



were recorded among the land records of the City of Alexandria, Virginia, and constitute covenants running with the land that are binding upon and that create rights in favor of all of the unit owners and members of FOA. A true and correct copy of the Condominium Instruments is attached and incorporated by reference as Exhibit A.

4. As of the Petition Date, the Debtor owned and operated approximately forty-one commercial and residential units in the Condominium, including a street-front unit having an address of 4580 Duke Street, Alexandria, Virginia (the "Restaurant Unit"), that is currently leased to the operator of a restaurant known as Mango Mike's.

5. The Condominium Instruments, together with Virginia Code §55-79.83D, grant FOA, as the unit owners' association for the Condominium, the authority to assess the Debtor for common expenses relating to FOA's operation and management.

6. Assessments are made on an annual basis and payable in monthly installments by each unit owner in the Condominium.

7. On January 14, 2009, FOA obtained an *Order* from the Circuit Court for the City of Alexandria, Virginia (the "Circuit Court"), in that certain civil action styled *Gordon Properties, LLC vs. First Owners' Association of Forty Six Hundred Condominium, Inc., et al.*, Case No. CL08-1432 (the "Civil Action"), resolving a dispute as to whether FOA was legally permitted to assess the Restaurant Unit and to what extent. In its ruling, the Circuit Court held:

The Court hereby construes the declaration and bylaws, together with Virginia Code § 55-79.83(D) as granting the Association the authority to assess the street-front commercial unit owned by Gordon Properties, LLC for common expenses relating to the operation and management of the Association as described in Article VIII of the bylaws of the Association; and that the street-front commercial unit owned by Gordon Properties, LLC is responsible for 11.32% of those expenses; and that Gordon Properties, LLC's claim in the first amended complaint for monetary damages for over-assessment of this street-front commercial unit is dismissed with prejudice.

A conformed copy of the *Order* is attached and incorporated by reference as Exhibit B. (A signed and entered copy of the *Order* could not be obtained by the date of filing of this

Attachment, but will be available in the future if necessary.) The 11.32% referenced in the Order is based upon the voting percentage attached to the Restaurant Unit.

8. On May 21, 2009, following the entry of the Circuit Court’s Order in the Civil Action, FOA assessed the Restaurant Unit for years 2003 through 2008 in the aggregate amount of \$265,522.43 (the “2003-2008 Assessments”). The 2003-2008 Assessments were calculated by multiplying the total annual general common expenses of FOA by the Restaurant Unit’s voting percentage of 11.32%, broken down as follows:

Year	General Common Expenses	Voting Percentage	Assessment	Payments	Balance
2003	\$304,478.16	× 11.32% =	\$34,466.93		\$34,466.93
2004	\$346,678.00	× 11.32% =	\$39,243.95	(\$3,136.56)	\$36,107.39
2005	\$412,309.80	× 11.32% =	\$46,673.47	(\$3,537.34)	\$43,136.13
2006	\$438,669.56	× 11.32% =	\$49,669.56		\$49,669.56
2007	\$466,956.00	× 11.32% =	\$52,859.42		\$52,859.42
2008	\$504,158.75	× 11.32% =	\$57,071.00	(\$7,788.00)	\$49,283.00
Totals	\$2,473,250.27	× 11.32% =	\$279,984.33	(\$14,461.90)	\$265,522.43

The 2003-2008 Assessments were due and payable in full following their assessment and remain unpaid as of the date of this Attachment, together with interest at the rate of ten percent per annum from the due date until the date paid. Pursuant to Article IX, Section 5 of the Bylaws of FOA, assessments are due within 10 days and thereafter are subject to interest at the rate of 10% per annum.

9. The 2009 annual assessment for the Restaurant Unit was similarly calculated at \$61,512 (“2009 Assessment”), payable in monthly installments of \$5,126.10 (“2009 Installment”). During 2009, the Debtor paid FOA the sum of \$2,269 (the “Insufficient Monthly Payment”) each month, which only partially paid each monthly 2009 Installment. FOA also assesses a late charge of \$50 per month for each 2009 Installment that is not paid in full and interest at the rate of ten percent per annum from the due date until the date paid.

10. As of the Petition Date, the Debtor owed FOA total assessments of \$305,531.99 with respect to the Restaurant Unit, consisting of: (i) the 2003-2008 Assessments (\$265,522.43),

(ii) interest on the 2003-2008 Assessments (\$9,019.76), and (iii) the unpaid balance (including late charges and interest) of the 2009 Assessment (\$30,989.80).

11. For the period from the Petition Date through December 31, 2009, the Debtor continued to pay FOA the Insufficient Monthly Payment, which resulted in an accruing deficiency each month with respect to each 2009 Installment. As of December 31, 2009, the total balance due in connection with the Restaurant Unit was \$315,673.36 (the "FOA Claim Amount"), consisting of (i) the 2003-2008 Assessments (\$265,522.43), (ii) accrued interest on the 2003-2008 Assessments (\$15,566.36), and (iii) the unpaid balance (including late charges and interest) for the 2009 Assessment (\$34,585.00).

12. The 2010 annual assessment for the Restaurant Unit has been calculated at \$77,928.00, payable in monthly installments of \$6,494.00 ("2010 Installment"). FOA has received payment of the 2010 Installment due for the month of January 2010. The next installment is due on February 1, 2010.

13. FOA has made annual assessments with respect to each of the other condominium units that the Debtor owns in the Condominium. As of the date of preparation of this *Attachment*, the Debtor was current with respect to its payment of the assessments for each of these other units. As such, as of the date of this *Attachment*, the Debtor was indebted to FOA solely with respect to assessments made in connection with the Restaurant Unit.

14. The FOA Claim Amount is substantially secured by a statutory lien on the Restaurant Unit, as provided by Section 55-79.84 of the Condominium Act and Article IX, Section 4 of the Bylaws of FOA. As such, the FOA Claim is a secured claim to the extent of the value of the Restaurant Unit.

Dated: January 29, 2010

Respectfully Submitted,

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