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of Forty Six Hundred Condominium, Inc.*

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

In re:	)	Chapter 11
	)	
GORDON PROPERTIES, LLC,	)	
CONDOMINIUM SERVICES, INC.	)	Case No. <b>09-18086-RGM</b>
	)	
Debtors.	)	
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	)	
GORDON PROPERTIES, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Proc. No. <b>11-01020-RGM</b>
	)	
FIRST OWNERS' ASSOCIATION OF FORTY	)	
SIX HUNDRED CONDOMINIUM, INC.,	)	
	)	
Defendant.	)	

**ANSWER AND AFFIRMATIVE DEFENSES**

Defendant First Owners' Association of Forty Six Hundred Condominium, Inc. ("FOA" or "Defendant"), by undersigned counsel, hereby answers Plaintiff Gordon Properties, LLC's ("Gordon Properties" or "Plaintiff") Complaint and states as follows:

## INTRODUCTION

The Introduction Paragraph constitutes allegations of causes of actions to which no response is required; however, to the extent any response is required, FOA denies that it is liable to Plaintiff under any theory or cause of action or for any reason whatsoever.

### The Parties

1. FOA admits the allegations in Paragraph 1 of the Complaint.
2. FOA admits the allegations in Paragraph 2 of the Complaint.
3. FOA admits the allegations in Paragraph 3 of the Complaint.
4. FOA admits the allegations in Paragraph 4 of the Complaint.
5. FOA admits the allegations in Paragraph 5 of the Complaint.
6. FOA denies the allegation in footnote 2 related to Paragraph 6 of the Complaint as to Plaintiff's entitlement to the relief sought in its Complaint. FOA admits the remaining allegations in Paragraph 6 of the Complaint.
7. FOA admits the allegations in Paragraph 7 of the Complaint.
8. FOA admits the allegations in Paragraph 8 of the Complaint.
9. FOA denies that Lieutenant Corey Brooks is a member of FOA's Board of Directors (the "Board"). Lieutenant Brooks is currently deployed in Afghanistan and does not reside in Virginia. FOA admits the remaining allegations in Paragraph 9 of the Complaint.
10. FOA admits the allegations in Paragraph 10 of the Complaint.
11. FOA admits the allegations in Paragraph 11 of the Complaint.
12. FOA admits the allegations in Paragraph 12 of the Complaint.
13. FOA admits the allegations in Paragraph 13 of the Complaint.

14. FOA admits the allegations in Paragraph 14 of the Complaint.<sup>1</sup>

15. FOA admits the allegations in Paragraph 15 of the Complaint.

16. FOA admits the allegations in Paragraph 16 of the Complaint.

17. FOA admits the allegations of Paragraph 17 of the Complaint, but states further that Gordon Properties is also subject to all conditions and restrictions of membership created by applicable law of the Commonwealth, the By-Laws of the Corporation, and the Condominium Instruments. FOA denies any remaining allegations in Paragraph 17 of the Complaint.

#### Jurisdiction and Venue

18. FOA admits the allegations in Paragraph 18 of the Complaint, as they pertain to Count I. FOA denies any remaining allegations in Paragraph 18 of the Complaint.

19. FOA admits the allegations in Paragraph 19 of the Complaint, as they pertain to Count I. FOA denies any remaining allegations in Paragraph 19 of the Complaint.

20. FOA admits the allegations in Paragraph 20 of the Complaint, as they pertain to Count I. FOA denies any remaining allegations in Paragraph 20 of the Complaint.

#### Qualifications and Terms of and Voting for Directors; Annual Meetings

21. FOA states that the document referenced in Paragraph 21 of the Complaint speaks for itself such that no response is required. FOA denies any remaining allegations in Paragraph 21 of the Complaint.

22. FOA states that the document referenced in Paragraph 22 of the Complaint speaks for itself such that no response is required. FOA denies any remaining allegations in Paragraph 22 of the Complaint.

23. FOA states that the document referenced in Paragraph 23 of the Complaint speaks for

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<sup>1</sup> In accordance with this Court's May 23, 2011 Order on Defendants' Motion to Dismiss, no individual Defendants remain in this action.

itself such that no response is required. FOA denies any remaining allegations in Paragraph 23 of the Complaint.

24. FOA states that the document referenced in Paragraph 24 of the Complaint speaks for itself such that no response is required. FOA denies any remaining allegations in Paragraph 24 of the Complaint.

25. FOA states that the documents referenced in Paragraph 25 of the Complaint speaks for itself such that no response is required. FOA denies any remaining allegations in Paragraph 25 of the Complaint.

26. FOA admits the allegations of Paragraph 26 of the Complaint.

27. FOA states that each Board Member who was elected in October of 2006 has served since that time, with the exception of Corey Brooks, due to the fact that the Association has not achieved a quorum at any annual meeting held since 2006; thus, no elections could be held.

28. FOA states that the document referenced in Paragraph 28 of the Complaint speaks for itself such that no response is required. FOA denies any remaining allegations in Paragraph 28 of the Complaint.

29. FOA states that the documents referenced in Paragraph 29 of the Complaint speaks for itself such that no response is required. FOA denies any remaining allegations in Paragraph 29 of the Complaint.

30. FOA states that nothing in its Condominium Instruments require it to follow Robert's Rules of Order; however, it has customarily done so.

The 2009 Annual Meeting

31. FOA admits the allegations in Paragraph 31 of the Complaint.

32. FOA admits that it had established a registration process for attendance at the 2009

annual meeting, as well as the identical process for annual meetings in prior years and that the registration information was used to determine whether a quorum was reached. FOA denies any remaining allegations in Paragraph 32 of the Complaint.

33. FOA admits the allegations in Paragraph 33 of the Complaint.

34. FOA admits that Brungart and Hernandez collected proxies but lacks sufficient information to admit or deny the remaining allegations of Paragraph 34 of the Complaint.

35. FOA admits the allegations in Paragraph 35 of the Complaint.

36. FOA admits the allegations in Paragraph 36 of the Complaint.

37. FOA admits the allegations in Paragraph 37 of the Complaint.

38. FOA admits that, based on the quorum determination made by a third party, Kevin Broncato reported to Dee Cuadros that there was an insufficient number of votes to establish a quorum. FOA denies any remaining allegations in Paragraph 38 of the Complaint.

39. FOA admits the allegations in Paragraph 39 of the Complaint.

40. FOA lacks sufficient information to either admit or deny the allegations in Paragraph 40 of the Complaint. FOA therefore denies the allegations of Paragraph 40 of the Complaint.

41. FOA denies the allegations in Paragraph 41 of the Complaint.

42. FOA admits the allegations in Paragraph 42 of the Complaint.

43. FOA admits that after being advised from Broncato that no quorum was reached, Cuadros announced there was no quorum for the 2009 Annual Meeting and asked if there were any motions. FOA denies the remaining allegations in Paragraph 43 of the Complaint.

44. FOA denies that Jane Brungart was the first to respond. FOA states that Brungart

rose and spoke out without being recognized by the Board and after another FOA member was already the first to respond by a raising of the hand. FOA denies any remaining allegations in Paragraph 44 of the Complaint.

45. FOA states that Cuadros recognized the first person she observed who sought recognition from the chair. FOA denies any remaining allegations in Paragraph 45 of the Complaint.

46. FOA admits the allegations in Paragraph 46 of the Complaint.

47. FOA denies the allegations in Paragraph 47 of the Complaint.

48. FOA denies the allegations in Paragraph 48 of the Complaint.

49. FOA denies the allegations in Paragraph 49 of the Complaint.

50. FOA denies the allegations in Paragraph 50 of the Complaint.

51. FOA denies the allegations in Paragraph 51 of the Complaint.

52. FOA denies the allegations in Paragraph 52 of the Complaint.

53. FOA states that Cuadros has served as Board President since 2006 and has chaired annual meetings of the Association since that time. FOA denies the remaining allegations in Paragraph 53 of the Complaint.

54. FOA admits that a voice vote was taken, but denies the remaining allegations in Paragraph 54 of the Complaint.

55. FOA denies the allegations in Paragraph 55 of the Complaint.

56. FOA denies the allegations in Paragraph 56 of the Complaint.

57. FOA denies the allegations in Paragraph 57 of the Complaint.

58. FOA denies the allegations in Paragraph 58 of the Complaint.

59. FOA denies the allegations in Paragraph 59 of the Complaint.

60. FOA denies the allegations in Paragraph 60 of the Complaint.

61. FOA denies the allegations in Paragraph 61 of the Complaint.

62. FOA denies the allegations in Paragraph 62 of the Complaint.

63. FOA denies the allegations in Paragraph 63 of the Complaint.

64. FOA states that there are no Individual Defendants in this action pursuant to the Court's May 23, 2011 Order on the Motion to Dismiss. FOA denies any remaining allegations in Paragraph 64 of the Complaint.

65. FOA denies the allegations in Paragraph 65 of the Complaint.

66. FOA admits the allegations in Paragraph 66 of the Complaint, but denies any inference that it had a duty to reschedule the 2009 Annual Meeting.

67. FOA admits the allegations in Paragraph 67 of the Complaint.

The 2010 Annual Meeting

68. FOA admits the allegations in Paragraph 68 of the Complaint.

69. FOA states that the document attached as Exhibit A speaks for itself, such that no response is required. If a response is deemed to be required, FOA denies the allegations in Paragraph 69 of the Complaint.

70. FOA denies the allegations of Paragraph 70 of the Complaint.

COUNT I

(Violation of the Automatic Stay)

71. FOA states that no response is required for the incorporations in Paragraph 71 of the Complaint. To the extent a response is required, FOA incorporates its Paragraphs 1-70 as if fully set forth herein.

72. FOA denies the allegations in Paragraph 72 of the Complaint.

73. FOA denies the allegations in Paragraph 73 of the Complaint.
74. FOA denies the allegations in Paragraph 74 of the Complaint.
75. FOA denies the allegations in Paragraph 75 of the Complaint.
76. FOA denies the allegations in Paragraph 76 of the Complaint.

#### COUNTS II, III, and IV

Pursuant to the May 23, 2011 Order of this Court on a Motion to Dismiss, Counts II, III, and IV have been dismissed from this action, such that no response is required to Paragraphs 77-100. If a response is deemed to be required, FOA denies each individual allegation contained in Paragraphs 77-100.

#### CONCLUSION

The WHEREFORE paragraphs (a)-(k) constitute demands for relief to which no response is required; however, to the extent any response is required, FOA denies that it is liable to Plaintiff under any theory or in any amount whatsoever.

#### AFFIRMATIVE DEFENSES

1. FOA denies that it is liable to Plaintiff in any way or for any amount whatsoever.
2. FOA states that the Complaint fails to state a claim upon which relief may be granted.
3. FOA states that the postponement of the 2010 Annual Meeting was not an effort to collect a debt and that there was no violation of the automatic stay; thus, this Court lacks jurisdiction to grant the relief requested.
4. FOA intends to rely upon the defenses, as may be developed through discovery and the evidence, that Plaintiff's claims are barred by the doctrines of *res judicata* and/or collateral estoppel, or are precluded by the relevant statute or statutes of limitations.

5. FOA reserves the right to amend this Answer as additional facts may be discovered in the course of this litigation.

Respectfully Submitted,

By Counsel,

/s/ Jennifer L. Sarvadi

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 7th day of June, 2011, I electronically filed the foregoing with the Clerk of Court using the Case Management/ Electronic Case Filing system (CM/ECF), which will send notification of such filing to the following counsel of record:

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Counsel