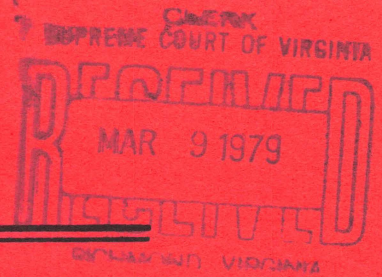


221 VA134



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 781224

WEST ALEXANDRIA PROPERTIES, INC.

Appellant

v.

FIRST VIRGINIA MORTGAGE AND REAL
ESTATE INVESTMENT TRUST,

Appellee

JOINT ADDENDUM TO
JOINT APPENDIX

W. Curtis Sewell
THOMAS & SEWELL
607 Prince Street
Alexandria, Virginia 22314

Counsel for Appellant

David C. Canfield
TOLBERT, SMITH, FITZGERALD,
& RAMSEY
2300 Ninth Street, South
Arlington, Virginia 22204

Counsel for Appellee

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JOINT ADDENDUM TO THE
JOINT APPENDIX

COME NOW the Appellant and Appellee, and jointly submit to the Court the attached Joint Addendum to the Joint Appendix previously filed herein, containing certain parts of the record designated by the parties but inadvertently not included in the Joint Appendix.

THOMAS & SEWELL, P.C.
607 Prince Street
Alexandria, Virginia 22314
Counsel for Appellant

By 
W. Curtis Sewell

TOLBERT, SMITH, FITZGERALD & RAMSEY
2300 Ninth Street, South
Arlington, Virginia 22204
Counsel for Appellee

By 
David C. Canfield

AGREEMENT

Made this 9th day of July, 1973, by West Alexandria Properties, Inc., a Delaware corporation ("West Alexandria"), and Landmark Palace Associates, a Virginia limited partnership ("Landmark").

WITNESSETH:

WHEREAS, West Alexandria and Landmark own adjoining properties in the City of Alexandria, Virginia, as shown on the plat attached hereto as Exhibit A;

WHEREAS, each party desires to maximize the uses permitted on its property, to comply with certain requirements of the City of Alexandria and, in connection therewith, to undertake the mutually advantageous cost-sharing and other cooperative arrangements set forth therein,

NOW, THEREFORE, in consideration of the premises, the parties agree as follows:

1. Construction.

(a) West Alexandria and Landmark shall jointly cause to be constructed the following improvements along the parties' common relocated north-south boundary line, such boundary line to have been relocated according to the criteria as set forth in section 5 hereof:

- (i) An 80-foot street from Edsall Road to Stevenson Avenue.
- (ii) An enclosed storm sewer trunk line between the existing outfall and the inlet installed on land adjoining that of West Alexandria and/or Landmark owned by King as shown on the site plan filed by King and approved by the City

of Alexandria.

(iii) Relocation of the north-south sanitary sewer.

(b) All construction pursuant to this section 1 shall be performed in accordance with all applicable time schedule and construction and other requirements of any governmental agency asserting jurisdiction and, where appropriate, pursuant to approved site plans and public works and other agreements with, and bonding requirements of, such governmental agencies.

(c) Without cost to the other party, each party shall furnish from its property and deliver in place for construction under this section 1 approximately 50% of the fill necessary for such construction. In the event either party shall fail timely, after demand, to furnish such fill, the other party may furnish fill to the end that construction not be delayed or interrupted. In the event one party shall fail for any reason to furnish such fill, and if the other party shall have enough fill available on its site to complete the required grading, the other party may furnish such fill. If, however, it shall be necessary to purchase off-site fill, the cost thereof shall be shared pursuant to section 1(e). Neither party may purchase fill at the expense of the other without first obtaining the consent of the other; however, such consent shall not be unreasonably withheld. The quality of the fill provided by each party shall be approved by the Director of Public Works of the City of Alexandria. Fill and borrow may be accomplished as necessary for timely construction under this section 1 without regard to building staging, provided such fill and borrow is performed to conform to finish grading of approved site plan and in accordance with erosion control standards as promulgated by the City of Alexandria or other appropriate agencies. Site plans of each party shall show areas from which borrow shall be provided. It is

contemplated that both parties will commence promptly and prosecute diligently all fill and borrow operations hereunder.

(d) Notwithstanding such bonding and other financial and security requirements as may be imposed upon each party by the City of Alexandria, West Alexandria and Landmark shall be jointly responsible for promptly letting, pursuant to bids where appropriate and normal in the industry, appropriate contracts for engineering and other services, and for construction for the work, required under this section 1, and for prosecution of all work in accordance with time schedules submitted by contractors and jointly approved by the parties. All such contracts, as well as engineering drawings, shall be reviewed by West Alexandria and Landmark for approval or disapproval by them within 5 working days after receipt thereof by each of them. Any disapproval of either of them shall be in writing to the other within such period specifying with particularity the items disapproved and the reasons therefor. The parties shall promptly proceed in good faith to resolve their differences and, if they shall fail to do so, each party shall within 3 days select one person to serve as arbitrator and these two shall within 3 days thereafter select a third arbitrator. The arbitrators shall meet promptly and the decision of a majority shall be final and binding. Costs of arbitration shall be shared as set forth in subsection 1(e). For the purpose of administering and implementing contracts entered into pursuant to this agreement, West Alexandria shall be designated Project Manager.

(e) All costs for work performed or services rendered pursuant to this section 1 shall be shared equally by the parties. All agreements made pursuant to this section 1 shall provide that invoices for work performed shall be directed to

West Alexandria by the subcontractors. Upon receipt of each invoice for payment under said agreements, West Alexandria shall deliver a copy of the same to Landmark on or before the 12th day of each month with evidence of payment and such other documentation, including releases of liens, as Landmark's bank may require and Landmark shall pay or cause others to pay to West Alexandria one-half of the amount of such invoice on or before the 15th day of the same month; West Alexandria shall timely pay such invoice. Landmark's bank shall guarantee payment to West Alexandria of one-half of the aggregate amounts due hereunder.

(f) Each party hereby grants to the other party, until completion of construction pursuant to section 1 hereof or termination of this Agreement, whichever shall first occur, easements for ingress and egress across, and for the storage of materials on the property of each grantor as may be necessary for the work contemplated by this Agreement.

(g) The relocation of the sanitary sewer, referred to in subparagraph (a)(iii) of this section 1, shall be designed and constructed to allow for two stubs for the use of Landmark.

(h) The failure of either West Alexandria or Landmark to perform timely hereunder shall entitle the other of them to complete such performance and be reimbursed by the other of them for one-half of the cost thereof.

2. Abandonment and Vacation.

(a) West Alexandria will join with Landmark in seeking abandonment or vacation by the City of Alexandria of the 50' and 15' unnamed street outlined in green on Exhibit A.

(b) Landmark will join with West Alexandria in seeking rescission or termination of the Agreement (attached hereto as Exhibit B) dated July 28, 1972 between the City of Alexandria and John Thorpe Richards, Trustee (West Alexandria's predecessor in title) recorded in Book 745 at page 840 among the land records of the City of Alexandria.

3. Compensating Lands.

If the parcels of the property of Landmark shown on Exhibit A, rezoned to the designation R-C, shall not be large enough to permit construction thereof of the improvements presently planned by Landmark as shown on Exhibit A, West Alexandria shall deed to Landmark such portion of the sewer easement area at the north boundary of West Alexandria's property as may be necessary to permit construction of Landmark's planned improvements on such parcels.

4.

[RESERVED]

5. Relocation of Property Line.

The engineers selected jointly by the parties shall, subject to the approval of the parties and to the arbitration provisions of section 1(d), promptly relocate the common north-south boundary line in a manner to achieve the purposes of this Agreement. Dewberry, Nealon, and Davis are hereby jointly approved. To the extent feasible, such relocation shall provide that:

(i) where the street abuts the property of both parties, each party will dedicate one-half of the land necessary for the street generally described in section 1(a)(i) and, if density credits

are lost, such loss shall be shared equally by the parties;
and

(11) if West Alexandria shall be required to deed
land to Landmark under section 3, West Alexandria shall
obtain from Landmark equivalent square footage west of the
relocated north-south common boundary.

6. Further Instruments and Assurances. The parties shall timely execute
such other and further deeds, instruments and assurances as may be necessary
to carry out the purposes of this Agreement. Within 30 days after the date hereof,
the parties shall execute ^{and deliver} such deeds, etc., as may be necessary to effect the land
exchanges provided for herein, ~~and such deeds shall be placed in escrow with the~~
~~attorneys for the parties.~~ In addition, it shall be a condition to West Alexandria's
obligations hereunder that the bank guarantee referred to in section 1(e) shall be
delivered within 10 days after the date hereof.

7. Notices. All notices and approvals hereunder, including notice of
change of address, shall be in writing and shall be deemed to have been duly
given on the earlier of: (a) when actually received, if delivered in person or sent
by regular mail; or (b) three days after post-marking if sent by registered or certified
mail deposited, postage prepaid, in a regularly maintained U.S. Postal Service box
and addressed as follows:

If to Landmark: addressed to Landmark at 225 South Whiting
Street, Alexandria, Virginia, 22304, Attention: Mr. Lon Poller, with a copy to
Myer Feldman, Esquire, Ginsburg, Feldman and Bress, 1700 Pennsylvania Avenue,

N.W., Washington, D.C. 20006.

If to West Alexandria: addressed to West Alexandria at 600 New Hampshire Avenue, N.W., Washington, D.C. 20037, Attention: Mr. Giuseppe Cecchi, with a copy to Daniel M. Singer, Esquire, Fried, Frank, Harris, Shriver and Kampelman, 600 New Hampshire Avenue, N.W., Washington, D.C. 20037.

8. Contingency . The obligations of the parties hereunder are contingent upon approval by the City of Alexandria on or before July 15, 1973 of site plans of the parties reflecting the substance of this Agreement.

9. Time is of the essence of this agreement and both parties shall prosecute all work hereunder with due diligence.

IN WITNESS WHEREOF, the parties have executed the foregoing agreement as of the day and date first above written.

Attest:

Secretary

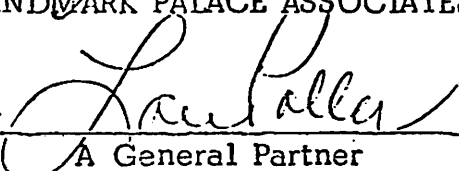
WEST ALEXANDRIA PROPERTIES, INC.

By

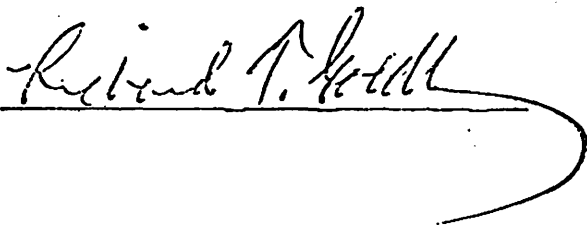

Giuseppe Cecchi, President

LANDMARK PALACE ASSOCIATES

By


A General Partner

Witness:



SS:

SS:

9



COMMONWEALTH of VIRGINIA

STATE REGISTRATION BOARD FOR CONTRACTORS
NINTH STREET OFFICE BUILDING
RICHMOND, VIRGINIA 23219

November 4, 1977

David C. Canfield, Esquire
Tolbert, Smith, Fitzgerald & Ramsey
2300 Ninth Street, South
Arlington, Virginia 22204

Dear Mr. Canfield:

In response to your letter dated October 31, 1977, as a Keeper of the Records of this Board, I hereby certify that there is no record of West Alexandria Properties, Inc. having ever been registered as a contractor under the provisions of Title 54, Chapter 7, Code of Virginia.

As a Keeper of the Records of this Board, I hereby certify that Glassman Construction Co., Inc. was registered as a contractor and issued Certificate #4332 on July 19, 1957. The certificate was renewed annually during the month of January until the certificate expired December 31, 1976, as application for renewal for 1977 was not received.

Yours very truly,

E. G. Andres
Assistant Executive Secretary

EGA:vl

JOHN C. HENDERSON
CHAIRMAN
ROANOKE

GILBERT W. SAUNDERS, JR.
VICE CHAIRMAN
PISTON

EDWARD L. KUSTERER
EXECUTIVE SECRETARY



COMMONWEALTH of VIRGINIA

STATE REGISTRATION BOARD FOR CONTRACTORS
NINTH STREET OFFICE BUILDING
RICHMOND 23219

EDWARD L. KUSTERER
EXECUTIVE SECRETARY

JOSEPH L. GUNTER
RICHMOND

DAVID H. BURROWS
ROANOKE

JAMES F. HOPE
SUI FOLY

EUGENE R. WEST, JR.
RICHMOND

AUTHORIZATION

I, Edward L. Kusterer, Secretary-Treasurer of the State Registration Board for Contractors, hereby designate Edward Gerald Andrea, Assistant Executive Secretary of the State Registration Board for Contractors, as a keeper of the records of the Board with authority to certify to the registration status of contractors registered with the Board as provided in Section 54-125, Title 54, Chapter 7, of the Code of Virginia.

A handwritten signature in cursive script, reading "Edward L. Kusterer".

Edward L. Kusterer
Secretary-Treasurer

August 27, 1975

FILING AND MAILING CERTIFICATE OF PRINTER

I hereby certify that on this 9 day of March, 1979 I filed with the Clerk's Office of this Court the required copies of this document and further certify that I mailed this same date from Richmond, Virginia the required copies to opposing counsel.

The necessary filing and mailing was performed in accordance with the instructions given me by counsel in this case.



Mary L. Johnson

FRED R. SURFACE & ASSOCIATES, INC.

Heritage Building

10th and Main Streets

Richmond, Virginia 23219