

**IN THE DISTRICT COURT  
HELD AT AUCKLAND**

TENANCY TRIBUNAL

9026601 (Unit 6L)

9026621 (Unit 9L)

9027541 (Unit 3H)

9027641 (Unit GA)

9027701 (Unit 4C)

**UNDER** Unit Titles Act 2010

**BETWEEN**

**Body Corporate 346799 Committee & PBB, 135 Victoria Street West, Auckland**  
**Applicant**

**AND**

**Hyung Been Kang (Unit 6L), Marie Gueirard (Unit 9L), Heegon Jung (Unit 3H),  
Thuy Vu (Unit GA) and Nick Stoikos (Unit 4C)**  
**Respondents**

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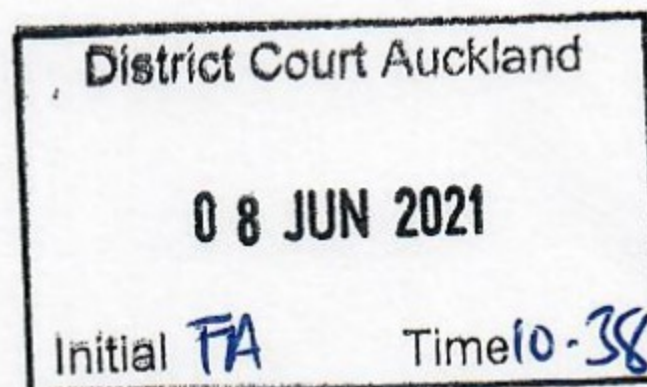
**AFFIDAVIT OF KAZUFUMI (KAS) IKEDA**

Sworn: June 2021

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Next Event Date: Hearing on Wednesday 9 June 2021 at 9.30am

Adjudicator: TBA



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## AFFIDAVIT OF KAZUFUMI (KAS) IKEDA

I, Kazufumi (Kas) IKEDA of Auckland, Business Consultant, swear-

1. My name is Kazufumi (Kas) Ikeda (**Ikeda**). I am an owner of Victopia Apartments (**Victopia**) Unit **13H** in 135 Victoria Street West, Auckland, Body Corporate 346799 (**the BC**). I have been a member of the BC Committee 8 times since its inception in 2005. I am duly authorised by the Respondents to swear this Affidavit on their behalf. I have full knowledge on the matters to which I depose, save where context indicates otherwise.
2. Annexed and marked "A" is a paginated bundle of documents that I refer to in my affidavit.
3. Jacqueline Anne Veronica Turner (**Turner**) is the BC **Chairperson** and a member of the BC Committee for 16 years since 2005, and an owner of Units **4A, 13J, 14E** and **14G**.
4. Dariusz Koper (**Koper**) who is an owner of Unit **13P**, Catherine Morgan (**Morgan**) who is an owner of Unit **GC**, Yana Hay (**Hay**) who is an owner of Unit **13G**, Villingi Young (**Young**) who is an owner of Unit **2D**, and Ina Lawrence (**Lawrence**) who is an owner of Unit **6C** are the Committee members (**Committee**) since 2010.
5. Body Corporate Administration Ltd (**BCA**) has been a BC Manager. Glenn Harry Kwok (**Kwok**) is a Director. Paula Kelly Beason (**Beaton**) is a GM. Jayshree Moodley (**Moodley**) is a staff.
6. Building Manager (**BM**) Aruba Management (**Aruba**) has been an on-site BM since 2011. Graeme John McDonald (**McDonald**) was an owner of Unit **11E** who passed away in September 2020. Joanna Maree Pidgeon (**Pidgeon**) is a new owner of Unit **11E** and a lawyer for the BM Aruba McDonald. Alan Robertson (**Robertson**) is a new owner of Unit **GG**. Pidgeon and Robertson have been the new BM Aruba Directors and Shareholders since 16 September 2020. Sarah Sumankant (**Sumankant**) is a staff of the BM Aruba.
7. Price Baker Berridge (**PBB**) Clinton Baker (**Baker**) is a Solicitor for the BC.

8. Grimshaw Lawyers (**Grimshaw**) Paul Grimshaw (**Grimshaw**) and Gareth Lewis (**Lewis**) have been the BC's Remediation lawyers since 2012.
9. Neilsons Lawyers (**Neilsons**) Trent Bowler (**Bowler**) is also a Solicitor for the BC.
10. Ian Harris (**Harris**) is a Remediation Project Manager.
11. Graham Harford (**Harford**) from Dawson Harford is a lawyer arranged by BCA Beaton, to chair our 2018, 2019 and 2020 AGM on behalf of Turner.
12. Not only recently but also since the inception of Victopia in 2005, the above "Victopia Management Team" has not provided all Victopia owners with full BC documents requested by many Victopia owners.
13. The BC Chairperson Turner, Committee Koper, Morgan, Hay, Young, Lawrence and McDonald (BM), and BCA Beaton, Kwok and Moodley have done things to shut down many owners' claims at every opportunity and avoid disclosing many important information to all owners.
14. Many owners and I have witnessed a lack of transparency, accountability and justice of Turner, Committee members, BCA Beaton, Kwok and Moodley and BM McDonald with PBB Baker, Grimshaw Lewis, Harris and their Contractors.

### **BACKGROUND (Undemocratic Environment)**

#### ***BC Chairperson, Committee, BCA and BM***

15. Since 2016, all Courts: Tenancy Tribunal (**TT**), District Court (**DC**) and High Court (**HC**) found that the Victopia BC Chairperson Turner, Committee Koper, Morgan, Hay, Young and Lawrence, BCA Beaton and Kwok, and BM Aruba McDonald (the **Defendants**) have been in numerous breaches of the Unit Titles Act 2010 and Regulations 2011 (**the Act**). All Courts: TT, DC and HC also supported "the Victopia Owners' legal Right" to obtain requested information in full in a timely manner from Turner, the Committee, BCA and BM, and to voice, challenge and object against the continuously breaching, mis-representing and mis-managing below standard Chairperson, Committee, BCA and BM. All Courts already proved that "Turner Rules", "Beaton Rules", "Kwok Rules" and "BM Aruba Rules" never work

before the Courts.

***TT 9000247 on 1 November 2016 (Turner, Committee, BCA breach in information disclosure)***

16. TT Adjudicator S Benson found on 1 November 2016 that Turner, Committee, BCA Beaton and Kwok breached the Act by continuously blocking and refusing for more than 6 months to release Ikeda's requested information on the Committee's 17 Remediation Levies and Grimshaw and Maynard Mark's Costs breakdown. The Adjudicator ordered against the Defendants to provide Ikeda with "a List of all 203 units owners contact" immediately. However, the Defendants have been in breach by its non-compliance of not providing the owners contact list to Ikeda for more than 4 years since 2016. As the Defendants have no intention to rectify their ongoing breach of the Act, DC should enforce the Defendants to immediately provide Ikeda with a full owners contact list.

***TT 9001243 on 9 May 2017 (Turner, Committee, BCA breach in information disclosure)***

17. TT once again ordered the Defendants to rectify their ongoing breaches of the Act. The Defendants and Grimshaw accepted that:

***"The Body Corporate (Turner, Committee, BCA and Grimshaw) will exercise their best endeavours to provide to Kazufumi Ikeda (and all owners) for his examination any invoices that have been paid to this date 9<sup>th</sup> May 2017 – by Maynard Marks and other contractors.***

***From the date 9<sup>th</sup> May 2017 – the body Corporate (Turner, Committee, BCA and Grimshaw) will use their best endeavours to provide access to any invoices – itemising the work that has been carried out and the reason for it.***

Despite that, the Defendants have been blocking and refusing to provide full requested information to Ikeda (and all owners). The Defendants have been releasing only selective information to all owners by their conventional excuses of privacy and confidentiality.

***TT 9004521 on 27 June 2018 (2017 AGM Violation of Chairperson and Committee Election)***

18. TT Adjudicator B Harvey found on 27 June 2018 that the Defendants once again breached the Act by "their organised efforts" not to vote Ikeda for the Victopia BC Chairperson and Committee by their "***breach of the UTA 2010 and UTR 2011 in a***

*variety of ways*". The Adjudicator also found that *"some of the actions by BCA (Turner, Committee, BCA, BM) leading up to the AGM and in terms of the actual vote counting created an unfair and potentially undemocratic environment"*. Due to the Defendants' numerous breaches of the Act, the Adjudicator *"considered whether the appropriate declaration is to invalidate the entire vote for the Committee."* Despite that, PBB Baker attempted to file an "unwarranted and meritless Appeal" with the DC against the TT Order, to delay the Defendants' Civil Debt payment to Ikeda. However, Chairperson Turner, Committee, BCA, BM and PBB Baker filed a Discontinuance with the DC on 26 February 2019 just prior to a DC hearing in March 2019.

*DC CIV-2017-004-2861, [2019] NZDC 12240 on 28 June 2019 (Turner's groundless and false allegation harassment application against Ikeda to silence Ikeda's active voice)*

19. The DC Judge GM Harrison dismissed on 28 June 2019 Turner groundless allegation harassment application against Ikeda. The Judge found that *"Turner's application has been made for a side purpose to prevent Ikeda from challenging the actions of Turner as Chairperson and the Committee"*. The Judge supported *"Ikeda's Right to question the actions of Turner and the Committee regarding Levies, Costs and Expenses"*. The Judge also supported the previous TT Adjudicator's Order and findings on the Defendants' 2017 AGM violation of election. Turner attempted several times to offer to Ikeda of their Settlement of the Chairperson Turner's immediate stepping down from the BC Chairperson position. However, the Defendants never stepped down from the Chairperson and Committee positions due to their best interest from our BC Remediation money.

*HC CIV-2019-404-1457, [2020] NZHC 149 on 13 February 2020 (Ikeda and all Victopia Owners Right to voice, challenge and object against Committee Decisions)*

20. The HC Justice J Lang dismissed on 13 February 2020 Turner's Appeal for their ongoing delaying attempt of the Judgement Debtor Turner's Civil Debt payments to Ikeda. The Justice found and supported the DC Judge's dismissal of Turner and Bowler's side purpose application with DC. The Justice also found that *"the Victopia Owners are not required to accept the Committee's actions without question. The Owners remain free to voice their displeasure when they consider the Committee's performance has fallen below what they perceive to be the required standard."* The Justice confirmed that Ikeda and all Victopia Owners' legal Right to

voice, challenge and object to the Committee's decisions and actions.

***Contractors' Breach of the Act***

***BCA Beaton, Kwok and Moodley***

BCA was originally appointed as our Victoria BC's temporary Secretary / Manager by the developer in 2005. Not only recently rather since the inception of Victoria BC in 2005, HC and TT already found BCA Beaton and Kwok's numerous breach Actions of the Act. As the attached Exhibit, many BC customers sued BCA with PBB Baker due to its breach practice. HC and TT found BCA's breach actions of Failures in 1) providing BCA's accounting service to its BC customers without the Director Beaton's Certificate (resulted in the authority's disciplinary investigation), 2) in refusing to hand over BCs' documents to new BC Managers, and 3) in missing large amounts of BC customers' funds, and so on. Ikeda's 2016, 2017, 2018, 2019 and 2020 TT, DC and HC Orders and Judgments against BCA were not the first BCA's breaches of the Act.

***BM Aruba New Directors and Shareholders Pidgeon, Robertson***

21. Pidgeon is a new owner of Unit **11E** and a lawyer for the late BM Aruba McDonald. Robertson is a new owner of Unit **GG**. Pidgeon and Robertson have become the new BM Aruba Directors and Shareholders on 16 September 2020 just one day after the McDonald's death on 15 September 2020. Sarah Sumankant was working for the late McDonald since 2018, and has been working for the BM Aruba Pidgeon and Richardson. Late McDonald sent out 2017 AGM Turner and 6 Committees' name pre-filled Proxy forms directly to their 35 owners. Sumankant also sent out 2019 AGM Turner and the same Committee members' name-prefilled Nomination forms to their 35 owners to collect many Proxies to vote for Turner and the same Committee members.

***PBB Baker***

22. PBB Baker is a Solicitor for many years. BCA Beaton and PBB Baker filed several BCs' water leaky apartments Litigation Affidavits with HC to start several HC litigations' Claims. The BC have been appointing PBB Baker as the BC's agent to file many TT Levy recovery applications against many Victoria Owners. Since the Committee and BCA issued the \$2.7 million additional Deck Levies to 130 Deck owners, BCA and PBB filed 6 TT applications against the 5 Respondents and Unit 1H since December 2020. PBB Baker was the Defendants' defence lawyer against the Applicant Ikeda's TT proceeding in 2017-2018.

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***Grimshaw Paul Grimshaw and Lewis***

23. Grimshaw Paul Grimshaw and Lewis have been the Victopia "Committee's Remediation lawyers" since 2013. Spenser on Byron BC (and other BCs) with Adina Thorn has been suing Grimshaw for a \$12 million Claim under "professional negligence" in 2020. Between 2013 and 2016, Grimshaw and Lewis charged our Victopia BC \$2.6 million legal fees (64 invoices) for the Victopia HC litigation. Grimshaw and Lewis with the Turner, Committee, BCA, BM and PBB are again attempting to commence a new litigation Claim money with an Australian litigation funder Omni Bridgeway against the Multiplex's (in liquidation) insurer, in their own interest by using our BC funds attempting further \$10 million Remediation funds Shortfall and a 3 years remediation completion delay.

***Maynard Marks (Babbage)***

24. MM was the "Committee's" original Remediation Designer. Gerald Ball resigned MM and joined Babbage. The Committee terminated MM and engaged Babbage.

**DELEGATION (2017 to 2020 AGM Violation of Election)**

25. TT, DC and HC already found our BC Chairperson, Committee, BCA and BM's numerous breaches of the Act in terms of these Defendants' 2017 AGM Violation of Chairperson and Committee Election. Despite that, "the same" Defendants' 2018, 2019 and 2020 AGM Violation of Chairperson and Committee Election has been ongoing. The \$2.7 million additional Deck Levy (\$140,000 Smoke detector Levy in 2018 as well) were not properly 2019 AGM-resolved. "Their only conventional excuse" is "AGM general Delegation" by their majority votes. Victopia Owners have many Evidence of the Defendants' ongoing AGM violation of Chairperson and Committee election in 2018, 2019 and 2020. Relying on their excuse, "the Defendants" always attempt to resolve any important BC matters "by their Committee decisions" without AGM and EGM Resolutions (by 75% Special Resolution, 153 votes out of 203 units). The Defendants always attempt to pretend that no Victopia owners are objecting to the Committee's decisions regarding our Remediation (\$10 million Shortfall and further 3 years Delay). By their Committee-level decisions and Resolutions on their \$2.7 million additional fund raising and Levies, without consulting all Victopia owners and by democratic and appropriate AGM and EGM Agenda and Resolution. The Defendants actually raised many Remediation funds by 2012, 2013, 2014, 2015 and 2016 AGM and EGM Resolutions, even though these

Resolutions were passed by their Delegation and majority votes.

***2017 AGM Chairperson and Committee Election Breach***

26. TT Adjudicator B. Harvey found on 27 June 2018 that the Defendants breached the Act by their “AGM Agenda, Resolution, Nomination, Postal voting form, Proxy, Voting sheets, Outstanding, Tally counts and Minutes in order not to vote Ikeda for the BC Chairperson and Committee. The TT ordered the Defendants and PBB Baker Discovery Orders two occasions. Despite that, the Defendants still failed to release all ordered BC documents to the TT.

***2018 AGM Chairperson and Committee Election Breach***

27. 8A May Stokes and 13H Ikeda proposed 6 owners’ 2018 AGM Agenda and Resolution. However, the Committee, BCA and BM ignored our 2018 AGM proposed Agenda and Resolution. At our 2018 AGM, despite that BC Chairperson’s Duties is clearly described in the UTR s11(1)(c), the Chairperson Turner has never chaired our AGMs for 14 years from 2005 to 2017. BCA Beaton or Kwok chaired our AGM on behalf of Turner for 13 years from 2005 to 2017. After the 2018 TT Order against Turner, Committee, BCA and BM, the Defendants used a Lawyer Harford to chair our 2018 AGM on behalf of Turner. At the beginning of our 2018 AGM, many owners attended out 2018 AGM objected Harford to chair our 2018 AGM on behalf of Turner and objected to pay Harford fee from our BC funds. However, BCA omitted the owners’ objection record in their 2018 AGM minutes. The Committee and BCA failed to record a List of Proxies in our 2018 AGM minutes. Several owners requested to review the original tally vote counts. However, BCA and PBB Baker refused to release the original.

***2019 AGM Chairperson and Committee Election Breach***

28. Turner once again forwarded her hand-written same 7 Committee names-prefilled Nomination forms to the BM Aruba McDonald to send out directly to their some 35 renting out owners to nominate the same Committee members. Units 4B 8B Justine Girgin and 13H Ikeda proposed our 2019 AGM Agenda and Resolution. However, the Committee, BCA and BM ignored our 2019 AGM proposed Agenda and Resolution. At the beginning of our 2019 AGM, many owners attended in person with many Proxies again objected Harford to chair our 2019 AGM on behalf of Turner and to pay Harford fee from our BC funds. However, BCA omitted many owners’ objection record in their 2019 AGM minutes. The Defendants again used Harford



to chair our 2019 AGM on behalf of Turner. Then, BCA Kwok gestured to count the numbers of the objecting Owners for their 2019 AGM record. However, BCA (and the Committee) never kept accurate records in their 2019 AGM minutes. The Committee and BCA failed to record a List of Proxies in our 2019 AGM minutes.

***2020 AGM Chairperson and Committee Election Breach***

29. 35 Units Owners proposed our 2020 AGM Agenda and Resolution. However, the Committee, BCA and BM ignored our 2020 AGM proposed Agenda and Resolution. Ikeda sent his complaint email directly to the PBB Solicitors (and the Committee, BCA and BM).
30. During our 2020 AGM, BCA only announces Turner (some 103 votes) and Ikeda's (31 votes) vote counts for Chairperson. BCA did not announce all Committee candidates' vote counts. Rather, BCA Beaton just emailed to all Owners Turner, Koper, Morgan, Hay, Young, Gillian (11A) and Robertson's names as the 2020-2021 Committee without any vote counts on 1 December 2020. The Committee and BCA failed to record a List of Proxies in our 2020 AGM minutes. BCA changed Turner (94 votes) and Ikeda's (29 votes) vote counts for Chairperson in their 2020 AGM minutes. The 2020 AGM minutes also has no record of other 7 Committee candidates: Ikeda, GA Thuy, 4B 8B Justine, 5E Francis, 7E Joseph, 8G Tony and 13D Maria's vote counts. Same as 2018 and 2019 AGM, my supporter Owners and I held many Proxies from other owners who could not attend our 2020 AGM. I had 8 Proxies. GA Thuy had 6 Proxies. 8G Tony had 4 Proxies. 3N Lucy had 2 Proxies. 7E Joseph had 5 Proxies. 5N Francis had 10 Proxies. It means that we had at least 35 Proxies. From their 2020 AGM minutes attendance list, I am 100% sure that our supporter especially at least 28 Asian owners who attended our 2020 AGM in person voted for Ikeda and his 6 supporter Committee candidates, and never voted for Turner, Koper, Morgan, Hay, Young and Richardson. Despite that, Turner and her same 6 Committee members always had 100+ votes each. Among 203 Units, roughly speaking, every year 70 owners attend in person our AGM, 70 owners give their Proxies and the remainder 70 owners are always unknown. From the above Facts, it was impossible for Turner and her 6 Committee members to obtain over 100 votes among our 203 Units at our 2017, 2018, 2019 and 2020 AGM. The Committee, BCA and PBB Baker have been refusing to release the 2018, 2019 and 2020 original AGM election vote tally to all Owners.

All Victopia Owners have been fully aware of the Facts.

**2019, 2020 AGM & EGM un-resolved \$2.7m Additional Deck Fund / Levy  
Committee's Manner to raise Additional Remedial Funds**

31. Since 2013, Committee and BCA have been mixing up our BC's Operational funds and Remedial finds to pay \$3.5 million Grimshaw and MM invoices. The \$2.7 million additional Deck Fund / Levy were not raised as the 2019 and 2020 AGM Agenda and Resolution in our 2019 and 2020 Postal voting forms to be voted by all owners. The Defendants have been attempting to raise a huge amount of unknown additional funds, such as the \$140,000 Smoke detector Levy in 2019 and \$2.7 million additional Deck Levy in 2020 by the Committee's Decision / Resolution, without our 2019 and 2020 AGM (by 75% Special Resolution, 153 votes out of 203 units) or EGM Resolution. The Defendants' only excuse of their Committee Resolution on the \$2.7 million Deck Levy is just AGM "general Delegation" to the" Committee. Turner has been the Chairperson since 2005. Her supporter 6 Committee members: Koper, Morgan, Hay, Young, Lawrence and McDonald have been the same Committee members by Ikeda's 2018 TT Order since 2011. Other good BCs' Committee properly raise AGM Agenda and Resolution to raise any funds at AGM or EGM to be voted by all BC owners. No other BCs' owners delegate their power to any to raise large amount of funds. No other BCs' Committee members and BC Managers issue large amount of Levies without providing all owners with full information in advance. The Committee want to pretend that no Victopia Owners have been objecting the Committee's decisions. However, it is fact that 190 out of 203 Units Owners have been objecting against the Committee's decisions. Many Victopia Owners do not trust the Committee because of no transparency, no accountability and no justice. As a result, many Victopia Owners have been under huge financial and mental pressure.
32. The Committee failed to raise the 2.7 million additional Deck fund / Levy as our 2019 and 2020 AGM Agenda and Resolution to vote by all Victopia Owners at our 2019 and 2020 AGM. Both our 2019 and 2020 AGM Postal voting forms and our 2019 and 2020 AGM minutes have no record of passed Resolution by all Owners (by 75% Special Resolution, 153 votes out of 203 Units). Rather, the Committee, attempted to resolve the \$2.7 million additional Deck fund / Levy for additional 106 Deck Owners (Ground to L12) by the Committee's decision / Resolution. The Committee's manner to raise large amount of additional funds is in ongoing breach of

the UTA and section 74 scheme clause 4 Committee Duties and Obligations towards all Victopia Owners and clause 9 Raising funds.

#### **UTA & section 74 scheme Obligations Breach**

33. The BC Chairperson Turner, Committee, BCA Beaton and Kwok, the BM Aruba Management, Harris, PBB Baker and Grimshaw Lewis have been blocking and refusing to release important information to all Victopia Owners, and in “numerous breaches of the UTA and section 74 scheme Duties and Obligations” by failing to provide all Victopia Owners with requested information and answers in full, including all original quotes and invoices on the other OH Costs Professional Costs (Babbage, Axcia, PBB Baker, Grimshaw Lewis, Harford, etc.)

#### ***Duties of the Chairperson and Committee***

##### ***Information Provision***

##### ***4. the Committee must:***

- (a) Apply due care and attention to making of all its decisions.***
- (c) have the repairs undertaken as diligent and as expeditiously as is practical.***
- (f) Keep minutes of all meetings (Committee meetings) and decisions of the BC Committee. Make the minutes available to the Owners upon request.***
- (g) Advise Owners the decisions of the BC Committee and the Progress***

34. BC Chairperson, Committee, BCA, PBB and Grimshaw have been refusing to release all Committee meeting minutes (decisions) to all owners. When they release, they are always selective to release information. The Committee and BCA always alter all original AGM, EGM and Committee meeting minutes before they circulate to all owners, , which is no accountability to all Victopia owners for many years.

#### ***Raising Funds to pay for the Repairs***

***9. The levies raised by the Chairperson and Committee under the Scheme shall be deemed to be as effective and binding in law as if a contribution (Operational account) raised under section 121 of the UTA 2010.***

35. The way the Committee, BCA, BM, PBB and Grimshaw raise not only our Operational funds but also our large original and additional Remediation funds have been made by the Committee’s ongoing unfair, undemocratic and no transparent

decisions, without raising and passing appropriate AGM and EGM Agenda and Resolutions with all Victopia owners. They always issue any Levies only by the Committee's decisions, without providing owners' requested original information in full.

***Other Purpose Use of BC Funds (to pay Turner's Civil Debts to Ikeda, to pay PBB & Neilsons)***

***15. The Chairperson and Committee must:***

***(a) Account to the Owners for all money that the Chairperson, Committee and BCA receive and expense on behalf of the Owners under this Scheme.***

***(b) Ensure that all the moneys received from Owners are only allocated and paid out for purposes authorised by this Scheme.***

***(c) Upon receipts of reasonable notice from any Owners supply to that Owner written information relating to the funds received and expenses for Repairs and associated costs.***

***(d) Each Owner authorises disclosure of information regarding their particular apportionment and levies to all Owners.***

***Disputes***

***17.***

***(b) Two or more owners raise an obligation the monetary value of which cumulatively exceeds \$60,000.***

***18. Owners wishing to object to a decision of the Chairperson and Committee must give written notice of their Objection to the Chairperson and Committee. The objection must be addressed to the BCA and must outline in writing the grounds upon which the Objection is made.***

***20. Upon receipt of an Objection notice that complies with clauses 17 and 18 the Chairperson and Committee will refer to the matter to an Arbitrator from the Arbitrator's and Mediator's Institute of New Zealand (AMINZ).***

36. Committee and BCA issued the \$2.7 million Additional Deck Levy Invoice to the 90 vacated Deck owners (Ground to Level 10) and to the other 40 occupying owners (Level 11 to Level 14) on 20 May 2020. The Committee and BCA has been receiving numerous questions, complaints and objections from many owners against the Committee's Deck Levy decision (Committee Resolutions). However, Harris

only released partial and selective Contractors' information on 30 July and 30 September 2020 before and after the original Deck Levy payment due of 20 August 2020. To date, all owners have not been provided requested information in full from the Committee and Harris. The Committee's failure in full information provision resulted that many Deck objecting owners missed to file an Objection with the AMINZ Arbitrator. At least 20 Objecting owners' monetary value cumulatively exceeds \$450,000. During our 2020 AGM in November 2020, 8G Tony Hall and 13H Ikeda questioned the Committee, BCA and Grimshaw Lewis if Grimshaw undertakes an Arbitration proceeding for many Deck Objecting owners. Grimshaw Lewis then made his excuse by saying that he was not instructed the Arbitration by the Committee.

***Indemnity***

***22. The owners jointly and severally indemnify and hold harmless the Chairperson, Committee, BCA and BM against all costs, expenses, claims and proceedings, and any other liabilities of any sort incurred by them in exercise or attempted exercise of the power granted to the Chairperson and Committee under this Scheme but not against any act or omission done fraudulently or by wilful misconduct.***

37. Already found and supported by all Courts: TT, DC and HC since 2016, the Defendants: same Chairperson, Committee, BCA and BM Aruba have been in ongoing numerous breaches of the Act, such as 2017 to 2020 AGM Violation of Election and failure to undertake an Arbitration on the AGM-unresolved \$2.7 million Additional Deck fund raising, etc. As the Evidence shows, Turner, Committee, BCA and BM have been using our BC funds for "Other Purpose". The TT ordered in 2016 and 2017 against the Defendants to provide full Contractors and Consultants invoices to Ikeda (and all owners). The Defendants have been in ongoing breach in both these previous TT Orders and the UTA and section 74 scheme by not complying to the Orders and the Act, and by the Defendants' ongoing no transparent, unfair and undemocratic actions.

**Unreasonable Deck Levy (P&G Costs)**

38. No Victopia Owners failed to pay "any Reasonable Operational levies and Remedial levies" to our BC.

***2017 AGM Minutes by Doug Cowan (weather tightness Un-related Betterment)***

39. My previous legal Counsel Doug Cowan, my friend interpreter Rodney Hellyer and I attended our 2017 AGM and argued that the Chairperson, Committee, BCA and BM with Grimshaw and the original designer MM, were attempting to inflate the original HC s74 scheme repair Scope for a maximum \$78 million Claim by adding many weather tightness un-related Variations, such as Mechanical ventilation, Double-glazing, Fibre broadband, kitchen upgrade, re-carpeting, re-painting and so on. Therefore, we strongly argued to limit our Scope within the original Scope: Cladding, Podium, L13 & L14 Deck tiles and membrane and Fire repairs. We pointed out that the Committee, BCA and MB has been attempting Remediation Litigation Claim as a source of income to fulfil their ongoing BC funds deficit. Despite that, in 2020, the Defendants again attempt to inflate their Scope by adding Ventilation, etc. weather tightness un-related Variations to their \$10 million Shortfall to charge to all Victopia Owners with further 2 years completion delay. The Committee's reason is to commence a new Grimshaw Litigation with Omni Bridgeway for a new Claim money against the BMX insurer which takes 2 to 3 years from today.
40. On **20 June 2020**, the Committee and BCA suddenly issued \$2.7 million Additional Deck Levy (Due on **20 August 2020**) to each owner (130 Deck owners) without 2019 AGM or EGM Resolution. 90 vacated Deck Owners (Ground to L10) received each Deck Levy Invoice and other 40 occupying Owners (L11 to L14) received each Deck amount "Approval Letter" without any detailed information provision. Many Deck Owners immediately requested the Committee and BCA for a full information. On **26 June 2020**, I also sent my email to Chairperson Turner, Project Manager Harris, BCA Kwok and Beaton to object the BCA's Deck Costs "Approval Letter", and to request 9 documents, including 1) Full Deck Schedule, 2) Teak original contract, 3) Council requirements and 4) all Committee minutes since 2018. However, the Committee, BCA and Harris refused to provide me (and all owners) with full requested information. Harris released only 130 Deck Schedule Summary, then released my 13H Deck Costs Breakdown.
41. On 30 July 2020, I again sent my email to Harris, BCA Kwok and Beaton to question on the extremely expensive OH P&G Costs and Professional Costs which accounted for nearly 50% of my 13H Deck Costs. Then, I again requested 4 information: 1) Council requirements, 2) 13H Deck defect evidence, 3) full 130 Schedule / Breakdown, and 4) all Subcontractors' original Quotes. Then Harris released 130

full Deck Schedule and 5 Subcontractors' Quotes via Dropbox in two occasions until 30 September 2020, which was far after the original Deck Levy payment Due on 20 August 2020. However, the Committee, BCA and Harris have not yet released any Professional Costs-related information (Babbage, Axcia, TSA, Grimshaw, PBB Baker, Neilsons Bowler and Harford, etc.) to all Owners. Their actions were in breach of both Ikeda's 2016 and 2017 TT Orders against the Defendants and of the UTA and HC section 74 scheme clause 4 Committee Duties and clause 9 Raising funds. The Committee and BCA issued "three different Deck Levy amounts" to the 130 Deck Owners on **20 June, 20 July** and **30 July** 2020.

42. At our 2020 AGM on **14 November 2020**, Grimshaw Lewis refused to undertake many Deck Levy objecting owners' HC s74 scheme Arbitration by his excuse that Grimshaw was not instructed by the Committee. In the HC proceeding by Adina Thorn against Grimshaw, HC Justice raised an issue that how they raised its Funds (Manner of raising funds) is important.

***Incorrect \$2.7 million Additional Deck Costs Breakdown to 130 Owners***

43. After receiving 13H Deck Costs Breakdown and 5 Subcontractors' original Quotes from Harris, Ikeda very carefully reviewed the Committee's Quantity Surveyor (QS) Axcia's each item of the Deck Construction Costs and Other OH P&G Costs. Ikeda found that while the 13H Deck Construction Costs account for 52%, the Other OH P&G Costs account for nearly 32% and Professional Costs account for 10%, and Margin accounted for 6% of the total 13H Deck Costs. Ikeda questioned Harris on two occasions on 26 July and 30 July 2020 regarding the extremely high 48% Other Costs, especially the P&G Costs 32%. I requested the Committee, BCA and Harris to provide 9 documents to review. Then I again requested 4 documents to review. The Committee, BCA and Harris Harris reluctantly released 130 Deck Summary, 130 Deck Breakdown and partial 5 Subcontractors original Quotes gradually. However, the Committee, BCA and Harris have been failing to provide all Consultants' related Quotes, Invoices and Payments to all Victopia Owners to date.

***Construction Cost Consultant (CCC) Peer Review***

Early 2020, based on the recommendations the Barristers Timothy Jones and Katerina Wendt, 19 Victopia Owners, including the 5 Respondents and I engaged our 3rd party, independent and registered QS Construction Cost Consultant (CCC) to obtain a Peer Review. As Ikeda expected, Victopia Owners have just obtained the CCC Peer

Review report finding that the Committee, BCA, BM, Harris and Axcia's total \$2.3 million (\$2.7 million) Costs are too high to the CCC's \$1.4 million (1.6 million) resulting in \$912,410 (\$1.1 million) difference from the industry standard, and that especially the Axcia's P&G Costs are \$633,974 (\$729,070) and Professional Costs are \$227,467 (\$261,587). . Some Owners were already forced to pay the Committee's Deck Levies in full. Other Owners have been paying individual Deck Levy in 12 instalments. Not only re-calculation and refund of the unreasonable 130 Deck Levies but also the Defendants' ongoing UTA breach actions to all Victopia Owners must be immediately corrected by law.

***IRREGULARITY (Due, Amounts, Extension, Instalments, BCA & PBB  
Unreasonable Costs Claim)***

44. The Committee, BCA and PBB have been creating numerous **Irregularity** in their Operational and Remedial Levies, unknown Oncharges and TT Levy recovery applications.
45. On **20 May 2020**, the Committee and BCA issued the first (130 Units) Deck Levy invoices (Due on **20 August 2020**) to the 90 Units owners (Ground to Level 10), and advised only Deck Levy amounts to other 40 Units owners (Level 11 to Level 14). After receiving many information requests, questions, complaints and objections from many owners, the Remediation Project Manager Harris released only 130 Deck Costs "Summary" on **30 July 2020**. Harris again released a 130 Deck Costs "Breakdown" and only 5 Contractors' (Demasol, Maxbuild, Spectrum, Topcoat and ZYJ) quotes on **30 September 2020**. The Committee and BCA also amended the 130 Deck Levy amounts "three occasions" and levied "three different amounts" to the 130 Deck owners.

***Payment Due***

46. After the Committee and BCA issued the \$2.7 million additional Deck Levy invoice to 130 (90) owners, without 2019 AGM Resolution, on 20 June 2020, they amended the Deck Levy amounts three occasions, and disclosed only "selective information" before and after the original payment due date of 20 August 2020. The Committee, BCA and PBB have offered unfairly a 3-month payment extension and 12 instalments to some "selective" owners, such as 3H, 4C, 4K, 5E, 8K, and 9H, etc. to date. On **10 May 2021**, the Committee and BCA Moodley sent her email to 4K owner to



demand his Deck Levy payment in full only with a 10% interest (BCA to 4K email). On the other hand, the Committee, BCA and PBB filled 6 TT Levy applications targeting at the overseas owners due to the current COVID-19, including GA, 3H, 4C, 6L and 9L.

***BCA & PBB Unreasonable Costs Claim***

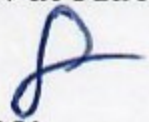
47. BCA have been attempting to charge “unreasonable Penalty” to the 5 Respondents. In the BCA Statements, BCA charged a \$850 TT filing fee to these 5 Respondents on **3 December 2020** before PBB Baker actually filed the 5 TT Levy applications from **15 January 2021** (6L). The Defendants had issued the “Committee-resolved” and “2019, 2020 AGM-unresolved” \$2.7 million additional Deck Levies to 130 (90) owners on 20 June 2020. From the previous TT Orders, the TT never awarded \$1,090 Costs (rather only \$362 from Unit 7N) to BCA and \$6,000 to \$7,000 to PBB.

***10% Interest***

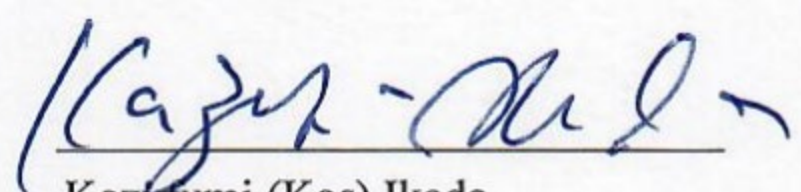
48. As several selective owners have been offered by the Defendants 3-month payment extension and 12 instalments, calculating a 10% p.a. Interest since the original due of 20 August 2020 is also invalid.

***Many Owners Emails to Voice, Object and Challenge against Defendants***

49. Unlike the BC Chairperson, Committee, BCA, BM, PBB and Grimshaw’s “annual AGM minutes records” and “annual AGM Chairperson and Committee Election, not only Ikeda but also many (190 Units out of 203 Units) Victopia Owners have been making our numerous Complaints, Challenges and Objections against “the same Defendants” for many years since 2005.

SWORN at Auckland )  
this  day of June 2021 )  
before me: )



  
Kazufumi (Kas) Ikeda

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A Solicitor of the High Court of New Zealand / A Justice of the Peace

Flower Ata  
Deputy Registrar  
District Court  
Auckland