was a good faith, arms-length negotiation that will result in a benefit to all parties involved, as well as the co-defendants in this case.
11. Pursuant to Mass. R. Civ. P. 54(b), separate and final judgment may be entered upon a determination by the Court that there is “no just reason for delay.” See Consol. Rail Corp. v. Fore River Ry. Co., 861 F.2d 322, 325 (1st Cir. 1988). “Final decision” means a determination that “puts an end to litigation, . . . leav[ing] nothing more open to dispute and . . . set[ting] [the] controversy at rest.” Pollack v. Kelly, 372 Mass. 469, 475-76 (1977). Such is the case here, as all claims against Cube 3 will have been resolved by agreement or by operation of M.G.L. Chapter 231B, § 4.
12. In evaluating a motion for separate and final judgment, the court should also consider the possibility of a hardship or injustice to the parties from the delay of an appeal; whether appellate resolution of the separate matter will shorten, simplify or expedite the trial of the still pending claims; and whether the entry of separate and final judgment is in the interests of sound judicial administration. See Dattoli v. Hale Hosp., 400 Mass. 175, 177 (1987). Where, as here, any issues that the remaining parties may raise on appeal are separate and distinct from the claims to be dismissed, it is in the interests of judicial economy to enter separate and final judgment. Kobico, Inc. v. Pipe, 44 Mass. App. Ct. 103 (1997).
13. Plaintiff’s remaining claims against the co-defendants can and should be determined without the continued role of Cube 3 as a defendant. Therefore, Plaintiff’s claims against Cube 3 are ripe for the entry of separate and final judgment pursuant to Rule 54(b).
14. As to Callahan’s and Harvey’s crossclaims for contribution and common law indemnity in tort against Cube 3, pursuant to § 4, a partial settlement agreement reached in good faith

reduces the Plaintiff's claims against other tortfeasors in the amount of the settlement figure and discharges the settling tortfeasor from liability for contribution to any other tortfeasor. See In re Atlantic Financial Management Inc. Securities Litigation, 718 F. Supp 1012 (1988).

15. "Absent a showing of bad faith, i.e. if the settlement figure were so inadequate as to suggest collusion, or the parties' dealings were not at arm'slength, it is not necessary that the settlement figure equal the settling defendant's ultimate relative share of liability determined after trial for the bar to operate. The non-settling defendants are only entitled to a credit against any ultimate judgment in the amount of the settlement, not a credit based on the settling defendant's proportionate share of liability as determined at trial." In re Atlantic Financial Management Inc. Securities Litigation, *supra* at 1015.

WHEREFORE, for the reasons discussed above, because there is no just reason for delay, Plaintiff and Cube3 respectfully request that this Honorable Court:

1. Approve the proposed settlement between Plaintiff and Cube 3 as being in good faith, pursuant to M.G.L. Chapter 231B;
2. Find that there is no just reason for delay in granting a separate and final judgment to Cube 3;
3. Issue an order directing the entry of a separate and final judgment dismissing with prejudice Plaintiff's Complaint as against Cube 3 and Callahan's and Harvey's Cross-Complaints against Cube 3, pursuant to Mass. R. Civ. P. 54(b); and
4. Dismiss, with prejudice, without costs or attorneys' fees, and waiving all rights of appeal, all claims and cross-claims asserted, or that could have been asserted, against Cube 3.

A proposed Order is attached hereto as Exhibit A.

Respectfully submitted,

Plaintiff,

Marina Bay Residences LLC

By its Attorneys,

/s/ Daniel P. Dain

Daniel P. Dain, Esq., BBO No. 632411
Kate Moran Carter, Esq., BBO No. 663202
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/s/ Gregory P. Sapire

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Respectfully submitted,

The Defendant,

Cube 3 Studio, LLC

By its Attorneys,

/s/ Michael P. Schaefer

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Date: September 19, 2025

CERTIFICATE OF SERVICE

I, Daniel P. Dain, hereby certify that I have served a copy of the foregoing on the following by email and/or mailing same, postage prepaid, this 19th day of September, 2025 to:

Charles F. Rourke, II, BBO #676041 Sloane and Walsh, LLP One Boston Place 201 Washington Street, Suite 1600 Boston, MA 02108 (617) 523-6010 crouke@sloanewalsh.com <i>Attorneys for CALLAHAN, INC.</i>	Mark S. Bodner, BBO# 546005 Melick & Porter, LLP One Liberty Square, 7th Floor Boston, MA 02109 mbodner@melicklaw.com <i>Attorney for COPPOLA CONSTRUCTION & REMODELING CORP.</i>
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Attorney for C&K Roofing, Inc

Daniel P. Dain

SUPERIOR COURT RULE 9A & 9C CERTIFICATE

I, Daniel P. Dain, attorney for Marina Bay Residences, LLC hereby certify that, as the moving party, counsel engaged in an initial conference regarding the topics of this Motion to Approve Settlement with Separate and Final Judgment with counsel for the other parties on September 24, 2025 and September 26, 2025 and provide this certification as required by Superior Court Rule 9A(a)(8), and Rule 9C (effective September 1, 2023).

/s/ Daniel P. Dain

Daniel P. Dain

Exhibit A

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT DEPARTMENT
C.A. NO. 2182CV01044

MARINA BAY RESIDENCES, LLC,
Plaintiff,

v.

CUBE 3 STUDIO, LLC et al.,
Defendants.

CALLAHAN, INC.,
Third-Party Plaintiff,

v.

EXTERIOR DESIGNS, INC. et al.,
Third-Party Defendants

EXTERIOR DESIGNS, INC.,
Plaintiff-in-Counterclaims

v.

CALLAHN, INC.,
Defendant-in-Counterclaims

EXTERIOR DESIGNS, INC.
Plaintiff-in-Crossclaims

v.

SHAWNLEE CONSTRUCTION, LLC et al.,
Defendant-in-Crossclaims

EXTERIOR DESIGNS, INC.,
Fourth-Party Plaintiff

v.

COPPOLA CONSTRUCTION &
REMODELING CORP., et al.,
Fourth-Party Defendants.

ORDER

After conducting a hearing on the *Joint Motion for Entry of Separate and Final Judgment and Approval of Settlement as Being in Good Faith* filed by Plaintiff Marina Bay Residences, LLC and Defendant Cube 3 Studio LLC, ("Cube 3"), this Court hereby finds, determines, and orders as follows:

- 1) The proposed settlement entered into between Plaintiff and Cube 3 was made in good faith, pursuant to M.G.L. Chapter 231B;
- 2) There is no just reason for delay, pursuant to Mass. R. Civ. P. 54(b); and
- 3) This Court enters judgment in favor of Cube 3 and orders and adjudges that that a separate and final judgment is entered pursuant to Mass. R. Civ. P. 54(b), dismissing with prejudice, without costs or attorneys' fees, and without any right to appeal to any party, all claims, counterclaims and crossclaims currently pending in this matter against Cube 3.

SO ORDERED BY:

DATED: _____

EXHIBIT D

Docketed 10/6/2025

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT DEPARTMENT
C.A. NO. 2182CV01044

MARINA BAY RESIDENCES, LLC,
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v.

CUBE 3 STUDIO, LLC et al.,
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CALLAHAN, INC.,
Third-Party Plaintiff,

v.

EXTERIOR DESIGNS, INC. et al.,
Third-Party Defendants

EXTERIOR DESIGNS, INC.,
Plaintiff-in-Counterclaims

v.

CALLAHN, INC.,
Defendant-in-Counterclaims

EXTERIOR DESIGNS, INC.
Plaintiff-in-Crossclaims

v.

SHAWNLEE CONSTRUCTION, LLC et al.,
Defendant-in-Crossclaims

EXTERIOR DESIGNS, INC.,
Fourth-Party Plaintiff

v.

COPPOLA CONSTRUCTION &
REMODELING CORP., et al.,
Fourth-Party Defendants.

11/18/2025 The Plaintiff and defendant Cube 3 Studio LLC ("setting defendant" a
Cube 3) bring this motion seeking the Court's approval of the settlement
as being made in good faith, for purposes of G.L.C. 231B 54, and
Cube 3's
Motion for
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1. The Court reviews the
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**JOINT MOTION FOR ENTRY OF SEPARATE AND FINAL JUDGMENT AND
APPROVAL OF SETTLEMENT AS BEING IN GOOD FAITH**

Plaintiff Marina Bay Residences, LLC ("Plaintiff") and Defendant Cube 3 Studio LLC ("Cube 3") hereby move this Honorable Court, pursuant to Mass. R. Civ. P. 54(b), for an order of separate and final judgment dismissing with prejudice all claims against Cube 3 in this matter. Further, Plaintiff and Cube 3 request this Court approve their proposed settlement as being in good faith, pursuant to M.G.L. Chapter 231B. In support thereof, the parties assert the following:

1. This matter arises out of a complaint ("Complaint") filed by the Plaintiff against Cube 3 and co-Defendant Callahan, Inc., ("Callahan") on November 18, 2021. Subsequently, nineteen additional parties were named in third-, fourth-, and fifth-party complaints.
2. The Complaint concerns a real property development called Meriel Marina Bay (the "Project"), located at and around 552 Victory Road in Quincy, Massachusetts, consisting of residential apartments and retail space. In its Complaint, Plaintiff asserted: 1) breach of contract against Callahan (Count One); 2) negligence against Callahan (Count Two); 3) breach of contract against Cube 3 (Count Three); and 4) professional negligence against Cube 3 (Count 4).
3. In its Complaint, Plaintiff alleges water intrusion occurred at the Project and that the water intrusion resulted from construction, design, and product defects. Callahan served as general contractor, and Cube 3 served as the architect of record for the Project. Cube 3 denies all liability to Plaintiff.
4. On March 8, 2022, Callahan filed a cross-claim against Cube 3 asserting claims for contribution and common law indemnity. Cube 3 denies all liability to Callahan.
5. On October 27, 2022, Harvey Industries, Inc., filed a cross-claim against Cube 3 asserting a claim for contribution. Cube 3 denies all liability to Harvey.

6. This case is currently scheduled for jury trial on August 3, 2026, with a Pre-Trial Conference on July 13, 2026.
7. Plaintiff and Cube 3 have engaged in lengthy settlement discussions (including a mediation with all parties in December 2024 and again in May 2025), and they have reached an agreement in good faith to resolve the claims asserted by Plaintiff against Cube 3. Plaintiff and Cube 3 have executed a confidential settlement and release agreement (the "Settlement Agreement," a copy of which can be produced to the Court for an *in camara* inspection, if requested), which enters into effect upon the Court finding that the settlement was entered in good faith and entering a separate and final judgment in favor of Cube 3. Plaintiff's claims against Callahan remain for later adjudication along with the third-, fourth-, and fifth-party claims.
8. As to the Settlement Agreement being in good faith, M.G.L. Chapter 231B, § 4 ("Chapter 231B") provides, in pertinent part, "[w]hen a release . . . is given in good faith to one of two or more persons liable in tort for the same injury . . . [i]t shall discharge the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor." "This rule, which is intended to encourage settlement, represents the realization that a joint tortfeasor will be unlikely to settle if he remains open to contribution claims." Chapman v. Bernard's, Inc., 198 F.R.D. 575, 577 (D. Mass. 2001) (applying Massachusetts law), *citing* Sullivan v. Bankhead Enter., Inc., 108 F.R.D. 378, 381 (D. Mass. 1985).
9. Chapter 231B "does not define good faith, but Massachusetts courts have stated that a lack of good faith under § 4 'includes collusion, fraud, dishonesty, and other wrongful conduct.'" Chapman, supra at 577; *citing* Noyes v. Raymond, 28 Mass. App. Ct. 186, 190 (1990).

10. There was no collusion, fraud, dishonesty or other wrongful conduct involved in the settlement negotiations between Plaintiff and Cube 3. Instead, the Settlement Agreement was a good faith, arms-length negotiation that will result in a benefit to all parties involved, as well as the co-defendants in this case.
11. Pursuant to Mass. R. Civ. P. 54(b), separate and final judgment may be entered upon a determination by the Court that there is “no just reason for delay.” See Consol. Rail Corp. v. Fore River Ry. Co., 861 F.2d 322, 325 (1st Cir. 1988). “Final decision” means a determination that “puts an end to litigation, . . . leav[ing] nothing more open to dispute and . . . set[ting] [the] controversy at rest.” Pollack v. Kelly, 372 Mass. 469, 475-76 (1977). Such is the case here, as all claims against Cube 3 will have been resolved by agreement or by operation of M.G.L. Chapter 231B, § 4.
12. In evaluating a motion for separate and final judgment, the court should also consider the possibility of a hardship or injustice to the parties from the delay of an appeal; whether appellate resolution of the separate matter will shorten, simplify or expedite the trial of the still pending claims; and whether the entry of separate and final judgment is in the interests of sound judicial administration. See Dattoli v. Hale Hosp., 400 Mass. 175, 177 (1987). Where, as here, any issues that the remaining parties may raise on appeal are separate and distinct from the claims to be dismissed, it is in the interests of judicial economy to enter separate and final judgment. Kobico, Inc. v. Pipe, 44 Mass. App. Ct. 103 (1997).
13. Plaintiff’s remaining claims against the co-defendants can and should be determined without the continued role of Cube 3 as a defendant. Therefore, Plaintiff’s claims against Cube 3 are ripe for the entry of separate and final judgment pursuant to Rule 54(b).
14. As to Callahan’s and Harvey’s crossclaims for contribution and common law indemnity in tort against Cube 3, pursuant to § 4, a partial settlement agreement reached in good faith

reduces the Plaintiff's claims against other tortfeasors in the amount of the settlement figure and discharges the settling tortfeasor from liability for contribution to any other tortfeasor. See In re Atlantic Financial Management Inc. Securities Litigation, 718 F. Supp 1012 (1988).

15. "Absent a showing of bad faith, i.e. if the settlement figure were so inadequate as to suggest collusion, or the parties' dealings were not at arm'slength, it is not necessary that the settlement figure equal the settling defendant's ultimate relative share of liability determined after trial for the bar to operate. The non-settling defendants are only entitled to a credit against any ultimate judgment in the amount of the settlement, not a credit based on the settling defendant's proportionate share of liability as determined at trial." In re Atlantic Financial Management Inc. Securities Litigation, *supra* at 1015.

WHEREFORE, for the reasons discussed above, because there is no just reason for delay, Plaintiff and Cube3 respectfully request that this Honorable Court:

1. Approve the proposed settlement between Plaintiff and Cube 3 as being in good faith, pursuant to M.G.L. Chapter 231B;
2. Find that there is no just reason for delay in granting a separate and final judgment to Cube 3;
3. Issue an order directing the entry of a separate and final judgment dismissing with prejudice Plaintiff's Complaint as against Cube 3 and Callahan's and Harvey's Cross-Complaints against Cube 3, pursuant to Mass. R. Civ. P. 54(b); and
4. Dismiss, with prejudice, without costs or attorneys' fees, and waiving all rights of appeal, all claims and cross-claims asserted, or that could have been asserted, against Cube 3.

A proposed Order is attached hereto as Exhibit A.

Respectfully submitted,

Plaintiff,

Marina Bay Residences LLC

By its Attorneys,

/s/ Daniel P. Dain

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Kate Moran Carter, Esq., BBO No. 663202
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/s/ Gregory P. Sapire

Gregory P. Sapire, *pro hac vice*
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Respectfully submitted,

The Defendant,

Cube 3 Studio, LLC

By its Attorneys,

/s/ Michael P. Schaefer

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Oliver Street Tower, 6th Floor
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Date: September 19, 2025

CERTIFICATE OF SERVICE

I, Daniel P. Dain, hereby certify that I have served a copy of the foregoing on the following by email and/or mailing same, postage prepaid, this 19th day of September, 2025 to:

Charles F. Rourke, II, BBO #676041 Sloane and Walsh, LLP One Boston Place 201 Washington Street, Suite 1600 Boston, MA 02108 (617) 523-6010 crouke@sloanevalsh.com <i>Attorneys for CALLAHAN, INC.</i>	Mark S. Bodner, BBO# 546005 Melick & Porter, LLP One Liberty Square, 7th Floor Boston, MA 02109 mbodner@melicklaw.com <i>Attorney for COPPOLA CONSTRUCTION & REMODELING CORP.</i>
John M. Curran, BBO#628772 Norman Brown, IV, BBO#654821 George M. Dolan, BBO#644170 Corwin & Corwin, LLP 600 Unicorn Park Drive Woburn, MA 01801 jcurran@corwinlaw.com nbrown@corwinlaw.com gdolan@corwinlaw.com <i>Attorneys for EXTERIOR DESIGNS, INC. (EDI HOLDINGS, LLC)</i>	William J. Fidurko, BBO# 567064 Matthew S. Prunk, BBO# 705781 Tucker, Dyer & O'Connell, LLP 199 Wells Avenue Newton, MA 02459 fidurko@toflawfirm.com prunk@tdolaw.com <i>Attorneys for SHAWNLEE CONSTRUCTION, LLC</i>
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Joseph H. Aronson, Esq. Scott Fox, Esq. Kiernan Trebach, LLP 40 Court Street Boston, MA 02108 jaronson@kiernantrebach.com sfox@kiernantrebach.com <i>Attorneys for FRY REGLET CORPORATION</i>	Kip J. Adams, Esq. Pierre C. Youssef, Esq. Lewis Brisbois Bisgaard & Smith LLP One International Place, Suite 350 Boston, MA 02110 Kip.adams@lewisbrisbois.com Pierre.Youssef@lewisbrisbois.com <i>Attorneys for WHITE CAP SUPPLY HOLDINGS, LLC</i>
Christopher J. Sullivan, BBO# 548137 Zachary M. Walton, BBO# 714104 Sullivan & Associates, LLC 500 West Cummings Park, Suite 4700 Woburn, MA 01801 csullivan@sullivanlitigation.com zwalton@sullivanlitigation.com <i>Attorneys for Harvey Industries, Inc.</i>	William M. Taylor, BBO# 624981 Jaclyn M. Essinger, BBO# 679695 Judah Rome, BBO# 695997 Troutman Pepper Locke LLP 125 High Street Boston, MA 02110-2736 William.taylor@troutman.com Jaclyn.essinger@troutman.com Judah.rome@troutman.com <i>Attorneys for Plycem USA, LLC and Elementia USA, Inc.</i>
Grace V.B. Garcia, BBO# 640970 Stephen G. Troiano, BBO# 683193 Morrison Mahoney LLP 250 Summer Street Boston, MA 02210-1181 ggarcia@morrisonmahoney.com stroiano@morrisonmahoney.com <i>Attorneys for Wellesley Roofing, inc. d/b/a Boston Roofing</i>	John A. Caletti, BBO# 649129 McAngus Goudelock & Courie LLC 40 Westminster Street Suite 201 Providence, RI 02903 <i>Attorney for Riverside Construction, Inc.</i>

Mark A. Perkins, Esq. Joseph T. Prive, Esq. Jeffrey D. Adams, BBO# 662697 Matthew Johnson, BBO# 636297 Devine, Millimet and Branch 111 Amherst Street Manchester, MA 03101 mperkins@devinemillimet.com Jprive@devinemillimet.com jadams@devinemillimet.com mjohnson@devinemillimet.com Attorneys for Optiline Enterprises, LLC	Imperial Hammer Contracting, LLC 45 Amherst Street Nashua, NH 03064 No Counsel – service sent via U.S. Mail
Louis Movitz, Esq. Packer and Movitz, P.C. 27 Mica Lane Suite 202 Wellesley, MA 02481-1741 lou.movitz@verizon.net Attorney for C&K Roofing, Inc	Anthony V. Agudelo, Esq. Brody, Hardoon, Perkins & Kesten, LLP 265 Franklin Street, 12th Fl. Boston, MA 02110 tagudelo@bhpklaw.com Attorney for Fasadex Designs, LLC

/s/ Daniel P. Dain

Daniel P. Dain

SUPERIOR COURT RULE 9A & 9C CERTIFICATE

I, Daniel P. Dain, attorney for Marina Bay Residences, LLC hereby certify that, as the moving party, counsel engaged in an initial conference regarding the topics of this Motion to Approve Settlement with Separate and Final Judgment with counsel for the other parties on September 24, 2025 and September 26, 2025 and provide this certification as required by Superior Court Rule 9A(a)(8), and Rule 9C (effective September 1, 2023).

/s/ Daniel P. Dain
Daniel P. Dain

Exhibit A

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT DEPARTMENT
C.A. NO. 2182CV01044

MARINA BAY RESIDENCES, LLC,
Plaintiff,

v.

CUBE 3 STUDIO, LLC et al.,
Defendants.

CALLAHAN, INC.,
Third-Party Plaintiff,

v.

EXTERIOR DESIGNS, INC. et al.,
Third-Party Defendants

EXTERIOR DESIGNS, INC.,
Plaintiff-in-Counterclaims

v.

CALLAHN, INC.,
Defendant-in-Counterclaims

EXTERIOR DESIGNS, INC.
Plaintiff-in-Crossclaims

v.

SHAWNLEE CONSTRUCTION, LLC et al.,
Defendant-in-Crossclaims

EXTERIOR DESIGNS, INC.,
Fourth-Party Plaintiff

v.

COPPOLA CONSTRUCTION &
REMODELING CORP., et al.,
Fourth-Party Defendants.

ORDER

After conducting a hearing on the *Joint Motion for Entry of Separate and Final Judgment and Approval of Settlement as Being in Good Faith* filed by Plaintiff Marina Bay Residences, LLC and Defendant Cube 3 Studio LLC, ("Cube 3"), this Court hereby finds, determines, and orders as follows:

- 1) The proposed settlement entered into between Plaintiff and Cube 3 was made in good faith, pursuant to M.G.L. Chapter 231B;
- 2) There is no just reason for delay, pursuant to Mass. R. Civ. P. 54(b); and
- 3) This Court enters judgment in favor of Cube 3 and orders and adjudges that that a separate and final judgment is entered pursuant to Mass. R. Civ. P. 54(b), dismissing with prejudice, without costs or attorneys' fees, and without any right to appeal to any party, all claims, counterclaims and crossclaims currently pending in this matter against Cube 3.

SO ORDERED BY:

DATED: _____

EXHIBIT E

**MARINA BAY APARTMENTS
EXHIBIT P - CHANGE ORDER**

Project: MARINA BAY APARTMENTS

Project Number: #5576

Change Order Number: #21

The Owner has reviewed the attached Proposal(s) from Contractor in which the Contractor has agreed to the changes in the Work described. Based upon this acceptance of the Contractor's Proposal, this Change Order is entered into by and between Owner and Contractor, as detailed below. In the event this Change Order increases the Guaranteed Maximum Price, the Contractor agrees, by accepting this Change Order, that all direct and indirect costs related to this Change Order, and any effect of the change on the remainder of the Project, the Schedule, or the Time(s) of Completion have been fully compensated by this Change Order. All other provisions of the Construction Contract remain in full force and effect.

The original Guaranteed Maximum Price was \$ 93,659,699.00

Net change by previously authorized Change Orders \$ 3,785,244.90

The Guaranteed Maximum Price prior to this Change Order was \$ 97,444,943.90

The Guaranteed Maximum Price will be decreased by this Change Order in the amount of (\$ 80,617.65)

The new Guaranteed Maximum Price including this Change Order will be \$ 97,364,326.25

The Contract Time will be unchanged

The Date of Substantial Completion as of the date of this Change Order therefore is unchanged

Accepted:

Doug Morrison

Accepted:

David Perry

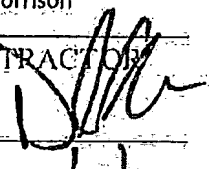
Accepted:

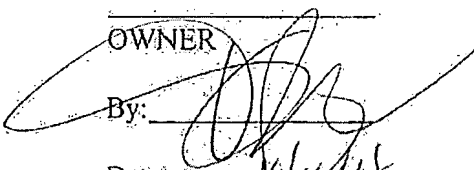
Aaron Bancroft

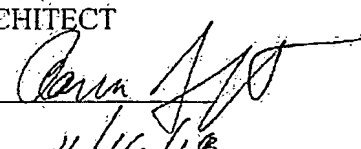
CONTRACTOR

OWNER

ARCHITECT

By: 

By: 

By: 

Date: 11/16/18

Date: 11/16/18

Date: 11/16/18



Owner Change Order

The Residences at Marina Bay

Project # 5576
Tel: Fax:

Callahan, Inc.

Date: 11/13/2018

To Contractor:
Callahan, Inc.

80 First Street
Bridgewater, MA 02324

Project # 5576
Contract Date: 8/18/2015
Contract Number: 01000
Change Order Number: 021

The Contract is hereby revised by the following items:

OCO-021;PCO-212 - Final Contract Settlement

PCO	Description	Amount
PCO-212	OCO-021;PCO-212 - Final Contract Settlement	(\$ 80,617.65)

The original Contract Value was.....	\$ 93,659,699.00
Sum of changes by prior Prime Contract Change Orders.....	\$ 3,785,244.90
The Contract Value prior to this Prime Contract Change Order was.....	\$ 97,444,943.90
The Contract Value will be changed by this Prime Contract Change Order in the amount of.....	\$ 80,617.65
The new Contract Value including this Prime Contract Change Order will be.....	\$ 97,364,326.25
The Contract duration will be changed by.....	0 Days
The revised Substantial Completion date as of this Prime Contract Change Order is.....	

Cube 3 Studio, LLC

ARCHITECT

360 Merrimack Street, Bldg 5, Floor 3
Lawrence, MA 01843

Address

By Aaron Bancroft

SIGNATURE

DATE

Callahan, Inc.

CONTRACTOR

80 First Street
Bridgewater, MA 02324

Address

By Doug Morrison

SIGNATURE

DATE

Marina Bay Residences, LLC

OWNER

One International Place, 11th Floor
Boston, MA 02110

Address

By David Perry

SIGNATURE

DATE

22W 11/13/18

CALLAHAN
CONSTRUCTION MANAGERS

80 First Street
Bridgewater, MA 02324
Phone: 508-279-0012
Fax: 508-279-0032

Tuesday, November 13, 2018

Mr. David Walker
Marina Bay Residences, LLC
One International Place, 11th Floor
Boston, MA 02110

RE: Potential Change Order # PCO-212
The Residences at Marina Bay - 5576

Dear Mr. Walker,

This letter is to provide official notification of a potential project change as follows:

PCO Number: PCO-212
Date: 13-Nov-18
Description: PCO-212 - Final Contract Settlement
Proposed Amt: (\$80,617.65)
Days Requested: 0
Category: Potential Change Order

This PCO is comprised of the following items:

Item Number	Item Description	Proposed Amount	Contractor
001	PCO-212 - Final Contract Settlement - Cost associated with contract settlement agreement between Doug M (Cal) and David W (Hines) per attached back-up	(\$80,617.65)	Callahan, Inc.

Total: (\$80,617.65)

The impacts and costs noted above include only those items which can presently be determined. We reserve our right to request compensation for any future impacts and costs which might arise or be caused by this change.

Please approve so a change order can be issued. Our subcontractors will not begin without such authorization, and we would like to begin this work shortly. If you have any questions, please contact the undersigned at (508) 279-0012 as soon as possible.

Respectfully,

Patrick Riordan

Patrick Riordan
11/13/18

David Walker 11/13/18
Approved By Date

Preconstruction

Construction Management

General Contracting

Callahan, Inc,			
Cost Review - 10/8/18			
Job # 5576 Marina Bay Residence			
Original Contract Value	\$	93,659,699.00	
Change Orders to Date	\$	3,785,244.90	
Contract Sum to Date	\$	97,444,943.90	
Allowance Balance Return	\$	(8,739.00)	
UTS Window Re-test	\$	(2,500.00)	
Cruz Bond Credit Error (OCO 10 / PCO 9)	\$	71,203.00	
Penalty LD's	\$	-	
Incomplete Work Credit - Seawall	\$	(6,500.00)	
Bond / SDI Credits	\$	-	
Total Contract Value	\$	97,498,407.90	
Selected Original Contract Value	Original Budget	Change Orders	Revised Budget
OH & P	\$ 3,385,290.00	\$ 97,819.47	\$ 3,483,109.47
General Liability Insurance	\$ 1,076,894.00	\$ 61,910.91	\$ 1,138,804.91
Sub Bonding / Subguard	\$ 1,079,132.00	\$ (107,804.25)	\$ 971,327.75 #
GC Bond	\$ 677,000.00	\$ 33,958.19	\$ 710,958.19
# - Includes Owner Credit of \$157,217.00			
Cost of Work	\$ 85,676,683.00		
Add:			
OH & P	\$ 3,483,109.47		
General Liability Insurance	\$ 1,138,804.91		
Sub Bonding / Subguard	\$ 971,327.75		
GC Bond	\$ 710,958.19		
Preconstruction Budget	\$ 250,000.00		
General Condition Budget	\$ 4,362,702.00		
Total Completed & Stored to Date	\$ 96,593,585.32		
Defective Work	\$ (146,198.00)		
Total Completed Work	\$ 96,447,387.32		

Total GMP Savings	\$ 1,051,020.58	
Callahan Savings @ 92%	\$ 966,938.93	
Owner Savings @ 8%	\$ 84,081.65	
50K Owner credit final settlement	\$ 50,000.00	
Final Contract Value with Savings	\$ 97,364,326.25	

EXHIBIT F

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT
DOCKET # 2577CV01253

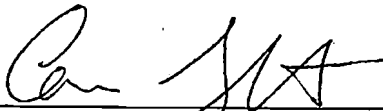
K. F., a minor, by his mother,	)
SANDRA FERNANDEZ DE VILLAVICENCIO,	)
and SANDRA FERNANDEZ DE VILLAVICENCIO,	)
individually	)
	)
<i>Plaintiffs.</i>	)
	)
v.	)
	)
CUBE 3 STUDIO LLC,	)
	)
<i>Defendant</i>	)

AFFIDAVIT OF AARON BANCROFT

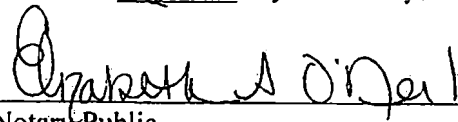
I, Aaron Bancroft, being duly sworn, state:

1. I am an architect and Principal at Cube 3 Studio LLC ("Cube 3").
2. I am generally familiar with Cube 3's involvement as Architect of Record in the Meriel Marina Bay Project (the "Project"), and I am familiar with Cube 3's file on the Project.
3. On or about April 23, 2018, Cube 3 employee, James A. Spiegel, acting on behalf of Cube 3, signed a Certificate of Substantial Completion (the "Certificate") for that the Project, including the building located at 552 Victory Road, Quincy, MA, noting that the Project had achieved substantial completion.
4. Exhibit B, attached to Cube 3's Motion for Partial Summary Judgment, is a true and accurate copy of the Certificate of Substantial Completion for the Project, including the building located at 552 Victory Road, Quincy, Massachusetts.

SIGNED UNDER PAINS AND PENALTIES OF PERJURY THIS 16th DAY OF JANUARY, 2026.


AARON BANCROFT

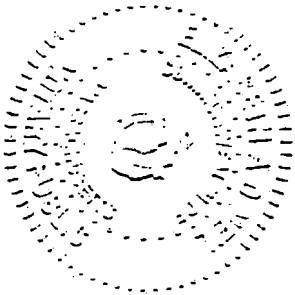
Subscribed and sworn to before me, a Notary Public within and for said County and State, this 16th day of January, 2026.


Notary Public

My Commission Expires:



ELIZABETH A O'NEIL
Notary Public
Commonwealth of Massachusetts
My Commission Expires
October 26, 2029



COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT
DOCKET # 2577CV01253

K. F., a minor, by his mother,
SANDRA FERNANDEZ DE VILLAVICENCIO,
and SANDRA FERNANDEZ DE VILLAVICENCIO,
individually

Plaintiffs,

v.

CUBE 3 STUDIO LLC,

Defendant

**DEFENDANT CUBE 3 STUDIO LLC'S STATEMENT OF UNDISPUTED MATERIAL
FACTS IN SUPPORT MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Rule 9A(b)(5)(i), Defendant CUBE 3 Studio LLC ("CUBE 3") hereby submits this Statement of Undisputed Material Facts in support of its Motion for Partial Summary Judgment.

1. The Meriel Marina Bay is a real estate development located at 552 Victory Road in Quincy, Massachusetts. Exh. A, Complaint, at ¶1, 18.
2. CUBE 3 served as the architect of record for the project. Exh. A, Complaint, at ¶19.
3. On July 31, 2017, the City of Quincy issued a certificate of occupancy for 552 Victory Road, with an allowable occupant load of 236 units, two model units and amenities. Exh. B, Certificate of Occupancy.
4. Substantial completion of the Meriel Marina Bay project was certified by architect CUBE 3 Studio LLC on April 23, 2018, by contractor Callahan Inc. on April 27, 2018, and by its

owner Marina Bay Residences LLC on May 3, 2018. Exh. B, Certificate of Substantial Completion; Affidavit of A. Bancroft; see also Exh. 1, Complaint, at ¶ 20.

5. The Complaint in the instant case was filed on November 10, 2025. Docket Entry November 10, 2025, Paper No. 1.
6. *Marina Bay Residences v. Callahan Inc. and CUBE 3 Studio LLC, et al.*, is a civil action in Norfolk Superior Court, commenced on November 18, 2021, concerning disputes between the owner, contractor, designer and other parties of the Meriel Marina Bay project regarding alleged construction defects and other issues. *Marina Bay Residences LLC v. CUBE 3, et al*, 2182CV01044, Docket Entries from November 18, 2021 to December 22, 2025, and continuing.
7. Between July and November of 2025, pro se nonparties K.F., by his mother S. Fernandez, and S. Fernandez, individually, submitted more than 20 filings in the Norfolk action to intervene, emphasizing concealment of insurance information and alleged construction defect causing personal injury and other damages; Dany Abouelkhier, also a pro se nonparty, submitted similar and sometimes identical filings during the same time period. *Marina Bay Residences LLC v. CUBE 3, et al*, 2182CV01044, Docket Entries from July 31, 2025, to November 14, 2025, including, inter alia, Paper Nos. 198, 199, 200, 203, 208, 217, 223, 235 and 248.
8. On October 3, 2025, CUBE 3 and Marina Bay Residences LLC filed a *Joint Motion for Entry of Separate and Final Judgment and Approval of Settlement as Being in Good Faith* in *Marina Bay Residences LLC v. CUBE 3, et al.*, 2182CV01044. Exh. C, Joint Motion for Entry of Separate and Final Judgment and Approval of Settlement as Being in Good Faith.

9. On November 20, 2025, Justice R. Connolly allowed the *Joint Motion for Entry of Separate and Final Judgment and Approval of Settlement as Being in Good Faith*, finding that CUBE 3's settlement was made in good faith within the definition of *Noyes v. Raymond*, 28 Mass. App. Ct. 186 (1990) and all claims were dismissed against CUBE 3. Exh. D, Order; *Marina Bay v. CUBE 3 et al*, 2182CV01044, Docket Entries November 20, 2025, Papers 251-254.

Date: January 20, 2026

Respectfully submitted,
The Defendant,
CUBE 3 Studio LLC
By its Attorneys,

/s/ Michael P. Schaefer
Michael P. Schaefer, Esq.,
BBO No. 711910
MG+M, The Law Firm
125 High Street
Oliver Street Tower, 6th Floor
Boston, MA 02110
(617)406-4593
mschaefer@mgmlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2026, I served a true and accurate copy of the foregoing document upon the named plaintiffs via email and first-class mail as follows:

Sandra Fernandez De Villavicencio, *Individually*
K. F., c/o Sandra Fernandez De Villavicencio
550 Liberty Street, Unit 905
Braintree, MA 02184
sandreval4@yahoo.com

/s/ Michael Schaefer

Michael Schaefer