

COVER SHEET FOR FILING CIVIL ACTIONS

COMMONWEALTH OF VIRGINIA

Case No. CL 1200 5183 (CLERK'S OFFICE USE ONLY)

CITY OF ALEXANDRIA

Circuit Court

HOWARD SOBEL, et al

v./In re:

BRYAN SELLS, et al

PLAINTIFF(S)

DEFENDANT(S)

I, the undersigned plaintiff defendant attorney for plaintiff defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- Claim Impleading Third Party Defendant
Monetary Damages
No Monetary Damages
Counterclaim
Monetary Damages
No Monetary Damages
Cross Claim
Interpleader
Reinstatement (other than divorce or driving privileges)
Removal of Case to Federal Court

Business & Contract

- Attachment
Confessed Judgment
Contract Action
Contract Specific Performance
Detinue
Garnishment

Property

- Annexation
Condemnation
Ejectment
Encumber/Sell Real Estate
Enforce Vendor's Lien
Escheatment
Establish Boundaries
Landlord/Tenant
Unlawful Detainer
Mechanics Lien
Partition
Quiet Title
Termination of Mineral Rights

Tort

- Asbestos Litigation
Compromise Settlement
Intentional Tort
Medical Malpractice
Motor Vehicle Tort
Product Liability
Wrongful Death
Other General Tort Liability

ADMINISTRATIVE LAW

- Appeal/Judicial Review of Decision of (select one)
ABC Board
Board of Zoning
Compensation Board
DMV License Suspension
Employee Grievance Decision
Employment Commission
Local Government
Marine Resources Commission
School Board
Voter Registration
Other Administrative Appeal

DOMESTIC/FAMILY

- Adoption
Adoption - Foreign
Adult Protection
Annulment
Annulment - Counterclaim/Responsive Pleading
Child Abuse and Neglect - Unfounded Complaint
Civil Contempt
Divorce (select one)
Complaint - Contested*
Complaint - Uncontested*
Counterclaim/Responsive Pleading
Reinstatement - Custody/Visitation/Support/Equitable Distribution
Separate Maintenance
Separate Maintenance Counterclaim

WRITS

- Certiorari
Habeas Corpus
Mandamus
Prohibition
Quo Warranto

PROBATE/WILLS AND TRUSTS

- Accounting
Aid and Guidance
Appointment (select one)
Guardian/Conservator
Standby Guardian/Conservator
Trust (select one)
Impress/Declare
Reformation
Will (select one)
Construe
Contested

MISCELLANEOUS

- Appointment (select one)
Church Trustee
Conservator of Peace
Marriage Celebrant
Bond Forfeiture Appeal
Declaratory Judgment
Declare Death
Driving Privileges (select one)
Reinstatement pursuant to § 46.2-427
Restoration - Habitual Offender or 3rd Offense
Expungement
Firearms Rights - Restoration
Forfeiture of U.S. Currency
Freedom of Information
Injunction
Interdiction
Interrogatory
Judgment Lien-Bill to Enforce
Law Enforcement/Public Official Petition
Name Change
Referendum Elections
Sever Order
Taxes (select one)
Correct Erroneous State/Local Delinquent
Vehicle Confiscation
Voting Rights - Restoration
Other (please specify)

Damages in the amount of \$ 200,000.00 are claimed.

November 29, 2012

DATE

PLAINTIFF DEFENDANT ATTORNEY FOR PLAINTIFF DEFENDANT

Mark E. Shaffer (VSB #75407)

PRINT NAME

Reed Smith LLP, 3110 Fairview Park Drive, #1400,

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

Falls Church, Virginia 22042, (703) 641-4200

***Contested** divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

**Civil Action Type Codes
(Clerk's Office Use Only)**

Accounting	ACCT	Ejectment	EJET
Adoption	ADOP	Encumber/Sell Real Estate	RE
Adoption – Foreign	FORA	Enforce Vendor's Lien	VEND
Adult Protection	PROT	Escheatment	ESC
Aid and Guidance	AID	Establish Boundaries	ESTB
Annexation	ANEX	Expungement	XPUN
Annulment	ANUL	Firearms Rights – Restoration	REST
Annulment – Counterclaim/Responsive Pleading..	ACRP	Forfeiture of U.S. Currency	FORF
Appeal/Judicial Review		Freedom of Information	FOI
ABC Board	ABC	Garnishment	GARN
Board of Zoning	ZONE	Injunction	INJ
Compensation Board	ACOM	Intentional Tort	ITOR
DMV License Suspension	JR	Interdiction	INTD
Employment Commission	EMP	Interpleader	INTP
Employment Grievance Decision	GRV	Interrogatory	INTR
Local Government	GOVT	Judgment Lien – Bill to Enforce	LIEN
Marine Resources	MAR	Landlord/Tenant	LT
School Board	JR	Law Enforcement/Public Official Petition	LEP
Voter Registration	AVOT	Mechanics Lien	MECH
Other Administrative Appeal	AAPL	Medical Malpractice	MED
Appointment		Motor Vehicle Tort	MV
Conservator of Peace	COP	Name Change	NC
Church Trustee	AOCT	Other General Tort Liability	GTOR
Guardian/Conservator	APPT	Partition	PART
Marriage Celebrant	ROMC	Petition – (Miscellaneous)	PET
Standby Guardian/Conservator	STND	Product Liability	PROD
Asbestos Litigation	AL	Quiet Title	QT
Attachment	ATT	Referendum Elections	ELEC
Bond Forfeiture Appeal	BFA	Reinstatement (Other than divorce or driving privileges)	REIN
Child Abuse and Neglect – Unfounded Complaint ..	CAN	Removal of Case to Federal Court	REM
Civil Contempt	CCON	Separate Maintenance	SEP
Claim Impleading Third Party Defendant –		Separate Maintenance – Counterclaim/Responsive Pleading	SCRP
Monetary Damages/No Monetary Damages	CTP	Sever Order	SEVR
Complaint – (Miscellaneous)	COM	Taxes	
Compromise Settlement	COMP	Correct Erroneous State/Local	CTAX
Condemnation	COND	Delinquent	DTAX
Confessed Judgment	CJ	Termination of Mineral Rights	MIN
Contract Action	CNTR	Trust – Impress/Declare	TRST
Contract Specific Performance	PERF	Trust – Reformation	REFT
Counterclaim – Monetary Damages/No Monetary Damages	CC	Unlawful Detainer	UD
Cross Claim	CROS	Vehicle Confiscation	VEH
Declaratory Judgment	DECL	Voting Rights – Restoration	VOTE
Declare Death	DDTH	Will Construction	CNST
Detinue	DET	Will Contested	WILL
Divorce		Writs	
Complaint – Contested/Uncontested	DIV	Certiorari	WC
Counterclaim/Responsive Pleading	DCRP	Habeas Corpus	WHC
Reinstatement – Custody/Visitation/Support/ Equitable Distribution	CVS	Mandamus	WM
Driving Privileges		Prohibition	WP
Reinstatement pursuant to § 46.2-427	DRIV	Quo Warranto	WQW
Restoration – Habitual Offender or 3 rd Offense	REST	Wrongful Death	WD

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

HOWARD SOBEL,
4600 Duke Street, #903
Alexandria, Virginia 22304

DEWANDA F. CUADROS,
4600 Duke Street, Unit #910
Alexandria, Virginia 22304,

F.J. PEPPER,
4600 Duke Street, #932
Alexandria, Virginia 22304,

CONNIE KING,
4574 Shetland Green Road
Alexandria, Virginia 22312,

STEVEN GREENBERG,
4600 Duke Street, Unit #927
Alexandria, Virginia 22304,

MARIETTA JONES,
4600 Duke Street, Unit #1505
Alexandria, Virginia 22304,

ELIZABETH MOORE,
4600 Duke Street, Unit #1510
Alexandria, Virginia 22304,

STEPHEN LANGONE,
4600 Duke Street, Unit #629
Alexandria, Virginia 22304,

BETTY GILLIAM,
4600 Duke Street, Unit #619
Alexandria, Virginia 22304,

FILED
CLERK OF COURTS
CITY OF ALEXANDRIA
JUL 29 AM 13
EDWARD CERRONAN, CLERK

EVELYN CANTRELL,
4600 Duke Street, Unit #1632
Alexandria, Virginia 22304,

ABDON ALEXANDRE ZOGHAIB,
2324 Archdale Road
Reston, Virginia 20191-1602,

Plaintiffs,

v.

Civil Case No. CL12005183

BRYAN SELLS,
733 15th Street, N.W.
Apartment 1105
Washington, D.C. 20005,

ELIZABETH GREENWELL,
18935 Yellow Schoolhouse Road
Bluemont, Virginia 20135,

LINDSAY WILSON,
1872 Clayton Ridge Court
Winchester, Virginia 22601,

and

FIRST OWNERS' ASSOCIATION OF
FORTY SIX HUNDRED CONDOMINIUM, INC.
4600 Duke Street
Alexandria, Virginia 22304-0000,

SERVE: DEWANDA F. CUADROS,
Registered Agent
4600 Duke Street, Suite 400
Alexandria, Virginia 22304-0000,

BRYAN SELLS,
President
733 15th Street, N.W.
Apartment 1105
Washington, D.C. 20005,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiffs Howard Sobel, Dewanda F. Cuadros, F.J. Pepper, Connie King, Steven Greenberg, Marietta Jones, Elizabeth Moore, Stephen Langone, Betty Gilliam, Evelyn Cantrell and Abdon Alexandre Zoghaib (collectively "Unit Owners"), by counsel, pursuant to Virginia Code § 8.01-184, *et seq.* and § 55-79.53A, file this Complaint individually, and derivatively on behalf of First Owners Association of Forty Six Hundred Condominium, Inc. ("FOA"), against Defendants, Bryan Sells, Elizabeth Greenwell, Lindsay Wilson, and FOA, and in support thereof state as follows:

PARTIES

1. Howard Sobel lives at 4600 Duke Street, Unit #903, Alexandria, Virginia 22304. He is a resident of Virginia and owns Units #903 and 908 at the Condominium and is a member of FOA.

2. Dewanda F. Cuadros lives at the Forty Six Hundred Condominium (the "Condominium"), 4600 Duke Street, Unit #910, Alexandria, Virginia 22304. She is a resident of Virginia, owns Unit # 910 at the Condominium and is a member of FOA.

3. Dr. F.J. Pepper lives at 4600 Duke Street, Unit #932, Alexandria, Virginia 22304. He is a resident of Virginia and owns Units 423 and 932 at the Condominium and is a member of FOA.

4. Connie King lives at 4574 Shetland Green Road, Alexandria, Virginia 22312. She is a resident of Virginia and owns Unit #1019 at the Condominium and is a member of FOA.

5. Steven Greenberg lives at 4600 Duke Street, Unit #927, Alexandria, Virginia 22304. He is a resident of Virginia and owns Unit #927 at the Condominium and is a member of FOA.

6. Marietta Jones lives at 4600 Duke Street, Unit #1505, Alexandria, Virginia 22304. She is a resident of Virginia and owns Unit #1505 at the Condominium and is a member of FOA.

7. Elizabeth Moore lives at 4600 Duke Street, Unit #1510, Alexandria, Virginia 22304. She is a resident of Virginia and owns Unit #1510 at the Condominium and is a member of FOA.

8. Stephen Langone lives at 4600 Duke Street, Unit #629, Alexandria, Virginia 22304. He is a resident of Virginia and owns Unit #629 at the Condominium and is a member of FOA.

9. Betty Gilliam lives at 4600 Duke Street, Unit #619, Alexandria, Virginia 22304. She is a resident of Virginia and owns Unit #619 at the Condominium and is a member of FOA.

10. Evelyn Cantrell lives at 4600 Duke Street, Unit #1632, Alexandria, Virginia 22304. She is a resident of Virginia and owns Unit #1632 at the Condominium and is a member of FOA.

11. Abdon Alexandre Zoghaib lives at 2324 Archdale Road, Reston, Virginia 20191-1602. He is a resident of Virginia and owns Unit #1310 at the Condominium and is a member of FOA.

12. The Condominium is a mixed-use condominium comprised of over 400 units that was created in 1975 pursuant to the Declaration attached as **Exhibit 1** to this Complaint. The Condominium consists of a main high-rise multifamily residential building, with both residential and commercial units, and two street front commercial units—a restaurant and a gas station—that are adjacent to the high-rise building.

13. FOA is a Virginia nonstock corporation formed pursuant to the requirements of the condominium instruments and § 55-79.39 *et seq.* of the Code of Virginia (1950), the Virginia

Condominium Act (the "Act"), and § 13.1-801 *et seq.* of the Code of Virginia (1950), the Virginia Nonstock Corporation Act ("Nonstock Act") to oversee the management of the Condominium as its unit owners' association.

14. Gordon Properties, LLC ("Gordon Properties") is a Virginia limited liability company with four members that owns approximately 38 units in the Condominium, including the adjacent restaurant, Mango Mike's, one of two street front units.

15. Gordon Residential, LLC ("Gordon Residential") is a Virginia limited liability company that owns Unit 1518 in the Condominium which it acquired from Gordon Properties, LLC on August 7, 2008. At least some of the members of Gordon Residential are also members of Gordon Properties.

16. Condominium Services, Inc. ("CSI") is a Virginia corporation that is a wholly-owned subsidiary of Gordon Properties with its office in Unit #331 in the Condominium, owned by Gordon Properties.

17. Bryan Sells ("Sells"), an attorney with the U.S. Department of Justice, owns Unit 703 in the Condominium which he purchased at a foreclosure. Sells is the managing member of both Gordon Properties and Gordon Residential. Sells is also the chief executive officer of CSI.

18. Elizabeth Greenwell ("Greenwell") is Sells' cousin and is a member of Gordon Properties.

19. Lindsey Wilson ("Wilson") is Sells' cousin, is a member of Gordon Properties and was and is an officer of CSI.

Nature of Dispute Between FOA, Gordon Properties and CSI

20. FOA is governed by a seven-person Board of Directors (the "Board"), with each director elected by the members of FOA at the annual meeting (held on the first Wednesday in October) for two-year terms, with three or four seats expiring each year. The Board has the

power to cause FOA to enter into management and service agreements and to oversee the operation and maintenance of the Condominium, including assessment authority. The Board also has the power to conduct business on behalf of FOA.

21. Every member of FOA is required to pay an annual assessment, representing the member's proportionate share of FOA's expenses pursuant to the Declaration and the Condominium Act. The Board uses the annual assessments to fund its reserves and to pay for the Condominium's administrative, operating and maintenance expenses.

22. In August of 2005, the Board entered into a management agreement with CSI for a term of two years from November 1, 2005 to October 31, 2007. FOA was to pay CSI a monthly fee of \$6,075 in exchange for CSI acting as FOA's management agent. The management agreement permitted FOA to terminate CSI without cause upon ninety days written notice and with cause upon thirty days written notice.

23. On July 1, 2006, the Board sent CSI a letter giving thirty days' notice of termination for cause effective August 1, 2006. Termination was justified because CSI failed to provide FOA with correct financial documents, failed to file necessary tax returns, failed to pay payroll taxes, and prepared incorrect W-2 forms for FOA's employees. FOA received notifications from the IRS and the Commonwealth that penalties and interest were being assessed as a result of these failures.

24. On August 1, 2006, despite receiving notice that FOA had terminated the management agreement, CSI's chief executive officer, Sells, sent a letter to all of FOA's unit owners on behalf of both CSI and Gordon Properties directing them to continue sending their assessment payments to CSI. Sells directed Wilson, who was then and is now an officer of CSI, to open a new bank account in FOA's name, in which to keep the assessment money CSI collected from the unit owners. CSI opened the account by having its then president – Lindsay

Wilson - falsely represent in documents filed with the bank that she was an officer of FOA.

Importantly, FOA did not authorize the opening of the account or have any signatory authority over it.

25. After August 1, 2006, CSI continued to collect assessment payments due FOA under false pretenses and deposited these payments into the unauthorized account it had opened in FOA's name. CSI used the assessments it collected to pay itself monthly management fees totaling \$91,125 even though FOA had properly terminated its management agreement.

26. On January 5, 2009, FOA filed a complaint against CSI in the Circuit Court of the City of Alexandria, alleging that CSI had breached the terms of the management agreement and had wrongfully converted FOA's funds ("CSI Action"). CSI filed a counterclaim and an amended counterclaim for breach of contract.

27. The parties proceeded to trial in November of 2009. At the conclusion of all the evidence, the circuit court granted FOA summary judgment on the conversion claim in the amount of \$91,125. On the remaining issues, the jury returned a verdict in favor of FOA on its breach of contract claim in the amount of \$70,667, prejudgment interest on the conversion claim beginning on October 1, 2007, and punitive damages in the amount of \$275,000 (the "CSI Judgment").

28. CSI appealed the jury's verdict and other issues decided at trial. The Supreme Court of Virginia granted CSI's petition for appeal and affirmed the jury's verdict and other issues decided by the circuit court. *See Condominium Services, Inc. v. First Owners Association of Forty Six Hundred Condominium, Inc.*, 281 Va. 561 (2011). In affirming the award of punitive damages against CSI, the Supreme Court noted that there was ample evidence that CSI had taken action in "conscious disregard of FOA's rights" that justified an award of punitive damages, including:

- a. Opening a bank account after the effective date of its termination and failing to provide FOA with signatory authority on that account.
- b. CSI officers misrepresenting that they were officers of FOA (when they were not) so they could open a bank account in FOA's name without FOA's consent or knowledge.
- c. Wrongfully collecting assessments that were owed to FOA and using these assessments to pay itself \$91,125 in monthly management fees even though its management agreement had been terminated.
- d. Performing each of the above wrongful acts while aware of a prior opinion by this Court that FOA had properly terminated the management agreement. *Id.* at 579-580.

29. Additionally, in 2008, Gordon Properties filed a lawsuit against FOA in the Alexandria Circuit Court, (Case No. CL 2008-1432), in which it engaged in a broad attack on FOA's assessment methodology and requested significant refunds of what it contended were overpaid assessments (the "Assessment Action"). In that suit, FOA filed a counterclaim seeking a declaration that the owners of the street-front units in the Condominium, including Gordon Properties, owed certain assessment obligations to FOA. Judge Kemler granted FOA's Motion for Summary Judgment regarding the assessment of the street-front units and held that Gordon Properties was liable for such assessments. (See Judge Kemler Order, attached as **Exhibit 2**.) Gordon Properties appealed that aspect of the judgment but the appeal was not taken.

30. Pursuant to Judge Kemler's Order, FOA assessed Gordon Properties' street-front unit for back assessments for 2003 and 2008 in the amount of \$315,673.36 ("Assessment").

**CSI And Gordon Properties File For Bankruptcy To Avoid Paying
The Judgment And Street Front Unit Assessments**

31. CSI has refused to pay the Judgment and Gordon Properties has refused to pay the Assessment. To avoid paying these debts, CSI and Gordon Properties, both under the direction of Sells, filed petitions for bankruptcy in the United States Bankruptcy Court of the Eastern District of Virginia ("Bankruptcy Court").

32. At the time of Gordon Properties' October 2, 2009 Bankruptcy Petition ("Gordon Properties Bankruptcy") Gordon Properties was solvent and had no need to reorganize. The filing of the Petition was a blatant act of forum shopping calculated to avoid the jurisdiction of this Court and Gordon Properties' obligation under state law with respect to FOA, and to retain its voting rights in FOA despite being delinquent for not paying the Assessment.

33. At the time it filed for bankruptcy, Gordon Properties identified assets that exceeded its liabilities by more than \$10 million. Gordon Properties also continued to pay the expenses of CSI which was unable to cover its own expenses.

34. In light of Gordon Properties' delinquency in paying the Assessment, FOA's Bylaws prohibit Gordon Properties from either voting or being represented on the Board of Directors of FOA until such time as it is current in its Assessments.

35. On January 9, 2011, Gordon Properties filed an adversary proceeding in the bankruptcy proceeding claiming that FOA, by following its Bylaws and preventing Gordon Properties from voting, had intentionally violated the automatic stay under 11 U.S.C. § 362(a)(6). On August 24, 2011, the Bankruptcy Court held that by following its Bylaws, FOA violated the automatic stay. As a sanction, the Court ordered FOA to pay Gordon Properties' attorneys' fees and to permit it to vote in FOA's next election. The Court also prescribed the details of how the annual meeting and election was to be conducted, including the appointment

of an independent election administrator. FOA appealed this order to the United States District Court for the Eastern District of Virginia ("Sanction Appeal"). This appeal is pending.

36. In a separate order, the Bankruptcy Court also held that FOA's claim in the bankruptcy for the Assessment it owed FOA pursuant to Judge Kemler's Order was not valid and that it need not be paid. FOA also appealed this order to the United States District Court for the Eastern District of Virginia ("Assessment Appeal"). This appeal is pending.

37. In the CSI bankruptcy proceeding, FOA moved to "substantively consolidate" the bankruptcies of Gordon Properties and CSI to make Gordon Properties liable for the Judgment. The Bankruptcy Court denied that motion, but FOA appealed that decision to the District Court which reversed the decision and remanded the issue of substantive consolidation to the Bankruptcy Court. *See In re Gordon Properties, LLC and Condominium Services, Inc.*, 478 B.R. 750 (E.D. Va. 2012). Thus, there is a strong probability that Gordon Properties could be liable for the Judgment. Both of these appeals are now pending with the District Court.

**Sells, Gordon Properties, And Gordon Residential Use
Improper Means To Take Over The Board**

38. On March 26, 2009, FOA's Board of Directors adopted Policy Resolution No. 2009-03, which clarified the requirements for service on the Board of Directors already contained in the Condominium Act and the condominium instruments. The Resolution states, in part, that a member of FOA, either a natural or non-natural person, may have only one position or one representative on FOA's Board of Directors at any given time. For example, a non-natural entity such as Gordon Properties is entitled to one representative on the Board of Directors, assuming that person is eligible to serve and is elected pursuant to the Bylaws of FOA.

39. On August 7, 2008 Gordon Properties conveyed one of its residential units to Gordon Residential.

40. The conveyance by Gordon Properties of a unit to Gordon Residential was a pretext to evade the limitation set forth in FOA's condominium instruments and the Virginia Condominium Act limiting a member to one seat on FOA's Board of Directors at any given time. There was no commercial or business reason for this conveyance; it was simply undertaken to evade the limitation of one member/one representative on FOA's Board of Directors.

41. Prior to the 2011 annual meeting, Gordon Residential identified five candidates to run for election to the Board. Just prior to the 2011 Annual Meeting, FOA, through its then counsel Reed Smith, LLP, filed a complaint with this Court, Case No. CL 2011-00441 ("Election Action"), on behalf of FOA, seeking a declaratory judgment that the Resolution was enforceable and precluded Gordon Residential from having more than one seat on the Board. Gordon Properties removed the matter to the Bankruptcy Court which eventually remanded the case back to this Court.

42. Following a hearing in the Election Action, the Court granted FOA a preliminary injunction that prohibited Gordon Residential from having more than one seat on FOA's Board.

43. On October 5, 2011, FOA held its annual meeting, at which it held an election to fill all seven seats on FOA's Board of Directors ("2011 Election"). Pursuant to the Bankruptcy Court order, Gordon Properties was permitted to vote although it remained delinquent, and cast approximately 19.6% of the votes. At the meeting, Sells ran for a seat based on the unit he owns; Wilson ran for a seat as a member of Gordon Properties and Greenwell ran for a seat as a member of Gordon Residential. Seeking to avoid the injunction and to gain control of FOA's Board, Gordon Properties nominated a second candidate from the floor, Dennis Howland, who is

Sells' father-in-law. Based on Gordon Properties being allowed to vote in violation of FOA's Bylaws, all four were elected to the Board.¹

44. After the election, the Board, then controlled by three members of Gordon Properties and Sell's father-in-law, elected Sells as FOA's President and elected Greenwell as Vice President. The Board also immediately terminated Reed Smith, which had represented FOA in the state court cases and in the Gordon Properties and CSI Bankruptcies.

45. The Bankruptcy Court subsequently ruled that the Resolution was enforceable and required the second person elected on behalf of Gordon Properties, Mr. Howland, to be removed from the Board. He was replaced by Elizabeth Moore.

46. Despite no longer having control of the Board, Sells was able to remain as President of FOA by manipulating Board meetings to avoid a vote to name new officers. This included simply ending meetings without allowing a vote on proposed resolutions to remove him as FOA's President.

47. During this time, the Board appointed a Special Litigation Committee to oversee and direct FOA's disputes and litigation matters with and against Gordon Properties and CSI. The committee was comprised of Betty Gilliam, Jane Brungart and Alec Zoghaib. This committee was appointed by the votes of both the Gordon Properties directors and the disinterested directors of the Board. Because of the actions of Sells to interfere with the functions of the Special Litigation Committee, the committee hired its own counsel, John Donelan, to assist the committee. Among other things, Mr. Donelan recommended the rehiring of Reed Smith to pursue the Assessment appeal in the District Court. The Special Litigation Committee followed its counsel's advice and re-hired Reed Smith for this engagement.

¹ Article IV, Section VII of FOA's Bylaws also preclude a delinquent owner from serving on the Board of Directors.

48. FOA held its 2012 annual meeting on October 3, 2012 at which three seats on the FOA Board were up for election. The seats of Sells, Greenwell and Wilson were not up for election since they were "elected" in 2011 to two year terms. In order to regain a majority on the Board, upon information and belief, in advance of the 2012 Annual Meeting, Gordon Properties purchased both votes and proxies and used its votes in order to elect candidates hand-picked by Gordon Properties: Martina Hernandez and William Reichenbach. Jonathan Halls – who has no connection to Gordon Properties - was also elected to the Board.

49. After the conclusion of the 2012 Annual Meeting, at or around 11:00 pm, Sells called a meeting of the newly-elected Board. No prior notice of this meeting was provided. Therefore, two Board members, Lucia Hadley and Mr. Reichenbach, were not in attendance. Wasting no time in acting in their own self-interest, the Gordon Properties' Board members voted, among other things, to terminate the Special Litigation Committee and to appoint a new committee comprised of Ms. Hernandez, Ms. Brungart and Mr. Reichenbach. Excluding the votes of Sells, Greenwell and Wilson, the vote was 1-1 with Ms. Hernandez immediately showing her loyalty to Gordon Properties by voting in favor of the motion. Mr. Halls voted against it.

50. At that same meeting, the Gordon Properties-led Board also voted to hire CSI to manage FOA. The vote again was 4-1 with Ms. Hernandez and all three Gordon Properties' directors voting in favor of the motion and Mr. Halls voting against it.

51. The newly and improperly appointed Special Litigation Committee also immediately showed its loyalty to Gordon Properties by terminating Reed Smith – again – against the advice of counsel to the Special Litigation Committee. Soon thereafter, again against advice of counsel, the committee voted to terminate LeClair Ryan as counsel for FOA. LeClair Ryan had ably represented FOA in one of the adversary proceedings before the Bankruptcy

Court regarding Gordon Properties ability to vote notwithstanding being delinquent, and in the Sanction Appeal to the District Court.

52. Thus, the Gordon Properties-appointed Special Litigation Committee acted swiftly to ensure that FOA had no representation by eliminating the two law firms which had successfully represented FOA for many years in litigation against Gordon Properties, Gordon Residential and CSI.

53. Upon receiving notice from the newly constituted Special Litigation Committee that their services had been terminated, Reed Smith and LeClair Ryan filed motions to withdraw as FOA's counsel in the appeals pending before the District Court and in the CSI and Gordon Properties Bankruptcies. The motions to withdraw are still pending before Judge Ellis. The motions were granted by Judge Brinkema and Reed Smith and LeClair Ryan were permitted to withdraw as FOA's counsel in that litigation. However, the actions of the Gordon Properties-appointed Special Litigation Committee did not go unnoticed by the Court. In granting these motions, the Honorable Leonie M. Brinkema stated that she was "terribly troubled by the manner in which this litigation is being conducted" by FOA's new Board. Judge Brinkema explained that the new Board's decision to terminate Reed Smith and LeClair Ryan is "extremely unfortunate...because any new counsel will need to spend a great deal of time to become familiar with the background and issues in this litigation. That process will impose additional, and in this Court's opinion, completely unnecessary costs on [FOA]." (Withdrawal Order, attached as **Exhibit 3**.)

54. At the same time that its newly-appointed Special Litigation Committee was terminating counsel for FOA, Gordon Properties requested that the Bankruptcy Court order mediation between FOA and Gordon Properties, which the Court granted.

55. The Gordon Properties-appointed Special Litigation Committee has the authority to negotiate on behalf of FOA and ostensibly settle all claims against Gordon Properties. Thus, Gordon Properties appointed those who will negotiate against it.

56. The Gordon Properties-appointed Special Litigation Committee has refused to proceed with the appeals in the District Court, which have been fully briefed and are ripe for decision, while Gordon Properties has pursued collection actions against FOA—garnishing FOA’s bank account and throwing FOA into default under its loan agreement with Virginia Commerce Bank.

57. In addition to setting up the committee with which it will negotiate, the Gordon Properties-controlled Board also voted to re-hire CSI as FOA’s management agent. This is the same CSI that stole money from FOA and that owes FOA over \$450,000 based on the judgment entered against CSI and in favor of FOA. Of course, the vote was 5-2 with Sells, Greenwell, Wilson, Hernandez and Reichenbach voting in favor and the remaining two Board members, Lucia Hadley and Jonathan Halls, voting against it. But for the members of Gordon Properties – which owns CSI – voting in favor, the motion would have failed.

58. As members of FOA’s Board, Sells, Greenwell, and Wilson owe FOA a “duty of care” and a “duty of loyalty” to FOA. The duty of care requires FOA’s Board members to perform their duties in accordance with the best interests of FOA. The duty of loyalty prohibits FOA’s Board members from using their positions to secure personal profit or other personal advantage at the expense of FOA or its members. Sells, Greenwell and Wilson breached these duties when they used their control over the Board to cause FOA to approve a series of self-dealing transactions, including the appointment of a new Special Litigation Committee and the rehiring of CSI, designed to enrich themselves, Gordon Properties, Gordon Residential and CSI, all to the detriment of FOA and its other members.

59. At the time Sells, Greenwell and Wilson were elected to the Board, all of FOA's decisions concerning its litigation against Gordon Properties and CSI had been delegated to the Special Litigation Committee. FOA's Special Litigation Committee is responsible for overseeing and managing FOA's efforts to collect the Judgment owed by CSI and the Assessment owed by Gordon Properties as well as the various appeals and other litigation between FOA and Gordon Properties and CSI. Additionally, the Special Litigation Committee is also vested with settlement authority on behalf of FOA in connection with its disputes with Gordon Properties and CSI.

60. With Reed Smith and LeClair Ryan out of the way, Sells, Greenwell and Wilson promptly disbanded the prior Special Litigation Committee and appointed new members to the Special Litigation Committee who were loyal to CSI and Gordon Properties. By seizing control of the Special Litigation Committee, Sells now has the ability to access FOA's confidential information concerning its claims and litigation strategy against Gordon Properties and CSI—vitiating the attorney-client privilege. Acting under the direction of Sells, CSI and Gordon Properties have since submitted settlement offers to the Special Litigation Committee that, if approved, will settle FOA's claims against CSI and Gordon Properties by, upon information and belief, causing FOA to release its right to collect the CSI Judgment and Assessment and reduce the amount FOA can assess the units owned by Sells, Gordon Properties, and Gordon Residential. These terms are extremely unfavorable to FOA, and most importantly its unit owners. Sells, Greenwell and Wilson's relationship with CSI and Gordon Properties make them interested directors who are prohibited from voting on any matters relating to the disputes and litigation between FOA and Gordon Properties and CSI. As such, these actions were in violation of their fiduciary duties to FOA and are void and *ultra vires*.

61. The appointment of the new members to FOA's Special Litigation Committee was not approved by a majority of disinterested directors on the Board and is void and *ultra vires*. Sells, Greenwell and Wilson breached the fiduciary duties they owed to FOA by voting to change the composition of the Special Litigation Committee and, among other things, when they:

- a. Upon information and belief, paid the delinquent assessments of various unit owners in exchange for giving Gordon Properties the right to cast the votes for these unit owners by proxy. This gave Gordon Properties the additional votes it needed to ensure that it maintained control of the Board and FOA.
- b. Placed Sells in charge of overseeing the counting of all election ballots and certifying the election results for the 2012 Board election. This allowed Sells to ensure that only parties that were loyal to Gordon Properties, CSI and Gordon Residential were elected to the Board.
- c. Held unplanned meetings without any notice to FOA's members so they could place unit owners who were loyal to Gordon Properties and CSI on FOA's Special Litigation Committee.
- d. Rehired CSI to manage FOA even though CSI has never paid the Judgment.
- e. Caused the Board to terminate FOA's contract with Cardinal Management for financial services. Sells is having CSI draft a request for proposal for a new financial services management contract for FOA, on which CSI will also bid.

62. At all relevant times, Sells, Greenwell and Wilson's relationship to each other and involvement in CSI, Gordon Properties, and/or Gordon Residential makes them interested

parties, which created a conflict of interest with each of the actions described above. This conflict of interest could not be waived and any matter involving the litigation between FOA, CSI and Gordon Properties that they voted on while having a conflict of interest is void and *ultra vires* as a matter of law.

COUNT I

(Declaratory Judgment and Injunctive Relief— Bryan Sells, Elizabeth Greenwell, Lindsay Wilson, and FOA)

63. The allegations set forth in the paragraphs 1-62 of this Complaint are incorporated as if fully set forth herein.

64. An actual and justifiable controversy has arisen and now exists between the Unit Owners, Sells, Greenwell, Wilson and FOA concerning their respective rights and obligations under the Bylaws, Condominium Act, Nonstock Act and the laws of Virginia affecting the Board's powers. On the one hand, the Unit Owners contend that Sells, Greenwell and Wilson are interested directors and have a conflict of interest in any transaction concerning Gordon Properties, Gordon Residential and CSI. Therefore, the condominium instruments, Condominium Act, Nonstock Act and the common law fiduciary duties prohibit Sells, Greenwell and Wilson from voting upon and taking any action on behalf of FOA that relates to any matter concerning Gordon Properties, Gordon Residential and CSI. This is particularly true as to any matters affecting the litigation and claims between FOA, CSI and Gordon Properties.

65. The Unit Owners further contend that Sells, Greenwell and Wilson are prohibited as a matter of law from voting on decisions relating to, or participating in, FOA's prosecution of its claims against Gordon Properties and CSI. Such actions are not subject to the "fairness" provision of the Non-Stock Act, which applies only to "transactions."

66. Conversely, Sells, Greenwell and Wilson contend that by virtue of their position on the Board they have a right to take action that provides a benefit to Gordon Properties,

Gordon Residential and CSI, even though they are interested parties in these transactions, because they deem such actions to be "fair." Specifically, they contend that they can vote on who sits on FOA's Special Litigation Committee and can otherwise participate in FOA's litigation against Gordon Properties and CSI.

67. Alternatively, even if the Sells, Greenwell and Wilson are not prohibited as a matter of law from voting and taking action that provides a benefit to Gordon Properties, Gordon Residential and CSI, these resolutions are only valid and enforceable if they can establish that they are fair to FOA. As set forth above, none of the actions taken by the Board (under the majority leadership of the Gordon Properties directors) have been fair to FOA.

WHEREFORE, the Unit Owners request that this Court enter a Declaratory Judgment and injunction in its favor and against FOA, Sells, Greenwell and Wilson declaring that:

- A. Sells, Greenwell and Wilson's election to the Board is invalid;
- B. The action of the Board terminating the prior Special Litigation Committee and empanelling a new Committee is invalid and *ultra vires*;
- C. The Special Litigation Committee appointed by the Board following the 2012 Annual Meeting has no authority to act on behalf of FOA and is enjoined from doing so;
- D. The Special Litigation Committee in place prior to the 2012 Annual Meeting is reinstated and has the authority to act on behalf of FOA;
- E. The action of the Board terminating its existing management contract and rehiring CSI as its management agent is invalid and *ultra vires*;
- F. Any Board action involving Gordon Properties, Gordon Residential or CSI taken by votes cast by Sells, Greenwell and Wilson is invalid unless approved by a majority of the disinterested Board members;

- G. Sells, Greenwell and Wilson are temporarily and/or permanently enjoined from voting or taking any action on any matters that come before the Board that relate in any way to Gordon Properties, Gordon Residential or CSI;
- H. Sells, Greenwell and Wilson are temporarily and/or permanently enjoined from voting or taking any action on any matters that involve any settlement of the claims arising out of or relating to Gordon Properties, CSI or Gordon Residential;
- I. And for such other further declaratory, injunctive and other relief as the Court deems appropriate, including without limitation judgment against any defendant the Court finds improperly transferred, received or benefited from any of FOA assets.

COUNT II

(Derivative Claim—Breach of Fiduciary Duty— Bryan Sells, Elizabeth Greenwell and Lindsay Wilson)

68. The allegations set forth in the paragraphs 1 through 62 of this Complaint are incorporated as if fully set forth herein.

69. Sells, Greenwell and Wilson, as members of the Board of FOA, owe FOA a fiduciary duty, including a duty of loyalty and a duty not to engage in self-dealing in connection with any actions or transactions involving Gordon Properties, Gordon Residential or CSI.

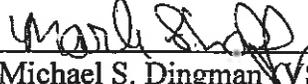
70. Sells, Greenwell and Wilson engaged in willful misconduct and breached the duties they owed to FOA when they caused FOA to pass resolutions, take actions and enter into self-dealing transactions with Gordon Properties, Gordon Residential and CSI which were not in the best interests of FOA or its members.

71. As a direct and proximate result of these breaches, FOA has incurred costs, expenses and other damages including, without limitation, additional management expenses, attorneys' fees and lost revenues.

WHEREFORE, the Unit Owners, derivatively, demand judgment against Sells, Greenwell and Wilson for an amount to be proven at trial believed to be at least \$200,000, plus interest, and such other relief as the Court may deem proper.

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EXHIBIT E
BY-LAWS OF THE
OWNERS' ASSOCIATION
FORTY SIX HUNDRED CONDOMINIUM



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EXHIBIT E

BY-LAWS
OF THE
OWNERS' ASSOCIATION
OF FORTY SIX HUNDRED CONDOMINIUM

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EXHIBIT E

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BY-LAWS
OF THE
OWNERS' ASSOCIATION

OF FORTY SIX HUNDRED CONDOMINIUM

ARTICLE I

Name and Location

Section 1. Name and Location. The name of this Corporation is the "Owners' Association of FORTY SIX HUNDRED CONDOMINIUM, INC. (hereinafter referred to as the "Owners' Association"). Its principal office is located at 4600 Duke Street, Alexandria, Virginia.

Section 2. These By-Laws are established in contemplation of and pursuant to Article 55, §79.39, Code of Virginia (1950) as amended and for the administration of the Building or Buildings constituted into a Condominium Project known as FORTY SIX HUNDRED CONDOMINIUM which is located at the address set forth in Section 1 of this ARTICLE.

ARTICLE II

Definitions

Section 1. Declaration. "Declaration" as used herein means that certain Declaration made the 10th day of November, 1975, by FORTY SIX HUNDRED CORPORATION pursuant to Article 55, §79.39 through and including §79.103, Code of Virginia (1950), as amended, by which certain described premises are submitted to a Condominium Project and which Declaration is recorded among the Land Records for the City of Alexandria, Virginia.

Section 2. Other Definitions. Unless it is plainly evident from the context that a different meaning is intended all other terms used herein shall have the same meaning as they are defined to have in the Declaration or in Article 55, §79.41, Code of Virginia (1950) as amended. The word "Declarant" as used hereinafter refers to FORTY SIX HUNDRED CORPORATION. Unless otherwise indicated hereinafter, the term "Common Elements" shall include both "General" and "Limited" Common Elements.

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ARTICLE III

Membership

Section 1. Members. Every person, group of persons, corporation, trust or other legal entity, or any combination thereof, which owns a Condominium Unit within the Condominium Project shall be a member of the Owners' Association, provided, however, that any person, group of persons, corporation, trust, or other legal entity, or any combination thereof, which holds such interest solely as security for the performance of an obligation shall not be a member. Every member shall remain a member of said Association until such time as his ownership ceases, for any reason, at which time his membership in said Association shall automatically cease.

Section 2. Membership Certificates. In the event the Board of Directors considers it necessary or appropriate to issue membership certificates or the like, then each such membership certificate shall state that the Owners' Association is organized under the laws of the State of Virginia, the name of the registered holder or holders of the membership represented thereby, and shall be in such form as shall be approved by the Board of Directors. Membership certificates shall be consecutively numbered, bound in one or more books, and shall be issued therefrom upon certification as to the transfer of title to the Condominium Unit to which such membership is appurtenant. Membership is not otherwise transferable. Every membership certificate shall be signed by the President or a Vice President and the Secretary or an Assistant Secretary and shall be sealed with the corporate seal.

Section 3. Lost Certificates. The Board of Directors may direct that a new certificate or certificates be issued in place of any certificate or certificates previously issued by the Owners' Association and alleged to have been destroyed or lost, upon the making of an affidavit of that fact by the person claiming the membership certificate to be lost or destroyed. When authorizing such issuance of a new certificate or certificates, the Board of Directors may, in its discretion, and as a condition precedent to the issuance thereof, require the registered holder of such lost or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as the Board of Directors shall require and to give the Owners' Association a bond in such sum as the Board of Directors may require as an indemnity against any claim that may be made against the Owners' Association.

Section 4. Liquidation Rights. In the event of any voluntary or involuntary dissolution of the Owners' Association, each member of the Owners' Association shall be entitled to receive out of the assets of the Owners' Association available for distribution to the members an amount equal to that proportion of such assets which is shown in Exhibit D, to the Declaration.

ARTICLE IV

Meeting of Members

Section 1. Place of Meetings. Meetings of the membership shall be held at the principal office or place of business of the Owners' Association or at such other suitable place convenient to the membership as may be designated by the Board of Directors.

Section 2. Annual Meeting. The first annual meeting of the members of the Owners' Association shall be held within one hundred eighty (180) days after formation of the Owners' Association, as set forth in the "Declaration" of this Condominium Project. Thereafter, the annual meetings of the members of the Owners' Association shall be held on the first Wednesday of October each succeeding year. At such meeting, there shall be elected by ballot of the members a Board of Directors in accordance with the requirements of Section 5 of ARTICLE V of these By-Laws. The members may also transact such other business of the Owners' Association as may properly come before them.

Section 3. Special Meetings. It shall be the duty of the President to call a special meeting of the members as directed by resolution of the Board of Directors or upon a petition signed by members representing at least twenty percent (20%) of the total votes of the Project having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of members representing four-fifths (4/5ths) of the votes present, either in person or by proxy.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to the unit owners as members of record, by U. S. mail return receipt requested, at his address as it appears on the membership book of the Owners' Association, or if no such address appears, at his last known place of address, at least twenty-one (21) days but not more than ninety (90) days prior to such annual meeting, and seven (7) days prior to such special meeting. Service may be accomplished by the delivery of any such notice to the member at his Condominium in the same manner. Notice may be delivered by the Secretary or his designate, provided a receipt of acceptance of such notice is obtained. Attendance by a member at any meeting of the members shall be a waiver of notice by him of the time, place and purpose thereof.

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Section 5. Quorum. The presence, either in person or by proxy, of members representing at least a majority of the total votes of the Condominium Project shall be requisite for, and shall constitute a quorum for the transaction of any business which affects the rights and duties of all unit owners. For any business which may result in an assessment, amendment of interest in a Limited Common Element, right or duty of fewer than all the unit owners, the presence, either in person or by proxy, of members representing a majority of the votes of the units so affected shall constitute a quorum.

Section 6. Adjourned Meetings. If any meeting of members cannot be organized because a quorum has not attended, the members who are present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 7. Voting. At every meeting of the members, each member present, in person or by proxy, shall have the right to cast the vote assigned to his Unit by Exhibit D of the Declaration on each question for each membership which he owns. The vote of the members representing a majority of the total votes of the Condominium Project, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provision of statute or of the Articles of Incorporation, or of the Declaration or of these By-Laws, a different vote is required, in which case such express provision shall govern and control. Notwithstanding the foregoing statement any question raised at a meeting which may result in an assessment, amendment of interest in a Limited Common Element, right or duty of fewer than all unit owners may be voted upon only by those unit owners who will or may be so affected and a majority vote shall carry the question. No amendment to any Condominium instruments shall alter any rights or obligations with respect to any Limited Common Elements without the consent of all unit owners adversely affected thereby. The vote of any member which is possessed by more than one person may be exercised by any one of them present at any meeting. If more than one owner of a unit is present, the vote may be cast by unanimous consent of said owners or by any one of them, provided no objections or protest by any other owner of such membership is noted at such meeting. No member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors who is shown on the books or management account of the Owners' Association to be more than thirty (30) days delinquent in any payment due the Owners' Association.

Section 8. Proxies. A member may appoint any other person or the Declarant as his proxy. Any proxy must be in writing and dated, the signatures of the owners properly acknowledged and be filed with the Secretary in form approved by the Board of Directors before the appointed time of each meeting. Unless limited by its terms, any proxy shall terminate upon the adjournment of the meeting next following the creation of the proxy or until sooner revoked by a written notice of revocation filed with the Secretary or by the death of the member.

Section 9. Order of Business. The order of business at all regularly scheduled meetings of the regular members shall be as follows:

- (a) Roll call and certification of proxies.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers, if any.
- (e) Reports of committees, if any.
- (f) Election of inspectors of election.
- (g) Election of directors.
- (h) Unfinished business.
- (i) New business.

In the case of special meetings, items (a) through (d) shall be applicable and thereafter the agenda shall consist of the items specified in the notice of the meeting.

ARTICLE V

Directors

Section 1. Numbers and Qualification. The affairs of the Owners' Association shall be governed by the Board of Directors (hereinafter sometimes referred to as "Board of Directors") composed of at least seven (7) natural persons who shall (after the first annual meeting of members) be members of the Owners' Association. At least one of the Directors, but not more than two, shall be owners of Commercial Condominium Units or if no Commercial Units have been conveyed, owners of the convertible space.

Section 2. Initial Directors. The initial Directors shall be selected by the Declarant and need not be members of the Owners' Association. Such Directors shall act from the date upon which the Declaration is recorded among the Land Records for the City of Alexandria, Virginia, until the first annual meeting of the members or until such time as their successors are duly chosen and qualified.

Section 3. Powers and Duties. The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Owners' Association and the Condominium Project and may do all such acts and things as are not by law or by these By-Laws directed to be exercised and done by the members. The powers and duties of the Board of Directors shall include, but not be limited to, the following:

(a) To provide for the care, upkeep and surveillance of the Condominium Project and the Common Elements and services in a manner consistent with law and the provisions of these By-Laws and the Declaration.

(b) To establish and provide for the collection of assessments and/or carrying charges from the members and for the assessment and/or enforcement of liens therefor in a manner consistent with law and the provisions of these By-Laws and the Declaration.

(c) To provide for the designation, hiring and/or dismissal of the personnel necessary for the good working order of the Condominium Project and for the proper care

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of the Common Elements and to provide services for the Project in a manner consistent with law and the provisions of these By-Laws and the Declaration.

(d) To promulgate and enforce such rules and regulations and such restrictions or requirements as may be deemed proper respecting the use, occupancy and maintenance of the Project and the use of the Common Elements as are designated to prevent unreasonable interference with the use and occupancy of the Condominium Project and of the Common Elements by the members, all of which shall be consistent with law and the provisions of these By-Laws and the Declaration.

(e) To authorize, in their discretion, refunds from excess residual receipts when and as reflected in the annual report.

(f) To establish a general operating reserve and/or a reserve for replacement or depreciation of Common Elements and to provide for the collection of such amounts.

(g) To comply with the provisions of the Declaration, these By-Laws, and any amendments thereto.

(h) To have the irrevocable power as attorney-in-fact on behalf of all unit owners and their successors in title to grant easements to the Common Elements and accept easements benefiting the Condominium Project.

(i) Establish and maintain bank accounts for the control of funds collected and disbursed as herein provided.

Section 4. Management Agent. The Board of Directors may, by contract in writing, delegate any of its duties, powers or functions to a management organization (Management Agent). The Owners' Association and the Board of Directors shall not be liable for any omission or improper exercise by the Management Agent of any such duty, power or function so delegated. Upon the expiration of two years from the creation of the Condominium, the Board of Directors shall ratify any management agreement entered into within that time period or terminate such agreement.

Section 5. Election and Term of Office. The term of the Directors named herein and in the Articles of Incorporation shall expire when their successors have been elected at the first annual meeting of members and are duly qualified. Such meeting shall be chaired by an officer, agent, or designate of the management agent but shall not be one of the initial Directors. At the first annual meeting of the members, the term of office of the four (4) elected Directors receiving the greatest number of votes shall be fixed for two (2) years. The term of office of the elected Directors receiving the fifth, sixth, and seventh greatest number of votes shall be fixed at one (1) year. In the event of a tie in the number of votes for the seventh Director, a runoff shall be held among those tying for the position. At the expiration of the initial term of office of each respective elected Director, his successor shall be elected to serve a term of two (2) years. The Directors shall hold office until their successors have been elected and hold their first meeting.

Section 6. Vacancies. Vacancies among the elected Directors caused by any reason other than the removal of a Director by a vote of the membership shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum, and each person so elected shall be a Director until a successor is elected by all the members at the next annual meeting to serve out the unexpired portion of the term.

Section 7. Removal of Directors. At a regular or special meeting duly called, any Director may be removed with or without cause by the affirmative vote of the majority of the entire membership of record and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the members shall be given an opportunity to be heard at the meeting. The term of any Director who becomes more than thirty (30) days delinquent in payment of any Assessments and/or carrying charges due the Owners' Association shall be automatically terminated and the remaining Directors shall appoint his successor as provided in Section 6 of this ARTICLE. An appointed Director may be removed at any time and only by the party or institution having appointed him.

Section 8. Compensation. No compensation shall be paid to Directors for their services as Directors. After the first annual meeting of the members, no remuneration shall be paid to any Director who is also a member of the Owners' Association for services performed by him for the Owners' Association in any other capacity unless a resolution authorizing such remuneration shall have been adopted by the Board of Directors before the services are undertaken.

Section 9. Organization Meeting. The first meeting of a newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided a majority of the whole Board of Directors shall be present.

Section 10. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time, by a majority of the Directors, but at least two (2) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least thirty (30) days prior to the day named for such meeting.

Section 11. Special Meetings. Special meetings of the Board of Directors may be called by the President on ten (10) days notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least one-third (1/3) of the Directors.

Section 12. Additional Notice Requirements. Copies of all notices of regular and special meetings shall be

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sent to the Managing Agent and to one agent appointed for receipt of such notice by all holders of first mortgages or first deeds of trust. The failure to give the notice required by this section shall invalidate any action taken at such meeting.

Section 13. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director or any person required to receive notice under Section 12 of ARTICLE V, may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the filing of such notice. Attendance by a Director at any meeting of the Board of Directors shall be a waiver of notice by him of the time, place and purpose thereof. If all the Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 14. Quorum. At all meetings of the Board of Directors a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. Notice of such adjournment shall be provided in writing to the absent Directors at their unit in the Condominium Project. At any subsequent meeting called pursuant to this sub heading, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 15. Action Without Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors.

Section 16. Fidelity Bonds. The Board of Directors shall require that all officers and employees of the Owners' Association handling or responsible for corporate or trust funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Owners' Association.

ARTICLE VI

Officers

Section 1. Designation. The principal officers of the Owners' Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. The President and Vice President shall be members of the Owners' Association. If the owner of a Commercial Condominium Unit who is serving as President or Vice President of the Owners' Association disposes of his Unit for a term greater than six months he may continue to serve as such officer. The owner of either a Residential or Commercial Condominium who conveys his Unit in fee automatically terminates his position as President or Vice President.

A President or Vice President of the Owners' Association who is a Director, officer, trustee or partner of an owner of a Unit who is not a natural person and ceases such relationship with the unit owner shall automatically be terminated as President or Vice President of the Owners' Association. The Secretary and Treasurer of the Owners' Association need not be members of the Owners' Association. The Directors may appoint an assistant Secretary and an assistant Treasurer and such other officers as in their judgment may be necessary. The office of Secretary and Treasurer may be filled by the same person.

Section 2. Election of Officers. The officers of the Owners' Association shall be elected annually by the Board of Directors at the organization meeting of each new Board and shall hold office at the pleasure of the Board of Directors.

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Owners' Association. He shall preside at all meetings of the members and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of President of a corporation, including but not limited to the power to appoint committees from among the membership from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Owners' Association.

Section 5. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be delegated to him by the Board of Directors.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the members of the Owners' Association; he shall have custody of the seal of the Owners' Association; he shall have charge of the membership transfer books and of such other books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary.

Section 7. Treasurer. The Treasurer shall have responsibility for corporate funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Owners' Association. He shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit, of the Owners' Association in such depositories as may from time to time be designated by the Board of Directors.

ARTICLE VII

Liability and Indemnification
of Officers and Directors

Section 1. Liability and Indemnification of Officers and Directors. The Owners' Association shall indemnify every officer and Director of the Owners' Association against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or Director in connection with any action, suit or other proceeding (including the settlement of any such suit or proceeding if approved by the then Board of Directors of the Owners' Association) to which he may be made a party by reason of being or having been an officer or Director of the Owners' Association whether or not such person is an officer or Director at the time such expenses are incurred. The officers and Directors of the Owners' Association shall not be liable to the members of the Owners' Association for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Officers and Directors of the Owners' Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Owners' Association or the Condominium Project (except to the extent that such officers or Directors may also be owners of Condominium Units) and the Owners' Association shall indemnify and forever hold each such officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification that an officer or Director of the Owners' Association is entitled, shall apply to a former officer or Director of the Owners' Association and his heirs, executors, and/or administrator. Such right of indemnification shall not be deemed exclusive of any rights to which he may be entitled under any by-law, agreement, vote of stockholders, or otherwise.

Section 2. Common or Interested Directors. The Directors shall exercise their powers and duties in good faith and with a view to the interests of the Owners' Association and the Condominium Project. No contract or other transaction between the Owners' Association and one or more of its Directors, or between the Owners' Association and any other corporation, firm or association (including the Declarant) in which one or more of the Directors of this Owners' Association are Directors or officers or are peculiarly or otherwise interested, is either void or voidable because such Director or Directors are present at the meeting of the Board of Directors or any committee thereof which authorized or approves the contract or transaction, or because his or their votes are counted for such purpose, if any, of the conditions specified in any of the following subparagraphs exist:

(a) The fact of the common directorate or interest is disclosed or known to the Board of Directors or a majority thereof or noted in the minutes, and the Board authorizes, approves, or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or

(b) The fact of the common directorate or interest is disclosed or known to the members, or a majority thereof,

and they approve or ratify the contract of transaction in good faith by a vote sufficient for the purpose; or

(c) The contract or transaction is commercially reasonable to the Owners' Association at the time it is authorized, ratified, approved or executed.

Common or interested Directors may be counted in determining the presence of a quorum of any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction, and may vote thereat to authorize any contract or transaction with like force and effect as if he were not such Director or officer of such other corporation or not so interested.

ARTICLE VIII

Operation and Management of the Project

Section 1. Management and Common Expenses. The Owners' Association, acting by and through its Board of Directors, shall manage, operate and maintain the Condominium Project and, for the benefit of the Condominium Units and the Owners thereof, shall enforce the provisions hereof and shall pay out of the Common Expense fund hereinafter provided for, the following:

(a) The cost of providing heat, air conditioning, water, sewer, garbage and trash collection, electrical, gas and other necessary utility services for the Common Elements, to the extent that the same are not separately metered or billed to each Condominium Unit, and for the Condominium Units; the costs of operating and maintaining any and all television and radio distribution systems, and recreational facilities, all or any of which may be done directly or through an independent contractor.

(b) The cost of fire and extended liability insurance on the Condominium Project, the cost of a master liability policy as described in the Declaration and the cost of such other insurance as the Owners' Association may affect.

(c) The cost of the services of a firm to manage the Project (Managing Agent) to the extent deemed advisable by the Owners' Association together with the services of such other personnel as the Board of Directors of the Owners' Association shall consider necessary for the operation of the Condominium Project.

(d) The costs of providing such legal and accounting services as may be considered necessary to the operation of the Condominium Project.

(e) The cost of painting, maintaining, replacing, repairing and landscaping the Common Elements and such furnishings and equipment for the Common Elements as the Board of Directors shall determine are necessary and proper, and the Board of Directors shall have the exclusive right and duty to acquire the same; provided, however that nothing herein contained shall require the Owners' Association to paint, repair or otherwise maintain the interior of any Condominium or any fixtures, appliances or equipment located therein.

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(f) The cost of any and all other materials, supplies, labor, services, maintenance, repairs, taxes, assessments or the like which the Owners' Association is required to secure or pay for by law, or otherwise, or which in the discretion of the Board of Directors shall be necessary or proper for the operation of the Common Elements; provided, however, that if any of the aforementioned are provided or paid for the benefit of a particular Condominium or Condominiums, the cost thereof shall be specially assessed to the owner or owners thereof in the manner provided in subsection (g) of Section 1 of this ARTICLE.

(g) The cost of the maintenance or repair of any Condominium Unit in the event such maintenance or repair is reasonably necessary in the discretion of the Board of Directors to protect the Common Elements or to preserve the appearance or value of the Condominium Project or is otherwise in the interest of the general welfare of all owners of Condominium Units; provided, however, that no such maintenance or repair shall be undertaken without reasonable written notice to the owner of the Condominium Unit proposed to be maintained and provided further that the cost thereof shall be assessed against the Condominium Unit which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then owner of said Condominium Unit at which time the Assessment shall become due and payable and a continuing lien and obligation of said owner in all respects as provided in ARTICLE IX of these By-Laws.

(h) Any amount necessary to discharge any lien or encumbrance levied against the Condominium Project, or any portion thereof, which may, in the opinion of the Board of Directors, constitute a lien against the Common Elements rather than the interest therein of the owner of any individual Condominium Unit.

(i) Any amount necessary to pay real estate taxes assessed against the property described in Exhibit A of the Declaration or other governmental charges of whatever nature assessed on or against the Common Elements of the Condominium Project, and all other taxes and assessments levied against the Owners' Association or upon any property which it may own or it is otherwise required to pay, if any.

(j) Any amount deemed necessary or desirable by the Board of Directors to be placed in a reserve for replacement of any Common Elements.

Section 2. Management Agent. The Board of Directors shall employ for the Owners' Association a management organization (the "Management Agent") at a rate of compensation and such other terms and conditions as shall be established by the Board of Directors to perform such duties and services as the Board of Directors shall from time to time authorize in writing, which may include, but not necessarily be limited to, the duties set out in ARTICLE V subsections (a) through (d) of Section 3 and subsections (a) through (j) of Section 1 of this ARTICLE. The Owners' Association shall not change Management Agents or undertake self-management, without the prior affirmative vote of members representing three-fourths (3/4ths) of the votes of the Residential and Commercial Unit owners present at any meeting of the members duly called for such

purpose except for the provisions of ARTICLE V, Section 4. herein.

Section 3. Duty to Maintain.

A. Residential and Commercial Units. Except for maintenance requirements herein imposed upon the Owners' Association, if any, the owner of any Residential or Commercial Condominium shall, at his own expense, maintain the interior of his Condominium and any and all equipment, appliances, or fixtures therein situate, in good order, condition and repair, and in such clean and sanitary condition as may at any time be necessary to maintain the good appearance of his Condominium Unit and shall, at his own expense, maintain, repair or replace any plumbing and electrical fixtures, outlets and receptacles, lighting fixtures, refrigerators, freezers, dishwashers, disposals, ranges, range hoods, and/or other equipment that may be in such Condominium Unit.

B. Street Front Commercial Units. The owner of a Street Front Commercial Unit shall maintain it and any improvements thereon at his own expense, in good order, condition, and repair, and in such clean and sanitary condition as may at any time be necessary to maintain the good appearance of his Condominium Unit.

Section 4. Windows and Doors. The owner of any Condominium shall at his own expense, clean and maintain the interior surfaces of all windows of the Condominium Unit.

Section 5. Access at Reasonable Times. For the purpose solely of performing any of the repairs or maintenance required or authorized by these By-Laws, or in the event of a bona fide emergency involving illness or potential danger to life or property, the Owners' Association through its duly authorized agents or employees, shall have the right, after reasonable efforts to give notice to the owner or occupant, to enter any Condominium Unit at any hour considered to be reasonable under the circumstances.

Section 6. Easements for Utilities and Related Purposes. The Owners' Association is authorized and empowered to grant such licenses, easements and/or rights-of-way for sewer lines, water lines, television and radio distribution systems, electrical cables, telephone cables, gas lines, storm drains, underground conduits and/or such other purposes related to the provision of public utilities to the Condominium Project as may be considered necessary and appropriate by the Board of Directors for the orderly maintenance, preservation and enjoyment of the Common Elements or for the preservation of the health, safety, convenience and/or welfare of the owners of the Condominiums or the Declarant.

Section 7. Limitation of Liability. The Owners' Association shall not be liable for any failure of any services to be obtained by the Owners' Association or paid for out of the Common Expense funds, including, but not limited to, those enumerated in ARTICLE VIII, Section 1 (a) hereof, or for injury or damage to person or property caused by the Elements or by the owner of any Condominium Unit, or any other person, or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Common Elements or from any wire, pipe, drain, conduit, appliance or equipment. The Owners' Association shall not be liable to the owner of any Condominium Unit for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Elements, including but not limited to owner storage areas, pool and

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sauna locker rooms and other appurtenances. Except as hereinelsewhere provided, no damages shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements, or to any Condominium Unit or from any action taken by the Owners' Association to comply with any law, ordinance or with the order or directive of any municipal or other governmental authority.

ARTICLE IX

Assessments

Section 1. Annual Assessments and Common Expenses.

Each Residential and Commercial member shall pay in advance to the Owners' Association a monthly sum (hereinelsewhere sometimes referred to as "Assessments") equal to one-twelfth (1/12th) of the member's proportionate share of the sum required by the Owners' Association, as estimated by its Board of Directors, to meet its annual expenses, including but in no way limited to the following (all of which are sometimes elsewhere herein referred to as "Common Expense"):

(a) The cost of all operating expenses of the Condominium Project and services furnished, including charges by the Owners' Association for facilities and services furnished by it and all costs required to be paid by the Owners' Association as set forth in ARTICLE VIII, Section 1.(a) et. seq. of these By-Laws.

(b) The cost of funding all reserves established by the Owners' Association, including when appropriate, a general operating reserve and/or a reserve for replacements; and

(c) The estimated cost of repairs, maintenance and replacements of the Condominium Project to be made by the Owners' Association.

The Board of Directors shall determine the amount of the Assessment annually, but may do so at more frequent intervals should circumstances so require.

The Assessments shall be based on the percentages of responsibility set forth in Exhibit D to the Declaration.

The Board of Directors of the Owners' Association shall make reasonable efforts to fix the amount of the Assessment against each Condominium Unit for each Assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the membership and Assessments applicable thereto which shall be kept in the office of the Owners' Association and shall be open to inspection by any owner upon reasonable notice to the Board. Written notice of the Assessment shall thereupon be sent to the members. The omission of the Board of Directors, before the expiration of any Assessment period, to fix the Assessments hereunder for that or the next period, shall not be

deemed a waiver or modification in any respect of the provisions of this ARTICLE, or a release of any member from the obligation to pay the Assessment, or any installment thereof, for that or any subsequent Assessment period, but the Assessment fixed for the preceding period shall continue until a new Assessment is fixed. No member may exempt himself from liability for Assessments by a waiver of the use or enjoyment of any of the Common Elements appurtenant to it his Unit or by abandonment of any Unit belonging to him.

Each Residential and Commercial owner shall pay the Assessment within fifteen days of the receipt of the Notice of Assessment.

Section 2. Special Assessments. In addition to the regular Assessments authorized by this ARTICLE, the Owners' Association may levy in any Assessment year a special Assessment or Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement located upon the Project, including the necessary fixtures and personal property related thereto, or for such other purpose as the Board of Directors may consider appropriate, provided that any such Assessment shall have the assent of the members representing two-thirds (2/3rds) of the total votes of those unit owners who will be assessed. A meeting of the members shall be duly called for this purpose, written notice of which shall be sent to all members at least seven (7) days but not more than thirty (30) days in advance of such meeting, which notice shall set forth the purpose of this meeting.

If the Assessment is for the capital improvement of a Limited Common Element, such Special Assessment shall be levied only against those affected owners and in proportion to their interest therein.

Section 3. Reserve for Replacements. The Owners' Association shall establish and maintain a reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be deposited in a special account with an institution the accounts of which are insured by an agency of the United States of America (the Board of Directors may authorize the depositing of funds in such an institution in excess of the limits of such insurance if any portion of such funds are insured), or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Such reserve shall be designated as applicable to one of the General or Limited Common Elements set out as a separate category in the Declaration and shall be drawn from Assessments on the Units to which the particular Common Element is appurtenant. The reserve for replacements may be expended only for the purpose of effecting the replacement of those Common Elements and equipment of the Project and for operating contingencies of a nonrecurring nature applicable thereto. The amounts required to be allocated to the reserve for replacements shall be considered an appurtenance of the Unit from which the Assessment was drawn and shall not be separately withdrawn, assigned or transferred or otherwise.

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separated from the Unit to which it appertains and shall be deemed to be transferred with such Unit.

Section 4. Non-Payment of Assessment. Any Assessment levied pursuant to these By-Laws, or any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the Condominium Unit or Condominium Units belonging to the member against whom such Assessment is levied and shall bind such Condominium Unit or Condominium Units in the hands of the then owner, his heirs, devisees, personal representatives and assigns, all in accordance with the provisions of Title 55 §79.84, Code of Virginia (1950) as amended. The personal obligation of the member to pay such Assessment shall, however, remain his personal obligation for the statutory period and a suit to recover a money judgment for non-payment of any Assessment levied pursuant to these By-Laws, or any installment thereof, may be maintained without foreclosing or waiving the lien herein and by the aforesaid statute created to secure the same.

Section 5. Remedies for Non-Payment of Assessment. Any Assessment levied pursuant to the Declaration or these By-Laws, or any installment thereof, which is not paid within the ten (10) days after it is due, shall bear interest at a rate not to exceed ten percent (10%) per annum, and the Owners' Association may bring an action at law against the member personally obligated to pay the same, or foreclose the lien against the Condominium Unit or Units then belonging to said member, in either of which events interest costs and reasonable attorneys' fees of not less than twenty percent (20%) of the sum claimed shall be added to the amount of each Assessment. The Owners' Association shall notify the holder of the first mortgage on any Condominium Unit for which any Assessment levied pursuant to these By-Laws becomes delinquent for a period in excess of thirty (30) days and in any other case where the owner of such Condominium Unit is in default with respect to the performance of any other obligation hereunder for a period in excess of thirty (30) days.

Section 6. Assessment Certificates. The Owners' Association shall upon demand at any time furnish to any member liable for any Assessment levied pursuant to these By-Laws (or any other party legitimately interested in the same), a certificate in writing signed by an officer of the Owners' Association setting forth the status of said Assessment, i.e., whether the same is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any Assessment therein stated to have been paid. A charge not to exceed TEN DOLLARS (\$10.00) may be levied in advance by the Owners' Association for each certificate so delivered.

The Owners' Association shall, upon demand at any time furnish to any member who is reselling his Unit, a certificate in writing signed by an officer of the Owners' Association setting forth a statement of any capital expenditures anticipated by the Owners' Association within the current or succeeding two fiscal years and a statement of the status and amount of any reserve for replacement fund including the portion of such fund earmarked for any specified Project by the Board of Directors. A

charge not to exceed TWENTY-FIVE DOLLARS (\$25.00) may be levied in advance by the Owners' Association for each certificate so delivered.

Section 7. Priority of Lien. The lien established by this ARTICLE and by Title 55, §79.84, Code of Virginia (1950) as amended, shall have preference over any other Assessments, liens, judgments or charges of whatever nature, except the following:

(a) General and special Assessments for real estate taxes on the Condominium Unit; and

(b) The liens of any mortgage duly recorded on said Condominium Unit after receipt of a written statement from the Board of Directors reflecting that payments on said lien were current as of the date of recordation of said mortgage.

Section 8. Subordination and Mortgage Protection. Notwithstanding any other provisions hereof to the contrary, the lien of any Assessment levied pursuant to these By-Laws upon any Condominium Unit in the Project shall be subordinate to, and shall in no way affect the rights of the holder of any indebtedness secured by any recorded first mortgage (meaning a mortgage with priority over other mortgages) upon such interest made in good faith and for value received, provided, however, that such subordination shall apply only to Assessments which have become due and payable prior to a sale or transfer of such Condominium Unit pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the purchaser at such sale of the Condominium Unit from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment, which said lien, if any, claimed shall have the same effect and be enforced in the same manner as provided herein. This provision shall in no way defeat the right of said purchaser to a cause of action against the transferor for reimbursement of said Assessment.

No amendment to this Section shall affect the rights of the holder of any such mortgage (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or of the indebtedness secured thereby) shall join in the execution of such amendment.

The Board of Directors may, in its sole and absolute discretion, extend the provisions of this Section to the holders of mortgages (or the indebtedness secured thereby) not otherwise entitled thereto.

Section 9. Additional Default. Any recorded first mortgage secured by a Condominium Unit in the Project shall provide that any default by the mortgagor in the payment of any Assessment levied pursuant to these By-Laws, or any installment thereof, shall likewise be a default in such mortgage (or the indebtedness secured thereby) but failure to include such a provision in any such mortgage shall not affect the validity or priority thereof and the protection extended to the holder of such first mortgage (or the indebtedness secured thereby) by reason of Section 7 of this ARTICLE shall not be altered, modified or diminished by reason of such failure.

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Section 10. Definition. As used in these By-Laws, the term "Mortgage" shall include deed of trust and term "holder" or "mortgagee" shall include the party secured by any deed of trust or any beneficiary thereof.

ARTICLE X

Use Restrictions

Section 1. Residential Condominium Unit. Condominium Units on floors 5 through 16 shall be used for private residential purposes exclusively except for such temporary non-residential uses as may be permitted by the Board of Directors from time to time. Nothing in this Section, or hereinelsewhere, shall be construed to prohibit the Declarant from the use of any Condominium Unit which Declarant owns for offices, promotion, marketing or display purposes as "model apartments" for the period of the easement to facilitate sales as set out in the Declaration or from leasing any Condominium Unit or Units which Declarant owns.

Section 2. Commercial Condominium Unit. The Condominium Units and convertible space on floors 3 and 4 shall be used as Commercial Units except for the provisions herein relating to the Declarant's right to convert convertible space and the right of any owner, other than Declarant, of Commercial Units to convert such Units to Residential Units upon written notice to the Board. The Street-Front Commercial Units may be used for any purpose allowed by law.

Section 3. Financial Responsibility, etc. The right to use or occupy any Condominium Unit within the Project, reside therein permanently or otherwise, and the right to sell, lease or otherwise transfer or convey any Condominium Unit may be subject to such uniform objective standards relating to financial responsibility and/or character as may now or hereafter be set forth in these By-Laws. No such restriction shall be based upon race, religion, sex, age or place of national origin.

Section 4. Leasing. No Condominium Unit designated a Residential Unit shall be rented for transient or hotel purposes or, in any event, for any period less than six (6) months, nor shall any customary hotel services, such as room service, food and beverage service, maid service, laundry or bellboy service be furnished. No portion of any Residential Condominium Unit (other than the entire Condominium Unit) shall be leased for any period. Any lease shall contain a provision to the effect that the right of the tenant to use and occupy the Condominium Unit shall be subject and subordinate in all respects to the provisions of the Declaration and these By-Laws and to such rules and regulations relating to the use of the Common Elements, or other "house rules" as the Board of Directors may from time to time promulgate. The provisions of this subsection shall not apply to any institutional mortgagee of any Condominium Unit which comes into possession of the Unit as a result of a foreclosure sale or other judicial sale or as a result of any proceeding in lieu of foreclosure. The owner of a Commercial Unit must provide in any lease agreement that every tenant or subtenant shall comply in all respects to the Declaration, By-Laws, and rules and regulations promulgated by the Board of Directors.

Section 5. Prohibited Uses of Residential and Commercial Units.

(a) No noxious or offensive activity shall be carried on in any Residential or Commercial Condominium Unit, nor shall anything be done or be permitted to remain in any Condominium Unit which may be or become a nuisance or annoyance to the other owners. Residents of FORTY SIX HUNDRED CONDOMINIUM shall exercise care not to disturb other residents with excessive noise.

(b) There shall be no obstruction of any Common Elements. Nothing shall be stored upon any Common Elements (excepting those areas designated for storage of personal property by the owners of the Condominiums) without the approval of the Board of Directors. Vehicular parking upon Limited Common Elements may be regulated or assigned by the Board of Directors consistent with the Declaration and these By-Laws.

(c) Nothing shall be done or maintained in any Condominium Unit or upon any Common Elements which will increase the rate of insurance on any Condominium Unit or any Common Elements, or result in the cancellation thereof, without the prior written approval of the Board of Directors. Nothing shall be done or maintained in any Condominium Unit or upon any Common Elements which would be in violation of any laws. No waste shall be committed upon any Common Elements.

(d) No structural alteration, construction, addition, or removal of any Residential or Commercial Condominium Unit or Common Elements shall be commenced or conducted except in strict accordance with the provisions of the Declaration and these By-Laws.

(e) No animals, livestock, poultry or birds, other than common household pets shall be kept or maintained in any Condominium Unit. No more than two cats or dogs or combination thereof shall be kept or maintained in any Unit. No common household pet shall be kept or maintained which weighs in excess of twenty-five (25) pounds. Common household pets shall not be kept, bred or maintained for commercial purposes in a Residential Condominium.

All pets must be registered with the Board of Directors and shall be the absolute responsibility of the respective unit owner. All dogs, while outside of any Unit shall remain on a leash and must be curbed. All pet owners shall be responsible for the removal of any excrement left by the pet on the Common Elements. Each pet owner is responsible for any damage caused to the Common Elements or to any other Unit by his pet.

(f) Except for such signs as may be posted by the Declarant for promotional or marketing purposes, no signs of any character shall be erected, posted or displayed upon, in, from or about any Residential Condominium or Common Elements. No owner or other resident or tenant of FORTY SIX HUNDRED CONDOMINIUM shall erect, post or display a sign of any character upon, in, from or about any Buildings or elsewhere on the Land, except on designated areas specified by the Owners' Association. The owner of a Commercial Condominium may place such name or logo on the door of his Condominium and in an office directory as is appropriate, but no owner may place a sign in or upon a window on the exterior of the Building.

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(g) No part of the Common Elements shall be used for commercial activities of any character except for the normal use of the Common Elements on floors 3 and 4. This subsection shall not apply to the use of Condominium Unit by the Declarant for display, marketing, promotional or sales, or business purposes.

(h) No burning of any trash and no unreasonable or unsightly accumulation or storage of litter, new or used building materials, or trash of any other kind shall be permitted within any Condominium Unit or upon any Common Elements. Trash and garbage containers shall not be permitted to remain in public view, but shall be deposited in the receptacles provided for that purpose.

(i) No structure of a temporary character, trailer, tent, shack, barn or other outbuilding shall be maintained upon any Common Elements at any time. No clothing, laundry, rugs or wash shall be hung from or spread upon any window or exterior portion of a Condominium Unit or in or upon a Common Element.

(j) No owner or other resident shall install any electrical or telephone wire, television antenna, or other antenna, air conditioning unit or other machine or device on the exterior of the Building in FORTY SIX HUNDRED CONDOMINIUM or in such a fashion that it protrudes through the roof or any windows, or any walls of the Building.

(k) There shall be no violation of any rules and regulations for the use of the Common Elements or other "house rules", which may from time to time be adopted by the Board of Directors and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere by these By-Laws authorized to adopt such rules.

ARTICLE XI

Architectural Control and Alteration of Unit Boundaries

Section 1. Architectural Control. Except for the original construction of the Condominium Unit situate within the Project and any improvements to any Condominium Unit or to the Common Elements by the Declarant, and except for purposes of proper maintenance and repair or as otherwise in these By-Laws provided, it shall be prohibited to install, erect, attach, apply, paste, hinge, screw, nail, build, alter, remove or construct any lighting, shades, screens, awnings, decorations, fences, aerials, antennas, radio or television broadcasting or receiving devices, slabs, sidewalks, curbs, gutters, patios, porches, driveways, walls or to make any change or otherwise alter (including any alteration in color) in any manner whatsoever to the exterior of any Residential or Commercial Condominium or upon any of the Common Elements within the Project until the complete plans and specifications, showing the location, nature, shape, height, material, color, type of construction

and/or any other proposed form of change (including, without limitation, any other information specified by the Board of Directors or its designated committee) shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography by the Board of Directors. Nothing contained in the Section shall be deemed to empower the Board of Directors to authorize any change in conflict with any provision of the Declaration.

In the event the Board of Directors, or its designated committee, fails to approve or disapprove such design and location within ninety (90) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have been fully complied with. The Section shall not apply to any Street-Front Commercial Unit.

Section 2. Reassignment of Limited Common Elements.
A unit owner who desires to assign the Limited Common Elements located in the parking garage, parking structure, and/or storage area and appurtenant to his Unit must do so by a written application to the President of the Owners' Association or his designee. The President or his designee shall forthwith prepare and execute an amendment to the Declaration, and appropriate exhibits thereto, reassigning all rights, responsibilities and obligations which apply to the Limited Common Elements. Upon execution of the reassignment, the President shall deliver to the unit owners involved, the prepared document together with an invoice for the costs of preparation. Such amendment shall not become effective until the reassignment is returned, acknowledged by all unit owners involved in the reassignment together with the receipt of the payment for costs. Approval of the application for reassignment of a Limited Common Element shall be by majority vote of the Board of Directors. Any assignment hereunder is subject to the prior written approval of the holder of any first mortgage encumbering the Unit from which the assignment is to be made.

Section 3. Relocation of Boundaries Between Units.
The unit owners who desire to relocate the boundaries between their Units must notify in writing the Board of Directors whose responsibility it shall be (1) to approve such notice within 45 days; (2) upon such approval to forthwith prepare and execute an amendment to the Declaration identifying the Units and containing the conveyance between the unit owners; (3) accept the reasonable reallocation made by the owners concerned as between the Units of the undivided interest in the Common Elements appertaining to those Units; (4) accept the reasonable reallocation made by the unit owners involved of the number of votes in the Owners' Association assigned to the Units, including the proportionate reallocation of liability for Common Expenses and rights to common profits; (5) prepare amendments to these By-Laws reflect-

BOOK 811 PAGE 444 Page - 22 -

ing the reallocation of undivided interest in the Common Elements and votes in the Owners' Association and liability for Common Expenses and rights to Common Profits; (6) have prepared by a registered architect or engineer such changes in boundaries of the appropriate Units; (7) assess to the unit owners involved the cost of the preparation of the documents required hereby. The unit owners undertaking such relocation shall obtain the prior written approval of the holders of first mortgages encumbering the respective Units, and bear all the costs of undertaking the relocation of the boundaries. The unit owners must supply with the notice to the Board of Directors, proof that the relocation will in no way weaken the structural integrity of the Building.

It shall be the duty of the unit owners involved to record the amendments and documents in accordance with these By-Laws and the laws of any political division of the State of Virginia. *

Section 4. Subdivision of a Unit. Upon written notice to the Board of Directors by a unit owner of a Commercial Unit of his intention to subdivide his Unit, the Board of Directors shall within 45 days approve such notice by majority vote and prepare and execute the following: (1) an amendment to the Declaration assigning new identifying numbers to the new Units created together with a reasonable reallocation of the undivided interest in the Limited Common Elements acceptable to the subdividing owner who may specify in his written application that this assignment shall be made to one or more but less than all of the new Units. If the subdividing owner specifies no allocation of the Limited Common Elements between new Units, the new Units shall jointly share all rights and shall be equally liable jointly and severally for all obligations of the original Unit; (2) an amendment to these By-Laws, acceptable to the subdividing owner, reasonably allocating to the new Units the votes in the Owners' Association and a proportionate allocation based on the size of the new Units of the liability for Common Expenses and rights to common profits including an assignment of the undivided interest in the Common Elements; (3) have prepared by a registered architect or engineer an amendment to the plats and plans indicating the new boundaries and identifying numbers; (4) deliver to the subdividing owner the above documents together with an invoice for the cost of their preparation.

The subdividing owner shall record the above documents and pay all costs assessed in accordance with these By-Laws and the laws of any political division of this state before construction on the subdivision may commence. The subdividing owner must bear all costs of undertaking the subdivision of his Unit.

This Section shall have no application to the conversion of convertible space.

Section 5. Alteration within Units. A unit owner who acquires an adjoining Unit and desires to remove any part of the intervening partition must, upon written application to the Board of Directors, demonstrate that such removal will in no way weaken a bearing wall or bearing column and that no portion of any Common Element,

other than the partition itself, will be damaged, destroyed, or endangered. A unit owner may make improvements or alterations within his Unit which do not impair the structural integrity of the Building or lessen the support for any portion of the Condominium. No Residential or Commercial owner may make any improvements or changes which will change the exterior appearance of the Condominium Project. Any unit owner making alterations pursuant to this Section shall obtain the prior written approval of all holders of first mortgages encumbering both Units.

Section 6. Conversion of Convertible Spaces. The Declarant may convert all or any portion of any convertible space into one or more Units and/or Common Elements, including, without limitation, Limited Common Elements. The Declarant shall prepare, execute, and record an amendment to the Declaration describing the conversion. Such amendment shall assign an identifying number to each Unit formed out of a convertible space and shall allocate to each Unit a portion of the undivided interest in the Common Elements appertaining to that space. Such amendments shall describe or delineate the Limited Common Elements formed out of the convertible space, showing or designating the Unit or Units to which each is assigned. If all or any portion of any convertible space is converted into one or more Units in accordance with this Section, the Declarant shall prepare and execute, and record simultaneously with the amendment to the Declaration, an amendment to the By-Laws, allocating votes in the Unit Owners' Association, rights to future common profits, and liabilities for future Common Expenses not specially assessed.

The Board of Directors shall execute the documents and amend the Condominium Instruments as required by the Section herein for subdivision of Units but shall have no authority of approval or denial over such conversion.

ARTICLE XII

Insurance

Section 1. Insurance. The Board of Directors shall obtain and maintain, to the extent available, at least the following:

(a) Insurance on the Project in an amount equal to one hundred percent (100%) of the full replacement value (i.e. 100% of "replacement cost") of the Building and Limited Common Elements (as determined annually by the Board of Directors) and with a replacement cost endorsement which provides for the payment of all losses without deduction or allowance for depreciation. Such coverage shall afford protection against, at least, the following:

(i) loss or damage by fire or other hazards covered by the standard extended coverage endorsement and additional extended coverage endorsement;

(ii) such other risks as shall customarily be covered with respect to Projects similar in construction, location and use, including, but not limited to, vandalism,

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... fire, boiler and machinery explosion or
... other insurance as the Board of Di-
... from time to time determines; and

(iii) a master liability policy covering the
... Association, the Board of Directors, the
... agent, all agents and employees of the above
... owners in residence or their tenants in

Public liability insurance in such amounts
... such forms as may be considered appropriate
... the Board of Directors including, but not limited
... water damage, legal liability, hired automobile,
... owned automobile and any and all other liability
... incident to the ownership and/or use of the Condominium
... Project or any portion thereof; and

(c) Workmen's compensation insurance to the ex-
... tent necessary to comply with any applicable law; and

(d) Such other policies of insurance, including
... insurance for other risks of a similar or dissimilar
... nature, as are or shall hereafter be considered appro-
... priate by the Board of Directors.

Section 2. Limitations. Any insurance obtained pur-
... suant to the requirements of this ARTICLE shall be sub-
... ject to the following provisions:

(a) All policies shall be written with a company
... or companies licensed to do business in the State of
... Virginia and holding a rating of "AAA" or better, by
... Best's Insurance Reports and a policyholder's rating
... of "A" or better.

(b) Exclusive authority to negotiate losses under
... said policies shall be vested in the Board of Directors
... or its authorized representative, including any trustee
... with which the Owners' Association may enter into any
... Insurance Trust Agreement, or any successor trustee,
... each of which shall hereinafter be referred to as
... the "Insurance Trustee" and all proceeds covering any
... loss shall be payable to the Insurance Trustee, or to
... his successor. All proceeds from an insured loss under
... such policy shall be held for the use and benefit of
... the Owners' Association and the owners of appropriate
... Condominium Units and their respective mortgagees as
... interest may appear. Such insurance proceeds shall be
... applied and distributed in accordance with the articles
... relating to insurance in the Declaration and these By-
... laws.

(c) In no event shall the insurance coverage ob-
... tained and maintained pursuant to the requirements of
... this ARTICLE be brought into contribution with insurance
... purchased and issued in the name of any individual Condo-
... minium Unit owner purchased as herein permitted by such
... owner of a Condominium Unit or their mortgagee. Any
... "no other insurance" or similar clause in any policy
... obtained by the Owners' Association pursuant to the re-
... quirements of this ARTICLE shall exclude such policies
... from consideration.

(d) All policies shall provide that such policies
... may not be canceled or substantially modified without
... at least thirty (30) days prior written notice to any
... and all insureds named thereon, including any and all
... mortgagees of the Condominium Units;

(e) All fire and other hazard insurance policies shall provide that, notwithstanding any provisions thereof which give the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable when in conflict with the provisions of these By-Laws.

(f) All policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Owners' Association, the Board of Directors, their agents and employees, the respective Condominium Unit Owners, their Unit employees and agents. Independent contractors shall not be considered agents, employees or servants of the Board of Directors or of the respective Condominium Unit owners within the meaning of said waiver.

(g) The insurance policy shall contain a provision that the insurance shall not be prejudiced:

(i) By any act or neglect of any occupants or owners of this Building when such act or neglect is not within the control of the Condominium Unit owners collectively; or

(ii) By failure of the Condominium Unit owners collectively to comply with any warranty or condition with regard to any portion of the premises over which the Condominium Unit owners collectively have no control.

Section 3. Individual Policies - Recommendation of Declarant. The owner of any Condominium Unit (including the holder of any mortgage thereon) may obtain additional insurance (including a "condominium-owner's endorsement" for improvements and betterments to the Condominium Unit made or acquired at the expense of the owner) at his own expense. Such insurance shall be written either by the same carrier as that purchased by the Board of Directors pursuant to this ARTICLE or if written by another carrier, shall provide that it shall be without contribution as against the same. Such insurance shall contain the same waiver of subrogation provision as that set forth in Section 2(f) of this ARTICLE. The Declarant recommends that each owner of a Condominium Unit in the Project obtain, in addition to the insurance hereinabove provided to be obtained by the Board of Directors, a "Tenant's Homeowners Policy", or equivalent, to insure against loss or damage to personal property used or incidental to the occupancy of the Condominium Unit, additional living expense, vandalism or malicious mischief, theft, personal liability and the like. Such policy should include a "condominium-owner's endorsement" covering losses to improvements and betterments to the Condominium Unit made or acquired at the expense of the owner.

ARTICLE XIII

Casualty Damage - Reconstruction or Repair

Section 1. Use of Insurance Proceeds. In the event of damage or destruction of any Residential or Commercial Unit by fire or other casualty the same shall be promptly repaired or reconstructed in substantial conformity with the original plans and specifications with the proceeds of insurance available for the purpose, if any.

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Section 2. Proceeds Insufficient. In the event that the proceeds of insurance are not sufficient to repair, damage or destruction to any Residential or Commercial Unit by fire or other casualty, or in the event such damage or destruction is caused by any casualty not herein required to be insured against, then the repair or reconstruction of the damaged Common Elements shall be accomplished promptly by the Owners' Association at its Common Expense, such Common Expense shall be assessed in accordance with the interest in the Common Element Damaged. The repair or reconstruction of any Residential or Commercial Condominium Unit shall be accomplished promptly by the Owners' Association at the expense of the owner of the affected Condominium Unit. The ratable share of the expense of such repairs or reconstruction may be assessed and the lien for the same shall have all the priorities provided for in ARTICLE IX of these By-Laws.

Section 3. Restoration Not Required. In the event more than two-thirds (2/3rds) of the total number of Residential and Commercial Condominium Units in the Project are substantially damaged or destroyed by fire or other casualty and members do not promptly resolve to proceed with repair or reconstruction in the manner set forth in the Declaration, then and in that event the Project shall be deemed to be owned in common by the owners of all of the Residential and Commercial Condominium Units in the same proportions as that previously established for ownership of appurtenant undivided interests in the Common Elements and the Project shall be subject to an action for partition at the suit of the owner of any Residential and Commercial Condominium Unit or the holder of any lien thereon, in which event the net proceeds of sale, together with the net proceeds of any insurance paid to the Owners' Association or its members in common, shall be considered as one fund and shall be divided among the owners of all the Condominium Units in the same proportion as that previously established for ownership of appurtenant undivided interests in the Common Elements, as set forth in Exhibit D attached hereto, after first paying out of the share of the owner of any Condominium Unit, to the extent such share is sufficient for the purpose, all liens upon said Condominium Unit. In the event that either of the Street-Front Commercial Units are not destroyed by casualty damage, they shall not share in the distribution of proceeds hereunder.

ARTICLE XIV

Fiscal Management

Section 1. Fiscal Year. The fiscal year of the Owners' Association shall begin on the first day of January every year. The commencement date of the fiscal year herein established shall be subject to change by the Board of Directors should corporate practice subsequently dictate.

Section 2. Books and Accounts. Books and accounts for the Owners' Association shall be kept under the direction of the Treasurer in accordance with good accounting practices consistently applied.

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Section 3. Auditing. At the close of each fiscal year, the books and records of the Owners' Association shall be audited by an independent Certified Public Accountant whose report shall be prepared and certified in accordance with generally accepted auditing standards consistently applied. Based upon such report, the Owners' Association shall furnish its members with an annual financial statement including the income and disbursement of the Owners' Association.

Section 4. Inspection of Books. The books and accounts of the Owners' Association, and vouchers accrediting the entries made thereupon, shall be available for examination by the members of the Owners' Association and/or their duly authorized agents or attorneys, and to the institutional holder of any first mortgage on any Condominium Unit and/or its duly authorized agents or attorneys, during normal business hours and for purposes reasonably related to their interests as members. Such inspection shall be allowed providing reasonable notice is given to the custodian of the books and accounts, but in no event may such inspection be employed to harass or unreasonably disrupt the normal work routine of such custodian. The holder of any first mortgage has the right to request the submission of annual reports and other financial data of the Owners' Association.

Section 5. Execution of Corporate Documents. With the prior authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Owners' Association by either the President or Vice President, and all checks shall be executed on behalf of the Owners' Association by such officers, agents or other persons as are from time to time so authorized by the Board of Directors.

Section 6. Seal. The Board of Directors shall provide a suitable corporate seal containing the name of the Owners' Association, which seal shall be in the charge of the Secretary. If so directed by the Board of Directors, a duplicate seal may be kept and used by the Treasurer.

ARTICLE XV

Amendment

Section 1. Amendments. The By-Laws may be amended by the affirmative vote of members representing eighty per cent (80%) of the total votes of the Condominium Project at any meeting of the members duly called for such purpose, and shall become effective only upon the recordation among the Land Records for the City of Alexandria, Virginia, of an amendment to the By-Laws attached as Exhibit E to the Declaration setting forth such amendment to these By-Laws and only after thirty (30) days prior written notice to the institutional holders of all first mortgages on the Condominium Units in the Project. Amendments may be proposed by the Board of Directors or by petition signed by members representing at least fifteen percent (15%) of the total votes of the Condominium Project. A description of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment is to be voted upon.

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ARTICLE XVI

Mortgages - Notice

Section 1. Notice to Board of Directors. Any owner of any Condominium Unit in the Condominium Project who mortgages such Unit shall promptly notify the Board of Directors of the name and address of his mortgagee, and, if requested so to do, shall file a conformed copy of such mortgage with the Board of Directors. The Board of Directors shall maintain suitable records pertaining to such mortgages.

Section 2. Definition. As used in this ARTICLE, the term "mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees, and the term "mortgage" shall include deed of trust. As used generally in these By-Laws, the term "institutional holder" or "institutional mortgagee" shall include banks, trust companies, insurance companies, savings and loan associations, pension funds, and any corporation, including a corporation of, or affiliated with, the United States Government, or any agency thereof.

ARTICLE XVII

Compliance - Interpretation - Miscellaneous

Section 1. Compliance. These By-Laws are set forth in compliance with the requirements of Title 55, §79.39 through and including §79.103, Code of Virginia (1950) as amended.

Section 2. Conflict. These By-Laws are subordinate and subject to all provisions of the Declaration and to the provisions of Title 55, §79.39 through and including §79.103, Code of Virginia (1950) as amended. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as in the Declaration or the aforesaid statute. In the event of any conflict between these By-Laws and the Declaration, the provisions of the Declaration shall control; and in the event of any conflict between the aforesaid Declaration and Title 55, §79.39 through and including §79.103, Code of Virginia (1950) as amended, the provisions of the statute shall control.

Section 3. Notices. Unless another type of notice is herein elsewhere specifically provided for, any and all notices called for in the Declaration or in these By-Laws shall be given in writing.

Section 4. Severability. In the event any provision or provisions of these By-Laws shall be determined to be invalid, void or unenforceable, such determination shall not render invalid, void or unenforceable any other provisions hereof which can be given effect.

Section 5. Waiver. No restriction, condition, obligation or provision of these By-Laws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 6. Captions. The captions contained in these By-Laws are for convenience only and are not a part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these By-Laws.

Section 7. Gender, etc. Whenever in these By-Laws the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

Section 8. Arbitration. A dispute arising between the Owners' Association, a unit owner, a Tenant in residence, or an assignee of any of these or a dispute between unit owners, their Tenants, or assignees shall be submitted to arbitration in accordance with the rules of the American Arbitration Association and the judgment thereby rendered shall be binding on all parties and may be presented in any Court having jurisdiction of the dispute.

VIRGINIA:
In the Clerk's office of the Circuit Court-City of Alexandria this deed was received and its taxes imposed by Sec. 58-54.1 in the amount of \$ have been paid & the Amended certificate admitted to record on

6-16-75 3:30 P.M.

Alison M. Spinks CLERK

John J. ...
3-14-77

513 BOOK 846 PAGE 645

AMENDMENT TO CONDOMINIUM DOCUMENTS
FORTY SIX HUNDRED CONDOMINIUM

In accordance with the Condominium Instruments of Forty Six Hundred Condominium recorded among the land records of the City of Alexandria commencing in Deed Book 811 at Page 315, the Declarant, Forty Six Hundred Corporation, hereby converts the convertible space (see Deed Book 811, page 372) in B Wing, Fourth Floor to units: 401, 402, 403, 404, 405, 406, 407, 408, 409 and 410 (see attached revised Page 372). The Limited Common Elements are delineated on the attached revised page 372.

Additionally, the Percentage Ownership in Common Elements, the Percentage Responsibility in Residential-Commercial Limited Common Elements, Percentage Responsibility in Commercial Limited Common Elements and the Schedule of Voting Rights are hereby amended by the attached amendments.

FORTY SIX HUNDRED CORPORATION

Dated: January 27, 1977

By: *Charles R. Langdon*
CHARLES R. LANGDON, President

ATTEST:

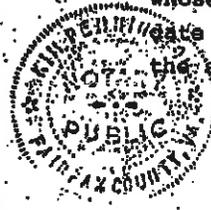
John F. Quinn
JOHN F. QUINN, Assistant Secretary

VIRGINIA:
In the Clerk's office of the Circuit Court-City of Alexandria this deed was received and the taxes imposed by Sec. 53-54.1 in the amount of \$ have been paid & Mr. the Annexed certificate admitted to record on 1-27-77 1:20 P.M.

Alvin H. ... CLERK

STATE OF VIRGINIA,
COUNTY OF FAIRFAX, to-wit:

I, the undersigned, a Notary Public in and for the County aforesaid, in the State of Virginia, do certify that CHARLES R. LANGDON and JOHN F. QUINN, who are President and Assistant Secretary, respectively of FORTY SIX HUNDRED CORPORATION, and whose names as such are signed to the writing attached bearing date of the 27th day of January, 1977, have acknowledged the same before me in my County and State aforesaid. GIVEN under my hand and seal this 27th day of January, 1977. My Commission expires: September 4, 1979



Kern Pennington
Notary Public

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FORTY SIX HUNDRED CONDOMINIUM
AMENDMENT TO EXHIBIT D RECORDED IN DEED BOOK 811 AT PAGE 415

A. Percentage of Ownership in Common Elements:
Commercial Units

Unit Type	Unit Designation	Area Sq. Ft.	Unit % Ownership	# of Units	Total % Ownership
	Floors 3, 4A and 4C	44,509	-	-	7.9765
	Floor 4B				
E	407	586	0.1050	1	0.1050
1 BR	408	864	0.1548	1	0.1548
2 BR	405, 406	1105	0.1980	2	0.3960
2 BR	401, 402, 403, 404	1140	0.2043	4	0.8172
3 BR	410	1426	0.2556	1	0.2556
3 BR	409	1472	0.2638	1	0.2638

BOOK 846 PAGE 648

FORTY SIX HUNDRED CONDOMINIUM

AMENDMENT TO EXHIBIT D RECORDED IN DEED BOOK 811 AT PAGE 416

B. Percentage of Responsibility in Residential-Commercial Limited Common Elements

Commercial Units

<u>Unit Type</u>	<u>Unit Designation</u>	<u>Floor Area</u>	<u>Unit Responsibility</u>	<u># of Units</u>	<u>Total Responsibility</u>
Floors 3, 4A and 4C		44,509	-	-	9.3490
Floor 4B					
E	407	586	0.1231	1	0.1231
1 BR	408	864	0.1815	1	0.1815
2 BR	405, 406	1105	0.2321	2	0.4642
2 BR	401, 402, 403, 404	1140	0.2394	4	0.9576
3 BR	410	1426	0.2995	1	0.2995
3 BR	409	1472	0.3091	1	0.3091

BOOK 846 PAGE 649

FORTY SIX HUNDRED CONDOMINIUM

AMENDMENT TO EXHIBIT D RECORDED IN DEED BOOK 811 AT PAGE 417

D. Percentage of Responsibility in Commercial Limited Common Elements.

Commercial Units

<u>Unit Type</u>	<u>Unit Designation</u>	<u>Floor Area</u>	<u>Unit % Responsibility</u>	<u># of Units</u>	<u>Total % Responsibility</u>
E	407	586	0.0116	1	0.0116
1 BR	408	864	0.0171	1	0.0171
2 BR	405, 406	1105	0.0219	2	0.0438
2 BR	401, 402, 403, 404	1140	0.0226	4	0.0904
3 BR	410	1426	0.0282	1	0.0282
3 BR	409	1472	0.0291	1	0.0291

The Commercial area of the Forty Six Hundred Condominium remaining is 44,509 square feet. As additional space is converted, the percentage ownership in the Commercial Limited Common Elements shall be prorated at the rate of 0.00198 percent per square foot.

BOOK 846 PAGE 650

FORTY SIX HUNDRED CONDOMINIUM

AMENDMENT TO EXHIBIT D RECORDED IN DEED BOOK 811 AT PAGE 418

I. VOTING RIGHTS

A. Schedule of Voting Rights.

Commercial Units

<u>Unit Type</u>	<u>Unit Designation</u>	<u>Area in Sq. Ft.</u>	<u>Votes of Unit Owner</u>	<u># of Units</u>	<u>Total Votes</u>
Floors 3, 4A and 4C		44,509	-	-	79.77
Floor 4B					
E	407	586	1.05	1	1.05
1 BR	408	864	1.55	1	1.55
2 BR	405, 406	1105	1.98	2	3.96
2 BR	401, 402, 403, 404	1140	2.04	4	8.16
3 BR	410	1426	2.55	1	2.55
3 BR	409	1472	2.64	1	2.64

BOOK 935 PAGE 286

WHEREAS, all institutional lenders that hold first mortgages of first deeds of trust on units at the Condominium are desirous of joining in this Amendment to evidence their consent to the recordation of the certified plats and plans;

NOW, THEREFORE, for and in consideration of One Dollar and other good and valuable consideration the receipt of which is hereby acknowledged, and for the purposes recited above, 4600 Corporation, The First Owners' Association of Forty Six Hundred Condominium, Inc., American Federal Savings and Loan Association, First Federal Savings & Loan Association of Alexandria, Suburban Savings & Loan Association, and First Commonwealth Savings & Loan Association of Alexandria do hereby amend the Condominium Instruments of Forty Six Hundred Condominium to correct the plats and plans originally recorded as set forth in the plats and plans attached hereto and made a part hereof.

IN WITNESS WHEREOF, 4600 Corporation has caused this Amendment to be signed by Charles R. Langdon, its President, The First Owners' Association of Forty Six Hundred Condominium, Inc., has caused this Amendment to be signed by Arthur J. Burgess, its Vice-President, American Federal Savings & Loan Association, has caused this Amendment to be signed by R.H. STUCLAIR, its CHAIRMAN OF THE BOARD, First Federal Savings and Loan Association of Alexandria has caused this Amendment to be signed by Richard F. Downham, its President, First Commonwealth Savings and Loan Association of Alexandria, has caused this Amendment to be signed by NOT APPLICABLE, its NOT APPLICABLE, and Suburban Savings & Loan Association has caused this Amendment to be signed by Vincent A. Sweeney, its Executive Vice President, this 7th day of MARCH, 1979, all pursuant to due and proper authority duly heretofore had.

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BOOK 935 PAGE 285

**CORRECTIVE AMENDMENT TO CONDOMINIUM INSTRUMENTS,
FOR FORTY SIX HUNDRED CONDOMINIUM**

THIS AMENDMENT, made this 7th day of MARCH
1979, by 4600 Corporation, a Virginia Corporation (Declarant).

W I T N E S S E T H:

WHEREAS, Declarant executed certain Condominium Instruments establishing Forty Six Hundred Condominium (the "Condominium") in Alexandria, Virginia, and caused such documents to be recorded on the 10th day of November, 1975, among the Land Records of the City of Alexandria, Virginia, in Deed Book 811 at Page 315; and

WHEREAS, Declarant executed certain Amendments to the Condominium Instruments for the Condominium and caused those Amendments to be recorded on January 27, 1977 and February 13, 1978, among the Land Records of the City of Alexandria, Virginia in Deed Book 846 at Page 645 and Deed Book 883 at Page 761 respectively, thereby converting convertible space into units and limited common elements; and

WHEREAS, it has been determined that the plats and plans filed as exhibits to the Condominium Instruments recorded in Deed Book 811 at Page 315, Deed Book 846 at Page 645 and Deed Book 883 at Page 761 among the Land Records of the City of Alexandria, do not contain necessary certifications as required by Section 55-79.58 of the Virginia Condominium Act and that the plats and plans contain certain scrivener's and other error; and

WHEREAS, Declarant is desirous of correcting such errors by recording the plats and plans properly certified; and

WHEREAS, The First Owners' Association of Forty Six Hundred Condominium, Inc., the Association comprised of all owners of units at the Condominium, through its elected Board of Directors is desirous of joining in this Amendment to evidence its consent to the recordation of the certified plats and plans; and

4600 CORPORATION

BOOK 935 PAGE 287

By: Charles R. Langdon, Pres.
Charles R. Langdon

THE FIRST OWNERS' ASSOCIATION OF FORTY SIX HUNDRED CONDOMINIUM, INC.

By: Arthur J. Burgess
Arthur J. Burgess

AMERICAN FEDERAL SAVINGS & LOAN ASSOCIATION

By: Albin Paul

FIRST FEDERAL SAVINGS & LOAN ASSOCIATION OF ALEXANDRIA

By: Richard J. [Signature]
President

FIRST COMMONWEALTH SAVINGS & LOAN OF ALEXANDRIA

By: NOT APPLICABLE

SUBURBAN SAVINGS & LOAN ASSOCIATION

By: Va Sweeney
Executive Vice President

BOOK 935 PAGE 288

COMMONWEALTH OF VIRGINIA

To-wit:

COUNTY/CITY OF _____

The foregoing instrument was acknowledged by (name and title)

Charles R. Langdon, President

of 4600 Corporation

a Corporation, on behalf of the Corporation this 5 day of

March, 1979.

My commission expires July 9, 1978

[Signature]
Notary Public



COMMONWEALTH OF VIRGINIA

District of Columbia

To-wit:

COUNTY/CITY OF _____

The foregoing instrument was acknowledged by (name and title)

R. H. Sinclair, Chairman of the Board

of American Federal Savings & Loan Association

a Corporation, on behalf of the Corporation this 5th day of

March, 1979.

My commission expires My Commission Expires Feb. 28, 1980

[Signature]
Notary Public



COMMONWEALTH OF VIRGINIA

To-wit:

COUNTY/CITY OF Alexandria

The foregoing instrument was acknowledged by (name and title)

Richard L. Jovanovic, President

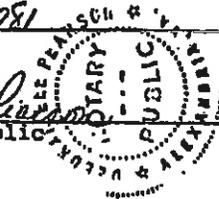
of First Federal Savings and Loan Association of Alexandria

a Corporation, on behalf of the Corporation this 4 day of

March, 1979.

My commission expires August 16, 1981

[Signature]
Notary Public



COMMONWEALTH OF VIRGINIA
COUNTY/CITY OF _____

BOOK 935 PAGE 289

To-wit:

The foregoing instrument was acknowledged by (name and title)

Arthur J. Duane

of First Owners Association of First Six Hundred Condominiums, Inc.
a Corporation, on behalf of the Corporation this 6th day of

March, 1979.

My commission expires _____ My Commission Expires 4/1/82

Francis C. Ward
Notary Public



COMMONWEALTH OF VIRGINIA
COUNTY/CITY OF FAIRFAX

To-wit:

The foregoing instrument was acknowledged by (name and title)

Vincent A. Sweeney, Executive Vice President

of Suburban Savings and Loan Association
a Corporation, on behalf of the Corporation this 7th day of

March, 1979.

My commission expires _____ July 26, 1980

Janice C. Boone
Notary Public
Janice C. Boone



Witness:
In the Clerk's office of the Circuit
Court-City of Alexandria this deed
was received and the taxes imposed by
Sec. 58-64, 7 to the amount of \$
have been paid & with the Ancients
certificate admitted to record on
3-7-79 4:48 P.M.
Frederick J. Johnson
Clerk

IT FURTHER APPEARING to the Court that the Association's claim in its Counterclaim for a money judgment against Gordon Properties, LLC with respect to the under-assessment of the Street-Front Commercial Unit owned by Gordon Properties, LLC is premature because no corrective assessment has been made by the Board; it is therefore

ORDERED that the Association's Motion for Partial Summary Judgment is Granted and 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 the Street-Front Commercial Unit is dismissed with prejudice; and Gordon Properties' claim in section (a) (iv) of the Prayer for Relief in Count I of the First Amended Complaint, for an injunction against collecting maintenance Assessments from Gordon Properties as owner of a Street Front Commercial Unit, is hereby dismissed with prejudice. That is the only claim for injunctive relief that is dismissed; and it is

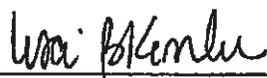
FURTHER ORDERED that Gordon Properties, LLC's Motion for Partial Summary Judgment on the Association's claim for a money judgment against Gordon Properties, LLC with respect to the Street-Front Commercial Unit is granted without prejudice because the Association's claim for a money judgment at law is premature; and it is

FURTHER ORDERED that the Association's request to amend its Counterclaim to allege a cause of action for an accounting with respect to the Street-Front Commercial Unit

owned by Gordon Properties, LLC is granted and the Association's Amended Counterclaim shall be filed by the close of business on Thursday, January 15, 2009;

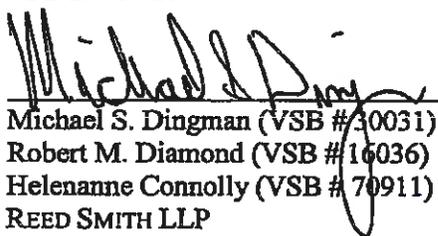
AND THIS MATTER IS CONTINUED.

ENTERED this 20th day of January, 2009.



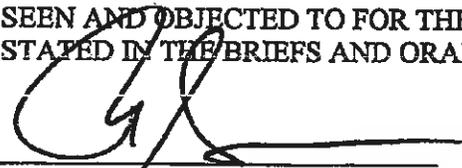
The Honorable Lisa B. Kemler

SEEN AND OBJECTED TO WITH
RESPECT TO THE COURT'S RULING
ON GORDON PROPERTIES, LLC'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT:



Michael S. Dingman (VSB # 30031)
Robert M. Diamond (VSB # 16036)
Helenanne Connolly (VSB # 70911)
REED SMITH LLP
3110 Fairview Park Drive
Suite 1400
Falls Church, VA 22042
(703) 641-4200 (telephone)
(703) 641-4340 (facsimile)
Counsel for Defendants/ Counter-Plaintiff

SEEN AND OBJECTED TO FOR THE REASONS
STATED IN THE BRIEFS AND ORAL ARGUMENT:

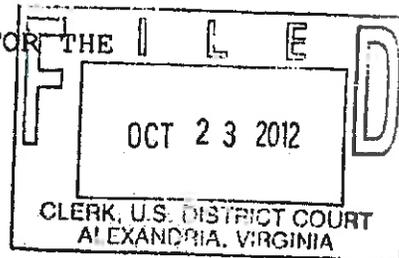


Robert E. Scully, Jr. (VSB # 19218)
Emily Harwood Smith, (VSB # 65527)
Stites & Harbison, PLLC
1199 North Fairfax Street

Suite 900
Alexandria, VA 22314
(703) 739-4600 (telephone)
(703) 739-9577 (facsimile)
Counsel for Plaintiff/ Counter-Defendant

US_ACTIVE-101037241.1

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



In re:)
 GORDON PROPERTIES,)
 Debtor.)
)
 FIRST OWNER'S ASSOCIATION OF)
 FORTY SIX HUNDRED)
 CONDOMINIUM, INC.,)
 Appellant)
)
 v.)
)
 GORDON PROPERTIES, LLC, et al.)
 Appellees.)

1:12cv1155 (LMB/IDD)

BK. NO. 09-18086-RGM

ORDER

Before the Court is Reed Smith, LLP's ("Reed Smith") Motion to Withdraw as Counsel for First Owners' Association of Forty Six Hundred Condominium, Inc. ("Motion to Withdraw") [Dkt. No. 5], filed on October 22, 2012. The motion states that the board of directors of First Owners' Association of Forty Six Hundred Condominium, Inc. ("FOA"), acting primarily at the behest of directors who are also members of Gordon Properties or who are related to members of Gordon Properties, has engaged in a course of conduct that Reed Smith believes "is unjust, repugnant, imprudent, and plainly contrary to the best interests of the members of FOA." Motion to Withdraw ¶ 12; see also id. ¶¶ 3, 10. Reed Smith therefore seeks to withdraw as counsel for FOA pursuant to Rule 1:16 of the Virginia Rules of Professional Conduct. Id. ¶ 11.



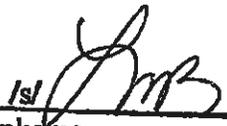
The litany of difficulties that Reed Smith has faced as counsel for FOA throughout this lengthy litigation is not lost on the Court, which is terribly troubled by the manner in which this litigation is being conducted. The Court finds, however, that Reed Smith has established good cause to withdraw as counsel. Accordingly, its Motion to Withdraw is reluctantly GRANTED, and it is hereby

ORDERED that Michael Sterling Dingman and the law firm of Reed Smith LLP be and are permitted to immediately withdraw as counsel for appellant.

The Clerk is directed to forward copies of this Order to counsel of record.

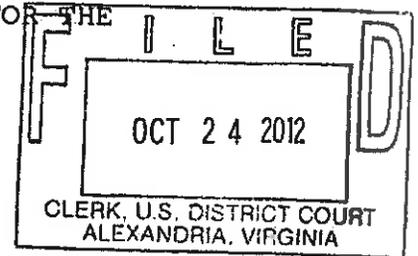
Entered this 23rd day of October, 2012.

Alexandria, Virginia



Leonie M. Brinkema
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



In re:)
GORDON PROPERTIES,)
Debtor.)
_____)
FIRST OWNER'S ASSOCIATION OF)
FORTY SIX HUNDRED)
CONDOMINIUM, INC.,)
Appellant)
v.)
GORDON PROPERTIES, LLC,)
Appellee.)

1:12cv1155 (LMB/IDD)

BK. NO. 09-18086-RGM

ORDER

Before the Court is the Motion for Leave to Withdraw as Counsel ("Motion to Withdraw") [Dkt. No. 8], filed by Jennifer L. Sarvadi, Ryan Day, and the law firm of Le Clair Ryan, A Professional Corporation, on October 23, 2012. The motion states that the new Board of Directors of First Owners' Association of Forty Six Hundred Condominium, Inc. ("FOA") has decided to hire new counsel.

Given the tortured history of litigation between these parties, it is extremely unfortunate that FOA's new Board of Directors has made this decision because any new counsel will need to spend a great deal of time becoming familiar with the background and issues in this litigation. That process will impose additional, and in this Court's opinion, completely unnecessary costs on the appellant.

Nevertheless, the Court will not force counsel to remain in this case. Accordingly, the Motion to Withdraw is GRANTED, and it is hereby

ORDERED that Jennifer L. Sarvadi, Ryan Day, and the law firm of LeClair Ryan, A Professional Corporation, be and are permitted to immediately withdraw as counsel for appellant.

In addition, to ensure that all unit owners are fully aware of the unwise and costly decision of this new Board of Directors, it is further

ORDERED that appellant immediately provide each unit owner with a copy of the motions of counsel to withdraw [Dkt. Nos. 5 and 8], the Order of October 22, 2012 [Dkt. No. 7], and this Order.

The Clerk is directed to forward copies of this Order to counsel of record.

Entered this th24 day of October, 2012.

Alexandria, Virginia

l/s/ LMB

Leonie M. Brinkema
United States District Judge