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CLERK OF SUPREME COURT
STATE OF WASHINGTON

Supreme Court No. _____
Court of Appeals No. 56265-7-I

SUPREME COURT OF THE STATE OF WASHINGTON

SATOMI, LLC,

Petitioner,

v.

SATOMI OWNERS ASSOCIATION,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR REVIEW
(filed by the *Amicus* below, Leschi Corp.)

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4/29/07

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I. IDENTITY OF PARTY FILING THIS BRIEF

Leschi Corp., a Washington corporation, is an affiliated member of The Murray Franklyn Family of Companies, one of the largest homebuilders in the Pacific Northwest. Leschi Corp. is a developer and declarant of condominiums in Washington State.

II. THE COURT OF APPEALS' PUBLISHED DECISION

The Petition for Review seeks review of the Court of Appeals' decision in *Satomi Owners Association v. Satomi, LLC*, -- Wn. App. --, 156 P.3d 460 (2007), No. 56265-7-I, filed June 11, 2007.

III. ISSUE PRESENTED FOR REVIEW

The majority decision in *Satomi* held that the Federal Arbitration Act, 9 U.S.C. *et seq.* ("FAA"), does not preempt the Washington Condominium Act, ch. 64.34 RCW ("WCA"), when evidence of interstate commerce was limited to incorporation of building materials arriving primarily from out of state. The issue for which Petitioner seeks review is whether the Court of Appeal erred in holding that judicial enforcement of the WCA is not preempted by the FAA under these circumstances. The issue presents a significant question of law under the U.S. Constitution.

IV. ISSUE OF CONCERN TO AMICUS CURIAE

Leschi Corp., as a developer and declarant of condominiums in Washington, brings a unique perspective of a party that is directly affected by the *Satomi* decision. Indeed, Leschi Corp. is currently engaged in litigation before the Court of Appeals that presents issues quite similar to those presented in *Satomi*, and it believes that acceptance of Petitioner's request for review will simplify and speed up resolution of the dispute between Leschi Corp. and a condominium homeowner's association. Therefore, Leschi Corp. believes an *amicus curie* brief can be of substantial assistance to this Court.

V. STATEMENT OF THE CASE

Amicus Leschi Corp. adopts and incorporates the statement of facts as set forth in Petitioner's brief for the Court of Appeals.

VI. ARGUMENT

Amicus Leschi Corp. requests the Court accept review of the case.

The FAA is a clear expression of federal policy that arbitration provisions in a contract are enforceable where the contract affects interstate commerce. The Court in *Satomi* has disregarded substantial evidence that interstate commerce affected the *Satomi* purchase agreement, and sets forth a precedent that, if not reviewed, may effectively bar all FAA preemption of a contrary

state law, namely the WCA preference for judicial resolution of disputes between condominium homeowners and condominium developers and declarants.

This case presents issues that reoccur in trial court cases and conflicting rulings that must be resolved to avoid inevitable appeals. Furthermore, FAA preemption allowing enforcement of private agreements to arbitrate involve issues of continuing and substantial public interest.

If the Court does not accept review, the *Satomi* decision will stand to prevent Leschi Corp. from resolving disputes with its purchasers through contractual binding arbitration. The benefits of enforcing arbitration involve avoidance of costly and lengthy litigation, which is why both Washington and the United States have such a strong public policy in favoring arbitration of disputes. See *Herzog v. Foster & Marshall, Inc.*, 56 Wn. App. 437, 443, 783 P.2d 1124 (1989); accord, *Stein v. Geonerco, Inc.*, 105 Wn. App. 41, 44, 17 P.3d 1266 (Div. 1, 2001) (reversing trial court's denial of a motion to compel contractually binding arbitration of a home construction dispute).

The U.S. Supreme Court has described the phrase "involving commerce" as the "functional equivalent of the more familiar term 'affecting commerce'—words of art that ordinarily signal the broadest permissible exercise of Congress' Commerce Clause power." *Satomi*, 159 P.3d at 465 (quoting *Citizens Bank*, 539 U.S.

52, 56, 123 S. Ct. 2037, 156 L. Ed. 2d 46 (2003)) . The Commerce Clause power “may be exercised in individual cases without showing any specific effect upon interstate commerce if in the aggregate the economic activity in question would represent a general practice . . . subject to federal control. . . .” *Id.* at 465 (quoting *Citizens Bank*, 539 U.S. at 56–57, 123 S. Ct. 2037) (internal quotes and citation omitted). “Only the general practice subject to federal control need have a substantial effect on interstate commerce.” *Id.* (citing *Citizens Bank*, 539 U.S. at 57, 123 S. Ct. 2037).

It is disingenuous for the Court of Appeals to treat a condominium purchase agreement as merely a “garden variety” Washington real estate deal, and then treat the exact same building as a complicated assemblage of discrete and separate materials and component parts, any one of which can be defectively manufactured or installed. These two ways of viewing the same structure are impossible to reconcile with reality, let alone with the proper application of pertinent law. Contrary to a clear expression of federal intent of the FAA to preempt contrary state law, the Court of Appeals may have effectively barred FAA preemption in condominium construction defect cases, even where the very materials that the homeowners allege were defectively manufactured or installed traveled to Washington via interstate commerce.

Leschi Corp. incorporates arbitration agreements into the purchase and sale agreements presented to its condominium purchasers because arbitration is economically efficient, leads to predictable results, and provides results far faster than through judicial enforcement. It is important to preserve arbitration as a remedy for "garden variety" real estate transactions, otherwise the courts will be overwhelmed with suits that could be, and should be, resolved by alternative dispute resolution proceedings.

Condominium construction defect lawsuits are widespread in the state of Washington, as are arbitration agreements in condominium purchase and sales agreements. The interest of Leschi Corp. in the outcome of the *Satomi* appeal serves as an example of the larger public interest in the acceptance of review. If the Court of Appeals decision is not reviewed, the right of Leschi Corp. and other condominium declarants to rely on negotiated contractual arbitration agreements may be effectively nullified.

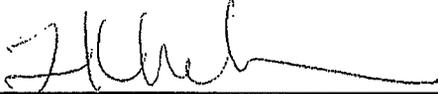
VII. CONCLUSION

Based on the foregoing, *amicus* Leschi Corp. respectfully requests this Court accept review of the Court of Appeals decision in *Satomi* and rule in favor of *Satomi, LLC*. Review will directly affect the broad public interest in further arbitration clauses in condominium purchase and sales agreements. In the furtherance

of judicial economy and serving the demonstrated public interest,
review should be accepted in this matter.

RESPECTFULLY SUBMITTED this 10th day of September, 2007,

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Court of Appeals No. 56265-7-1

SUPREME COURT OF THE STATE OF WASHINGTON

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The undersigned certifies under penalty of perjury under the laws of the State of Washington that on this day the undersigned caused to be served in the manner indicated below a copy of:

1. Motion for Leave to File Amicus Curiae Brief in Support of Petition for Review;
2. Brief in Support of Petition for Review; and
3. this Certificate of Service.

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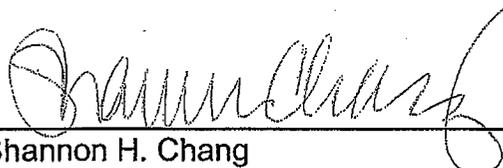
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DATED at Seattle, Washington, this 10th day of
September, 2007.



Shannon H. Chang

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Court of Appeals No.: 56265-7-I

Dear Clerk:

Please find attached for filing with your court:

1. Motion for Leave to File Amicus Curiae Brief in Support of Petition for Review;
2. Brief in Support of Petition for Review; and
3. Certificate of Service.

Please let me know if you have any problems viewing the attachments. As well, please notify me that you are in receipt of these documents and that it will be filed today.

Thank you very much.

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