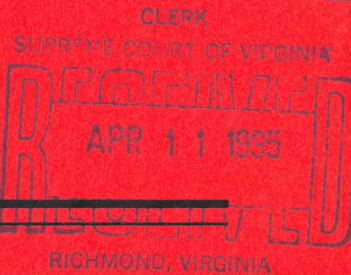


350Va 315



IN THE
Supreme Court of Virginia

AT RICHMOND

RECORD NO. 941963

RIVER PLACE NORTH HOUSING CORPORATION,

Appellant,

v.

AMERICAN LANDMARK EQUITY CORPORATION,

Appellee.

JOINT APPENDIX

Mary M. Jolma Benzinger
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(703) 448-6600

Counsel for Appellee

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V I R G I N I A:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

RIVER PLACE NORTH
HOUSING CORPORATION
1121 Arlington Boulevard
Suite
Arlington, Virginia 22209,

Plaintiff,

v.

AMERICAN LANDMARK EQUITY CORP.
1011 Arlington Boulevard
Suite 330
Arlington, Virginia 22209,

SERVE:
William T. Freyvogel
Registered Agent
1650 Tysons Blvd.
Suite 700
McLean, Virginia 22102

Defendant.

At Law No. 93-490

RECEIVED

MAY 4 - 1993

DAVID A. BELL, CLERK
Arlington County Circuit Court
By A Deputy Clerk

MOTION FOR JUDGMENT

COMES NOW your plaintiff, RIVER PLACE NORTH HOUSING CORPORATION, by counsel, and for and as its Motion for Judgment against the above-named defendant, states as follows:

1. Plaintiff, RIVER PLACE NORTH HOUSING CORPORATION, ("River Place"), is a Virginia corporation formed for the purpose of providing and managing cooperative housing units.

2. Defendant AMERICAN LANDMARK EQUITY CORP., ("American") is a Virginia Corporation that provides financing for cooperative housing units.

3. Upon information and belief, American made loans to certain individuals for the purpose of acquiring cooperative units

in River Place, including loans for River Place North units 1002 and 1003.

4. Upon information and belief, said two loans became delinquent and American sought to foreclose upon these loans.

COUNT I

5. Paragraphs 1-4 are incorporated by reference as though fully set forth herein.

6. On or about April 3, 1991, American purchased at a trustee's sale, unit number 1002 for the stated consideration of \$120,000.00.

7. A Trustee's Deed of Assignment of Proprietary Lease (a copy of which is attached hereto as Exhibit "A"), prepared by the trustee, granted to American "The Proprietary Lease to Unit/Apt. No N-1002, River Place North..."

8. As a result of the trustee's sale of unit number 1002 to American, American is now the Proprietary Lessee of unit number 1002.

9. Pursuant to the Section 7.3 of the Bylaws of the Corporation (a copy of which is attached hereto as Exhibit "B"):

The new Proprietary Lessee is jointly and severally liable with the former Proprietary Lessee for all unpaid assessments against that Proprietary Lessee or his shares which became due before the new Proprietary Lessee acquired ownership thereof...

10. Pursuant to Section 7.6 of the Declaration of Covenants; Easements and Liens for River Place dated May 10, 1982 (a copy of which is attached hereto as Exhibit "C"):

The new Owner of a Parcel shall be jointly and severally liable with the former Owner(s) thereof for all unpaid

assessments against the former Owner(s) of that Parcel...

11. At the time of said trustee's sale, the former Proprietary Lessee of unit number 1002 was delinquent in payment of assessments to River Place in the amount of \$3,720.00 (See Exhibit D attached hereto, Statement of Account)

12. Pursuant to the Declaration and the Bylaws, as American is the new Proprietary Lessee of unit number 1002, American is liable for the unpaid delinquent assessments.

13. Despite repeated demands by River Place upon American for payment of the delinquent assessments, American has failed and refused to make said payments.

14. As a direct and proximate result of this failure by American to make payment, River Place has been harmed in the amount of \$3,670.00.

WHEREFORE, the premises considered, RIVER PLACE NORTH HOUSING CORPORATION demands judgment be entered against AMERICAN LANDMARK EQUITY CORP. in the amount of \$3,670.00 representing the amount of delinquent assessments for which American is contractually liable pursuant to Declaration Section 7.6 and Bylaws Section 7.3, and for attorney's fees as provided for in Bylaws Section 12.1(b), plus interest at 18 percent from April 3, 1991 to date of judgment as provided for in Bylaws Section 12.1(d), and for any such other relief as this Honorable Court may deem just and meet.

COUNT II

15. Paragraphs 1-14 are incorporated by reference as though fully set forth herein.

16. On or about April 3, 1991, American purchased at a trustee's sale, unit number 1003 for the stated consideration of \$120,000.00.

17. A "Trustee's Deed of Assignment of Proprietary Lease" (a copy of which is attached hereto as Exhibit "E"), prepared by the trustee, granted to American "The Proprietary Lease to Unit/Apt. No N-1003, River Place North..."

18. As a result of the trustee's sale of unit number 1003 to American, American is now the Proprietary Lessee of unit number 1003.

19. Pursuant to the Section 7.3 of the Bylaws of the Corporation (a copy of which is attached hereto as Exhibit "B"):

The new Proprietary Lessee is jointly and severally liable with the former Proprietary Lessee for all unpaid assessments against that Proprietary Lessee or his shares which became due before the new Proprietary Lessee acquired ownership thereof.

20. Pursuant to Section 7.6 of the Declaration of Covenants; Easements and Liens for River Place dated May 10, 1982 (a copy of which is attached hereto as Exhibit "C"):

The new Owner of a Parcel shall be jointly and severally liable with the former Owner(s) thereof for all unpaid assessments against the former Owner(s) of that Parcel...

21. At the time of said trustee's sale, the former Proprietary Lessee of unit number 1003 was delinquent in payment of assessments to River Place in the amount of \$3,496.00. (See Exhibit "F" attached hereto, Statement of Account)

22. Pursuant to the Declaration and the Bylaws, as American is the new Proprietary Lessee of unit number 1003, American is

liable for the unpaid delinquent assessments.

23. Despite repeated demands by River Place upon American for payment of the delinquent assessments, American has failed and refused to make said payment of the amount of delinquent assessments for unit number 1003.

24. As a direct and proximate result of this failure by American to make payment, River Place has been harmed in the amount of \$3,496.00.

WHEREFORE, the premises considered, RIVER PLACE NORTH HOUSING CORPORATION demands judgment be entered against AMERICAN LANDMARK EQUITY CORP. in the amount of \$3,496.00 representing the amount of delinquent assessments for which American is contractually liable pursuant to Declaration Section 7.6 and Bylaws Section 7.3, and for attorney's fees as provided for in Bylaws Section 12.1(b), plus interest at 18 percent from April 3, 1991 to date of judgment as provided for in Bylaws Section 12.1(d), and for any such other relief as this Honorable Court may deem just and meet.

Respectfully submitted,

RIVER PLACE NORTH HOUSING CORPORATION
By Counsel

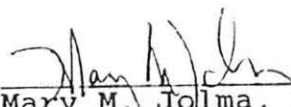

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EXHIBIT A

16970

TRUSTEE'S DEED OF ASSIGNMENT
OF PROPRIETARY LEASE

THIS TRUSTEE'S DEED OF ASSIGNMENT OF PROPRIETARY LEASE is made and executed as of this 31st day of April, 1991, by and between AMERICAN LANDMARK MANAGEMENT CORPORATION, a Virginia corporation, Substitute Trustee (hereinafter referred to as the "Trustee"), under a Deed of Trust from Shawna L. BUTLER and Abbas GHASSEMI, Grantors (hereinafter referred to as the "Grantor") and AMERICAN LANDMARK EQUITY CORP., a Virginia corporation (hereinafter referred to as the "Grantee").

WHEREAS, by virtue of that certain Cooperative Leasehold Deed of Trust (hereinafter referred to as the "Deed of Trust"), dated February 5, 1988 and recorded in Deed Book 2319 at Page 1411, among the land records of Arlington County Virginia, and by virtue of that certain Cooperative Apartment Loan Security Agreement (hereinafter referred to as the "Loan Security Agreement"), dated February 5, 1988, Shawna L. Butler and Abbas Ghassemi, Joint Tenants, conveyed their right, title and interest in and to the Proprietary Lease to Unit/Apartment No. H-1002, River Place North, and parking spaces HP-159 and HP-160, described hereinafter, together with 6714 shares of the capital stock of River Place North Housing Corporation (hereinafter collectively referred to as the "Property"), in trust to H. Louise Riley, and James A. Howard, Trustees, to secure the repayment of a certain Note (hereinafter referred to as the "Note") and other obligations due and owing to Monument Associates (hereinafter referred to as the "Beneficiary"); and

WHEREAS, by virtue of a certain Deed of Appointment of Substitute Trustee, dated January 16, 1991 and recorded in Deed Book 2463 at Page 1425 among the land records of Arlington County, Virginia, the Beneficiary did name and appoint American Landmark Management Corporation, a Virginia corporation, to serve as Substitute Trustee under the Deed of Trust and the Loan Security Agreement, in place of and instead of the aforementioned Trustee; and

REC-17-C-257-719
CONSIDERATION - \$20,000.00

ADAMS, PORTER & RADIGAN, L.L.C.
ATTORNEYS AND COUNSELORS AT LAW
THE CORPORATE OFFICE CENTRE AT TYSONS II
SUITE 700
1630 TYSONS BOULEVARD
MCLEAN, VIRGINIA 22102

WHEREAS, Shawna L. Butler and Abbas Ghassemi defaulted in their obligations under the Note, Deed of Trust and Loan Security Agreement; and

WHEREAS, having been requested to do so by the Beneficiary of the Note, the Substitute Trustee declared all of the debts and obligations secured by the Deed of Trust and the Loan Security Agreement to be at once due and payable and proceeded to advertise the time, place and terms of sale for the Property by advertisement once a week for three (3) successive weeks in the Northern Virginia Sun, a newspaper published and having general circulation in Arlington County, Virginia, all in accordance with the terms of the Deed of Trust, the Loan Security Agreement and the laws of the Commonwealth of Virginia; and

WHEREAS, more than fourteen (14) days prior to the sale, the Substitute Trustee caused a letter to be sent by certified mail to Shawna L. Butler and Abbas Ghassemi at their last known address, as reflected on the loan records of the Beneficiary, which certified letter enclosed a copy of the Notice of Trustee's Sale as it appeared in the Northern Virginia Sun; and

WHEREAS, on Wednesday, April 3, 1991, the Substitute Trustee offered the Property for sale at public auction in accordance with the terms and conditions prescribed in the Notice of Trustee's Sale; and

WHEREAS, Grantee was the successful bidder at the foreclosure sale for the total bid price of \$120,000.00, as reflected in that certain Memorandum of Sale executed by the parties; and

WHEREAS, the Substitute Trustee and the Grantee desire to complete the settlement on the conveyance of the Substitute Trustee's right, title and interest to the Property in accordance with the terms and conditions described in the Notice of Trustee's Sale and in the Memorandum of Sale.

NOW, THEREFORE, in consideration of the premises and in further consideration of the payment by the Grantee of the sum of \$120,000.00, the receipt and sufficiency of which are hereby

acknowledged by both parties, the Substitute Trustee does hereby grant, bargain, sell and convey, with Special Warranty of Title, unto American Landmark Equity Corp., a Virginia Corporation, Grantee, the property described in the Deed of Trust and the Loan Security Agreement, including all of the improvements thereon, situated and lying in Arlington County, Virginia, and more particularly described as follows:

The Proprietary Lease to Unit/Apt. No. H-1002, River Place North, and Parking Spaces MP-159 and MP-160, as described in the Declaration of Covenants, Easements and Liens for "River Place" and the Exhibits attached hereto, together with and subject to all rights, covenants and easements contained therein, as recorded May 10, 1982 in Deed Book 2061 at Page 388, et seq., as amended in Deed Book 2079 at page 21 among the land records of Arlington County, Virginia and as the same have been and may be lawfully amended further from time to time;

AND

6714 shares of the capital stock of River Place North Housing Corporation, which shares entitle the owner thereof to the Proprietary Lease above described (the leasehold interest and shares collectively referred to as the "Property").

Street Address: Apartment No. H-1002
1121 Arlington Blvd.
Arlington, Virginia 22209.

This sale is made subject to any and all existing prior deeds of trust, liens, covenants, conditions, restrictions, rights-of-way, easements, reservations and other prior encumbrances of record, and to the payment of any and all delinquent real estate taxes, cooperative fees and other proper charges due on the Property which may have legal priority over the aforesaid Deed of Trust and Loan Security Agreement. This sale is further subject to mechanics' and materialmen's liens, if any, of record and not of record. This conveyance is further subject to the specific terms and conditions of the above-described Declaration of Covenants, Easements and Liens for "River Place" and the Exhibits attached thereto, and to the terms and conditions of the Proprietary Lease for the Property.

IN WITNESS WHEREOF, the said American Landmark Management Corporation, a Virginia corporation, has caused this Trustee's Deed of Assignment of Proprietary Lease to be executed in its

name by James A. Howard, its Senior Vice President, as of the day and year first above written.

AMERICAN LANDMARK MANAGEMENT
CORPORATION, Substitute Trustee,

By: James A. Howard,
Senior Vice President

STATE OF VIRGINIA,

COUNTY OF ARLINGTON, to-wit:

The foregoing Trustee's Deed of Assignment of Proprietary Lease was subscribed and sworn before me in my aforesaid jurisdiction this 3rd day of April, 1991, by James A. Howard, Senior Vice President of American Landmark Management Corporation, on behalf of the Corporation in its capacity as Substitute Trustee.

Charles A. Hall
Notary Public

My Commission Expires: 11/31/93

VIRGINIA: IN THE CLERK'S OFFICE OF THE
CIRCUIT COURT OF THE COUNTY OF ARLINGTON

This deed was presented, and with the
certificate appended, admitted to record
on April 11, 1991 at 3:21 o'clock PM.
CONSIDERATION: \$20,000.00
STATE TAX \$3.00
COUNTY TAX \$0.00
TRANSFER FEE _____
CLERK'S FEE \$3.00
GRANTOR'S TAX _____
TOTAL \$23.00
WIT: David A. Hall CLERK

EXHIBIT B

BYLAWS

OF

RIVER PLACE NORTH HOUSING CORPORATION

(Arlington, Virginia)

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SCHEDULE A - Chart of Upkeep Responsibilities

BYLAWS

OF

RIVER PLACE NORTH HOUSING CORPORATION

ARTICLE 1

Interpretative Provisions

Section 1.1. Definitions. In these Bylaws:

(1) "Apartment" means a portion of the Building designed for individual occupancy as a residence, including the materials comprising the finished surfaces of the walls, floors, and ceilings thereof, any patio, balcony or terrace designed to serve that residence exclusively, and any other fixtures, equipment, appliances or other apparatus designed to serve that residence exclusively.

(2) "Articles of Incorporation" mean the Articles of Incorporation of the Corporation.

(3) "Board of Directors" or "Board" means the Board of Directors of the Corporation, and the terms "Director" or "Directors" refer to members of that Board.

(4) "Building" means the apartment building or apartment buildings in which the Corporation has a leasehold interest (or estate for years) from the date each such estate or interest is acquired, but excludes any portions of such building or buildings excluded from such estate or interest.

(5) "Common Elements" means all of the Building except the Apartments.

(6) "Common Expenses" means expenditures by or financial obligations of the Corporation, together with allocations to reserves.

(7) "Corporation" means River Place North Housing Corporation.

(8) "Governing Documents" means (i) the Declaration of Covenants, Easements and Liens for River Place recorded in Deed Book ____ at page ____ et seq. among the Land Records of Arlington County, (ii) the Articles of Incorporation, Bylaws, and Rules and Regulations of River Place Owners' Association, (iii) all leases and assignments of lease from Monument Associates to the Corporation now or hereafter recorded, and (iv) the Articles of Incorporation, Bylaws, and Rules and Regulations of the Corporation.

(9) "Majority Vote" means a simple majority (except where a higher majority is specified) of the votes actually cast at a meeting held pursuant to these Bylaws where the quorum requirements for such meeting are satisfied.

(10) "Officer" means a Director or Officer of the Corporation, except to the extent otherwise provided by Section 4.1 of these Bylaws.

(11) "Person" means a natural person, corporation, partnership, trust or other entity.

Section 2.3. Notice of Shareholders' Meetings. (a) Written notice stating the place, day and hour of each meeting of the Shareholders, and, in case of a special meeting, the purpose(s) for which the meeting is called, shall be given not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by the Secretary or an Assistant Secretary to each Shareholder of record entitled to vote at such meeting.

(b) Notice of a Shareholders' meeting to act on a proposed amendment to the Articles of Incorporation, or on a reduction of stated capital, or on a plan of merger, consolidation or exchange, shall be given in the manner provided above not less than twenty-five (25) nor more than fifty (50) days before the date of the meeting. Any such notice shall be accompanied by a copy of the proposed amendment or plan of reduction, merger, consolidation or exchange.

Section 2.4. Waiver of Notice of Meetings. (a) Whenever any notice is required to be given of any Shareholders' meeting, a waiver thereof in writing signed by a Person entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice to that Person.

(b) A Shareholder who attends a Shareholders' meeting shall be conclusively presumed to have had timely and proper notice of the meeting or to have duly waived notice thereof, unless he attends for the express purpose of objecting to the transaction of any business on the grounds that the meeting was not lawfully called or convened.

Section 2.5. Action by Shareholders Without A Meeting. Any action required or permitted to be taken at a meeting of the Shareholders may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Shareholders entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the Shareholders and shall be filed with the minutes of the proceedings of the Shareholders.

Section 2.6. Closing of Transfer Books and Fixing Record Date. For the purpose of determining Shareholders entitled to notice of or to vote at any meeting of the Shareholders or adjournment thereof, or in order to make a determination of the Shareholders for any other purpose, the Board of Directors may provide that the stock transfer books shall be closed for a stated period not to exceed fifty (50) days prior to the date of the proposed meeting or other action. In lieu of closing the stock transfer books, the Board of Directors may fix in advance a date as the record date for any such determination of the Shareholders, such date in any case to be not more than fifty (50) days prior to the date of the proposed meeting or other action. If the stock transfer books are not closed and no record date is fixed for the determination of the Shareholders entitled to notice of or to vote at a meeting of the Shareholders, the date on which notice of the meeting is mailed shall be the record date for such determination of Shareholders. When a determination of the Shareholders entitled to vote at any meeting of the Shareholders has been made as provided in this Section, such determination shall apply to any adjournment thereof.

Section 2.7. Voting List. The officer or agent having charge of the stock transfer books shall make, at least ten (10) days before each meeting of the Shareholders, a complete list, in alphabetical order, of the Shareholders entitled to vote at such meeting or any adjournment thereof, with the address of and the number of shares held by each. Such list, for a period of ten

(10) days prior to such meeting, shall be kept on file at the registered office of the Corporation or at its principal place of business or at the office of its transfer agent or registrar and shall be subject to inspection by any Shareholder at any time during usual business hours. Such list shall also be produced and subject to inspection by any Shareholder at all times throughout the meeting. The original stock transfer books shall be prima facie evidence as to who are the Shareholders entitled to examine such list or transfer books or to vote at any meeting of the Shareholders. If the requirements of this Section have not been substantially complied with, the meeting shall, on the demand of any Shareholder in person or by proxy, be adjourned until the said requirements are complied with. Failure to comply with the requirements of this Section shall not affect the validity of any action taken at such meeting prior to the making of any such demand.

Section 2.8. Quorum of Shareholders. One-third (1/3) of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at any meeting of the Shareholders. If a quorum is present, a Majority Vote on any matter shall be the act of the Shareholders unless the vote of a greater number is required by the Virginia Stock Corporation Act or by the Articles of Incorporation, and except that in elections of Directors those receiving the greatest numbers of votes shall be deemed elected even though not receiving a majority. Less than a quorum may adjourn.

Section 2.9. Absence of Quorum. In the absence of a quorum at any meeting of the Shareholders, the Shareholders present in person or by proxy and entitled to vote thereat, or, if no Shareholders entitled to vote are present in person or by proxy, any Officer authorized to preside at or act as Secretary of such meeting, may adjourn the meeting from time to time, for periods not exceeding twenty (20) days at any one time, until a quorum shall be present. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called if a quorum had been present.

Section 2.10. Voting of Shares. Each outstanding share shall be entitled to one vote on each matter submitted to a vote at a meeting of the Shareholders. Treasury shares shall not be voted at any meeting or counted in determining the total number of outstanding shares at any given time entitled to vote. If the Corporation holds shares of its own stock in a fiduciary capacity, they may be counted to establish a quorum, but may not be voted unless the Corporation is a fiduciary jointly with another, in which case the other may vote the shares. Except as provided in this Section and Sections 2.11 and 2.12 of these Bylaws, shares may be voted as provided in Section 13.1-32 of the Code of Virginia, as the same may be amended from time to time.

Section 2.11. Manner of Voting. Voting by Shareholders shall be by voice vote unless any Shareholder present at the meeting, in person or by proxy, demands a vote by written ballots indicating the name of the Shareholder voting, the number of shares owned by him, and the name of the proxy of such ballot if cast by a proxy. Shares held by two or more Persons as joint tenants, tenants in common, or tenants by the entirety may be voted in person or by proxy by any of such Persons. If more than one of such tenants shall vote such shares, the vote shall be divided among them in proportion to the number of such tenants voting in person or by proxy. At each election for Directors, every Shareholder entitled to vote at such election shall have the right to cumulate his votes, in person or by proxy, by giving one candidate as many votes as the number of Directors to be

elected at the time multiplied by the number of his votes shall produce, or by distributing such votes on the same principle among any number of such candidates.

Section 2.12. Proxy Voting. A Shareholder may vote either in person or by proxy executed in writing by the Shareholder or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from its date unless otherwise provided in the proxy. No authorization of an attorney-in-fact to execute a proxy shall be valid after ten (10) years from its date, but such proxies may be accepted as valid in the absence of notice to the contrary.

Section 2.13. Order of Business. The order of business at meetings of the Shareholders shall be as follows:

- (1) Call to order.
- (2) Roll call and ascertainment of a quorum.
- (3) Proof of notice of meeting.
- (4) Reading of minutes of preceding meeting.
- (5) Appointment of vote tellers (if any vote is to be taken) by the Officer presiding.
- (6) Election of Directors (at annual meetings).
- (7) Reports of Officers.
- (8) Unfinished business.
- (9) New business.
- (10) Adjournment.

Section 2.14. Conduct of Meetings. The Officer presiding at a meeting of the Shareholders may appoint a person to serve as parliamentarian at that meeting. The 1907 edition of Robert's Rules of Order shall govern the conduct of all meetings of the Shareholders when not in conflict with the Virginia Stock Corporation Act or these Bylaws.

ARTICLE 3

BOARD OF DIRECTORS

Section 3.1. Number and Selection of Directors. The business and affairs of the Corporation shall be managed by a Board of Directors selected in accordance with Article 6 of the Articles of Incorporation. Beginning with the 1986 annual meeting or, if earlier, with the first annual meeting after the Sponsor ceases to be able, in its own right or as proxy for other Shareholders, to cast at least twenty-five percent (25%) of the outstanding shares of the Corporation, the Board of Directors shall consist of seven (7) members. The business affairs of the Corporation and, subject to the Declaration of Covenants, Easements and Liens for River Place and to the Articles of Incorporation and Bylaws for River Place Owners' Association, the Upkeep of all property owned or leased by the Corporation, shall be managed by the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the certificate of incorporation or by these Bylaws directed or required to be exercised or done by the Shareholders.

Section 3.2. Vacancies in Board of Directors. Any vacancy occurring in the Board of Directors by reason of death, resignation, removal, increase in the number of Directors or otherwise, may be filled by the vote of a majority of the remaining Director(s) even if the remaining Director(s) comprise less than a quorum of the Board.

Section 3.3. Removal of Directors. At a meeting of the Shareholders called expressly for that purpose, any Director may

be removed, with or without cause, by a vote of the Shareholders holding a majority of the shares entitled to vote. No Director may be removed, however, if the votes of a sufficient number of shares are cast against his removal which, if then cumulatively voted at an election of all Directors, would be sufficient to elect him.

Section 3.4. Resignation of Directors. Any Director may resign at any time by giving written notice to the Board of Directors or to the President or the Secretary of the Corporation. Unless otherwise specified in such written notice, such resignation shall take effect upon receipt thereof, and the acceptance of such resignation shall not be necessary to make it effective. If any Director was a Shareholder of the Corporation, or a resident of the property owned or leased by the Corporation, at the time he became such a Director, he shall be deemed to have resigned at such time as he ceases to be such a Shareholder or resident.

Section 3.5. Meetings of Directors. The first meeting of each newly-elected Board of Directors shall be held immediately after each annual meeting of the Shareholders and no notice of such meeting shall be necessary to the newly-elected Directors in order legally to constitute the meeting, provided a quorum shall be present, or the Board may convene at such time and place as shall be fixed by the consent in writing of all the Directors. Thereafter, the Board shall meet regularly without notice at such intervals, times and places as may be fixed from time to time by resolutions of the Board. Special meetings of the Board shall be held when called by a majority of the Directors with at least three (3) days' notice to the remainder of the Board, or not less than twenty-four (24) hours after notice has been received by the remainder of the Board, whichever period is shorter. However, notice of a special meeting may be waived by any Director in writing or by attending the meeting, unless he attends for the express purpose of objecting to the transaction of any business on the grounds that the meeting was not lawfully called or convened.

Section 3.6. Action without Meeting. Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action taken, shall be signed either before or after such action by all of the Directors. Such consent shall have the same force and effect as a unanimous vote and shall be filed with the minutes of the proceedings of the Board.

Section 3.7. Quorum of Directors. A majority of the Board of Directors constitute a quorum for the transaction of business. A Majority Vote of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 3.8. Powers and Duties. (a) In addition to such other powers as are conferred on the Board of Directors by the Virginia Stock Corporation Act and the Articles of Incorporation, but subject to any limitations created by this or any other Governing Document, the Board shall have the power:

(1) to regulate, and adopt, amend and repeal Rules and Regulations governing the use and operation of the Common Elements and any portions thereof and the use and occupancy of the Apartments, provided, however, that any such Rule or Regulation in conflict with the other Governing Documents or any applicable law, ordinance or other governmental regulation shall be void;

(2) to determine the budget of and the expenditures to be made by the Corporation and the purpose of each such expenditure;

(3) to borrow money on behalf of the Corporation, provided, however, that a two-thirds (2/3) Majority Vote at a meeting of the Shareholders shall be required to borrow any sum in excess of Forty Thousand Dollars (\$40,000.00);

(4) to grant exclusive or nonexclusive licenses for the use of designated Common Elements to the Proprietary Lessees of designated Apartments;

(5) to do or cause to be done any act or thing necessary or convenient for carrying out its duties under the Governing Documents; and

(6) to do or cause to be done any other act or thing not inconsistent with the Governing Documents or any applicable law, ordinance or governmental regulation, which may be authorized by a two-thirds (2/3) Majority Vote at a meeting of the Shareholders.

(b) The Board of Directors shall have the duty to:

(1) enforce or cause to be enforced the provisions of the Governing Documents and the Proprietary Leases;

(2) carry out or cause to be carried out the responsibilities of the Corporation under the Governing Documents and the Proprietary Leases;

(3) do or cause to be done by an appropriate Officer all acts and things required by the Virginia Stock Corporation Act or these Bylaws to be performed by an Officer;

(4) do or cause to be done any other act or thing not inconsistent with the Governing Documents or any applicable law, ordinance or governmental regulation, as may be directed by a two-thirds (2/3) Majority Vote at a meeting of the Corporation; and

(5) keep books with detailed accounts in chronological order of the receipts and expenditures affecting the Building and the administration of the Building. Such books and vouchers accrediting the entries therein shall be kept available for examination by the Shareholders, their attorneys, accountants and authorized agents during general business hours on business days at times and in the manner set and announced by the Board for the general knowledge of the Shareholders. All books and records shall be kept in accordance with generally accepted accounting principals. This duty may be delegated to a Managing Agent.

(c) Subject to the provisions of Article 6 of these Bylaws, the Board of Directors may, by resolution or pursuant to a contract authorized by a resolution of the Board or of the Shareholders, delegate (with or without conditions), to a Managing Agent and/or to specified Officer(s), any of the powers and duties specified in Sections 8.2(a), 8.3, 8.4, 8.6 and 9.1 of these Bylaws. Other powers and duties imposed on the Board or on any Officer may be so delegated only as contemplated by the Sections of these Bylaws setting forth those powers and duties. The Board may, however, in accordance with the requirements of Article 6 of these Bylaws, employ a Managing Agent or any other Persons to assist in the exercise or discharge of any powers and duties conferred or imposed by these Bylaws on the Board or on any Officer.

(d) Notwithstanding any other provision of these Bylaws, as long as the Sponsor owns at least twenty-five percent (25%) of the outstanding shares of the Corporation, the Board of Directors shall not, without the prior written consent of the Sponsor:

(d) Treasurer. It shall be the duty of the Treasurer to collect all assessments and other sums due the Corporation from each Shareholder; to open insured accounts with financial institutions designated by the Board and to deposit therein all income of the Corporation; to disburse the funds of the Corporation only in accordance with resolutions of the Board of Directors; to keep orderly books showing the income and expenditures of the Corporation; to make those books available for inspection and copying by any Shareholder at reasonable times and by appointment; and to provide the accounting required by Section 7.2(c) of these Bylaws; provided, however, that the Board may delegate any of the Treasurer's duties to the Managing Agent.

(e) All Officers. It shall be the duty of each Officer (including the foregoing Officers), to perform such duties as are normally associated with his office in parliamentary organizations, except to the extent (if any) inconsistent with law, the Articles of Incorporation, or other provisions of these Bylaws; and each Officer shall perform such other duties as are assigned to his office by law or resolution of the Shareholders or of the Board of Directors.

Section 4.4. Committees. The Board of Directors may create and abolish from time to time such committees as the Board may deem appropriate to aid in the administration of the affairs of the Corporation. Such committees shall have the powers and duties fixed by resolution of the Board from time to time. The Board shall appoint the chairman of each committee, and may either appoint the other members thereof or leave such appointment to the chairman thereof.

Section 4.5. Actions by Committee Without Meeting. Any action required or permitted to be taken at a meeting of a committee may be taken without a meeting if a consent in writing, setting forth the action taken, shall be signed either before or after such action by all of the members of the committee. Such consent shall have the same force and effect as a unanimous vote.

ARTICLE 5

Liabilities, Responsibilities and Compensation of the Corporation and its Officers

Section 5.1. Indemnification of Officers; Insurance

(a) The Corporation shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was an Officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation or other entity, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

(b) The Corporation shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by

reason of the fact that he is or was an Officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation or other entity against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such Person shall have been adjudged to be liable for gross negligence or willful misconduct in the performance of his duty to the Corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(c) To the extent that an Officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b), or in defense of any claim, issue or matter therein, he shall be indemnified by the Corporation against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under subsections (a) and (b) (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsections (a) and (b). Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, or (3) by the Shareholders.

(e) Expenses (including attorneys' fees) incurred in defending an action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative, may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized in the manner provided in subsection (d) upon receipt of an undertaking by or on behalf of the Officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation as authorized in this Section.

(f) The Corporation shall have power to make any other or further indemnity, including criminal proceedings, to any Person referred to in this Section that may be authorized by any Bylaw made by the Shareholders or any resolution adopted, before or after the event, by the Shareholders, except an indemnity against any such Person's gross negligence or willful misconduct. Each such indemnity may continue as to a Person who has ceased to have the capacity referred to above and may inure to the benefit of the heirs, executors and administrators of such a Person.

(g) The Corporation shall have power to purchase and maintain insurance on behalf of any Person who is or was an Officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or other entity, against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or

not the Corporation would have the power to indemnify him against such liability under the provisions of this Section.

(h) For the purposes of this Section, references to the "Corporation" include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation, so that any Person who is or was a director, officer, employee or agent of such a constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership or other entity shall stand in the same position under the provisions of this Section with respect to the resulting or surviving corporation as he would if he had served the resulting or surviving corporation in the same capacity.

Section 5.2. Conflicts of Interest. (a) No contract or other transaction between the Corporation and one or more of its Officers, or in which one or more of its Officers are interested, and no contract or other transaction between the Corporation and any other corporation or other entity in which one or more of its Officers are directors or officers or are interested, shall be either void or voidable because of such relationship or interest or because such Officers are present at the meeting of the Board of Directors which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, provided that the material facts as to his or their relationship or interest are disclosed or known (i) to the Board of Directors which authorizes, approves or ratifies the contract or transaction by a vote sufficient for the purpose without counting the votes of such interested Officers, or (ii) to the Shareholders entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent.

(b) No contract or other transaction described in subsection (a) of this Section shall be void or voidable despite failure to comply with clauses (i) or (ii) of subsection (a), provided that such contract or transaction was fair and reasonable to the Corporation in view of all the facts known to any Officer at the time such contract or transaction was entered into by or on behalf of the Corporation.

Section 5.3. Nonliability of the Corporation. The Corporation shall not be liable for any failure of water supply or other utilities or services of any nature to be obtained or paid for by the Corporation, or for injury or damage to any Person or property caused by natural elements or by any Shareholder or 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 pipe, drain, conduit, structure or other apparatus. No diminution or abatement of any assessment for Common Expenses shall be claimed or allowed for any reason whatsoever, including (without limitation) inconvenience or discomfort arising from improper Upkeep or lack of Upkeep, of the Common Elements or from any action taken by the Corporation, any Officer(s), the Managing Agent or any Shareholder(s) to comply with any law, ordinance or other governmental regulation or order.

Section 5.4. Disclaimer of Bailee Liability. Neither the Corporation, the Board of Directors, any other Officer(s), the Managing Agent, nor any Shareholder(s) shall be considered as a bailee of any personal property placed anywhere within the Cooperative and shall not be responsible for the security of such personal property or for any loss thereof or damage thereto from any cause, whether or not attributable to negligence, except to the extent covered by insurance in excess of any applicable deductible.

Section 5.5. Compensation of Officers. No salary or other compensation (other than reimbursement of properly documented authorized expenses) shall be paid to any Officer of the Corporation for serving or acting as such, but this shall not preclude the payment of salary or other compensation for the performance by such Officer of other services to the Corporation.

ARTICLE 6

Managing Agent

Section 6.1. Selection. The Board of Directors may, but shall not be obligated to, employ on behalf of the Corporation a Managing Agent. If, at any given time, no such Managing Agent is so employed or employed pursuant to Section 6.1 of the Bylaws of River Place Owners' Association, then any fiscal agent or in-house accounting staff shall comply with the standards prescribed in Section 6.4 hereof, except as otherwise prescribed by the Board of Directors.

Section 6.2. Requirements. Any Managing Agent employed pursuant to Section 6.1 of these Bylaws shall be a bona fide business enterprise which manages common interest residential communities. The contract with the Managing Agent must have a term not in excess of one (1) year and must provide that it may be terminated, without payment of a termination fee or cancellation charge, without cause on no more than ninety (90) days' written notice and with cause on no more than thirty (30) day's written notice.

Section 6.3. Powers and Duties. Subject to Section 3.8(c) of these Bylaws, any Managing Agent shall have such powers and duties as may be delegated to it or imposed upon it by the Board of Directors pursuant to the Managing Agent's contract.

Section 6.4. Standards. The Board of Directors may impose appropriate standards of performance upon a Managing Agent employed pursuant to Section 6.1 of these Bylaws and, unless instructed otherwise by the Board, the Managing Agent shall:

- (1) employ the accrual method of accounting;
- (2) designate two or more individuals to be responsible for handling cash to maintain adequate financial control procedures;
- (3) not commingle cash accounts of the Corporation with any other accounts;
- (4) not accept any remuneration from any third Persons providing goods or services to the Corporation, whether in the form of commissions, finder's fees, service fees or otherwise, and shall credit to the benefit of the Corporation any discounts obtained;
- (5) disclose in advance to the Board of Directors any financial or other interest which the Managing Agent may have in any Person providing goods or services to the Corporation;
- (6) prepare an annual budget for each fiscal year of the Corporation on an accrual basis with a twelve-month cash flow projection;
- (7) prepare monthly financial reports for the Board of Directors containing:

adjusted budget reflecting the liability of all Shareholders for Common Expenses for the remainder of the fiscal year; provided, however, that if the assessments necessary to fund the budget will not be modified as to any particular Shareholders, such notification need not be given to them. The amount of assessment attributable to each Shareholder shall thereafter be the amount specified in the adjusted budget until a new budget shall have been adopted by the Board of Directors.

(c) Assessment and Payment of Common Expenses.

Subject to the provisions of Section 12.1(a) of these Bylaws, the total amount of the estimated funds required from assessments to pay the Common Expenses as set forth in any budget or adjusted budget adopted by the Board of Directors shall be assessed against each Shareholder in proportion to the number of his shares. On or before the first day of each fiscal year, and the first day of each of the succeeding eleven (11) months in such fiscal year, each Shareholder shall remit to the Treasurer or the Managing Agent (as determined by the Board of Directors) one-twelfth (1/12) of such assessment. Within thirty (30) days after the end of each fiscal year, the Person who served as Treasurer during that fiscal year shall supply to all Shareholders an itemized accounting of the Common Expenses for such fiscal year actually paid, together with a tabulation of the amounts collected for such fiscal year, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited to the Shareholders, in proportion to the number of shares owned by each, against the next monthly installments due from each. Any net shortage shall promptly be assessed against the Shareholders in proportion to the number of shares owned by each, and shall be due either in full with the next monthly assessment due or, if the Board of Directors so determines, in a number of equal monthly installments sufficient to make up the shortage within a period ending not later than the end of the then current fiscal year.

(d) Reserves. The Corporation shall accumulate and maintain reasonable reserves for working capital, operations, contingencies and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. If the reserves are inadequate for any reason, including (without limitation) the nonpayment of any assessments, the Board of Directors may at any time levy a further assessment, which shall be assessed against the Shareholders in proportion to the number of shares owned by each, and which shall be payable in a lump sum or in installments as the Board may determine. The Secretary shall give notice of any such further assessment to each Shareholder, giving the reason(s) therefor. All Shareholders shall be obligated to pay such further assessment either in full with the next monthly installment due or, if the Board of Directors so determines, in a number of equal monthly installments sufficient to make up the shortage within a period ending not later than the end of the then current fiscal year.

(e) Initial Assessments and Capital Contributions.

(1) Upon taking office, the first Board of Directors designated pursuant to these Bylaws shall determine the budget of the Corporation for the remainder of the fiscal year in which such designation occurs. Assessments made against the Shareholders pursuant to this subsection shall become due during such period as provided in subsection (c) of this Section, except that the assessments made as provided in this paragraph shall be due and payable in equal monthly installments on the first day of each month remaining in that fiscal year.

(2) The Sponsor, as the agent of the Corporation, shall collect from the first Proprietary Lessee (other than the Sponsor) of each Apartment at the time of settlement an "initial capital contribution" equivalent to twice the monthly installment payment for the annual Common Expense assessment against such Proprietary Lessee's shares, based either on the assessments for the then current fiscal year or, if the Sponsor's contract of sale with the Purchaser so provided, on the assessments for the fiscal year in which the contract was made. The Sponsor shall deliver the funds so collected to the Board to provide working capital for the Corporation. Such funds may be allocated to reserves or used for such other Common Expenses as the Board may determine.

(f) Effect of Failure to Prepare or Adopt Budget. Failure or delay in preparing or adopting a budget for any fiscal year shall not constitute a waiver or release in any manner of a Shareholder's obligation to pay his share of the Common Expenses whenever the same shall be determined and, in the absence of any budget for the then current fiscal year, each Shareholder shall continue to pay monthly installments at the rate established for the previous fiscal year until delivery of the new monthly installment schedule.

(g) Assessments to Constitute a Lien. All amounts assessed against or otherwise due from a Shareholder shall constitute a lien against that Shareholder's shares as provided in Section 12.2 of these Bylaws.

Section 7.3. Liability for Assessments. Each Shareholder shall be personally liable for all assessments against him or his shares. No Shareholder may avoid liability for any assessment by waiver, non-use or abandonment of any right or real estate. The new Proprietary Lessee of an Apartment shall be jointly and severally liable with the former Proprietary Lessee thereof for all unpaid assessments against that Proprietary Lessee or his shares which became due before the new Proprietary Lessee acquired ownership thereof, without prejudice to any right of a successor in ownership to recover from any of his predecessors in ownership any amount for which any of the latter was liable.

Section 7.4. Non-Liability for Assessments. No Person shall have any liability with respect to assessments or installments thereof becoming due as to any shares after he has ceased to be the Shareholder thereof.

Section 7.5. Certificate as to Status of Payment. Upon written request of any Shareholder, the Treasurer shall furnish or make available within five (5) business days to such Shareholder a dated certificate setting forth the amount of any unpaid assessments or installments thereof that have become due as to the shares owned by him as of the date of that certificate. A charge may be fixed from time to time by resolution of the Board of Directors for the issuance of such certificates. Notwithstanding any other provision of these Bylaws, a bona fide purchaser of shares who has relied upon such a certificate shall not be liable for any assessments or installments thereof which became due before the date of that certificate and which are not reflected thereon.

Section 7.6. Collection of Assessments. The Board of Directors, or the Managing Agent or any Officer(s) at the request of the Board, shall take prompt action to collect any assessments for Common Expenses due from any Shareholder which remain unpaid for more than thirty (30) days from the due date thereof.

(i) an Income Statement reflecting all income and expense activity for the preceding month on an accrual basis, and separately accounting for the capital contributions of each Shareholder to the Corporation;

(ii) an Account Activity Statement reflecting all receipts and disbursements for the preceding month on a cash basis;

(iii) an Account Status Report reflecting the status of all accounts in an "actual" (versus "projected") budget format;

(iv) a Balance Sheet reflecting the financial condition of the Corporation on an unaudited basis;

(v) a Budget Report reflecting any actual or pending obligations which are in excess of budgeted amounts by an amount exceeding the operating reserves or ten percent (10%) of a major budget category (as distinct from a specific line item in an expanded chart of accounts); and

(vi) a Delinquency Report listing all Shareholders who are delinquent in paying assessments made by the Corporation and describing the status of any actions to collect such assessments.

ARTICLE 7

Operation of the Property

Section 7.1. Fiscal Year. The first fiscal year of the Corporation shall begin on the date of its incorporation and end on the last day of December. Each subsequent fiscal year shall coincide with the fiscal year of River Place Owners' Association, its successors and assigns.

Section 7.2. Determination of Common Expenses and Assessments Against Shareholders.

(a) Preparation and Approval of Budget. Before each annual meeting of the Shareholders, the Board of Directors shall adopt a budget for the Corporation containing an estimate of the total amount considered necessary for the next fiscal year to pay the Common Expenses, including (without limitation) reasonable amounts necessary to provide working capital, a general operating reserve, and reserves for contingencies and replacements. The budget shall be presented and may be modified at the annual meeting of the Shareholders. Within ten (10) days after each annual meeting, the Secretary shall send to each Shareholder a copy of the budget in a reasonably itemized form setting forth the amount of the Common Expenses and the amounts and due dates of the assessments (and installments thereof) payable by that Shareholder for the shares owned by him. The determination of such Common Expense assessments and the amounts of the assessments payable as aforesaid shall constitute the determination for all purposes under the Governing Documents of the annual cash requirements and rent payable pursuant to Article 1 of the Proprietary Lease.

(b) Reallocation of Assessments. Within thirty (30) days after any change in the number of Apartments in the Cooperative, the Board of Directors shall adjust the budget, allocating assessments against all the outstanding shares, and the Secretary shall send to each Shareholder a copy of the

Section 7.7. Upkeep of the Building.

(a) Upkeep by the Corporation. Subject to paragraph (2) of subsection (b) of this Section, the Corporation (acting through the Board of Directors and/or the Managing Agent) shall be responsible for the Upkeep of all Common Elements, and the cost of such Upkeep shall be a Common Expense.

(b) Upkeep by the Shareholder.

(1) Each Shareholder shall be responsible for the Upkeep of his Apartment, including keeping it and its equipment, appliances and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of his Apartment. In addition, each Shareholder shall be responsible for all damage to any other Apartment or to any Common Element resulting from his failure to perform any of the Upkeep required by this Section. Each Shareholder shall perform his responsibility in such manner as shall not unreasonably disturb or interfere with the other Shareholders. Each Shareholder shall promptly report to a Director or the Managing Agent any defect or need for Upkeep for which the Corporation is responsible.

(2) Any Shareholder who has been granted an exclusive license for the use of a designated Common Element shall be responsible for keeping it in a clean and sanitary condition and for abiding by the Rules and Regulations applicable thereto.

(c) Chart of Upkeep Responsibilities. Notwithstanding the provisions of subsections (a) and (b), specific Upkeep responsibilities shall, to the extent set forth thereon, be governed by the Chart of Upkeep Responsibilities set forth as Schedule A hereto.

(d) Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of the same or better quality.

Section 7.8. Personnel and Equipment. The Board of Directors, and the Managing Agent and any Officer(s) to the extent authorized by the Board, may, on behalf of the Corporation in connection with the operation and Upkeep of the Common Elements and the operation of the Corporation, employ and dismiss any Persons and purchase any equipment, supplies or material. Such equipment, supplies and material, shall be the property of the Corporation.

Section 7.9. Additions, Alterations or Improvements by Board of Directors. Whenever in the judgment of the Board of Directors it is desirable to make additions, alterations or improvements to the Common Elements costing in the aggregate more than Forty Thousand Dollars (\$40,000.00) during any period of twelve consecutive months, the making of such additions, alterations or improvements shall be approved by a Majority Vote at a meeting of the Shareholders. The dollar limitation fixed by this Section shall increase annually by a percentage equal to the percentage increase in the annual budget of the Association. Notwithstanding the foregoing, if the Board determines that additions, alterations or improvements to the Common Elements are exclusively or substantially exclusively for the benefit of the Shareholders requesting the same, the cost thereof shall be assessed exclusively such requesting Shareholders in such proportions as they jointly approve or, if they are unable to agree thereon, in such proportions as may be determined by the Board.

Section 7.10. Additions, Alterations or Improvements by the Shareholders. No Shareholder shall make any structural addition, alteration or improvement in or to his Apartment, or any addition, alteration or improvement in or to any mechanical, electrical, plumbing or other system, without the prior written consent of the Board of Directors. No Shareholder shall paint or alter the exterior of his Apartment, including (without limitation) the doors and windows thereof, nor shall any Shareholder paint or alter any Common Element, without the prior written consent of the Board. The Board shall answer any written request by a Shareholder for approval of a proposed structural addition, alteration or improvement to such Shareholder's Apartment within sixty (60) days after receipt of such request. If any application to any governmental authority for a permit to make any such addition, alteration or improvement in or to any Apartment requires execution by or on behalf of the Corporation, and provided consent has been given by the Board, then the application shall be executed on behalf of the Corporation only by the President or such other Officer as the Board may by resolution designate, without, however, incurring any liability on the part of the Corporation or any Officer(s) to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any Person having claim for personal injury or property damage arising therefrom. Subject to the approval of the Board and the Proprietary Lessee(s) of the affected Apartment(s), any Apartment may be subdivided or the boundaries between adjoining Apartments may be relocated, in either of which cases the Corporation and the Proprietary Lessee(s) involved shall execute (a) new Proprietary Lease(s) for the resulting Apartment(s).

Section 7.11. Execution of Documents. All agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures or obligations shall be executed by the President, the Treasurer, or by any other Officer(s) designated from time to time by resolutions of the Board of Directors. The Board may require that instruments involving more than a specified amount of money be signed by two different Officers. The Board may authorize instruments involving less than a specified amount of money to be signed by Persons designated by the Managing Agent.

Section 7.12. Restrictions on Use of Apartments and Common Elements.

(a) Each Apartment and each Common Element shall be used for residential purposes only, except that (i) the Board of Directors may permit reasonable, temporary, non-residential uses in designated Apartments and/or Common Elements from time to time, and (ii) the Sponsor shall have the right to use any Apartments for which no Proprietary Leases have been issued or for which it holds the Proprietary Leases as sales offices or model units, and to use the Common Elements for sales purposes, including (without limitation) the posting of signs.

(b) Nothing shall be done or kept in any Apartment or in the Common Elements which will increase the rate of insurance for the Building except pursuant to a prior resolution of the Board of Directors. No Shareholder shall permit anything to be done or kept in his Apartment or in the Common Elements which could result in the cancellation of insurance on the Building or any part thereof, or which would be in violation of any applicable law, ordinance, or other governmental regulation. No waste shall be committed in any Apartment or in the Common Elements.

(c) No improper, offensive or unlawful use shall be made of any Apartment or other part of the Building, and all

applicable laws, ordinances and other governmental regulations shall be complied with by and at the sole expense of the Shareholder(s) and/or the Corporation having responsibility for Upkeep of the affected portion(s) of the Building.

(d) The Common Elements shall be used only for the furnishing of the services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the Apartments.

(e) No Person shall obstruct any of the Common Elements, nor shall any Person store anything upon any of the Common Elements except within any areas designated for such storage by resolution of the Board of Directors. Nothing shall be constructed or altered in, or removed from, the Common Elements except in accordance with the Rules and Regulations or other resolutions of the Board of Directors.

(f) No Apartment shall be rented or leased for transient or hotel purposes or in any event for an initial period of less than six (6) months. No portion of any Apartment (other than the entire Apartment) shall be rented or leased for any period. No Shareholder shall rent or lease an Apartment other than on a written form of lease providing that failure of the lessee to comply with the Governing Documents shall constitute a default under the lease and that, in the event of such default, the Board of Directors or any Officer designated by the Board shall have the power as attorney-in-fact for the Shareholder to terminate the lease and bring summary eviction proceedings against the tenant if such default is not cured within seven (7) days of sending written notice of the default to the Shareholder. The Board of Directors may provide a suggested standard form lease for use by Shareholders. Each Shareholder shall, promptly following the execution of any lease of an Apartment, forward a conformed copy thereof to the Secretary. The provisions of this subsection, except the restriction against use for hotel or transient purposes and the restriction against renting or leasing a portion of an Apartment, shall not apply to the Sponsor or to a Mortgagee in possession of an Apartment as a result of foreclosure or deed or assignment in lieu of foreclosure.

(g) Except for such signs as may be posted by the Sponsor while the Sponsor is a Shareholder, no signs shall be posted in any place within the Building visible from any interior or exterior portion of the Common Elements except pursuant to a prior resolution of the Board of Directors.

Section 7.13. Right of Access. There is hereby reserved a right of access through each Apartment for the benefit of the Board of Directors, the Managing Agent, any Person(s) authorized by the Board or the Managing Agent, and any group of the foregoing, for the purpose of enabling the exercise and discharge of their and the Corporation's powers and duties, including (without limitation) making inspections, correcting any condition originating in an Apartment and threatening another Apartment or any Common Element, Upkeep of the Common Elements within an Apartment or elsewhere in the Building, and correcting any condition which violates any provision of the Governing Documents or of any mortgage or deed of trust encumbering all of the Apartments. Requests for entry shall be made in advance, and any such entry shall be made at a time reasonably convenient to the Shareholder, provided, however, that in case of an emergency such right of entry shall be immediate, whether the Shareholder is present at the time or not, and no notice or permission shall be necessary.

ARTICLE 8

Insurance

Section 8.1. Authority to Purchase. (a) Except as otherwise provided in the Bylaws of River Place Owners' Association or in Section 8.5 of these Bylaws, all insurance policies relating to the Building shall be purchased by or on behalf of the Corporation. Neither the Corporation, any Officer(s), the Managing Agent, nor the Sponsor shall be liable for failure to obtain any coverages required by this Article if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at demonstrably unreasonable cost. The Secretary shall promptly furnish to each Shareholder written notice of the procurement, subsequent changes in, and the termination of all insurance coverage obtained on behalf of the Corporation.

(b) Each such policy shall provide, to the extent reasonably available at reasonable rates, that:

(1) the insurer waives any right to claim by way of subrogation against the Sponsor, the Corporation, the Officers, the Managing Agent, the Shareholders, and their respective agents, employees and invitees, and, in the case of the Shareholders, the members of their households;

(2) such policy shall not be cancelled, invalidated or suspended due to the conduct of any Officer(s), Shareholder(s), Managing Agent, or any invitee, agent, officer, or employee of any of the foregoing without a prior demand in writing to the Board of Directors or the Managing Agent (whichever is applicable) that the defect be cured, followed by failure to so cure the defect within sixty (60) days after such demand;

(3) such policy shall not be cancelled or substantially modified for any reason (including nonpayment of premium) without at least sixty (60) days prior written notice to the Board of Directors and the Managing Agent; and

(4) such policy covers the interests of the Corporation, the Board of Directors, and all Shareholders and Mortgagees, as their interests may appear. For the purposes of this Article 8, "Mortgagee" has the meaning set forth in Section 1.1(13) of the Bylaws of River Place Owners' Association.

(c) All policies of insurance shall be written by reputable companies licensed to do business in the Commonwealth of Virginia.

Section 8.2. Physical Damage Insurance. (a) The Board of Directors shall obtain and maintain a blanket, "all-risk" form policy of fire insurance with extended coverage, vandalism, malicious mischief, windstorm, debris removal, cost of demolition and water damage endorsements, insuring all of the Apartments and the bathroom and kitchen fixtures, service machinery, and other appliances and apparatuses installed therein by the Sponsor, and all of the Common Element improvements (other than improvements and other items not normally insured). Such insurance shall cover the interests of the Corporation, the Board of Directors and all Shareholders, as their interests may appear (subject, however, to the loss payment and adjustment provisions in favor of the Board of Directors as Insurance Trustee contained in Sections 8.6 and 8.7 of these Bylaws), and shall be in an amount equal to one hundred percent (100%) of the then current replacement cost of the Building (exclusive of foundations and other items normally excluded from such coverage), without deduction for depreciation, such amount to be determined annually by the Board of Directors with the assistance of the Managing Agent, the insurance company affording such coverage, and (if the Board so resolves) a qualified appraiser of real estate.

(b) Such policy shall also provide:

(1) a waiver of any right of the insurer to repair, rebuild or replace any damage or destruction if a decision is made pursuant to Section 9.5 of these Bylaws not to do so and, in such event, that the insurer shall pay on the basis of the agreed amount endorsement;

(2) the following endorsements (or equivalent): (i) "no control" (to the effect that coverage shall not be prejudiced by any act or neglect of any Shareholder, occupant, or other Person if such act or neglect is not within the control of the insured, nor by any failure of the insured or any other Person to comply with any warranty or condition concerning any portion of the Building not controlled by the insured); (ii) "contingent liability from operation of building laws or codes"; (iii) "increased cost of construction" or "cooperative replacement cost"; and (iv) "agreed amount" or elimination of co-insurance clause;

(3) that any "no other insurance" clause excludes individual Shareholders' policies from its operation so that the physical damage policy purchased on behalf of the Corporation shall be deemed primary coverage and any individual Shareholders' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained on behalf of the Corporation hereunder be brought into contribution with insurance purchased by individual Shareholders or their Mortgagees unless otherwise required by law; and

(4) that a duplicate original of such policy, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums, shall be delivered by the insurer to any Mortgagee whose request therefor is received by the insurer at least thirty (30) days prior to expiration of the then current policy.

Section 8.3. Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability insurance (including without limitation coverage of all Officers against libel, slander, false arrest, invasion of privacy, and errors and omissions) and property damage insurance in such limits as the Board may from time to time determine, insuring the Corporation, each Officer, the Managing Agent, each Shareholder and the Sponsor against any liability to the public or to the Shareholders (and their invitees, agents, employees and members of their households) arising out of or incident to the ownership and/or use of the Building. Such insurance shall be issued on a comprehensive liability basis and shall contain: (i) a cross liability endorsement under which the rights of a named insured shall not be prejudiced with respect to his action against another named insured; (ii) hired and non-owned vehicle coverage; (iii) host liquor liability coverage with respect to events sponsored by the Corporation; (iv) deletion of the normal products exclusion with respect to events sponsored by the Corporation; and (v) a "severability of interest" endorsement which shall preclude the insurer from denying liability to a Shareholder because of negligent acts or omissions of the Corporation, any Officer(s), or any other Shareholder(s). The Board shall review such limits once a year, but in no event shall such insurance be less than One Million Dollars (\$1,000,000.00) covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained in an amount not less than Three Million Dollars (\$3,000,000.00).

Section 8.4. Other Insurance. The Board of Directors shall obtain and maintain:

(a) adequate fidelity coverage to protect against dishonest acts on the part of Officers, agents and employees of the Corporation and all others who handle or are responsible for handling funds of the Corporation. Such fidelity bonds shall: (i) name the Corporation as an obligee; (ii) be written in an amount not less than one-half (1/2) of the total annual assessments for Common Expenses for the then current fiscal year; and (iii) contain waivers of any defense based upon the exclusion of Persons who serve without compensation from any definition of "employee" or similar expression;

(b) if required by any governmental or quasi-governmental agency, flood insurance in accordance with the then applicable regulations of such agency;

(c) workmen's compensation insurance if and to the extent necessary to meet the requirements of law;

(d) such other insurance as the Board of Directors may determine or as may be required from time to time by resolutions of the Corporation.

Section B.5. Separate Insurance. Each Shareholder shall have the right, at his own expense, to obtain insurance for his own Apartment and for his own benefit, including insurance coverage on his personal property, for his personal liability, and on any improvements made by him to his Apartment under coverage normally called "tenant's improvements and betterments coverage;" provided, however, that no Shareholder shall acquire or maintain insurance coverage so as to decrease the amount which the Corporation may realize under any insurance policy, or to cause any insurance coverage in favor of the Corporation to be brought into contribution with insurance coverage obtained by a Shareholder. All policies obtained by Shareholders individually shall contain waivers of subrogation. No Shareholder shall obtain separate insurance on the Building except as provided in this Section.

Section B.6. Insurance Trustee. All physical damage insurance policies purchased by or on behalf of the Corporation shall be for the benefit of the Corporation and the Shareholders, as their respective interests may appear, and shall provide that all proceeds of such policies shall be paid in trust to the Board of Directors as Insurance Trustee to be applied pursuant to the terms of Article 9 of these Bylaws. The sole duty of the Board of Directors as Insurance Trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes stated in Article 9 of these Bylaws, for the benefit of the insureds and their beneficiaries thereunder.

Section B.7. Board of Directors as Agent. The Board of Directors as Insurance Trustee is hereby irrevocably constituted as agent for the Corporation, each Shareholder, other named insureds and their beneficiaries, and any other holder of a lien or other interest in the Building, to adjust and settle all claims arising under insurance policies purchased by the Board and to execute and deliver releases upon the payment of claims.

ARTICLE 9

Repair and Reconstruction After Fire or Other Casualty

Section 9.1. When Repair and Reconstruction are Required. Except as otherwise provided in Section 9.5 of these Bylaws, in the event of damage to the Building as a result of fire or other casualty, the Board of Directors shall arrange for

and supervise the prompt repair and restoration thereof, including any damaged Apartments and everything installed therein by the Sponsor but not including anything installed in any Apartment by any Shareholder other than the Sponsor. Any such repair and restoration shall be substantially in accordance with the original construction and installation, subject to any modifications required by changes in applicable laws, ordinances, and other governmental regulations, and using to the extent feasible such contemporary materials and technology as may then be available. Notwithstanding the foregoing, each Shareholder shall have the right to supervise the redecorating of his own Apartment.

Section 9.2. Cost Estimates. Immediately after a fire or other casualty causing damage to the Building, the Board of Directors shall obtain reliable and detailed estimates of the costs of the repair and restoration contemplated by Section 9.1 of these Bylaws to a condition as good as that existing before such casualty. Such costs shall include professional fees and premiums for such bonds as the Board of Directors as Insurance Trustee may determine to be necessary.

Section 9.3. Insufficiency of Insurance Proceeds. If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair the insurance proceeds are insufficient for the payment of the costs thereof, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve for replacements and/or a special assessment therefor may be levied, as the Board of Directors shall decide.

Section 9.4. Disbursements of Construction Funds.

(a) Construction Fund and Disbursement Thereof. Any proceeds of insurance collected on account of any casualty, any sums appropriated by the Board of Directors from reserves, and any sums received from collections of special assessments on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of repair and reconstruction in the following manner:

(1) If the estimated cost of reconstruction and repair is less than Forty Thousand Dollars (\$40,000.00), the construction fund shall be disbursed in payment of such costs upon resolutions of the Board of Directors.

(2) If the estimated cost of reconstruction and repair is Forty Thousand Dollars (\$40,000.00) or more, then the construction fund shall be disbursed in payment of such costs upon resolutions of the Board following or contingent upon approval of an architect qualified to practice in Virginia and employed by the Board to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other Persons who have rendered services or furnished materials in connection with the work, and stating that: (i) the sums requested in payment are justly due and owing to the Persons requesting them, and such sums do not exceed the value of the services and materials furnished; (ii) there is no other outstanding indebtedness known to such architect for the services and materials described; and (iii) the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the requested sums.

(b) Surplus. If there is a balance in the construction fund after the payment of all of the costs of the repair and reconstruction for which the construction fund is established, such balance shall be credited to all Shareholders in proportion to the number of shares owned by each against their respective liabilities for assessments then due or thereafter becoming due.

(c) Priority of Common Elements Over Apartments. If the damage is to both Common Elements and Apartments, the construction fund shall be applied first to the cost of repairing those portions of the Common Elements which enclose and service the Apartments, then to the cost of repairing the other Common Elements, and thereafter to the cost of repairing the Apartments.

(d) Certificate. The Board of Directors as Insurance Trustee shall be entitled to rely upon a certificate executed by the President or Vice President, and the Secretary, certifying: (1) whether the damaged property is required to be repaired or reconstructed; (2) the name of the payee and the amount to be paid with respect to each disbursement from the construction fund; and (3) all other matters concerning the holding and disbursing of any construction fund. Any such certificate shall be delivered to the Board of Directors as Insurance Trustee promptly upon request.

Section 9.5. When Repair or Reconstruction Is Not Required. If the Board of Directors resolves not to repair insubstantial damage to the Common Elements, the Board of Directors shall cause to be removed all debris, with the site of the damage restored to a condition compatible to the extent feasible with the remainder of the Building, and the balance of any insurance proceeds received on account of such damage shall be credited to all Shareholders in proportion to the number of shares owned by each against their respective liabilities for assessments then due or thereafter becoming due.

ARTICLE 10

Proprietary Leases

✓ Section 10.1. Form of Lease. The Board of Directors shall adopt a form of Proprietary Lease to be used by the Corporation for the leasing to Shareholders of all Apartments. Subject to the other provisions of these Bylaws, such Proprietary Leases shall be on such terms and shall contain such conditions, covenants, restrictions and other provisions as the Board may determine. After a Proprietary Lease in the form so adopted by the Board shall have been executed and delivered by the Corporation, all Proprietary Leases subsequently executed and delivered shall be the same (except with respect to the statement as to the number of shares owned by the lessee), unless variations for subsequent use are approved by the holders of a majority of the outstanding shares of stock of the Corporation.

Section 10.2. Allocation of Shares. The Board of Directors shall allocate to each Apartment to be leased to Shareholders under Proprietary Leases the number of shares of the Corporation that must be owned by the Proprietary Lessee of such Apartment.

Section 10.3. Regrouping of Space. The Board of Directors, upon the written request of the owner or owners of one or more Proprietary Leases covering one or more Apartments and of the shares issued in connection with the same, may in its discretion, at any time, permit such owner or owners, at his or their own expense, to subdivide or combine all or any portions of any such Apartment or Apartments into one or any desired number of

Apartments and to reallocate the shares issued to accompany the Proprietary Leases, in such proportions as such owners request and the Board approves, provided only that (a) the total number of the shares so reallocated is not less than the shares previously allocated, and (b) the Proprietary Leases so affected and the accompanying share certificates are surrendered, and that there are executed and delivered in place thereof, respectively, a new Proprietary Lease for each Apartment so created and a new share certificate for the number of shares so reallocated to each such new Proprietary Lease. The reallocation of shares shall be based on the fair market value of the equity in the Building attributable to the subdivided or combined Apartment(s), but in any event, the total number of shares so reallocated shall remain the same. Notwithstanding any other provision of this Section, the consent of the Managing Agent rather than the Board of Directors shall alone be required for any such subdivision or combination and reallocation in the case of Apartments as to which the Sponsor owns the allocable shares.

Section 10.4. Lost Proprietary Leases. In the event that any Proprietary Lease is lost, stolen, destroyed or mutilated, the Board of Directors may authorize the issuance of a new Proprietary Lease in lieu thereof, in the same form and with the same conditions, covenants, restrictions and other provisions. The Board may, in its discretion, before the issuance of such new Proprietary Lease, require the owner of the lost, stolen, destroyed, or mutilated Proprietary Lease, or the legal representative of the owner, to make an affidavit or affirmation setting forth such facts as to the loss, destruction, or mutilation as it deems necessary, and to give the Corporation a bond in such reasonable sum as it directs, to indemnify the Corporation.

ARTICLE 11

Corporate Shares

Section 11.1. Share Certificates. Certificates for the shares of the Corporation shall be in the form prescribed by the Board of Directors, and shall be signed by the President or Vice President and by the Secretary or an Assistant Secretary and shall be numbered in the order in which issued. Certificates shall be bound in a book and issued in consecutive order therefrom, and in the margin or stub thereof shall be entered the name of the Person owning the shares therein represented, the number of shares, and the date of issue. Each certificate exchanged or returned to the Corporation shall be cancelled, and the date of cancellation shall be indicated thereon by the Secretary and such certificate shall be immediately pasted in the certificate book opposite the memorandum of its issue.

Section 11.2. Transfer of Shares. Transfer of shares shall be made only upon the books of the Corporation by the Shareholder in person or by power of attorney, duly executed and witnessed and filed with the Secretary, and only on the surrender of the certificate of such shares; except that shares sold by the Corporation to satisfy any lien which it holds thereon may be transferred without the surrender of such certificate. No transfer of shares shall be valid as against the Corporation, its Shareholders or its creditors for any purpose until it shall have been entered in the stock transfer books by an entry showing from whom and to whom transferred. Any valid transfer of shares shall entitle the transferee thereof to a Proprietary Lease of the Apartment to which such shares are allocated.

Section 11.3. Restriction on Transfer of Shares. Each Shareholder shall be entitled to assign, transfer or otherwise dispose of his interest as a Shareholder in the Corporation only in conformity with the following rules: (1) except as contemplated by Section 10.3 of these Bylaws, shares and the Proprietary Lease associated with such shares cannot be separated or otherwise divided and can be assigned, transferred or otherwise disposed of only as a single unit; and (2) shares and a Proprietary Lease associated with such shares shall not be transferred, assigned or otherwise disposed of without the prior written consent of the Board of Directors (or its duly authorized representative), which consent shall be denied only if the Board of Directors (or its representative) determines that the proposed assignee, if not a natural person, would jeopardize the Corporation's status as a cooperative housing corporation under Section 216 of the Internal Revenue Code of 1954 as amended from time to time.

Section 11.4. Fees on Transfer or Reallocation of Shares. The Board of Directors shall have authority to fix by resolution and to collect, before any transfer of a Proprietary Lease or any reallocation of shares takes effect, the Corporation's expenses and attorneys' fees in connection with such proposed assignment or reallocation, or both, as the case may be.

ARTICLE 12

Compliance and Default

Section 12.1. Relief. Each Shareholder shall comply with all provisions of the Governing Documents as any of the same may be amended from time to time. In the event of any lack of such compliance, the Corporation, acting on its own behalf or through any of its Officers or the Managing Agent, shall be entitled to the following relief:

(a) Additional Liability. Each Shareholder shall be liable for the expense of all Upkeep by the Corporation rendered necessary by his act, neglect or carelessness or the act, neglect or carelessness of any member of his family or any of his employees, agents or licensees, but only to the extent that such expense is not covered by the proceeds of insurance maintained by or on behalf of the Corporation. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy or abandonment of any Apartment or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation. Each Shareholder shall also be liable for all expenses incurred by the Corporation in bringing eviction proceedings against such Shareholder's tenant(s) pursuant to Section 7.12(f) of these Bylaws.

(b) Costs and Attorney's Fees. In any proceeding arising out of any alleged default by a Shareholder, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be determined by the court.

(c) No Waiver of Rights. The failure of the Corporation, any Officer(s), or any Shareholder(s) to enforce any provision of the Governing Documents shall not constitute a waiver of the right of the Corporation, any Officer, or any Shareholder to enforce such provision in the future. All rights, remedies and privileges granted to the Corporation, any Officer(s), or any Shareholder(s) pursuant to any provision of the Governing

Documents shall be deemed to be cumulative, and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the Person(s) exercising the same from exercising such other rights, remedies and privileges as may be granted to such Person(s) by the Governing Documents or by law.

(d) Interest and Late Charges. If a Shareholder fails to pay in full any assessment for a period in excess of fifteen (15) days from the due date, the principal amount unpaid shall bear interest from the date due until paid at the rate of eighteen percent (18%) per annum or at such other lawful rate as may be fixed from time to time by resolutions of the Board of Directors. Except as otherwise determined by resolution of the Board, any assessment or installment thereof not paid within five (5) days after becoming due shall accrue a late charge in the amount of Fifteen Dollars (\$15.00) or such other amount as may be established from time to time by resolution of the Board of Directors. Interest and late charges imposed pursuant to this subsection shall be treated as assessments for the purposes of this Article.

(e) Abating Violations Within Apartments. Any violation of any provision of the Governing Documents shall give the Corporation, the Board of Directors, the Managing Agent, any Person(s) authorized by the Board or the Managing Agent, and any group of the foregoing, the right, in accordance with Section 7.13 of these Bylaws, to enter the Apartment in which, or as to which, such violation exists and summarily to abate and remove, at the expense of the Proprietary Lessee thereof, any condition that may exist therein constituting such a violation.

(f) Legal Proceedings. Violation of any provision of the Governing Documents shall be grounds for relief, including (without limitation) an action or suit: (i) to recover any sums due, (ii) for damages, (iii) for injunctive relief, (iv) to foreclose the lien for assessments, (v) any other relief provided for by the Governing Documents, (vi) for any other remedy available at law or in equity and (vii) for any combination of any of the foregoing; all of which relief may be sought by the Corporation, any Officer(s), the Managing Agent and in any appropriate case, by any aggrieved Shareholder(s), and shall not constitute an election of remedies.

Section 12.2. Lien for Assessments.

(a) Every assessment made against shares or the Shareholder thereof pursuant to these Bylaws is a lien against those shares, which lien shall be effective as of the date such assessment is made. Any Officer or the Managing Agent may file or record such other or further notice of such lien or such other document with respect thereto as may be required by law to confirm the establishment and priority of such lien. The lien created by this subsection shall be prior to all liens and encumbrances recorded after the effective date thereof except for any Mortgage as the term "Mortgage" is defined in Section 1.1(12) of the Declaration of Covenants, Easements and Liens for River Place.

(b) In any case where an assessment against a Shareholder is payable in installments, upon a default by such Shareholder in the timely payment of any two (2) installments, the maturity of the remaining total of the unpaid installments of such assessments may be accelerated at the option of the Board of Directors, and the entire balance of that assessment may thereupon be declared due and payable in full by the service of notice to that effect upon the defaulting Shareholder by any Officer or by the Managing Agent.

(c) The lien for assessments may be enforced and foreclosed in any manner provided by law by any proceeding in the name of the Corporation, or by any Officer(s) or the Managing Agent acting on behalf of the Corporation. During the pendency of such proceeding the Shareholder shall be charged by the Corporation with a reasonable rental for the Apartment for the period from the initiation of such proceeding until satisfaction of or sale pursuant to any judgment or order obtained in such proceeding. The plaintiff in such proceeding shall have the right to the appointment of a receiver if available under law.

ARTICLE 13

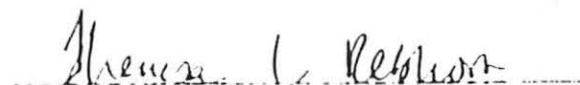
Miscellaneous


Section 13.1. Notices. All notices, demands, requests, bills, statements or other communications contemplated by these Bylaws shall be in writing and shall be deemed to have been duly given or served when delivered personally or deposited in the United States mail, postage prepaid, or, if notification is of a default or lien, sent by registered or certified United States mail, return receipt requested, postage prepaid (i) if to a Shareholder, at the address which appears on the stock transfer books of the Corporation, or (ii) if to the Corporation the Board of Directors or to the Managing Agent, at the principal office of the Managing Agent or at such other address as shall be designated by notice in writing to the Shareholders pursuant to this Section.

Section 13.2. Method of Amendment. These Bylaws may be amended at any meeting of the Shareholders provided that the proposed amendment has been inserted in the notice of meeting or that all of the Shareholders are present in person or by proxy. These Bylaws may also be amended at any meeting of the Board of Directors provided that the proposed amendment has been inserted in the notice of the meeting and provided at least two-thirds (2/3) of the total number of Directors shall be present at such meeting. Any amendment adopted by the Board may at any time be rescinded, repealed, or amended by the Shareholders. Notwithstanding the foregoing, the real estate owned by the Corporation shall not be subjected to a mortgage or deed of trust without the consent of the holders of ninety percent (90%) of the issued and outstanding shares of the Corporation; nor may this Section be amended without such consent.

WE, the initial Directors of the Corporation, joined by all of the Shareholders thereof, have adopted these Bylaws this 10th day of May, 1982 as evidenced by our signatures hereto.


Richard L. Poore


Theresa L. Rebhorn


Steven K. Lueken

MONUMENT ASSOCIATES

By *[Signature]* General Partner

By *[Signature]*
President

EXHIBIT C

DECLARATION OF COVENANTS, EASEMENTS AND LIENS
FOR RIVER PLACE

THIS DECLARATION is made this 10th day of May, 1981, by Monument Associates, a Virginia general partnership hereinafter referred to as "Sponsor", by River Place North Housing Corporation, a Virginia stock corporation, by River Place East Housing Corporation, a Virginia stock corporation, by River Place South Housing Corporation, a Virginia stock corporation, and by River Place West Housing Corporation, a Virginia stock corporation.

WHEREAS, the parties aforesaid own a leasehold estate (or estate for years) or a fee simple estate in the various parcels of real estate shown on the plat and plans recorded as Exhibits A and B hereto and have decided to subject all of that real estate to certain covenants, restrictions, reservations, easements, servitudes, liens and charges, as more particularly hereinafter set forth.

NOW, THEREFORE, Sponsor and the aforementioned Housing Corporations hereby covenant and declare, on behalf of themselves and their successors and assigns, that the said real estate, from the date of the recording of this Declaration until December 20, 2052 (or, in the case of the portion of the said real estate as to which the Sponsor owns a leasehold estate or estate for years expiring on December 31, 1998, until that date with respect to that portion) shall be held, conveyed, acquired and encumbered subject to the provisions hereof, all of which shall run with the land and bind and inure to the benefit of all persons who may, during such term, now or hereafter own or acquire any right, title, estate or interest in or to the said real estate or occupy or reside on any portion thereof.

ARTICLE I

INTERPRETIVE PROVISIONS

Section 1.1. Definitions. In this Declaration:

(1) "Apartment" means a portion of a Building designed for individual occupancy as a residence and includes any patio, balcony or terrace designed to serve that residence exclusively.

(2) "Articles of Incorporation" mean the Articles of Incorporation of the Association.

(3) "Association" means River Place Owners' Association, a nonstock corporation organized under the laws of the Commonwealth of Virginia.

(4) "Association Documents" means this Declaration and the Articles of Incorporation, Bylaws, and Rules and Regulations of the Association, all as the same may be amended from time to time.

(5) "Board of Directors" or "Board" means the Board of Directors of the Association, and the terms "Director" and "Directors" refer to members of that Board.

(6) "Building" means any of the four (4) numbered buildings designated as such on Exhibit A hereto, including the items attached to or serving such a building and excluded from the Common Area.

(7) "Bylaws" means the Bylaws of the Association."

(8) "Commercial Structures" means all existing or proposed structures designated as such on Exhibit A hereto, including the items attached to or serving such structures and excluded from the Common Area.

(9) "Common Area" means all of the Property except the Buildings and the Commercial Structures and any canopies, patios, balconies, terraces, conduits and other fixtures attached to or exclusively serving one Building or Commercial Structure, but including, nevertheless, any portions of any Building designated as Common Area on Exhibit B hereto.

(10) "Common Expenses" means expenditures by or financial obligations of the Association, together with allocations to reserves.

(11) "Housing Corporation" means an Owner incorporated for the primary purpose of providing homes for its shareholders by leasing to them Apartments in one or more of the Buildings.

(12) "Mortgage" means a first mortgage, or first deed of trust, on a Proprietary Lease, together with a security interest in a pledge of shares in a Housing Corporation, securing an institutional lender.

(13) "Officer" means a Director or Officer of the Association.

(14) "Owner" means, while he or they hold such title or estate, any Person(s) who now or hereafter hold leasehold title (or an estate for years) in or to any portion of the Property, provided such estate or interest is not scheduled to expire before December 20, 2052 (or December 31, 1998 in the case of any portion within the area designated "3-A" on Exhibit A hereto); but the term "Owner" does not mean any Person(s) whose estate or interest exists only by virtue of a Proprietary Lease or an unrecorded contract or is held only as security for the payment or performance of an obligation.

(15) "Parcels" means (i) Building No. I ("Parcel 1"), (ii) Building No. II ("Parcel 2"), (iii) Building No. III ("Parcel 3"), (iv) Building No. IV ("Parcel 4"), (v) the Commercial Structures ("Parcel 5"), and (vi) each of the parking spaces within the Parking Facilities; all of the foregoing being as shown on Exhibit A hereto and (subject to Section 9.4 hereof) on Exhibit B hereto, but excluding at any given time (i) any portion of any Building constituting Common Area, and (ii) any parking spaces as to which no Owner other than the Association has a leasehold interest (or estate for years) extending until December 20, 2052 (or December 31, 1998 in the case of any parking space within the area designated "3-A" on Exhibit A hereto).

(16) "Parking Facilities" means those parking facilities designated as such on Exhibits A and B hereto and the parking spaces shown on the said Exhibit A.

(17) "Parking Space Lease" means a lease from the Sponsor of a parking space within the Property.

(18) "Person" means a natural person, corporation, partnership, trust or other entity.

(19) "Property" means the real estate shown on Exhibit A hereto and includes all improvements and appurtenances thereto now or hereafter existing.

(20) "Proprietary Lease" means a lease of an Apartment from a Housing Corporation to one of its shareholders not scheduled to expire before December 20, 2052.

(21) "Rules and Regulations" means the rules and regulations of the Association.

(22) "Sponsor" means Monument Associates, a Virginia general partnership. From and after the date of recordation of a document assigning to another Person all of the rights reserved to the Sponsor under this Declaration, the term "Sponsor" shall mean that assignee.

(23) "Upkeep" means operation, regulation, care, maintenance, insurance, repair, repainting, remodelling, restoration, improvement, renovation, alteration, replacement and reconstruction.

Section 1.2. Captions. The captions in this Declaration are inserted only as a matter of convenience and for reference, and in no way limit or otherwise affect the scope, meaning or effect of any provision of this Declaration.

Section 1.3. Pronouns. Masculine singular pronouns are used in this Declaration only for convenience and shall be construed to include Persons of any gender or number.

Section 1.4. Severability. Each provision of this Declaration is severable from every other provision hereof, and the invalidity of any one or more provisions of this Declaration shall not change the meaning of or otherwise affect any other provision hereof.

Section 1.5. Conflicts. If there is any conflict between provisions of any leases of any portions of the Property assigned to the Sponsor or assigned or made by the Sponsor to any Owner, this Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association, the Rules and Regulations of the Association, and/or a resolution adopted pursuant to any of

the foregoing, the provisions of the document mentioned in this sentence before the document containing a conflicting provision shall control.

ARTICLE 2

COMMON AREA

Section 2.1. Upkeep. Upkeep of the Common Area shall be the responsibility of the Association, except that Upkeep of any portion of the Common Area located within a Building shall be the responsibility of the Housing Corporation which is the Owner thereof.

Section 2.2. Right of Use and Enjoyment. An easement is hereby created entitling all persons lawfully residing in Parcels 1, 2, 3 and 4 to use and enjoy the Common Area, other than the Parking Facilities. An easement is also hereby created entitling all persons lawfully occupying Parcels 1, 2, 3, 4 and 5, or using any of the Parking Facilities, to use all of the roads and walkways on the Common Area. The easements created by this Section are subject to the right which is hereby granted to the Association, in accordance with its Articles of Incorporation and Bylaws, to:

- (i) regulate the use and enjoyment of the Common Area;
- (ii) suspend the rights granted by this Section in the case of Persons who violate the Rules and Regulations promulgated by the Association, or who occupy or reside on any portion of any Parcel for which an assessment owed to the Association is due but not paid, except that no such suspension shall deny access to any Parcel to any Person lawfully entitled to occupy the same; and
- (iii) dedicate, convey, or otherwise transfer any portion(s) of the Common Area or any easements or other estates or interests therein to any governments or governmental agencies or public utility companies, provided that any such transfer shall be made only after notice to the Owner(s) of the affected Parcel(s).

ARTICLE 3

EASEMENTS

Section 3.1. Encroachments and Support. If any improvement constituting part of or containing any Parcel or part of the Common Area now or hereafter encroaches on any (other) Parcel or on the Common Area by reason of (i) the original construction thereof, (ii) deviations within normal construction tolerances in the Upkeep of any improvements, or (iii) the settling or shifting of any land or improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. To the extent that any land or improvement constituting part of or containing any Parcel or part of the Common Area now or hereafter supports or contributes to the support of any land or improvement constituting part of or containing any (other) Parcel or of the Common Area, the former is hereby burdened with an easement for the support of the latter.

Section 3.2. Easement Reserved to Sponsor. The Sponsor hereby reserves an easement over the Common Area, which easement shall arise upon the conveyance to any other Owner(s) of each of the Parcels, whether or not mentioned in that conveyance, for the purpose of completing the construction of all improvements on the Property now or hereafter contemplated by the Public Offering Statement for any Housing Corporation and for the purpose of placing and maintaining signs anywhere on the Common Area and within the Buildings. To the extent that damage is inflicted on any part of the property in the course of utilizing the easement hereby reserved to the Sponsor, the Sponsor shall be liable for the prompt repair thereof and for the restoration of the same to a condition compatible with the remainder of the Property at such time as all such construction is completed and all such signs are removed.

Section 3.3. Emergency Access. There is hereby granted an easement over the Property for the lawful performance of their functions in the event of emergencies by all police, fire, ambulance and other rescue personnel.

Section 3.4. Easements Required by Governmental Authority.

The right is hereby reserved to the Sponsor and to the Association to grant any easements required by any government or governmental agency over any portion or portions of the Property, including (without limitation) any Parcels of which neither the Sponsor nor the Association is the Owner at the time such easements are granted.

Section 3.5. Utilities. The Property as a whole is hereby made subject to an easement for the provision to any portion or portions of the Property of all utilities, including (without limitation) water, sewers, electricity, gas, telephone, and cable television service. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed, maintained or relocated where initially installed with the permission of the Sponsor, where contemplated on any site plan approved by the Sponsor, or where approved by resolution of the Board of Directors. The right is hereby reserved to the Sponsor and to the Association to grant to any public utility companies easements over and through any portion or portions of the Property, including (without limitation) any Parcels of which neither the Sponsor nor the Association is the Owner at the time such easements are granted.

Section 3.6. Other Easements. Other easements are created by Sections 2.2, 4.2 and 5.1 hereof, and may be created pursuant to Sections 2.2, 3.4 and 3.5 hereof.

ARTICLE 4

UPKEEP OF THE PARCELS

Section 4.1. Responsibility. Each Owner shall be responsible for the Upkeep of his Parcel, except that the Association shall be responsible for the Upkeep of the Parking Facilities. If any Owner shall fail to keep in as good repair and condition as when it was acquired (normal wear and tear excepted) all portions of the Property for the Upkeep of which he is responsible, the Board of Directors or any Architectural Control Committee created pursuant to the Bylaws may, pursuant to resolution, give notice to that Owner of the condition complained of, specifying generally the action to be taken to rectify that condition. If the Owner fails to rectify that condition within thirty (30) days

of the date such notice is given, or such shorter period as may be specified in the notice if the circumstances warrant a shorter period, the Association shall have the right, pursuant to any resolutions adopted by the Board of Directors, to rectify that condition by taking such action (or by causing such action to be taken) as was specified in the notice. The costs incurred by the Association in rectifying that condition, less any amount recovered by the Association pursuant to Section 4.3 hereof, shall be assessed against the Owner in question in accordance with Section 7.5 hereof.

Section 4.2. Easement of the Association. The Association is hereby granted an easement entitling its Directors, officers, agents and employees, and independent contractors hired by or on behalf of the Association, to enter into any Parcel to the extent reasonably necessary to determine whether the Parcel is being kept up as required by this Article and to take any action pursuant to this Article.

Section 4.3. Assignment of Insurance Proceeds. Each Owner covenants and agrees, by his acquisition of leasehold title to a Parcel, that if any insurance proceeds are payable by reason of an event or circumstances causing a condition rectified by the Association pursuant to this Article, those proceeds are hereby assigned to the Association. Each Owner shall, promptly upon request of any Director or officer of the Association, execute such document(s) as may be necessary to effect or confirm such assignment. The amount thereof received by the Association shall be credited against the costs incurred by the Association in rectifying that condition, and any amount in excess of those costs shall be returned by the Association to the Owner.

Section 4.4. Operating Agreements. Notwithstanding any other provision of this Declaration, in the case of any Building which includes areas devoted to retail, office or other commercial use, the terms of any Operating Agreement (however denominated) between the Owners of such Building shall control over any

conflicting provisions of this Declaration as they relate to the rights, liabilities and obligations of those Owners inter se, regardless of whether any such Operating Agreement is entered into before or after the date of this Declaration.

ARTICLE 5

PARTY WALLS

Section 5.1. Applicable Law; Easement. All matters arising in connection with any wall which would constitute a party wall at common law if title lines coincided with the division of Upkeep responsibilities within the Property (such as any wall or portion thereof common to a Building and a garage Parking Facility) shall, to the extent consistent with the provisions of this Article, be treated for the purposes of this Article as a party wall and shall be subject to the common law of Virginia regarding party walls as modified by statute from time to time. In the event the centerline of such a wall should now or hereafter fail to coincide with the boundary between the Parcels it serves, an easement for any resulting encroachment is hereby granted.

Section 5.2. Upkeep. Upkeep of each party wall is the equal responsibility of the Persons responsible for Upkeep of the Parcels it serves, and they shall share equally the cost of its Upkeep, subject to (i) any right of the Association to recover a portion of its half from the Owner contributing the other half under Section 7.4(iii) hereof, and (ii) any right of an Owner to recover a portion of its half from another Owner under an Operating Agreement as contemplated by Section 4.4 hereof. Notwithstanding the foregoing, each Owner is solely responsible for damage to a party wall caused by himself or his invitees, including (without limitation) all persons lawfully occupying or residing on his Parcel. Rights and duties of contribution under this Section and any such rights and duties arising under the law of Virginia shall run with the land and bind the successors in interest of the Person(s) to whom such rights belong and of the

Person(s) from whom such duties are owed, without prejudice to any right of a successor in interest to recover from any of his predecessors in title any amount for which the latter was liable.

Section 5.3. Arbitration. In the event of any dispute concerning a party wall, the dispute shall be submitted by either party to the Board of Directors, the decision of which shall be binding on the affected Owners and their successors in interest.

ARTICLE 6

RESTRICTIONS

Section 6.1. Improvements and Exterior Changes. Except pursuant to and in accordance with a prior resolution of the Board of Directors, or a prior resolution of any Architectural Control Committee created pursuant to the Bylaws, or a permissive provision of the Rules and Regulations, no Person shall do anything which would change the exterior appearance of any portion of the Property, or (without limiting the generality of the foregoing):

1. construct or place any improvement or structure of a temporary character anywhere on the Property;
2. attach or affix any paint, sign, flag, or any other thing whatsoever, to any portion of the Property (except the interior of a Building); or
3. place, keep or store anything on any portion of the Common Area.

Section 6.2. Nuisance. No Person shall cause any unreasonably loud noise anywhere on the Property, nor shall any Person permit or engage in any activity, practice or behavior, for the purpose of causing annoyance, discomfort or disturbance to any Person lawfully present on the Common Area or in any other Parcel, or which would interfere with the enjoyment of the Common Area or of any other Parcel; but this provision shall not be construed as forbidding any work involved in the Upkeep of any portion of the Property so long as such work is undertaken and carried out (i) with the minimum practical disturbance to Persons occupying or

reserves and to pay the administrative costs of the Association, the costs of discharging the Association's powers and duties under this Declaration and the Association Documents, Upkeep costs for the Common Area, and all other costs lawfully incurred or to be incurred by the Association or for which the Association is liable or otherwise responsible. Each Owner shall pay when due such assessments as may be made against him by the Association.

Section 7.2. Annual Assessments. Until the beginning of the fiscal year of the Association following the first conveyance of any of the Parcels to one or more Owners other than the Sponsor, the annual assessment for each Parcel shall be due in equal installments for each Parcel on the date of such conveyance and on the first day of each full month (if any) remaining in that fiscal year. For the fiscal year following the first conveyance of any of the Parcels to one or more Owners other than the Sponsor, and for all fiscal years thereafter, the Association or the Board of Directors shall fix and may change the amount of the annual assessments. Except as provided above for the first fiscal year in which any of the Parcels are conveyed to one or more Owners other than the Sponsor, payment of one-twelfth ($1/12$) of the annual assessment for each Parcel shall be due on the first day of each month of the Association's fiscal year, and such an installment shall be deemed delinquent if not received by the tenth day of the month in which it became due. If a fiscal year begins without the amount of the annual assessments for that year having been fixed, monthly installments shall continue to become due in the same amounts as in the preceding fiscal year, but the amount of the remaining monthly installments becoming due after such time as the amount of the annual assessments for that fiscal year has been fixed shall be adjusted, so that the total of all installments shall equal the total of the annual assessments fixed for that fiscal year.

Section 7.3. Special Assessments. In the event of any actual or anticipated shortage in the funds necessary for reserves and

All Owners shall comply with the requirements imposed by the Association pursuant to items (3) and (4) of Section 3.5(a) of the Bylaws of the Association.

Section 7.5. Extraordinary Assessments. The Association or the Board of Directors shall individually assess an Owner (i) for the amount of any costs incurred by the Association pursuant to Section 4.1 hereof, and (ii) for any costs incurred by the Association because of any violation for which that Owner is responsible under Section 8.1 hereof. Each such assessment shall be due ten (10) days after notice thereof is given to the Owner unless the notice specifies a later date.

Section 7.6. Liability for Assessments. Each Owner shall be personally liable for all assessments against him or his Parcel(s). No Owner may avoid liability for any assessment by waiver, nonuse or abandonment of any right or real estate. The new Owner of a Parcel shall be jointly and severally liable with the former Owner(s) thereof for all unpaid assessments against the former Owner(s) of that Parcel, without prejudice to any right of a successor in interest to recover from any of his predecessors in title any amount for which the latter was liable.

Section 7.7. Nonliability for Assessments. No Person(s) shall have any liability with respect to assessments or installments thereof becoming due as to a particular Parcel after he has ceased to be the Owner thereof.

Section 7.8. Certificate as to Status of Payment. Upon written request of any Owner, the Treasurer of the Association, or such other officer of the Association as the Bylaws may specify, shall issue a dated certificate to that Owner setting forth the amount of any assessments or installments thereof that have become due from that Owner before the date of that certificate but which have not been paid as of the date of that certificate. A reasonable charge may be fixed from time to time by resolution of the Board of Directors for the issuance of such certificates. Notwithstanding any other provision of this Article, a bona fide purchaser of a Parcel

from the Owner to whom such a certificate is issued shall not be liable for any assessments or installments thereof which became due before the date of that certificate and which are not reflected thereon, and the Parcel acquired by that purchaser shall (from the time that purchaser becomes the Owner thereof) be free of the lien created by Section 7.10 hereof to the extent that any such assessments or installments were not so reflected.

Section 7.9. Interest on Assessments. If not paid within ten (10) days after the date it was due, any assessment or installment thereof shall bear interest, from the due date until the date it is fully paid with interest, at the rate of eighteen percent (18%) per annum or at such other lawful rate as may be fixed from time to time by resolution of the Board of Directors for all assessments and installments thereof.

Section 7.10. Lien for Assessments. Each unpaid assessment or installment thereof levied pursuant to this Declaration and/or the Bylaws shall constitute a lien running within the land from the time it becomes due, as shall the interest accruing thereon. Until fully paid and satisfied, the lien shall apply to and shall run with all of the real estate in the Property that was owned, as of the date when payment was due, by the Owner from whom payment was due, and shall also apply to and encumber any and all Parcels thereafter acquired by that Owner from the time he becomes the Owner thereof. The lien created by this Section shall be prior to all liens and encumbrances hereafter recorded except Mortgages.

Section 7.11. Remedies for Nonpayment. If any assessment (or installment thereof) is not paid within ten (10) days after the date it becomes due, an action to foreclose the lien and/or to obtain a personal judgment against the delinquent Owner may be brought at any time by the Association, by the Board of Directors or any member(s) thereof, or by any officer of the Association. The prevailing plaintiff in such an action shall have the right to reimbursement from the delinquent Owner for court costs and reasonable attorneys' fees, and the Association shall be subrogated to such right if it pays or reimburses any such costs and fees to the plaintiff.

ARTICLE 8

APPLICATION, RESPONSIBILITY AND ENFORCEMENT

Section 8.1. Application and Responsibility. The Association Documents are binding upon every Person who is at any time present on any portion of the Property. Each Owner is responsible for any violation of any provision of any Association Document by any Person or animal present on any portion of the Property at or with the express or implied invitation or consent of that Owner (or, if that Owner comprises more than one Person, at or with the express or implied invitation or consent of any one of the Persons comprising that Owner). The class of Persons for whose acts and omissions an Owner is liable under this Section includes, but is not limited to, his lessees, proprietary lessees, and his or their tenants, guests, licensees and invitees. The acts and omissions for which an Owner is responsible under this Section shall be imputed to that Owner and treated as his own acts and omissions for the purposes of the liabilities, obligations and other provisions of the Association Documents.

Section 8.2. Enforcement. The Association, each member of the Board of Directors, and each Owner has the right to enforce by any proceeding at law or in equity every provision of the Association Documents, and to seek and obtain any and all relief which may be appropriate in the circumstances of each case. A prevailing plaintiff in any such proceeding shall be entitled to have his court costs and reasonable attorneys' fees reimbursed by the defendant(s), together with any other reasonable expenses incurred in enforcing this right. Any waiver of or failure to enforce a provision of the Association Documents in any one or more cases shall not affect the validity or enforceability of that provision in any other case, but any Owner against whom such a provision is enforced by the Association or by any Director(s) shall have the right to have that provision enforced with equal rigor against other Owners where unfair discrimination would otherwise result.

ARTICLE 9

MISCELLANEOUS PROVISIONS

Section 9.1. Notice. Where a notice to an Owner is required by any provision of the Association Documents, the notice shall be deemed to have been given when mailed, first class postage paid, to such Owner at the most recent address of that Owner known to the sender. Where an Owner consists of more than one Person, it is the responsibility of the one who receives any such notice to immediately notify the other(s) of its contents.

Section 9.2. Membership in the Association and Notice Thereof. Each Owner, other than the Owner of a parking space in the Parking Facilities, shall be a member of the Association from the time he becomes an Owner until the time he ceases to be an Owner. Each Owner shall give written notice of his acquisition of title to the Secretary of the Association immediately following such acquisition, stating the name(s) and address(es) of the new Owner and the number(s) of the Parcel(s) acquired. If two or more Persons comprise an Owner, they shall collectively constitute only one Member of the Association, but each of them shall be entitled to attend all meetings of the Association.

Section 9.3. No Obligations. Nothing contained herein or in any Association Document shall be deemed to impose on the Sponsor any obligation of any kind to construct or provide any dwellings, other improvements, fixtures, or personal property.

Section 9.4. Amendments. No amendment to this Declaration shall become effective except upon the recordation among the land records of an agreement signed by all of the Persons comprising the Owners of Parcels 1, 2, 3, 4, and 5. Notwithstanding the provisions of the preceding sentence, (i) the Sponsor reserves the right to amend unilaterally any provisions of this Declaration to satisfy the requirements of any government, governmental agency, or governmentally regulated corporation or association which insures or guarantees Mortgages or which purchases Mortgages (or participations in Mortgages) from banks, savings and loan

Associations, or other institutional lenders, (ii) the Sponsor reserves the right to amend Exhibit B to this Declaration as it applies to this Declaration as it applies to any Buildings of which the Sponsor is the Owner at the time of amendment, and (iii) neither this Section nor Section 7.4 hereof may be amended to increase the first two percentages stated in item (ii) of the latter Section without the written consent of the Owners of the parking spaces located on any tax lot on which no Building is located.


Section 9.5. Termination of Declaration. This Declaration shall become void at 11:59 p.m. on December 20, 2052, but any liabilities or obligations accruing before that time shall remain enforceable thereafter, subject only to any applicable statutes of limitation.

IN WITNESS WHEREOF, the Sponsor, River Place North Housing Corporation, and River Place East Housing Corporation have executed this Declaration on the date first written above.

MONUMENT ASSOCIATES
By NF ASSOCIATES 9

By  [SEAL]
Gary H. Nordheimer

By  [SEAL]
Scott A. Nordheimer

By  [SEAL]
Myer Feldman

RIVER PLACE NORTH HOUSING CORPORATION

By  [SEAL]
President

RIVER PLACE EAST HOUSING CORPORATION

By  [SEAL]
President

RIVER PLACE SOUTH HOUSING CORPORATION

By [Signature] (SEAL)
President

RIVER PLACE WEST HOUSING CORPORATION

By [Signature] (SEAL)

STATE OF MARYLAND)
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this 10th day of May, 1982, by Gary H. Nordhelmer, Scott A. Nordhelmer and Myer Feldman, general partners of NF Associates 9, a Virginia limited partnership which is a general partner in Monument Associates, a Virginia general partnership, on behalf of the partnerships.

[Signature] (SEAL)
Notary Public

My commission expires: 7/1/82

STATE OF MARYLAND)
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this 10th day of May, 1982, by Richard L. Poole, President of River Place North Housing Corporation, a Virginia corporation, on behalf of the corporation.

[Signature] (SEAL)
Notary Public

My commission expires: 7/1/82

STATE OF MARYLAND)
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this 10th
day of May, 1982, by Richard L. Poole
President of River Place East Housing Corporation, a Virginia
corporation, on behalf of the corporation.

Barbara H. Morris [SEAL]
Notary Public

My commission expires: 7/1/82

STATE OF MARYLAND)
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this 10th
day of May, 1982, by Richard L. Poole
President of River Place South Housing Corporation, a Virginia
corporation, on behalf of the corporation.

Barbara H. Morris [SEAL]
Notary Public

My commission expires: 7/1/82

STATE OF MARYLAND)
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this 10th
day of May, 1982, by Richard L. Poole
President of River Place West Housing Corporation, a Virginia
corporation, on behalf of the corporation.

Barbara H. Morris [SEAL]
Notary Public

My commission expires: 7/1/82

AMENDMENT TO
DECLARATION OF COVENANTS, EASEMENTS AND LIENS
FOR RIVER PLACE

THIS AMENDMENT is made this 17 day of October, 1981, by Monument Associates, a Virginia general partnership, by River Place North Housing Corporation, a Virginia stock corporation, by River Place East Housing Corporation, a Virginia stock corporation, by River Place South Housing Corporation, a Virginia stock corporation, and by River Place West Housing Corporation, a Virginia stock corporation.

WHEREAS, the parties aforesaid comprise the Owners of Parcels 1,2,3,4 and 5 as defined in the Declaration of Covenants, Easements and Liens for River Place dated and recorded May 10, 1962 in Deed Book 2061 at page 388 et seq. among the land records of the County of Arlington, Virginia; and

WHEREAS, the parties aforesaid have decided to amend Article 7 of the said Declaration to provide in the said Declaration for the collection of certain sums from all of the Owners of River Place by River Place Owners' Association, a Virginia non-stock corporation, as contemplated by the Bylaws of the said Association; and

WHEREAS, the parties aforesaid have also decided to reflect changes in the proposed development plan and proposed parking layout for River Place by amending Sheet 2 of Exhibit A to the said Declaration; and

WHEREAS, the parties aforesaid have also decided to reflect the reconfiguration of certain parking spaces within one of the Parking Facilities and of certain Apartments within one of the Buildings;

NOW, THEREFORE, the said Declaration is hereby amended as follows:

(1) Section 7 of the said Declaration is amended by adding a new Section 7.4:1 as follows:

Section 7.4:1. Assessments for real estate taxes and ground rents. Each Owner is responsible for the timely payment of any real estate taxes and ground rents due with respect to any portion of the Property of which he is the Owner. If any real estate tax or ground rent is due or will become due with respect to any portion of the Property as to which there is more than one Owner, the Board of Directors of the Association shall determine (on the basis of the relative estimated fair market values of the part(s) of such portion held by each such Owner) the share thereof that each such Owner must pay and shall arrange for collection thereof pursuant to Item (4) of Section 3.5(a) of the Bylaws.

(2) Sheet 2 of Exhibit A to the said Declaration is hereby amended as shown on the substitute for that Sheet recorded with this Amendment as an integral part hereof.

(3) The page of Exhibit B to the said Declaration recorded at pages 413, 477 and 478 in the said Deed Book is hereby amended as shown on the substitutes for those pages recorded with this Amendment as an integral part hereof.

IN WITNESS WHEREOF, Monument Associates, River Place North Housing Corporation, River Place East Housing Corporation, River Place South Housing Corporation, and River Place West Housing Corporation have executed this Amendment on the date first written above.

MONUMENT ASSOCIATES
By NF ASSOCIATES 9

By [Signature] (SEAL)
General Partner

RIVER PLACE NORTH HOUSING CORPORATION
By [Signature] (SEAL)
President

RIVER PLACE EAST HOUSING CORPORATION
By [Signature] (SEAL)
President

RIVER PLACE SOUTH HOUSING CORPORATION
By [Signature] (SEAL)
President

RIVER PLACE WEST HOUSING CORPORATION
By [Signature] (SEAL)
President

STATE OF VIRGINIA)
COUNTY OF ARLINGTON)

The foregoing instrument was acknowledged before me this 17
day of August, 1981, by [Signature], a

Elizabeth A. Young [SEAL]
Notary Public

My commission expires: 7/22/27 1996

The foregoing instrument was acknowledged before me this 11 day of January, 1981, by Robert Lee Hester, President of River Place North Housing Corporation, a Virginia corporation, on behalf of the corporation.

Notary Public [SEAL]

My commission expires: 11-24-77

The foregoing instrument was acknowledged before me this day of February, 1982, by James H. [unclear] President of River Place East Housing Corporation, a Virginia corporation, on behalf of the corporation.

Exhibit A [SEAL]

The foregoing instrument was acknowledged before me this 17 day of March, 1982, by Robert W. Lee, President of River Place South Housing Corporation, a Virginia corporation, on behalf of the corporation.

Notary Public (SEAL)

My commission expires: 11-2-71

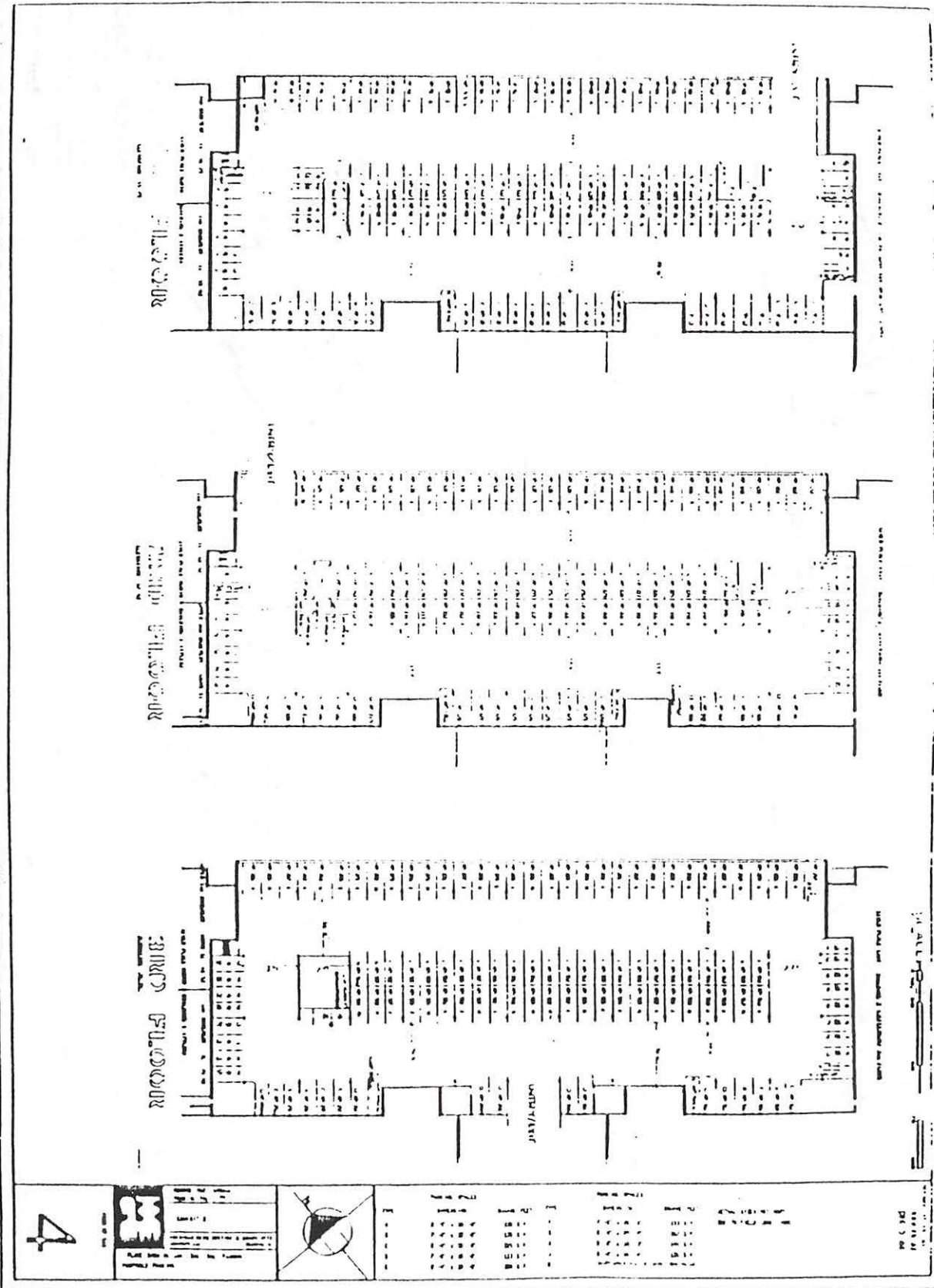
STATE OF VIRGINIA)
)
COUNTY OF ARLINGTON)

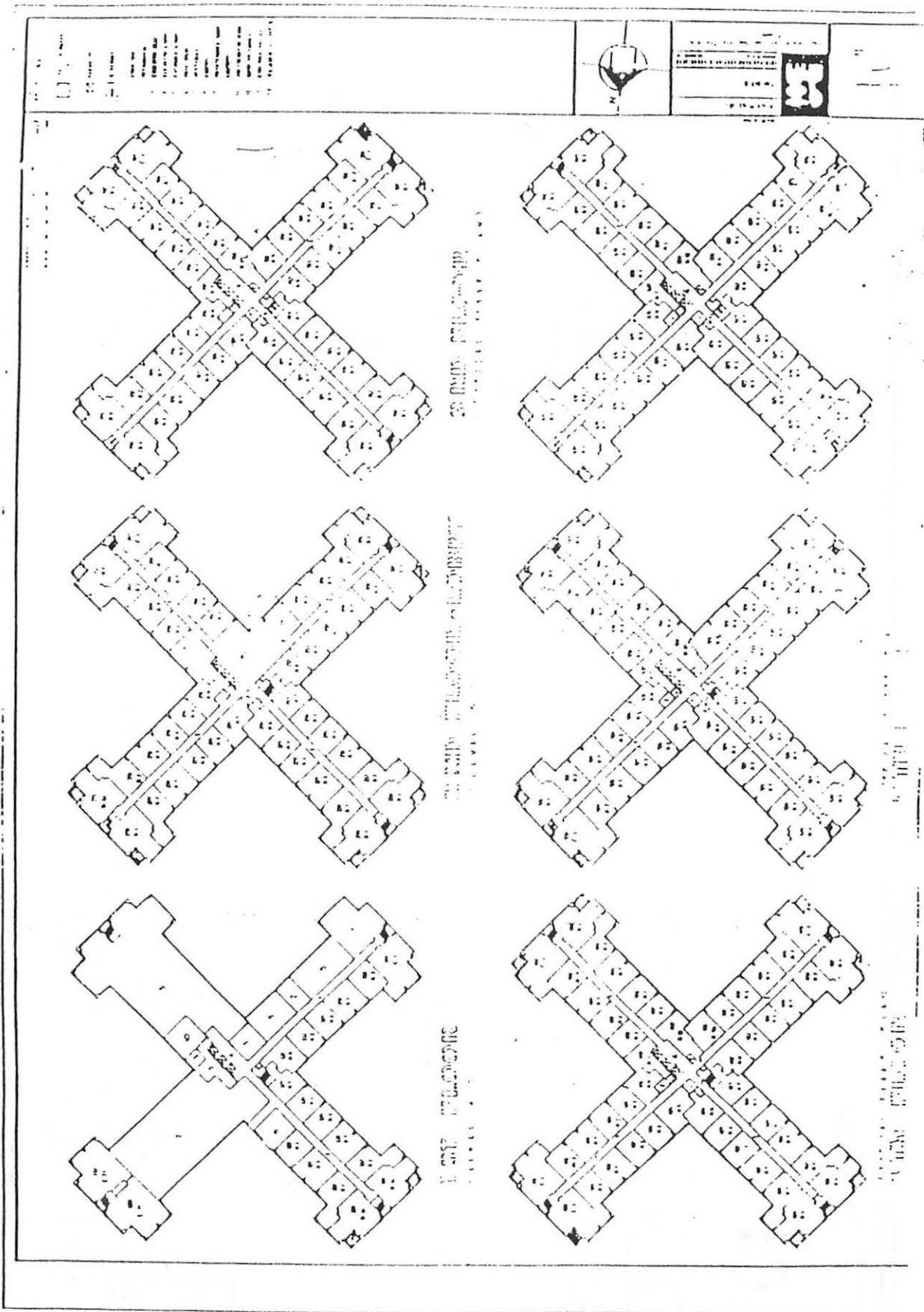
The foregoing instrument was acknowledged before me this 17
day of October, 1988, by Robert L. Smith
President of River Place West Housing Corporation, a Virginia
corporation, on behalf of the corporation.

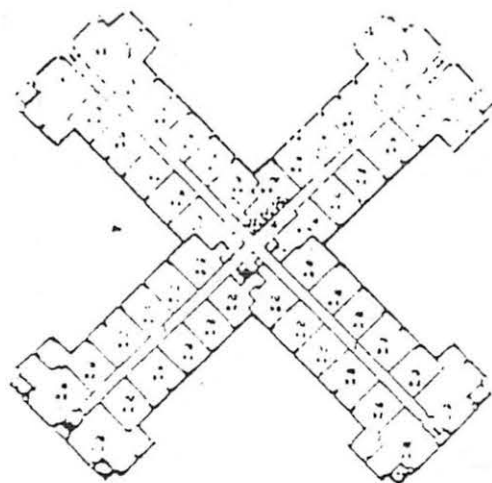
Robert L. Smith [SEAL]
Notary Public

My commission expires: May 11, 1990.

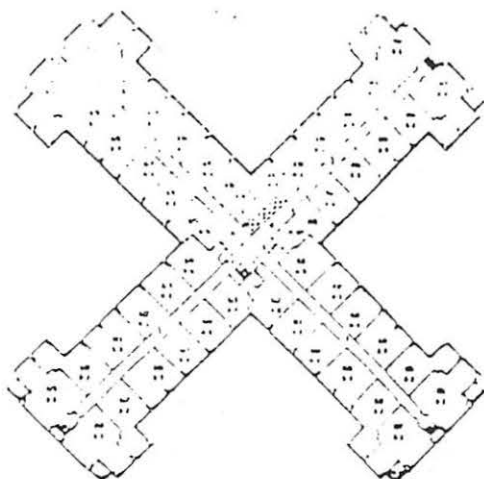




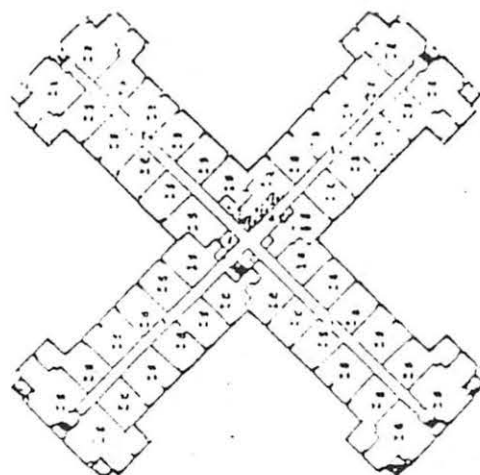




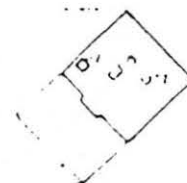
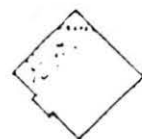
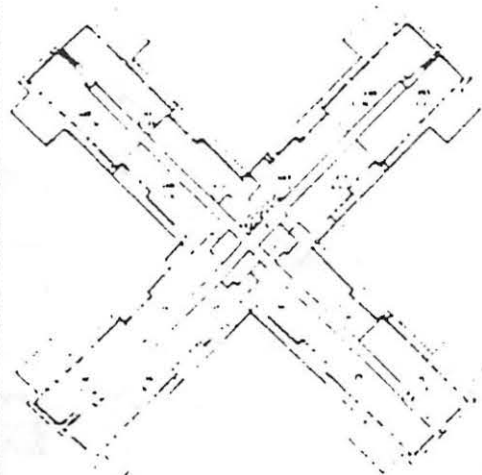
1. **THE UNIVERSITY OF CHICAGO**
 2. **CHICAGO, ILLINOIS 60637**



1970-1971, 1972-1973, 1974-1975, 1976-1977, 1978-1979, 1980-1981, 1982-1983, 1984-1985, 1986-1987, 1988-1989, 1990-1991, 1992-1993, 1994-1995, 1996-1997, 1998-1999, 2000-2001, 2002-2003, 2004-2005, 2006-2007, 2008-2009, 2010-2011, 2012-2013, 2014-2015, 2016-2017, 2018-2019, 2020-2021, 2022-2023, 2024-2025, 2026-2027, 2028-2029, 2030-2031, 2032-2033, 2034-2035, 2036-2037, 2038-2039, 2040-2041, 2042-2043, 2044-2045, 2046-2047, 2048-2049, 2050-2051, 2052-2053, 2054-2055, 2056-2057, 2058-2059, 2060-2061, 2062-2063, 2064-2065, 2066-2067, 2068-2069, 2070-2071, 2072-2073, 2074-2075, 2076-2077, 2078-2079, 2080-2081, 2082-2083, 2084-2085, 2086-2087, 2088-2089, 2090-2091, 2092-2093, 2094-2095, 2096-2097, 2098-2099, 2100-2101, 2102-2103, 2104-2105, 2106-2107, 2108-2109, 2110-2111, 2112-2113, 2114-2115, 2116-2117, 2118-2119, 2120-2121, 2122-2123, 2124-2125, 2126-2127, 2128-2129, 2130-2131, 2132-2133, 2134-2135, 2136-2137, 2138-2139, 2140-2141, 2142-2143, 2144-2145, 2146-2147, 2148-2149, 2150-2151, 2152-2153, 2154-2155, 2156-2157, 2158-2159, 2160-2161, 2162-2163, 2164-2165, 2166-2167, 2168-2169, 2170-2171, 2172-2173, 2174-2175, 2176-2177, 2178-2179, 2180-2181, 2182-2183, 2184-2185, 2186-2187, 2188-2189, 2190-2191, 2192-2193, 2194-2195, 2196-2197, 2198-2199, 2200-2201, 2202-2203, 2204-2205, 2206-2207, 2208-2209, 2210-2211, 2212-2213, 2214-2215, 2216-2217, 2218-2219, 2220-2221, 2222-2223, 2224-2225, 2226-2227, 2228-2229, 2230-2231, 2232-2233, 2234-2235, 2236-2237, 2238-2239, 2240-2241, 2242-2243, 2244-2245, 2246-2247, 2248-2249, 2250-2251, 2252-2253, 2254-2255, 2256-2257, 2258-2259, 2260-2261, 2262-2263, 2264-2265, 2266-2267, 2268-2269, 2270-2271, 2272-2273, 2274-2275, 2276-2277, 2278-2279, 2280-2281, 2282-2283, 2284-2285, 2286-2287, 2288-2289, 2290-2291, 2292-2293, 2294-2295, 2296-2297, 2298-2299, 2300-2301, 2302-2303, 2304-2305, 2306-2307, 2308-2309, 2310-2311, 2312-2313, 2314-2315, 2316-2317, 2318-2319, 2320-2321, 2322-2323, 2324-2325, 2326-2327, 2328-2329, 2330-2331, 2332-2333, 2334-2335, 2336-2337, 2338-2339, 2340-2341, 2342-2343, 2344-2345, 2346-2347, 2348-2349, 2350-2351, 2352-2353, 2354-2355, 2356-2357, 2358-2359, 2360-2361, 2362-2363, 2364-2365, 2366-2367, 2368-2369, 2370-2371, 2372-2373, 2374-2375, 2376-2377, 2378-2379, 2380-2381, 2382-2383, 2384-2385, 2386-2387, 2388-2389, 2390-2391, 2392-2393, 2394-2395, 2396-2397, 2398-2399, 2400-2401, 2402-2403, 2404-2405, 2406-2407, 2408-2409, 2410-2411, 2412-2413, 2414-2415, 2416-2417, 2418-2419, 2420-2421, 2422-2423, 2424-2425, 2426-2427, 2428-2429, 2430-2431, 2432-2433, 2434-2435, 2436-2437, 2438-2439, 2440-2441, 2442-2443, 2444-2445, 2446-2447, 2448-2449, 2450-2451, 2452-2453, 2454-2455, 2456-2457, 2458-2459, 2460-2461, 2462-2463, 2464-2465, 2466-2467, 2468-2469, 2470-2471, 2472-2473, 2474-2475, 2476-2477, 2478-2479, 2480-2481, 2482-2483, 2484-2485, 2486-2487, 2488-2489, 2490-2491, 2492-2493, 2494-2495, 2496-2497, 2498-2499, 2500-2501, 2502-2503, 2504-2505, 2506-2507, 2508-2509, 2510-2511, 2512-2513, 2514-2515, 2516-2517, 2518-2519, 2520-2521, 2522-2523, 2524-2525, 2526-2527, 2528-2529, 2530-2531, 2532-2533, 2534-2535, 2536-2537, 2538-2539, 2540-2541, 2542-2543, 2544-2545, 2546-2547, 2548-2549, 2550-2551, 2552-2553, 2554-2555, 2556-2557, 2558-2559, 2560-2561, 2562-2563, 2564-2565, 2566-2567, 2568-2569, 2570-2571, 2572-2573, 2574-2575, 2576-2577, 2578-2579, 2580-2581, 2582-2583, 2584-2585, 2586-2587, 2588-2589, 2590-2591, 2592-2593, 2594-2595, 2596-2597, 2598-2599, 2600-2601, 2602-2603, 2604-2605, 2606-2607, 2608-2609, 2610-2611, 2612-2613, 2614-2615, 2616-2617, 2618-2619, 2620-2621, 2622-2623, 2624-2625, 2626-2627, 2628-2629, 2630-2631, 2632-2633, 2634-2635, 2636-2637, 2638-2639, 2640-2641, 2642-2643, 2644-2645, 2646-2647, 2648-2649, 2650-2651, 2652-2653, 2654-2655, 2656-2657, 2658-2659, 2660-2661, 2662-2663, 2664-2665, 2666-2667, 2668-2669, 2670-2671, 2672-2673, 2674-2675, 2676-2677, 2678-2679, 2680-2681, 2682-2683, 2684-2685, 2686-2687, 2688-2689, 2690-2691, 2692-2693, 2694-2695, 2696-2697, 2698-2699, 2700-2701, 2702-2703, 2704-2705, 2706-2707, 2708-2709, 2710-2711, 2712-2713, 27



ON THE FLOOR
OFFICIAL FLOOR PLAN



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DEED

THIS DEED, made this 17 day of April, 1982,
by and between MONUMENT ASSOCIATES ("Grantor"), a Virginia general
partnership and RIVER PLACE OWNERS' ASSOCIATION ("Grantee"), a
Virginia non-stock corporation,

WITNESSETH:

That for and in consideration of Ten Dollars (\$10.00) and
other good and valuable consideration, the receipt of which is
hereby acknowledged, Grantor does hereby grant, bargain, convey,
assign and quitclaim unto Grantee all of Grantor's right, title
and interest in and to:

(1) the two parcels of real estate described by metes
and bounds in Exhibit A to this Deed, which Exhibit is hereby
incorporated herein; and

(2) the "Parking Facilities" reserved to the Declarant
in (a) the Assignment of Lease from Grantor to River Place South
Housing Corporation dated and recorded February 5, 1982 in Deed
Book 2056 at page 1462 et seq. among the land records of Arlington
County, Virginia and (b) the Assignment of Lease from Grantor to
River Place North Housing Corporation dated and recorded January
8, 1982 in Deed Book 2055 at page 979 et seq. as amended by an
Amendment to Assignment of Lease between the same parties dated and
recorded February 5, 1982 in Deed Book 2056 at page 1434 et seq.
among the said land records.

SUBJECT TO any Parking Space Leases (as defined in Section
1.1(17) of the Declaration of Covenants, Easements and Liens for
River Place dated and recorded May 10, 1982 in Deed Book 2061 at
page 388 et seq. among the said land records) now or hereafter
entered into by Grantor as lessor under any such Leases, it being
the intent of the Grantor and Grantee herein to except herefrom
and to continue to reserve to Grantor the exclusive right to
lease under such Parking Space Leases any parking spaces now or
hereafter created within (or partially within) the property
described in Exhibit A hereto and any such spaces now or here-
after created within (or partially within) the property that is
the subject of the aforesaid Assignments of Lease, as amended.

This Deed is made and accepted subject to all liens, encum-
brances and other matters of any nature whatsoever affecting
title to the real estate which is the subject hereof.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Deed
to be executed as of the date first set forth above.

GRANTOR: MONUMENT ASSOCIATES

By: RE ASSOCIATES 9, a general partner

By: [Signature] (SEAL)
General Partner

GRANTEE: RIVER PLACE OWNERS' ASSOCIATION

By: [Signature] (SEAL)
President

DISTRICT OF COLUMBIA, to wit:

The foregoing instrument was acknowledged before me this
day of July, 1988, by [Signature],
a general partner of HF Associates 9, a Virginia limited partner-
ship which is a general partner in Monument Associates, a Virginia
general partnership, on behalf of the partnerships.

[Signature] (SEAL)
Notary Public

My commission expires: 1/1/90

DISTRICT OF COLUMBIA, to wit:

The foregoing instrument was acknowledged before me this
day of July, 1988, by [Signature],
President of River Place Owners' Association, a Virginia non-
stock corporation, on behalf of the corporation.

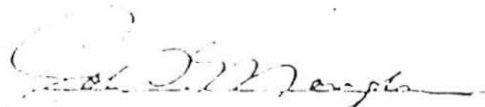
[Signature] (SEAL)
Notary Public

My commission expires: 1/1/90

DESCRIPTION OF
PART OF THE PROPERTY OF
ARLAND TOWERS COMPANY, ET AL
(PAGE 3A)
ARLINGTON COUNTY, VIRGINIA

Beginning at a point on the Westerly R/W line of Jefferson Davis Highway said point being N 01° 50' 55" W, 353.09 feet from a point marking the intersection of the Westerly R/W line of Jefferson Davis Highway with the Northeasterly R/W line of Arlington Boulevard (U.S. Route #50); thence through the property of Arland Towers Company, et al the following courses: N 01° 50' 55" W, 520.00 feet; with a curve to the left whose radius is 490.13 feet (and whose chord is N 11° 19' 47" W, 127.61 feet) an arc distance of 127.97 feet and S 66° 37' 19" E, 24.92 feet to a point on the aforementioned Westerly R/W line of Jefferson Davis Highway; thence with the Westerly R/W line of Jefferson Davis Highway the following courses: with a curve to the right whose radius is 700.91 feet (and whose chord is S 19° 16' 20" E, 10.00 feet) an arc distance of 21.36 feet; with a curve to the right whose radius is 471.36 feet (and whose chord is S 12° 59' 14" E, 235.03 feet) an arc distance of 237.54 feet; S 01° 16' 59" W, 386.59 feet and N 69° 03' 35" W, 18.16 feet to the point of beginning, containing 23,856 square feet of land.

Given under my hand this 3rd day of December, 1967.


John L. Menagher
Certified Land Surveyor #515

Dewberry & Davis

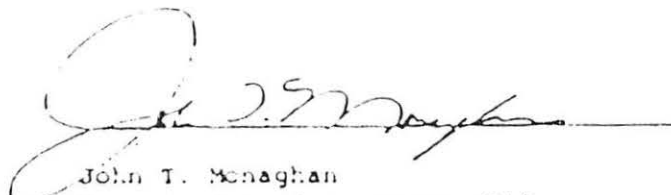


Exhibit A
Page 2

DESCRIPTION OF
PART OF THE PROPERTY OF
ARLAND TOWERS COMPANY, ET AL
ARLINGTON COUNTY, VIRGINIA

Beginning at a point marking the intersection of the Westerly R/W line of Jefferson Davis Highway with the Northeasterly R/W line of Arlington Boulevard (U.S. Route 450); thence with the Northeasterly R/W line of Arlington Boulevard the following courses: N 65° 18' 40" W, 242.14 feet; N 31° 28' 11" W, 152.21 feet; N 52° 33' 50" W, 78.12 feet; N 57° 17' 58" W, 236.00 feet and N 48° 47' 27" W, 54.90 feet to a point; thence departing from the road and running through the property of Arland Towers Company, et al the following courses: with a curve to the right whose radius is 1246.00 feet (and whose chord is S 61° 23' 08" E, 242.24 feet) at arc distance of 242.62 feet and S 55° 48' 00" E, 512.90 feet to the point of beginning, containing 18,011 square feet of land.

Given under my hand this 3rd day of December, 1987.


John T. Monaghan
Certified Land Surveyor #815

JTM/cl

EXHIBIT D

TRUSTEE'S DEED OF ASSIGNMENT
OF PROPRIETARY LEASE

THIS TRUSTEE'S DEED OF ASSIGNMENT OF PROPRIETARY LEASE is made and executed as of this 3rd day of April, 1991, by and between AMERICAN LANDMARK MANAGEMENT CORPORATION, a Virginia corporation, Substitute Trustee (hereinafter referred to as the "Trustee"), under a Deed of Trust from Abbas GHASSEMI, Grantor (hereinafter referred to as the "Grantor") and AMERICAN LANDMARK EQUITY CORP., a Virginia corporation (hereinafter referred to as the "Grantee").

WHEREAS, by virtue of that certain Cooperative Leasehold Deed of Trust (hereinafter referred to as the "Deed of Trust"), dated July 31, 1987 and recorded in Deed Book 2295 at Page 327, among the land records of Arlington County Virginia, and by virtue of that certain Cooperative Apartment Loan Security Agreement (hereinafter referred to as the "Loan Security Agreement"), dated July 31, 1987, Abbas Ghassemi, Sole Tenant, conveyed his right, title and interest in and to the Proprietary Lease to Unit/Apartment No. N-1003, River Place North, and parking spaces MP-152 and MP-169, described hereinafter, together with 6360 shares of the capital stock of River Place North Housing Corporation (hereinafter collectively referred to as the "Property"), in trust to R. Daniel Lindley, and James A. Howard, Trustees, to secure the repayment of a certain Note (hereinafter referred to as the "Note") and other obligations due and owing to Monument Associates (hereinafter referred to as the "Beneficiary"); and

WHEREAS, by virtue of a certain Deed of Appointment of Substitute Trustee, dated January 16, 1991 and recorded in Deed Book 2463 at Page 1423 among the land records of Arlington County, Virginia, the Beneficiary did name and appoint American Landmark Management Corporation, a Virginia corporation, to serve as Substitute Trustee under the Deed of Trust and the Loan Security Agreement, in place of and instead of the aforementioned Trustee; and

17-039-419

Consolidation 3120, 000 00

ADAMS, PORTER & RADIAN, L.L.C.
ATTORNEYS AT LAW
1000 K STREET, N.W.
WASHINGTON, D.C. 20004

1000 K STREET, N.W.
WASHINGTON, D.C. 20004

WHEREAS, Abbas Ghassemi defaulted in his obligations under the Note, Deed of Trust and Loan Security Agreement; and

WHEREAS, having been requested to do so by the Beneficiary of the Note, the Substitute Trustee declared all of the debts and obligations secured by the Deed of Trust and the Loan Security Agreement to be at once due and payable and proceeded to advertise the time, place and terms of sale for the Property by advertisement once a week for three (3) successive weeks in the Northern Virginia Sun, a newspaper published and having general circulation in Arlington County, Virginia, all in accordance with the terms of the Deed of Trust, the Loan Security Agreement and the laws of the Commonwealth of Virginia; and

WHEREAS, more than fourteen (14) days prior to the sale, the Substitute Trustee caused a letter to be sent by certified mail to Abbas Ghassemi at his last known address, as reflected on the loan records of the Beneficiary, which certified letter enclosed a copy of the Notice of Trustee's Sale as it appeared in the Northern Virginia Sun; and

WHEREAS, on Wednesday, April 3, 1991, the Substitute Trustee offered the Property for sale at public auction in accordance with the terms and conditions prescribed in the Notice of Trustee's Sale; and

WHEREAS, Grantee was the successful bidder at the foreclosure sale for the total bid price of \$120,000.00, as reflected in that certain Memorandum of Sale executed by the parties; and

WHEREAS, the Substitute Trustee and the Grantee desire to complete the settlement on the conveyance of the Substitute Trustee's right, title and interest to the Property in accordance with the terms and conditions described in the Notice of Trustee's Sale and in the Memorandum of Sale.

NOW, THEREFORE, in consideration of the premises and in further consideration of the payment by the Grantee of the sum of \$120,000.00, the receipt and sufficiency of which are hereby acknowledged by both parties, the Substitute Trustee does hereby

grant, bargain, sell and convey, with Special Warranty of Title, unto American Landmark Equity Corp., a Virginia Corporation, Grantee, the property described in the Deed of Trust and the Loan Security Agreement, including all of the improvements thereon, situated and lying in Arlington County, Virginia, and more particularly described as follows:

The Proprietary Lease to Unit/Apt. No. N-1003, River Place North, and Parking Spaces MP-152 and MP-169, as described in the Declaration of Covenants, Easements and Liens for "River Place" and the Exhibits attached hereto, together with and subject to all rights, covenants and easements contained therein, as recorded May 10, 1983 in Deed Book 2061 at Page 388, et seq., as amended in Deed Book 2079 at page 21 among the land records of Arlington County, Virginia and as the same have been and may be lawfully amended further from time to time;

AND

6360 shares of the capital stock of River Place North Housing Corporation, which shares entitle the owner thereof to the Proprietary Lease above described (the leasehold interest and shares collectively referred to as the "Property").

Street Address: Apartment No. N-1003
1121 Arlington Blvd.
Arlington, Virginia 22208.

This sale is made subject to any and all existing prior deeds of trust, liens, covenants, conditions, restrictions, rights-of-way, easements, reservations and other prior encumbrances of record, and to the payment of any and all delinquent real estate taxes, cooperative fees and other proper charges due on the Property which may have legal priority over the aforesaid Deed of Trust and Loan Security Agreement. This sale is further subject to mechanics' and materialmen's liens, if any, of record and not of record. This conveyance is further subject to the specific terms and conditions of the above-described Declaration of Covenants, Easements and Liens for "River Place" and the Exhibits attached thereto, and to the terms and conditions of the Proprietary Lease for the Property.

IN WITNESS WHEREOF, the said American Landmark Management Corporation, a Virginia corporation, has caused this Trustee's Deed of Assignment of Proprietary Lease to be executed in its

name by James A. Howard, its Senior Vice President, as of the day and year first above written.

AMERICAN LANDMARK MANAGEMENT CORPORATION, Substitute Trustee,

By: James A. Howard,
Senior Vice President

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

The foregoing Trustee's Deed of Assignment of Proprietary Lease was subscribed and sworn before me in my aforesaid jurisdiction this 3rd day of April, 1991, by James A. Howard, Senior Vice President of American Landmark Management Corporation, on behalf of the Corporation in its capacity as Substitute Trustee.

C. T. A. 30-1
Notary Public

My Commission Expires: 7/31/93

VIRGINIA: IN THE CLERK'S OFFICE OF THE
CIRCUIT COURT OF THE COUNTY OF ARLINGTON
This deed was presented, and with the
certificate annexed, admitted to record
on April 16, 1991 at 8:23 o'clock — m.
CONSIDERATION: \$50,000.00
STATE TAX 120.00
COUNTY TAX 60.00
TRANSFER FEE
CLERK'S FEE 13.00
GRANTOR'S TAX
TOTAL 253.00
TESTE: [Signature] CLERK

EXHIBIT E

STATEMENT OF ACCOUNT

Association River Place North Unit 1002 N-1002 Date April
 of Association _____

Owner(s) Name(s) Albas Gassani, and Shawn L. Butler
 Property Address 1121 Arlington Blvd # 1002 Arlington, Va: 22209
 Phone Numbers (O) _____ (H) _____

Settlement Date 02-05-88 (Attach copy of settlement statement, if any)
 Lot/Block _____ Tax ID _____

Owner(s) Mailing Address(es) 3323 Lakeside View Drive
 if different from above Falls Church, Va 22041

INDICATE NAME OF ANY CO-OWNER WHO TO THE BEST OF YOUR KNOWLEDGE & BELIEF
 MEMBER OF UNITED STATES ARMED FORCES NOW ON ACTIVE DUTY:

Initial Notice sent by Management on April 1, , 1991.

COMPLETE FROM DATE OF FIRST MISSED PAYMENT
 (Beginning Balance should be -0-)

| DATE | ASSESSMENT | LATE FEE | PAYMENTS | BALANCE | INTEREST | LEGAL COSTS | OTHER |
|----------|------------|----------|----------|----------|----------|-------------|-------|
| 11-01-90 | 570.00 | | | 570.00 | | | |
| 11-16-90 | | 50.00 | | 620.00 | | | |
| 12-01-90 | 570.00 | | | 1,190.00 | | | |
| 12-16-90 | | 50.00 | | 1,240.00 | | | |
| 01-01-91 | 570.00 | | | 1,810.00 | | | |
| 01-16-91 | | 50.00 | | 1,860.00 | | | |
| 02-01-91 | 570.00 | | | 2,430.00 | | | |
| 02-16-91 | | 50.00 | | 2,480.00 | | | |
| 03-01-91 | 570.00 | | | 3,050.00 | | | |
| 03-16-91 | | 50.00 | | 3,100.00 | | | |
| 04-01-91 | 570.00 | | | 3,670.00 | | | |

EXHIBIT F

STATEMENT OF ACCOUNT

Association River Lake North Unit 1003 N-1003 Date April 30, 1991
 Type of Association _____

Owner(s) Name(s) Abbas Glassemi
 Property Address 1121 Arlington Blvd # 1003 Arlington, Va 22209
 Phone Numbers (O) _____ (H) _____

Settlement Date 07-31-87 (Attach copy of settlement statement, if available)
 Lot/Block _____ Tax ID _____

Owner(s) Mailing Address(es) 3323 Lakeside View Drive
 if different from above Falls Church, Va 22041

INDICATE NAME OF ANY CO-OWNER WHO TO THE BEST OF YOUR KNOWLEDGE & BELIEF IS
 MEMBER OF UNITED STATES ARMED FORCES NOW ON ACTIVE DUTY:

Initial Notice sent by Management on April 1, 1991

COMPLETE FROM DATE OF FIRST MISSED PAYMENT
 (Beginning Balance should be -0-)

| DATE | ASSESSMENT | LATE FEE | PAYMENTS | BALANCE | INTEREST | LEGAL COSTS | OTHER |
|----------|------------|----------|----------|----------|----------|-------------|-------|
| 11-01-90 | 541.00 | | | 541.00 | | | |
| 11-16-90 | | 50.00 | | 591.00 | | | |
| 12-01-90 | 541.00 | | | 1,132.00 | | | |
| 12-16-90 | | 50.00 | | 1,182.00 | | | |
| 01-01-91 | 541.00 | | | 1,723.00 | | | |
| 01-16-91 | | 50.00 | | 1,773.00 | | | |
| 02-01-91 | 541.00 | | | 2,314.00 | | | |
| 02-16-91 | | 50.00 | | 2,364.00 | | | |
| 03-01-91 | 541.00 | | | 2,905.00 | | | |
| 03-16-91 | | 50.00 | | 2,955.00 | | | |
| 04-01-91 | 541.00 | | | 3,496.00 | | | |

12/16/4

V I R G I N I A:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

RIVER PLACE NORTH HOUSING CORPORATION,)

Plaintiff,)

v.)

At Law No. 93-490

AMERICAN LANDMARK EQUITY CORP.)

Defendant.)

ANSWER AND GROUNDS OF DEFENSE

COMES NOW Defendant, American Landmark Equity Corp., by counsel, and as and for its answer and grounds of defense to the Motion for Judgment filed herein, states as follows:

1. As to the allegations contained in paragraph 1 of the Motion for Judgment, Defendant admits only that Plaintiff is a corporation managing the housing cooperative of the River Place North building. This Defendant is without sufficient knowledge to admit or deny the remaining allegations of paragraph 1, and said allegations are therefore denied.

2. As to the allegations contained in paragraph 2 of the Motion for Judgment, Defendant admits only that it was a Virginia corporation at all times alleged in the Motion for Judgment. All other allegations of paragraph 2 are denied.

3. The Defendant denies the allegations contained in paragraph 3 of the Motion for Judgment.

4. As to the allegations contained in paragraph 4 of the Motion for Judgment, Defendant admits the two loans for the properties became delinquent, but Defendant denies it sought to foreclose upon the loans.

ADAMS, PORTER
& RADIGAN, Ltd.
ATTORNEYS AT LAW
SUITE 700
50 TYSONS BOULEVARD
CLEAN, VIRGINIA 22102
17031 448-6600
FAX 17031 448-8144

5. The allegations incorporated by paragraph 5 of the Motion for Judgment are admitted and/or denied as set forth herein.

6. The Defendant admits the allegations contained in paragraphs 6, 7 and 8 of the Motion for Judgment.

7. The Defendant denies that the Bylaw and Declaration provisions cited in paragraphs 9 & 10 of the Motion for Judgment apply to the Defendant, and the allegations contained in said paragraphs are therefore denied.

8. The Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 11 of the Motion for Judgment, and said allegations are therefore denied.

9. The Defendant denies the allegations contained in paragraphs 12, 13 and 14 of the Motion for Judgment.

10. The allegations incorporated by paragraph 15 of the Motion for Judgment are admitted and/or denied as set forth herein.

11. The Defendant admits the allegations contained in paragraphs 16, 17 and 18 of the Motion for Judgment.

12. The Defendant denies that the Bylaw and Declaration provisions cited in paragraphs 19 & 20 of the Motion for Judgment apply to the Defendant, and the allegations contained in said paragraphs are therefore denied.

13. The Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 21 of the Motion for Judgment, and said allegations are therefore denied.

14. The Defendant denies the allegations contained in paragraphs 22, 23 and 24 of the Motion for Judgment.

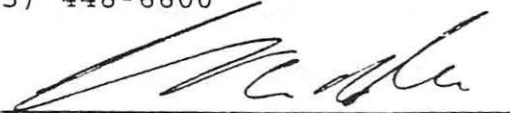
15. Defendant specifically denies it is liable for any damages, costs, interests, attorneys fees or any other amounts claimed by Plaintiff herein.

16. By way of affirmative defense, Defendant submits that Plaintiff's claim is barred by the doctrines of accord and satisfaction, estoppel, payment, release, waiver, laches, failure of consideration, the statute of limitations and the statute of frauds.

WHEREFORE, Defendant, American Landmark Equity Corp., prays this Court dismiss Plaintiff's Motion for Judgment, and award this Defendant its costs and fees incurred herein.

AMERICAN LANDMARK EQUITY CORP.
DEFENDANT,
BY COUNSEL

ADAMS, PORTER & RADIGAN, LTD.
1650 Tysons Boulevard
Suite 700
McLean, Virginia 22102
(703) 448-6600


By: 
Christopher C. Nolan,
Virginia State Bar No. 26043,
Counsel for Defendant,
American Landmark Equity Corp.

ADAMS, PORTER
& RADIGAN, LTD.
ATTORNEYS AT LAW
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MCLEAN, VIRGINIA 22102
703/448-6600
FAX 703/448-8144

Certificate of Service

I hereby certify that I have this 27 day of May, 1993,
caused a true copy of the foregoing to be mailed by first class
U.S. mail, postage prepaid, to:

Mary M. Jolma, Esquire
Raymond R. Benzinger, Esquire
Law Office of Raymond B. Benzinger, P.C.
Counsel for Plaintiff
2009 N. 14th Street, Suite 410
Arlington, Virginia 22201



Christopher C. Nolan

MS. PORTER
DIGAN, Ltd.
PNEYS AT LAW
SUITE 700
SONS BOULEVARD
VIRGINIA 22102
448-6600
031 448-8144

V I R G I N I A:

IN THE CIRCUIT COURT FOR ARLINGTON COUNTY

- - - - -X

RIVER PLACE NORTH HOUSING CORP., :

Plaintiff, :

-vs-

AT LAW
: NO. 93-490

AMERICAN LANDMARK EQUITY CORP., :

Defendant. :

- - - - -X

Arlington, Virginia

Thursday, January 27, 1994

The hearing commenced at 2:00 o'clock p.m.

BEFORE:

The Honorable William T. Newman, Jr., Judge.

APPEARANCES:

For the Plaintiff:

MARY M. JOLMA, ATTORNEY AT LAW
Of: Raymond B. Benzinger, PC
2009 North 14th Street
Suite 410
Arlington, Virginia 22201

For the Defendant:

CHRISTOPHER C. NOLAN, ESQUIRE
 Of: Adams, Porter & Radigan, Ltd.
 1650 Tysons Boulevard
 Suite 700
 McLean, Virginia 22102-0549

ALSO PRESENT: Arthur Magnon,
 Representative American Landmark

- - -

C O N T E N T S

| <u>WITNESS</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
|--------------------|---------------|--------------|-----------------|----------------|
| Patricia Lansdowne | 16 | 41 | 66, 69 | 69 |
| Arthur Magnon | 70 | -- | -- | -- |

- - -

E X H I B I T S

| <u>EXHIBIT NO.</u> | <u>FOR IDENTIFICATION</u> | <u>IN EVIDENCE</u> |
|-------------------------------------|-------------------------------|------------------------|
| Plaintiff's | | |
| Exhibit No. 1 (Dec of Covenants) | -- | 18 |
| Exhibit No. 2 (Bylaws) | -- | 20 |
| Exhibit No. 3 (Statement) | 24 | 76 |
| Exhibit No. 4 (Statement) | 24 | 76 |
| Exhibit No. 5 (Notice/Trustee) | -- | 28 |
| Exhibit No. 6 (Notice/Trustee) | -- | 28 |
| Exhibit No. 7 (Memo of Sale) | -- | 39 |
| Exhibit No. 8 (Memo of Sale) | -- | 39 |
| Exhibit No. 9 (Deed) | -- | 29 |
| Exhibit No. 10 (Deed) | -- | 29 |
| Exhibit No. 11 (Letter) | -- | 35 |

E X H I B I T S (CONTD)

| <u>EXHIBIT NO.</u> | <u>FOR IDENTIFICATION</u> | <u>IN EVIDENCE</u> |
|-------------------------------------|-------------------------------|------------------------|
| Plaintiff's | | |
| Exhibit No. 12 (Affidavit) | -- | 38 |
| Exhibit No. 13 (Lease) | 32 | 93 |
| Defendant's | | |
| Exhibit No. 1 (Statement) | 51 | -- |
| Exhibit No. 2 (Statement) | 51 | -- |
| Exhibit No. 3 (Written off fees) | 60 | -- |
| Exhibit No. 4 (| 64 | -- |
| Exhibit No. 5 (| 66 | -- |

P R O C E E D I N G S

THE CLERK: Law 93-490, River Place North
versus American Landmark Equity Corporation.

MS. JOLMA: Good morning, Your Honor,
again.

THE COURT: Ms. Jolma.

MS. JOLMA: We're working in sprints here,
Your Honor.

THE COURT: I'll say, my life's work is
like having you --

MS. JOLMA: I hope this will be a little
more pleasant than yesterday and the day before.

THE COURT: Is this scheduled for a full
day?

MS. JOLMA: It was, Your Honor, but I think
we can finish.

MR. NOLAN: I'm confident we will finish it
today.

THE COURT: How many witnesses are there?

MS. JOLMA: I intend to call one in my case
in chief, and I may call one rebuttal.

MR. NOLAN: As of right now I would just
call Mr. Magnon.

1 THE COURT: I mean I'm not trying to rush
2 you, but I just happened to look at this and it says
3 here: one full day.

4 MS. JOLMA: Well, we've had the whole
5 morning to discuss our issues amongst ourselves and
6 try to narrow some things down as well as talk about
7 admissibility of documents and things like that, so
8 we may have speeded this process up.

9 THE COURT: All right.

10 MS. JOLMA: Your Honor, for the record my
11 name is Mary Jolma. I represent River Place North
12 Housing Corporation in its motion for judgment filed
13 against American Landmark Equity Corporation.

14 I have one preliminary matter, Your Honor.
15 I'm not sure whether it's gotten into your jacket
16 yet, but I did file a motion which briefs the
17 addendum clause. I don't know whether that's in
18 there yet or not.

19 THE COURT: Hold just one second; no, I
20 don't see it.

21 MS. JOLMA: Let me pass you up a copy, Your
22 Honor.

23 Your Honor, I've asked that the addendum be

1 increased. There are two counts. I'd ask that they
2 be increased respectively on count one to \$6,289 and
3 on count two to \$5,963.03 to properly reflect
4 the --

5 THE COURT: I'm sorry, sixty-two-eighty-
6 nine on count one and fifty-nine-sixty-three-oh-
7 three, okay.

8 MS. JOLMA: To properly reflect the full
9 accounting, Your Honor. There was an error made in
10 the initial pleading. We relied on a statement that
11 only reflected the past six months. It didn't
12 reflect the entire amount.

13 It shouldn't come as a great surprise to
14 the defendant. They were notified; well, they
15 received a letter of November, 1992, setting forth a
16 sum even greater than what I have asked for here.

17 So although I probably made an error or
18 used the erroneous statement, the correct numbers
19 are there and they've been aware of it for some
20 time.

21 THE COURT: Mr. Nolan?

22 MR. NOLAN: Good afternoon, Judge.

23 Christopher Nolan for the defendant, Landmark Equity

1 Corp. Your Honor, I have discussed this with Ms.
2 Jolma.

3 I have raised certain affirmative defenses
4 in the case which would play upon the timing of
5 these assessments and the inquiries I wish to do,
6 everything for the record to preserve those
7 defenses.

8 With that understanding I object on that
9 basis to the motion, in order to preserve the
10 defenses which I have raised.

11 MS. JOLMA: I have no objection to his
12 preservation of those defenses, Your Honor.

13 THE COURT: Okay, with that, the motion is
14 granted.

15 MS. JOLMA: A brief opening statement, Your
16 Honor.

17 This cause comes on, Your Honor, on our
18 motion for judgment seeking -- briefly, River Place
19 North Housing Corporation, as you may know, is a
20 cooperative down here at the corner of Route 50 and
21 Lynn Street.

22 In the course of River Place's existence as
23 a cooperative, there have been times when co-ops

1 were transferred obviously from one owner to another
2 owner and two cases involved here were a result of
3 two foreclosures by Monument Associates who were the
4 holders of the deed of trust.

5 American Landmark Equity Corporation was
6 the ultimate purchaser at those sales, foreclosure
7 sales. They bought both units, 1002 and 1003.

8 It's our position, Your Honor, that
9 pursuant to the terms of the bylaws and the other
10 documents pertinent to this case, that American
11 Landmark Equity Corporation is in fact liable for
12 any outstanding assessments at the time they bought
13 the property.

14 And that's what we're seeking, is the
15 outstanding assessments and to establish their
16 liability for those.

17 THE COURT: Okay, Mr. Nolan?

18 MR. NOLAN: Thank you, Your Honor. Your
19 Honor, I want to present to the Court Mr. Arthur
20 Magnon, who is here as a representative for
21 defendant, American Landmark Equity Corp.

22 Let me, if I could, take up two matters
23 before I begin my opening statement. There is

1 another witness here and I just want to request that
2 the Court rule on witnesses. She's not in the
3 Courtroom at this time, but in the event she comes
4 in, I want to be --

5 MS. JOLMA: I agree with the rule, and this
6 is Pat Lansdowne. She's the assistant office
7 manager at River Place North. She's a corporate
8 representative. The other witnesses are --

9 THE COURT: Well, that's just fine. When
10 you first said, you know, I just got a little
11 nervous, but okay.

12 MR. NOLAN: I didn't know if she'd been
13 instructed and she might come in.

14 THE COURT: Okay, that's fine.

15 MR. NOLAN: The other issue, I think Ms.
16 Jolma and I discussed a stipulation with regard to a
17 -- as she discussed, American Landmark Equity Corp.
18 was a subsequent purchaser of these units at a
19 foreclosure sale. They did not incur the debt.

20 Plaintiff's argument is that by her bylaws
21 and provisions they are liable for the debt.
22 American Landmark was a purchaser at a foreclosure
23 sale and a prior owner, who incurred the debt, was

1 apparently as I understand it from Ms. Jolma,
2 pursued by this same plaintiff.

3 As I understand it they obtained a judgment
4 in General District Court prior to the foreclosure,
5 if I'm correct --

6 MS. JOLMA: I believe so.

7 MR. NOLAN: -- in '91. But there was no
8 judgment of record. Nothing was ever adopted in
9 Circuit Court until after the foreclosure in which
10 my clients purchased. That becomes relevant, will
11 become relevant during the trial. I think we can
12 stipulate to that.

13 MS. JOLMA: Yes, Your Honor, I believe the
14 date of record of the one judgment was June 6, 1991.
15 It is in fact of record, and I'll just stipulate to
16 that.

17 MR. NOLAN: Judge, as I said, there is no
18 dispute in the case about the fact that the
19 defendant here did not incur the debt. The debt was
20 for delinquent co-op fees incurred by this prior
21 owner, and Mr. Ghassemi, I believe it's
22 G-h-a-s-s-e-m-i, who lived in these units.

23 The units were foreclosed upon and my

1 client purchased the units at a foreclosure sale.
2 The defense evidence will clearly show there was no
3 notice, certainly no record notice, of these
4 deficiencies. Nothing on record. Judgment didn't
5 come to be -- it was not docketed until after the
6 time of foreclosure.

7 The plaintiffs here now seek to collect
8 those assessments from my client, the subsequent
9 purchaser at a foreclosure sale, based on certain
10 provisions in the bylaws.

11 What will also become clear through the
12 evidence is that these bylaws are not recorded. And
13 overall, and I'll submit this as a theme throughout
14 the case and will raise a number of times, the
15 bottom line here is this is a suit by the plaintiffs
16 seeking to charge the defendant with the debt of a
17 third party with no right.

18 Under those circumstances the claim is
19 barred by the statute of wrongs. Beyond that,
20 although I don't think we need to go further than
21 that, but beyond that what you'll hear evidence
22 about today is an arrangement or working agreement
23 between all the parties involved in River Place.

1 You have a number of lenders, owners,
2 purchasers and the housing cooperative, the
3 plaintiff here. There were delinquent mortgages
4 during this period of time. There were a number of
5 foreclosures. There were a number of lenders
6 involved.

7 And all of these parties operated under an
8 arrangement whereby foreclosures on first trusts,
9 the defaulted foreclosure on the first trust
10 undertaken by a lender would result in notification
11 to the housing cooperative of the foreclosure; the
12 housing cooperative would then; or should have then;
13 notified all the parties of any outstanding
14 cooperative fees.

15 And if, in fact, the housing cooperative
16 wanted to pursue those fees as against the new
17 purchaser, they would have to actually docket and
18 record a judgment in the Circuit Court of Arlington
19 County.

20 The arrangement, because of the ways the
21 bylaws read, because of the way the Virginia Code
22 system works with relation to cooperatives, it
23 became necessary for the housing cooperative to

1 undertake such action and to preserve any right and
2 to essentially perfect their lien, otherwise it was
3 lost.

4 By virtue of the bylaws, they were junior
5 to a first trust. Any first trust foreclosure would
6 result in extinguishing any outstanding co-op fees.
7 So the housing cooperative knew what they had to do
8 when there was a first trust foreclosure, and this
9 is a case of a first trust foreclosure.

10 The evidence will show there's no dispute
11 as to that.

12 The reason the housing cooperative agreed,
13 the reason the lenders agreed, the reason all
14 parties operated this way was because it was a
15 benefit of all the parties.

16 You'll hear evidence from Mr. Magnon that
17 over a period of time in order to keep the units
18 paying, in order to occupy the units, in order that
19 you could obtain financing from mortgage lenders,
20 you couldn't have outstanding fees there on record
21 or new buyers coming in being assessed with these
22 fees, there would be no loans available.

23 They wouldn't be able to move the units.

1 And perhaps more than any other reason, the ability
2 to foreclose and eliminate these outstanding fees
3 meant that the housing cooperative, the plaintiff
4 here, then had a paying unit.

5 The fees would be picked up again by the
6 new owner. It benefitted everyone involved and
7 everyone over a period of years operated under this
8 system.

9 What you'll find in this case is, the
10 housing cooperative has now decided: well, maybe we
11 don't agree this time. We changed our mind.

12 The problem is, they apparently changed
13 their mind and sent notices some years after these
14 foreclosures took -- in some period of time after
15 these foreclosures had taken place, without notice,
16 any notice as part of the foreclosure, without any
17 notice to this defendant that would allow him to do
18 anything prior to foreclosure to try and collect
19 these fees or recover these fees.

20 As I said, the bylaws specifically provide
21 for first trust priority over these cooperative
22 fees. I don't think that that would be an issue in
23 this case. There is no writing between the parties.

1 It's clearly barred by the statute of frauds. I
2 believe the evidence will bear that out.

3 But there was also an arrangement between
4 the parties that we would submit finally that this
5 plaintiff is estopped to change that arrangement
6 after the fact.

7 After not putting anyone on notice of
8 record after the time of foreclosure, they are
9 estopped to come forward and charge a third party
10 with this debt.

11 I think defense evidence will be presented
12 accordingly, and we'd ask you to enter judgment in
13 favor of the defendant.

14 THE COURT: Ms. Jolma?

15 MS. JOLMA: Your Honor, I'd call for the
16 first witness, Patricia Lansdowne, please.

17 (Thereupon, the witness was
18 sworn.)

19 MS. JOLMA: Your Honor, I've given to Mr.
20 Nolan and I have here a book of my documents I
21 intend to use that I'd like to give to the witness.

22 Would that be okay?

23 MR. NOLAN: I have no objection.

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1 Thereupon,

2 PATRICIA M. LANSDOWNE,
3 a witness, was called by counsel on behalf of the
4 Plaintiff, and having been duly sworn, was examined
5 and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. JOLMA:

8 Q. Ms. Lansdowne, would you please state your
9 full name for the Court?

10 A. Patricia M. Lansdowne.

11 Q. And what is your position?

12 A. Assistant manager, custodian of record.

13 Q. Of?

14 A. River Place North Housing Corporation.

15 Q. And is that the same River Place North who
16 is the plaintiff here today?

17 A. Yes.

18 Q. Ms. Lansdowne, let me turn your attention
19 to the first document in the book that's marked as
20 Exhibit 1. Are you aware of what that document is?

21 A. Yes, it's a declaration of covenants,
22 which was recorded in 1982.

23 Q. That's for River Place North?

1 A. For the entire property, yes.

2 MS. JOLMA: Your Honor, for ease of
3 administration, would you like me to place a pile of
4 these on your bench or would you like me to bring
5 them up to you every time? It's your preference.

6 THE COURT: Let me ask you: are there
7 going to be any objections to them?

8 MR. NOLAN: Judge, I don't think there'll
9 be objection to the authenticity of any of the
10 documents. As to Exhibit 1, I quite frankly just
11 want to make sure this is a complete declaration.
12 (examines document.)

13 MR. NOLAN: No objection, Your Honor.

14 THE COURT: Okay. We'll mark this as
15 Plaintiff's 1.

16 MR. NOLAN: Judge, with the understanding
17 that that's the complete declaration, I have no
18 objection.

19 (Thereupon, the above-referred to
20 document was marked as Plaintiff's
21 Exhibit No. 1, in Evidence.)

22 BY MS. JOLMA:

23 Q. Ms. Lansdowne, is it your understanding of

1 this particular document -- or what is your
2 understanding as put forth in this particular
3 document about River Place North's authority to
4 enforce assessments or anything like that?

5 A. There is a section in here, I think it's
6 7.6, which is the liability for assessments. It
7 states that each owner shall be personally liable
8 for all assessments against him or his partials.

9 And it skips on to say that no owner may
10 avoid liability for any assessments by waiver, non-
11 use or abandonment.

12 Q. Was it your understanding that that
13 definition of owner in this was an individual unit
14 owner or the building?

15 A. And owner, an individual.

16 MR. NOLAN: Judge, I'm going to object.
17 Owner is defined in the document. I don't think the
18 witness's understanding of the definition is --

19 MS. JOLMA: I'll withdraw it.

20 THE COURT: Okay, it's withdrawn.

21 BY MS. JOLMA:

22 Q. Let me turn your attention to document
23 number two in your folder there. Can you identify

1 that document?

2 A. Bylaws of River Place North Housing
3 Corporation.

4 Q. Can you take a quick look at it and make
5 sure that's the true and accurate copy of what's in
6 your records?

7 A. (Peruses document) Yes, it is.

8 MS. JOLMA: Your Honor, I would move that
9 in as Plaintiff's Exhibit 2, please.

10 MR. NOLAN: No objection.

11 THE COURT: It will be received as
12 Plaintiff's 2.

13 (Thereupon, the above-referred to
14 document was marked as Plaintiff's
15 Exhibit No. 2, in Evidence.)

16 BY MS. JOLMA:

17 Q. Ms. Lansdowne, does the bylaws provide for
18 River Place to assess monthly assessments against
19 individual unit owners?

20 A. Yes, it does. It's the same, actually,
21 somewhat of the same of what's in the declarations
22 and the covenants, which is liability for
23 assessments is somewhat of the same paragraph.

1 Q. Can you identify where that provision is,
2 if there's a number.

3 A. Seven-point-three of the bylaws.

4 Q. And what does that provision state with
5 regard to liability for a subsequent purchaser, a
6 new proprietary lessee?

7 A. That they're both jointly liable with the
8 former proprietary lease, for all unpaid assessments
9 against the proprietary lessee or his shares, which
10 become due before the new proprietary lessee
11 acquired ownership thereof, without prejudice.

12 Q. Let me ask you, with respect to the two
13 units that are in question here, number 1002 and
14 1003 --

15 A. Uh-huh.

16 Q. -- were you working for River Place at the
17 time of their foreclosures?

18 A. Yes, I was.

19 Q. When those units were foreclosed upon, were
20 you aware of how much was outstanding?

21 A. Yes.

22 Q. And the owner was Mr. Ghassemi; is that
23 correct?

1 A. Ghassemi on one sole unit and Ghassemi and
2 Shawna Butler on another unit, maybe 1002; it was
3 jointly owned.

4 Q. And at the time of foreclosure, was there
5 an outstanding balance due?

6 A. Yes, there was.

7 Q. Let me turn your attention to Exhibits 3
8 and 4, please (Peruses documents).

9 Ms. Lansdowne, would you please identify
10 these two documents for me?

11 A. They're a statement of account histories,
12 and a lot of time they're produced on a shareholder
13 that's in default or for anyone who wants to know
14 their history for tax purposes, is basically what it
15 is, for all outstanding assessments.

16 In this case from the time of the balance
17 due through April of '91.

18 Q. And what was particular about April of '91?

19 A. That was when we received the notice of
20 foreclosure from American Landmark or Monument, the
21 notice of trustee sale.

22 Q. And you prepare these? Is that part of
23 your job?

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1 A. Yes, that was part of my position.

2 Q. To the best of your knowledge, are these
3 true and accurate statements of what was outstanding
4 at the time?

5 A. Yes.

6 Q. What is the date of these two documents?

7 A. The date?

8 Q. The date prepared?

9 A. 12/23 -- 12/22/93 in this case, because it
10 was getting ready for Court, and that's the time
11 that I updated them, or revised them.

12 Q. Did you go back and look through your
13 records to assure yourself that these were in fact
14 the accurate numbers?

15 A. Yes, I did. I think in '89 or '90 when I
16 came aboard, right before I came aboard, they used
17 to use the Wolf system, ADP, which are old logs.

18 And I took figures from there and updated
19 them with the company, financial services company
20 that we used, Ross, Lang and McHenry in '90. And
21 then from that point to Brem, Inc.

22 So all their records reflected the same
23 amount and the amount that's on the system now that

1 we have in-house.

2 MS. JOLMA: Your Honor, I'd like to move
3 these two documents into evidence, please.

4 MR. NOLAN: I'm going to ask the Court to
5 reserve ruling pending cross exam on these two
6 particular documents.

7 THE COURT: Okay, that's fine.

8 (Thereupon, the above-referred to
9 documents were marked as Plaintiff's
10 Exhibit Nos. 3 & 4, respectively,
11 for Identification.)

12 BY MS. JOLMA:

13 Q. Now, Ms. Lansdowne, let me ask you one
14 other question. While these statements of account
15 reflect a number; for example, you have three; the
16 bottom line is seven-one-three-nine. Does that
17 number include late fees?

18 A. Yes, it does.

19 Q. But you're not claiming late fees here
20 today, are you?

21 A. No, we are not. Just the assessments.

22 Q. So that number should be reduced by the
23 late fees?

1 A. Yes.

2 Q. Ms. Lansdowne, is it your testimony then
3 that the amount that's actually due and owing on the
4 units is; if I can find that. So what is actually
5 owing on unit 1002 is sixty-two-eighty-nine, \$6,289?

6 A. Is that less the late fees? I don't have
7 it separated out on here. I have about eight-
8 hundred-and-something in late fees, I presume.
9 Eight-ninety-five in late fees on 1002.

10 Q. And on 1003? Would that number be five
11 thousand, nine hundred and sixty-three-oh-three?

12 A. Yes.

13 Q. And would you describe for the Court
14 briefly what occurs or what did occur in these two
15 units when they went to foreclosure?

16 A. Normally what would happen in going back
17 from the time I used to do this, is you would get a
18 call either from a settlement company; in this case
19 I got a call from Adams, Porter and Radigan; asking
20 for the delinquency amount owed on these units, the
21 parking spaces or any other charges that were
22 outstanding.

23 Sometime in March, maybe, or prior to that

1 a young lady called the office. Unfortunately I
2 have no notes of that phone call. I gave her all
3 the delinquent amounts: on service bills, the
4 parking spaces that were attached to these units,
5 plus the outstanding assessments.

6 Q. And you specifically remember a
7 conversation about these two units?

8 A. Yes, I do. And the reason is, is because
9 when you got the trustee's notice of sale; the
10 manager at the time was Jules Kerner, and he pointed
11 out to me that it stipulated in them --

12 MR. NOLAN: Your Honor, I'm going to object
13 to what --

14 THE WITNESS: I'm sorry.

15 MR. NOLAN: -- Mr. Kerner may have
16 indicated. Verbally or otherwise.

17 MS. JOLMA: Ms. Lansdowne, please don't
18 testify when somebody is --

19 THE WITNESS: I'm sorry. What I read, is
20 that better? The last page of it was: This sale is
21 made subject to any and all existing deeds of trust,
22 liens, covenants, conditions.

23 And it went on to say that: enter the

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1 payment of any and all delinquent real estate taxes,
2 cooperative fees and other proper charges due on the
3 property that were due.

4 So I assume that money would be coming
5 shortly after the units were actually foreclosed on,
6 because by getting this document did not mean that
7 American Landmark/Monument Associates were going to
8 actually take the units.

9 It was just a notice going to an owner that
10 they were getting in the position to do so.

11 Q. Was it customary for someone, either a
12 title company or a settlement agency, to call you
13 and request what was owed?

14 A. Yes.

15 Q. Let me turn your attention to Plaintiff's
16 Exhibits 5 and 6. Could you tell the Court
17 approximately when your office received these
18 documents and what they are?

19 A. They're a notice of trustee sales.

20 Q. And do you have any idea approximately when
21 you received them?

22 A. Sometime in March. I believe it was in
23 March.

1 Q. And both these documents are notice of
2 trustee sale for apartments 1002 and 1003?

3 A. Yes, they are.

4 MS. JOLMA: Your Honor, I would like to
5 move in Plaintiff's 5 and 6.

6 THE COURT: Mr. Nolan?

7 MR. NOLAN: Judge, I have no objection to 5
8 and 6.

9 THE COURT: Okay.

10 (Thereupon, the above-referred
11 documents were marked as Plaintiff's
12 Exhibit Nos. 5 & 6, respectively,
13 in Evidence.)

14 BY MS. JOLMA:

15 Q. Now, to your knowledge, Ms. Lansdowne, when
16 did the foreclosure occur?

17 A. In May, May of '91.

18 Q. Is that when it occurred or when you were
19 notified?

20 A. When we received notification that it
21 actually was foreclosed on.

22 Q. And are the documents --

23 A. Or the documents, I'm sorry.

1 Q. I'm sorry?

2 A. No, the documents, they had taken them
3 back. They weren't actually recorded until '92.

4 Q. Let me turn your attention to number 9 and
5 number 10 in your notebook. Are those the documents
6 you were saying you received in May, approximately?

7 A. Yes.

8 MS. JOLMA: Your Honor, I'd like to move in
9 9 and 10, trustee's deed of assignment and
10 proprietary lease.

11 MR. NOLAN: No objection.

12 THE COURT: Okay, 9 and 10 will be
13 received.

14 (Thereupon, the above-referred to
15 documents were marked Plaintiff's
16 Exhibit Nos. 9 & 10, respectively,
17 in Evidence.)

18 BY MS. JOLMA:

19 Q. Would you please briefly describe for the
20 Court what your understanding of the deed of
21 assignment for proprietary lease is, what it
22 accomplishes?

23 A. It shows that they're now the new purchaser

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1 and that they have ownership of the unit and their
2 shares and that they would be liable and responsible
3 for all due assessments.

4 Q. And when they're referring to the
5 assignment of a proprietary lease, is there a
6 document that is in fact the proprietary lease?

7 A. Yes, there is.

8 Q. And have you been able to locate the
9 original document for these two; the original
10 proprietary lease for these two units?

11 A. No, I have not.

12 Q. This is marked for identification as
13 Plaintiff's Exhibit 13. Would you identify that
14 document for me, please?

15 A. It's the proprietary lease that's recorded
16 within the Courts at the same time that the
17 declaration and easements were recorded in '82.

18 Q. Is that the lease from which all the
19 assignments flow?

20 A. Yes.

21 MR. NOLAN: Well, Judge, I'm going to
22 object. I'm not sure if this witness is qualified
23 to make what I think is a request for a legal

1 opinion. In fact I know she's not qualified to make
2 that, so I'd move to strike the answer unless some
3 foundation is laid.

4 MS. JOLMA: I'll lay a better foundation
5 for that.

6 THE COURT: Okay.

7 BY MS. JOLMA:

8 Q. Could you tell me where that document came
9 from?

10 A. Our public offering statement.

11 Q. And is that public offering statement part
12 of your records that you keep?

13 A. Yes, it is.

14 Q. So you have actual knowledge of the
15 origination of that document?

16 A. Yes. We use this a lot.

17 Q. And when it's referred to in the trustee
18 -- this deed of assignment of proprietary lease, is
19 that in fact the proprietary lease they're referring
20 to?

21 A. Yes, it is.

22 MS. JOLMA: Your Honor, I'd like to move
23 that document into evidence, Plaintiff's Exhibit 13.

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1 MR. NOLAN: Judge, I'd ask you to reserve
2 ruling on that particular document also, pending
3 cross exam.

4 THE COURT: Okay, we'll reserve it pending
5 cross examination.

6 (Thereupon, the above-referred to
7 document was marked Plaintiff's
8 Exhibit No. 13, for Identification.)

9 BY MS. JOLMA:

10 Q. To your knowledge is there any other -- let
11 me withdraw that.

12 In your dealings with River Place and in
13 your personal review of the documents and your
14 knowledge acquired since you've worked there, is
15 that the only proprietary lease that you know of?

16 A. The only one that I know of, yes.

17 Q. Is that the one that's been approved by a
18 resolution of the board?

19 A. Yes.

20 Q. After you received or River Place received
21 the trustee's deeds of assignment for these two
22 units, did you ever communicate thereafter with
23 American Landmark regarding the delinquencies?

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1 A. Yes, I did.

2 Q. Would you describe for the Court, please,
3 the nature of those delinquencies -- or sorry, the
4 nature of those conversations?

5 A. Well, what we did was once we got notice
6 that everything was recorded, we transferred them
7 over to show that American Landmark was then
8 responsible for the charges.

9 Q. I'm sorry, you transferred what over?

10 A. The amounts. To the current billing.

11 Q. That's in your internal records?

12 A. Yes. Well, no, it's in a billing. It was
13 in a monthly billing that went out by our financial
14 services company. I contacted Pat Gore and spoke
15 with her about it because she didn't understand
16 where the amount came from.

17 At that time I had indicated to her it
18 arrived from when they took over 1002 and 1003.

19 Q. Who is Pat Gore?

20 A. She works for American Landmark.

21 Q. And you said you sent her monthly
22 statements?

23 A. Yes.

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1 Q. Beginning approximately when?

2 A. It was in July.

3 Q. So they went out every month thereafter?

4 A. They went out every month thereafter.

5 Q. Let me turn your attention to Exhibit
6 Number 11, please. Could you identify that
7 document for me, please?

8 A. It's a letter that was written to Art
9 Magnon in November of '92.

10 Q. Is this a document that was located in the
11 records of River Place?

12 A. Yes.

13 Q. What is the gist of that document?

14 A. After speaking with Pat Gore several times
15 she had suggested that we write to Art Magnon, and
16 I'd spoke with the board president, Mr. Walter
17 Charlton, and he drafted a letter letting them know
18 of the deeds of trustee's assignments and the
19 proprietary lease and when they were recorded or
20 when they took them back, and the amounts that were
21 due.

22 It also stated in this letter that I spoke
23 verbally with Ms. Gore.

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1 MS. JOLMA: Your Honor, I'm going to move
2 the admission of Plaintiff's Exhibit 11 only for the
3 limited purpose of notice of delinquency. Nothing
4 else contained in it --

5 MR. NOLAN: I discussed with Ms. Jolma, my
6 objection to the exhibit is that the contents are
7 hearsay. If their only purpose is admitting a
8 letter dated November 10, 1992, as a notice of a
9 claim for certain delinquencies, that and that alone
10 I have no objection to.

11 MS. JOLMA: That's all I'm submitting it
12 for, Your Honor.

13 THE COURT: With that understanding, it's
14 being submitted for that limited purpose.

15 (Thereupon, the above-referred to
16 document was marked as Plaintiff's
17 Exhibit No. 11, in Evidence.)

18 BY MS. JOLMA:

19 Q. In response to this letter, did you receive
20 any payment on these two units?

21 A. No, I did not.

22 Q. Ms. Lansdowne, have you had occasion to
23 review briefly the terms of the proprietary lease;

1 let me rephrase that.

2 Are you familiar with the terms of the
3 proprietary lease itself?

4 A. One section actually that we use a lot,
5 which is the 32 section of it that talks about
6 delinquencies and how to remedy them, you know, get
7 rid of them or handle them when they're in default.
8 Just what actions you can take towards an owner of
9 the delinquent unit.

10 Q. To your knowledge does the proprietary
11 lease, the original proprietary lease, incorporate
12 in there the bylaws?

13 MR. NOLAN: I'm going to object, it's
14 calling for a legal conclusion. This witness isn't
15 qualified to give that. If and when the document
16 comes into evidence it may speak for itself. If
17 it's not in evidence, this witness isn't qualified.

18 THE COURT: It is not at this time in
19 evidence.

20 MS. JOLMA: Your Honor, at this time I'd
21 like to move in Plaintiff's Exhibit 13.

22 MR. NOLAN: Judge, the same proprietary
23 lease I requested earlier, if the Court can reserve

1 ruling pending --

2 THE COURT: It is pending cross
3 examination.

4 MS. JOLMA: Court's indulgence a moment,
5 Your Honor.

6 (Brief Pause.)

7 BY MS. JOLMA:

8 Q. In your role at River Place have you been
9 involved in the collection process at all?

10 A. Yes, I have.

11 Q. Are you familiar with provisions in the
12 bylaws regarding collection?

13 A. Yes, I am.

14 Q. Does the bylaws provide for collections
15 actions such as this, recovery of reasonable
16 attorney's fees?

17 A. Yes, it does.

18 MS. JOLMA: Your Honor, I'm going to move
19 into evidence Plaintiff's Exhibit 12, it's an
20 affidavit of attorney's fees with a caveat attached.

21 MR. NOLAN: Judge, I'm not contesting the
22 amount and the bylaws speak for themselves.
23 Obviously I'm not conceding that it's a necessary

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1 exhibit now or anytime during the trial. With that
2 understanding I'm not contesting the amount
3 contained in the affidavit.

4 THE COURT: Okay, the Court will receive
5 it.

6 (Thereupon, the above-referred to
7 document was marked as Plaintiff's
8 Exhibit No. 12, in Evidence.)

9 MS. JOLMA: Court's indulgence, Your Honor.

10 I have Plaintiff's Exhibits 7 and 8, which
11 are documents received from the defendants. I'd
12 like to move these into evidence.

13 I don't believe there's going to be any
14 objection. Mr. Nolan, correct me if I'm wrong.

15 THE COURT: Plaintiff's 7 is what, the
16 memorandum of sale, Mr. Nolan?

17 MR. NOLAN: Judge, I have no objection to
18 those documents coming in as is at this time. I
19 don't believe that they are signed. They're signed
20 on the second page as I read it, by the trustees.

21 I have no objection to that document coming
22 in as a stipulation because this witness isn't
23 identifying it, but I'm not stipulating it was

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1 signed by the defendant.

2 THE COURT: But you have no objection to
3 them coming in, but with the understanding that you
4 say that they're not -- well, okay, they can come in
5 for the purpose that they're being offered.

6 MR. NOLAN: They appear to be signed by the
7 trustee.

8 THE COURT: Yes.

9 MR. NOLAN: It's a sale.

10 THE COURT: Yes.

11 (Thereupon, the above-referred to
12 documents were marked as Plaintiff's
13 Exhibit Nos. 7 & 8, respectively,
14 in Evidence.)

15 BY MS. JOLMA:

16 Q. Ms. Lansdowne, do you know what the
17 relationship is between American Landmark
18 Corporation and American Landmark Equity
19 Corporation?

20 A. American Landmark Management, if I'm
21 correct, is the agent for American Landmark Equity,
22 to the best of my knowledge.

23 Q. And how do you know that?

1 A. By the checks that they produce for their
2 monthly assessment payments. Or at the time it was
3 one of the checks that they produced on a unit.

4 Q. Has American Landmark Equity Corporation,
5 the defendant here, made payments of assessments on
6 these two units?

7 A. Yes, they have.

8 Q. And those assessments were paid beginning
9 when?

10 A. Let me look.

11 Q. Was it after they purchased the property?

12 A. It was after they purchased the property.
13 I believe they made one big payment in May that
14 covered April and May.

15 Then from that point on they paid the
16 current assessment amount, a thousand dollars each
17 on each unit for two months.

18 Q. And that -- it occurred today?

19 A. Yes.

20 MS. JOLMA: Your Honor, I have no further
21 questions for this witness.

22 THE COURT: Mr. Nolan.

23 MR. NOLAN: Thank you, Your Honor.

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CROSS EXAMINATION

BY MR. NOLAN:

Q. Ms. Lansdowne, as you said, American Landmark is current. They've paid the current assessments?

A. Yes, they have.

Q. Since they bought the unit they've paid all their assessments?

A. Yes, they have.

Q. Now, when you originally talked about; Ms. Jolma asked you about identifying the bylaws.

A. Which is a lesson all in itself.

Q. And you referenced the bylaw provisions with regard to assessments; is that correct?

A. Yes, I did. The liability for assessments and my understanding of what it means.

Q. Would you look to section 12.2 of the bylaw.

A. Lien for assessments.

Q. Yes.

A. Uh-huh.

Q. Can you read that section for me?

MS. JOLMA: Your Honor, I'm going to object

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1 to the relevance of this. I'm not asserting any
2 lien or pursuing under any lien in this case.

3 MR. NOLAN: With the understanding that the
4 plaintiff is not pursuing a suit to enforce any
5 lien, I will withdraw the question.

6 MS. JOLMA: I am not, Your Honor.

7 THE COURT: Okay.

8 BY MR. NOLAN:

9 Q. If you could turn back to Exhibit 1, Ms.
10 Lansdowne, the declaration of covenants. Ms. Jolma
11 asked you some questions about that. Could you turn
12 article one, and subsection 14. Or it's page three,
13 I'm sorry.

14 A. Oh, thank you, that helps. I'm there.

15 Q. About half-way down subsection 14
16 identifies -- is the definition of an owner; is that
17 correct?

18 A. Yes, it is.

19 Q. And about half-way down that there is a
20 semicolon beginning with the word "but." Six lines
21 down.

22 A. Yes. By the term "owner?"

23 Q. Yes, can you read the remainder of that

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1 paragraph?

2 MS. JOLMA: Your Honor, I will stipulate
3 that owner does not include the proprietary lessee,
4 or unrecorded contract. I'll stipulate that what it
5 says is what it says. I have no problem with that.
6 It does not include individual owners, I think is
7 the drift. And I agree with that.

8 MR. NOLAN: Thank you, that's satisfactory,
9 Your Honor.

10 BY MR. NOLAN:

11 Q. And Ms. Lansdowne, the bylaws are not
12 recorded. This declaration is recorded, the bylaws
13 are not; is that right?

14 A. To the best of my knowledge. I'm not
15 really sure. I haven't never checked. I always
16 assumed that it was all together in one big package
17 recorded in Arlington County.

18 Q. Well, you don't have any reason to believe
19 the bylaws are recorded; you're not asserting the
20 bylaws are recorded?

21 A. No, I'm not.

22 Q. Now, you were referencing earlier a time
23 you were contacted by someone from Monument. I

1 think you said Adams, Porter and Radigan.

2 A. Yes.

3 Q. The party that was going to foreclose on
4 you?

5 A. Yes.

6 Q. And you were referencing come language that
7 I believe is contained in the trustee's, or the
8 notice of trustee's sale; is that correct?

9 A. Referenced any and all -- that line item?

10 Q. Yes.

11 A. Yes.

12 Q. Let's see if I can find that, because I'd
13 like to ask you about that. The notice of trustee's
14 sale was Exhibit 5?

15 A. It's 5, the back page.

16 Q. And that is the second full paragraph on
17 the page; is that correct?

18 A. Yes.

19 Q. Would you read the full paragraph, please?

20 A. "This sale is made subject to any and all
21 existing prior deeds of trust, liens,
22 covenants, conditions, restrictions, right-of-
23 way, easements, reservations and other prior

1 encumbrances of record, and to the payment of
2 any and all delinquent real estate taxes,
3 cooperative fees and other proper charges due
4 on the property that may have legal priority
5 over the deed of trust."

6 Q. And the deed of trust in this case was the
7 first trust they foreclosed on; is that right?

8 A. Yes.

9 Q. Now, I'll tell you before I do this that I
10 want to correct; because I think you testified if
11 I'm not mistaken with regard to the trustee's deeds,
12 Exhibit 9 and Exhibit 10: did I understand you to
13 testify that they were not recorded until 1992?

14 A. Well, on the back here it's 1992. Our
15 transfer agent -- let me make that correction here.

16 On July 2nd of 1992 we received the
17 documents from Edmund J. Flynn Company which until
18 the time she actually I believe records the transfer
19 then becomes the owner of record. I'm not really
20 sure if this makes it owner of record or when she
21 actually does the transfer.

22 But in July I received notice from her with
23 the stock certificates of the recording of these

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1 documents attached to them, yes.

2 Q. But you're not really sure when the legal
3 transfer takes place?

4 A. I was --

5 Q. Is that a fair statement?

6 A. Is that a yes or no answer? Or may I say,
7 I was always told when the transfer agent records
8 the documents.

9 Q. But you would agree with me that this
10 trustee's deed is the deed to the property?

11 A. Yes.

12 Q. And it's recorded by it's little sticker in
13 '91.

14 A. Yes.

15 Q. Now, you also made a statement with regard
16 to the proprietary lease. You indicated with regard
17 to the proprietary lease that you thought the board
18 approved that?

19 A. I need to stand corrected on that. The
20 board did not approve them. I think when it was
21 changing over from a development to an apartment
22 complex, the declarations and the proprietary lease
23 was designed at that time.

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1 Not that it was approved by the board, but
2 what I meant was, it's always been a part of our
3 documents that are given out as far as the sale and
4 then when it's foreclosed on the assignment is
5 assigned to a unit at foreclosure.

6 And therefore the proprietary lease that is
7 binding makes the new owner -- the purchaser binding
8 to the proprietary lease, if that makes any sense or
9 not.

10 Q. Well, the new owner is not given that
11 proprietary lease, he's given an assignment?

12 A. Assignment of proprietary lease, yes.

13 Q. He's not given that proprietary lease. And
14 in fact the board, you, the plaintiff, didn't even
15 exist back when that document, right, when that
16 document was generated?

17 A. Right. But it's one of our governing
18 documents that we live by now.

19 MR. NOLAN: Your Honor, I'm sorry, the
20 proprietary lease that we are speaking of is --

21 BY MR. NOLAN:

22 Q. This document that's been marked as Exhibit
23 13, the proprietary lease that you've been talking

1 about, this is actually a blank, a sample; is that
2 right?

3 A. Yes, it is.

4 Q. You don't know that this is the exact
5 document that's recorded; is that right?

6 A. I believe it's the exact document that's
7 been recorded.

8 Q. You think that a document identical
9 to this is recorded?

10 A. I believe, yes.

11 Q. You don't know?

12 A. I have not checked, no.

13 Q. All right, and this proprietary lease is
14 not given to all the new buyers, just the assignment
15 is given to new buyers?

16 A. Just the assignment.

17 Q. Ms. Lansdowne, I'm sorry, you may have
18 said.

19 A. That's okay.

20 Q. When did you begin with the plaintiff,
21 River Place North, when did you start working?

22 A. In April of 1990.

23 Q. You had testified with regard to the letter

1 which I believe is Exhibit Number 11 that was sent
2 to Mr. Magnon, is that right? You had Exhibit
3 Number 11?

4 A. Yes, I did.

5 Q. Isn't it true that after that letter was
6 sent, at a time period after that you and Mr. Magnon
7 had lunch and talked about that? Do you recall
8 that?

9 A. No, I did not have lunch with Mr. Magnon.

10 Q. I'm sorry, Mr. Charlton. You had lunch
11 with Mr. Charlton to discuss this?

12 A. No, I did not. That's okay. And I don't
13 know the conversation. I believe it would be
14 considered hearsay if I did.

15 Q. Ms. Lansdowne, I want to show you a copy of
16 the interrogatories which you received during the
17 pendency of this lawsuit, and ask you if you can
18 identify these as a true and correct copy. And I've
19 highlighted a section that I'll ask you about later.

20 But for now if you can just identify those
21 as true and correct copies?

22 A. Okay.

23 Q. That is your signature on the

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1 interrogatories?

2 A. Yes, it is.

3 Q. And you answered those interrogatories
4 under oath; is that correct?

5 A. To the best of my knowledge I did, yes.

6 Q. Well --

7 A. Yes.

8 Q. The balance that you claim due -- I
9 understand there's been an amendment today.

10 A. Yes.

11 Q. But at the time, the balance that you claim
12 due there was true and correct?

13 A. Uh-huh.

14 Q. And the answer that you gave in number
15 seven is true and correct; is that to your
16 knowledge?

17 A. Yes.

18 Q. Now, and you were -- I'm sorry --

19 A. The day, I believe there's something wrong
20 with this date because it says arrearages
21 accumulated monthly until American Landmark began
22 regular payments of assessments on or about May 1st
23 of 1993. I think that should have been '92 -- '91,

1 '92.

2 If you can hand me my folder I can tell you
3 exactly when it was. The date on here isn't right.
4 American Landmark started paying prior to May of '93
5 on the assessments.

6 Q. Well, in fact, that's what I want to ask
7 you about.

8 A. All right.

9 Q. Let me show you two statements of account
10 and ask if you can identify those?

11 A. Yes, I believe these are the ones that I
12 typed up.

13 Q. Are those statements of account true and
14 accurate?

15 A. Yes. I mean they look right.

16 Q. Let me if I could mark: what I'm marking
17 is Defendant's Exhibit 1 and Defendant's Exhibit 2.

18 A. (No response.)

19 (Thereupon, the above-referred to
20 documents were marked as Defendant's
21 Exhibit Nos. 1 & 2, respectively,
22 for Identification.)

23 BY MR. NOLAN:

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1 Q. Now, the initial default as I understand,
2 and I want you to reference the statements of
3 account; the initial default listed here was not by
4 the defendant. It was by the prior owner?

5 A. Yes, it was.

6 Q. That was in 1989?

7 A. Yes. And then HTR Property Management
8 started managing it, and as you can see by the large
9 dollar amount in January of '90 they brought it
10 current for a small period of time.

11 Q. And the foreclosure took place in April of
12 '91; is that correct?

13 A. Yes.

14 Q. So you claim that as of April of '91,
15 that's the time which --

16 A. American Landmark started paying, and what
17 this payment represents would be May's and April's
18 assessment. Then as you can see by it they paid
19 every month thereafter.

20 Q. So in fact they weren't in arrears?

21 A. American Landmark?

22 Q. Right.

23 A. No.

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1 Q. So the interrogatory answer isn't
2 completely correct. They were not in arrears since
3 they've owned the unit?

4 A. Correct.

5 Q. As I understand it, you're claiming,
6 though, that as of April, '91, when they purchased
7 at foreclosure, they owned these delinquent fees?

8 A. Yes.

9 Q. When in fact if you look to the statement
10 of account in April of '91 the delinquent fees were
11 written off according to the account; isn't that
12 right?

13 A. Well, actually I have "transfer to American
14 Landmark, not written off". We really rarely write
15 anything off any more. That's just in brackets to
16 show that it was transferred, and that's American
17 Landmark abbreviated.

18 Q. Okay.

19 A. Okay.

20 Q. And then we go to April -- we go to the
21 very next entry, and they're not transferred; is
22 that correct?

23 A. Well, that's probably more or less a typo,

1 because if you look at July 1st of '92 when I
2 finally got our financial management services
3 company to transfer it, it was within a month of
4 July. I tried to make this as accurate as I could
5 with the books of record.

6 MS. JOLMA: Your Honor, I'm sorry, I don't
7 know which document you're on on this.

8 THE WITNESS: Oh, you don't have this part,
9 he kept the --

10 MR. NOLAN: I'm sorry. You have the
11 copies, they are both identical in date. The
12 differences -- if I'm correct, they're both
13 identical in date. The numbers may be different but
14 the chronology is the same.

15 MS. JOLMA: For which units?

16 THE WITNESS: Right now we're looking at
17 1003, but when I asked you where the rest of the
18 copies, they weren't there. But as you can see, I
19 believe this is when Brown actually transferred it
20 over to American Landmark's set of records on the
21 system itself.

22 That's why this is an exact amount that I
23 have here, that I have transferred. It's one that

1 should have been transferred.

2 BY MR. NOLAN:

3 Q. But it wasn't?

4 A. But it was not.

5 Q. It wasn't transferred to their account for
6 a year and three months.

7 A. It was an error by our financial services
8 company, not that it shouldn't have been
9 transferred.

10 It's hard when you have a property
11 management company or a financial services company
12 and you give them instructions to do something and
13 they feel that they'll do it at their own time. I
14 don't know. It should have been transferred at
15 that time.

16 Q. But for a year and three months it wasn't.
17 For a year and three months there was no record they
18 were in arrears.

19 A. There were verbal conversations of them
20 being in arrears, and being responsible to pay.

21 Q. They weren't billed for the amount, though,
22 were they, during that year and three months?

23 A. May I see your statements?

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1 Q. Sure.

2 A. And I'll tell you if they were or if they
3 were not. (Brief pause.)

4 Would you happen to have a bill for the
5 month of July?

6 Q. These are --

7 A. These are --

8 Q. You're right, these are individual bills,
9 these are for April of '92.

10 A. Yes.

11 Q. Do you agree with me that April of '92 on
12 your financial statement shows that they're current?

13 A. Yes.

14 Q. And there's no delinquency?

15 A. That's correct, although there was a
16 delinquency. Just because our financial services
17 manager made an error in not transferring it
18 properly, like instructed, does not mean it didn't
19 exist.

20 Q. But this is what my client gets, right?

21 A. Yes, and your client should have had one
22 as of April, and thereafter with the charge.

23 Q. But you agree with me that in April of

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1 '92 --

2 A. That's right, there was no charge.

3 Q. There was no charge.

4 A. On their bill. You're correct.

5 Q. Can you identify these two as in fact the
6 invoices that they're billed from your office?

7 A. Yes, at that time.

8 Q. From your management company's office?

9 A. Yes.

10 Q. Now, you heard and agreed with the
11 stipulation that prior to the foreclosure you all
12 obtained a judgment in General District Court
13 against this prior owner who owed the money?

14 A. Uh-huh.

15 Q. But to your knowledge, were his mortgage
16 payments ever garnished?

17 MS. JOLMA: I would object, Your Honor, I
18 don't think I got into that on direct. I don't
19 think I discussed with her on direct the collection
20 actions against the prior owner.

21 THE COURT: I have no recollection of that.

22 MR. NOLAN: I don't believe she did either.
23 I think the collection efforts, it opens up an area

1 that is covered in the bylaws there. They, as I
2 understand it, are claiming both parties are liable.

3 I can call her as my own witness if the
4 Court wishes. That's the only question along those
5 lines that I have.

6 THE WITNESS: If I could just show
7 that I --

8 THE COURT: Whoa, whoa.

9 You have something further, Ms. Jolma?

10 MS. JOLMA: Your Honor, I'll stipulate
11 there was a General District Court judgment, that it
12 was recorded in Circuit Court and that collection
13 attempts which were unsuccessful I believe were
14 made. And I want to stipulate to that.

15 THE COURT: Mr. Nolan?

16 THE WITNESS: I have records, Mr. Nolan --

17 THE COURT: Well, wait, there's no question
18 pending yet.

19 THE WITNESS: I'm sorry.

20 MR. NOLAN: That's fine, Your Honor.

21 THE COURT: Okay. Which would basically be
22 the question and the answer to the question anyway.

23 MR. NOLAN: Well, it may be except that;

1 let me try to ask the question this way:

2 BY MR. NOLAN:

3 Q. You knew that Monument Associates was the
4 lender on this. Prior to foreclosure, Monument
5 Associates was the lender. They were the ones who
6 were going to foreclose on the first trust?

7 A. I didn't know that at the time. But now I
8 realize they were, yes.

9 Q. They were the ones who received the monthly
10 income, the mortgage or the rent, if you will, from
11 Mr. Ghassemi, the person who owed you all a debt?

12 A. I wasn't aware that that's who he was
13 responsible of paying, no.

14 Q. Now, am I correct in saying that there were
15 in fact -- your office, River Place North, handles a
16 number of deficiencies; I'm not talking about
17 lawsuits. But you have other units that are
18 deficient?

19 A. Yes.

20 Q. And in fact you attend the board of
21 directors meetings for River Place North; is that
22 correct?

23 A. Yes.

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1 Q. And during some of those board of directors
2 meetings delinquent fees have been waived for units;
3 is that correct?

4 A. When you say delinquent fees, as of August
5 of '92 when the north building was no longer
6 centralized with east and west in the old way, I
7 found documents in '89 where board members; and
8 north building documents; where late fees were
9 written off.

10 I found documents where there was a lump of
11 units owned by -- I guess the mortgage was by
12 Monument and DeSanto and Naftil had where they wrote
13 off fees at that time. I wasn't a part of that, no.

14 Q. Let me show you what I've marked as
15 Defendant's Exhibit 3. It actually contains three
16 documents.

17 A. Okay.

18 (Thereupon, the above-referred to
19 documents were marked as Defendant's
20 Exhibit No. 3, for Identification.)

21 BY MR. NOLAN:

22 Q. Are these the documents that you were
23 referring to when you said you found fees written

1 off?

2 A. Yes. But I think it need to be noted that
3 some of these fees that were written off were due
4 to; it says in here; incorrect bookkeeping errors.

5 Q. And some of them also say "due to
6 foreclosure"?

7 A. Due to foreclosure, yes.

8 Q. In point of fact, over a period of time,
9 you don't know exactly which ones may have been
10 pursued and which weren't, which were written off.
11 You know since you've been there.

12 A. When looking back through their book of
13 resolutions, okay, the general resolutions is where
14 when I guess the board decided to write off late
15 fees, assessments for whatever reason. There had to
16 have been one of these drawn up in order to do that.

17 In going through the book I found this one
18 and several others that I looked at and found the
19 reasons why and a lot of times like in this one
20 instance it was due to foreclosure.

21 But if it was Monument at the time and then
22 a seller had it and they wrote off the fees, that
23 didn't mean that it was Monument that they were

1 writing them off, or it could have meant that they
2 were writing them off for the --

3 Q. I'm not asking you to speculate about what
4 might have happened.

5 A. Okay.

6 Q. I'm saying you found some that existed
7 before you came there?

8 A. Yes.

9 Q. I think as you said, for whatever
10 reasoning, you don't know all the reasons, there
11 have been some that have been written off at varying
12 times.

13 A. Yes.

14 Q. You weren't privy to all the agreements or
15 arrangements with regard to some being written off
16 or something else?

17 A. I think I should have been, because I
18 brought the book with me, the book of resolutions,
19 to where if they were written off they had to do a
20 resolution for it.

21 As far as the board sitting down and
22 saying: let's write off, they had to draw up a
23 resolution to show that it was done, and in this

1 case like this.

2 And we have the book to show how many units
3 there were. So it would be hard for me to say: oh,
4 no, I don't know of any other than the ones that are
5 in the book.

6 Q. What I'm saying is: you don't know what
7 all the arrangements or the motivations behind
8 writing off some of these were?

9 A. No, I do not. No, I do not.

10 Q. Or agreements or arrangements by board
11 members before you came there?

12 A. Correct.

13 Q. People before Mr. Charlton, before Mr. --

14 A. Yes.

15 Q. Now, you have been present, correct, for
16 many of the board meetings and executive sessions?

17 A. I don't attend executive sessions.
18 Strictly the board, and maybe the minutes taking.
19 But management is excused from executive session
20 meetings.

21 Q. Well, let me show you what I've marked as
22 Defendant's Exhibit 4 and ask you if you can
23 identify that?

1 A. (No response.)

2 (Thereupon, the above-referred to
3 document was marked as Defendant's
4 Exhibit No. 4, for Identification.)

5 MS. JOLMA: Your Honor, I'm starting to get
6 confused here. I've let this go a little bit, but
7 it seems to be getting way far afield from the
8 direct. I'm not sure where this is going. I kind
9 of thought this would apply into the direct somehow,
10 but I'm getting lost.

11 MR. NOLAN: Judge, I understand Ms. Jolma's
12 position. We've raised as one defense, estoppel.
13 These issues with regard to board meetings and
14 waivers do go to estoppel. I can call Ms. Lansdowne
15 as my own witness, if Ms. Jolma would rather. I'm
16 happy to do that.

17 MS. JOLMA: I think I'd rather do that,
18 Your Honor, because now I'm being obliged to do
19 things that I wouldn't normally do.

20 THE COURT: Okay. Are you going to switch
21 gears then and just call her?

22 MS. JOLMA: I have no objection to that,
23 Your Honor, if he wants to do it right now and save

1 the time. Shift gears in mid-stream.

2 MR. NOLAN: In fact, Judge, these are the
3 last two exhibits I have for this witness.

4 THE COURT: All right.

5 MR. NOLAN: And I'm happy to ask her non-
6 leading questions.

7 THE COURT: Okay.

8 MS. JOLMA: Okay.

9 BY MR. NOLAN:

10 Q. Can you identify that?

11 A. Yes, it's an executive session, minutes.

12 Q. Were you present at that?

13 A. Not at this executive session, no.

14 Q. But can you identify those minutes as --

15 A. Being true.

16 Q. -- true and accurate, yes?

17 A. Yes.

18 Q. Let me show you what I've marked as
19 Defendant's Exhibit 5. And ask if you can identify
20 that?

21 A. (No response.)

22 (Thereupon, the above-referred to
23 document was marked as Defendant's

1 Exhibit No. 5, for Identification.)

2 MS. JOLMA: Your Honor, I'll stipulate that
3 all these are true and accurate copies of what's in
4 the Court files. I think he got them from there, or
5 what's in River Place North's files, if it will
6 speed things up.

7 THE COURT: Okay.

8 MS. JOLMA: That's where the originals come
9 from.

10 MR. NOLAN: Thank you, Your Honor, that's
11 all the questions I have for this witness.

12 THE COURT: Ms. Jolma?

13 MS. JOLMA: I'm not sure if I'm on cross or
14 redirect.

15 THE COURT: Redirect.

16 REDIRECT EXAMINATION

17 BY MS. JOLMA:

18 Q. Mr. Nolan asked you about the origination
19 of the proprietary lease?

20 A. Yes.

21 Q. Was it your understanding or your testimony
22 prior that the -- what did you call the initial --

23 A. Public offering statement.

1 Q. Public offering statement. Can that be
2 referred to as the birth of River Place?

3 A. Yes.

4 Q. Was that part of the birthing process?

5 A. Yes, it was.

6 Q. To the best of your knowledge, as I asked
7 you before, you've not been able to locate in your
8 records a signed version of that?

9 A. That's correct, to these units. Yes.

10 Q. The best of your knowledge is the signed
11 proprietary lease was recorded?

12 A. Yes, it is.

13 Q. Let me ask you quickly, the confusion about
14 the dates on the statements. When did you say you
15 received the packet from Edmund Flynn?

16 A. July 2nd of '92.

17 Q. And I don't know whether you still have the
18 documents in front of you or not?

19 A. Which documents?

20 Q. The statements of account; do you still
21 have those in front of you?

22 When they assessed the transfer from
23 Ghassemi, does that correspond in time that you

1 received the transfer packet from Edmund J. Flynn?

2 A. Yes, it does.

3 Q. Did you have any conversations with anyone
4 at American Landmark about an outstanding balance
5 before that time?

6 A. Yes, I did. I spoke with Pat Gore.

7 Q. Other than the little check statement we
8 saw go by, did any other documents ever go to Pat
9 Gore?

10 A. No, that was our only mailing document that
11 we mailed for assessments, any bill or any late
12 notices, I'm sorry. Late notices went out around
13 the 17th or the 18th of each month.

14 That's the monthly billing that goes out
15 the 1st or before the 1st of the following month.
16 And then in the mid-month another notice would go
17 out which was called a late notice.

18 Q. Mr. Nolan asked you briefly if you knew
19 about any deals in terms of deals or waiving late
20 fees or assessments before you came here. Did you
21 know of any deals after?

22 A. No.

23 MS. JOLMA: Your Honor, I have no further

1 questions for this witness.

2 MR. NOLAN: If I could have one very brief
3 follow-up.

4 RECROSS EXAMINATION

5 BY MR. NOLAN:

6 Q. Ms. Lansdowne, let me show you again what's
7 identified as Defendant's Exhibits 1 and 2. And if
8 I could ask you to take a look at the -- I think you
9 pointed out where they were transferred.

10 From the time of the transfer -- well,
11 actually at any time -- let's start with the time of
12 the transfer, as you said, to American Landmark in
13 1992.

14 Those statements do not reflect any late
15 fees, do they?

16 A. That's correct.

17 MR. NOLAN: Thank you, Ms. Lansdowne.

18 THE WITNESS: You're welcome.

19 MS. JOLMA: Just one quick one.

20 FURTHER REDIRECT EXAMINATION

21 BY MS. JOLMA:

22 Q. Those statements that you saw there, those
23 are your internal records?

1 A. Those statements?

2 Q. Yes.

3 A. Yes.

4 Q. Those are not sent to American Landmark,
5 are they?

6 A. No, they're not.

7 MS. JOLMA: I have no further questions,
8 Your Honor.

9 You may step down, ma'am.

10 Your Honor, I'd like to call Mr. Magnon
11 briefly.

12 Thereupon,

13 ARTHUR J. MAGNON,
14 a witness, was called by counsel on behalf of the
15 Plaintiff, and having been previously duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. JOLMA:

19 Q. Would you please state your full name for
20 the Court, please?

21 A. It's Arthur J. Magnon.

22 Q. And what is your position with American
23 Landmark Equity Corporation?

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1 A. I'm the president.

2 Q. Would you explain to me, please, who
3 American Landmark Management Corporation is?

4 A. American Landmark Management Corp is the
5 management company that is managing the units owned
6 by American Landmark Equity Corp. And I'm the
7 president of American Landmark Management Corp.

8 Q. So then there is an agency relationship
9 between the two; one acts for the other?

10 A. Yes.

11 Q. Let me turn your attention then to Exhibits
12 7 and 8 in your notebook. Seven and 8. Would you
13 look at the signature page on there; and do you
14 recognize that signature?

15 A. The one for the substitute trustee?

16 Q. Yes. I know it's not very clear.

17 A. I think that's James A. Howard, who was the
18 substitute trustee.

19 Q. And does he work for American Landmark
20 Management Corporation?

21 A. At this point in time the answer to that
22 would be yes; 1991, yes.

23 Q. Do you know or can you recognize the

1 writing on the first page, it says American Landmark
2 Equity Corp; is that also Mr. --

3 A. To what I can remember of Mr. Howard's
4 handwriting, this is not his handwriting. I can't
5 tell you that I know whose handwriting this is.

6 Q. Is there any reason for you to suspect this
7 is not the memorandum of sale?

8 A. No reason.

9 Q. To the best of your knowledge, did this
10 come from your records?

11 A. I don't know where this came from. I mean
12 it may be our records or it may be others, I don't
13 know.

14 MS. JOLMA: I believe there's a
15 stipulation, Your Honor, that these particular
16 documents come from the records of --

17 MR. NOLAN: We'll stipulate to that. The
18 documents were produced in discovery and I have no
19 objection to the documents coming into evidence. I
20 don't know that they came from American Landmark.

21 THE COURT: They're already in.

22 BY MS. JOLMA:

23 Q. Mr. Magnon, Exhibit 13; were you a

1 participant in the public offering statement process
2 of River Place?

3 A. No, I came after. The River Place
4 documents were already in place.

5 Q. Have you ever seen those documents?

6 A. Yes, ma'am.

7 Q. Have you ever seen a signed version of
8 that?

9 A. I would have to say probably yes, but the
10 specific one here, whether this is it, I don't know.
11 There is a signed proprietary lease somewhere in
12 those documents.

13 Q. And those are the ones that are recorded?

14 A. I would assume that they get recorded in
15 Virginia. Again, my background is New York, so
16 therefore I don't know what gets recorded in the
17 Virginia court records and real estate records.

18 MS. JOLMA: Your Honor, I have no further
19 questions for Mr. Magnon.

20 MR. NOLAN: No questions.

21 THE COURT: Thank you.

22 MS. JOLMA: Your Honor, that is the close
23 of my evidence, my case in chief. I'd like to move

1 all exhibits in that did not get moved in. I
2 believe we've had our cross examination and the
3 like.

4 MR. NOLAN: Judge, I believe the exhibits
5 not in evidence are --

6 THE COURT: Three and four.

7 MR. NOLAN: Which are the statements of
8 account?

9 THE COURT: Yes, and 13.

10 MR. NOLAN: Judge, my objection to 3 and 4:
11 I have produced certain statements of account the
12 plaintiff's own witnesses has also identified and
13 I've also identified as true and accurate, but they
14 are not identical to those statements of account on
15 the same properties.

16 Under those circumstances I don't believe
17 that those statements of account are properly
18 established to come into evidence as a true and
19 accurate representation.

20 I'm not offering my documents at this time,
21 but I would submit to the Court -- and I have no
22 objection to true and accurate statements of account
23 as a representation of an amount they claim is owed.

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1 But I don't think that the plaintiffs have
2 established that they are true and accurate; that
3 the same witness has also identified documents she
4 also produced on the same date as true and accurate,
5 that don't have late fees, and that reflect a gap of
6 a year and three months.

7 Under those circumstances I do object to
8 those statements of account coming into evidence.

9 MS. JOLMA: Your Honor, I'm flying blind
10 here a little bit. One moment, Your Honor, (Brief
11 pause.)

12 Is the objection of Mr. Nolan that they're
13 not complete through date or -- I believe she
14 testified that there were -- one of mine was the
15 date; yours appears to go through the present date.
16 Is that the objection?

17 Your Honor, it appears that my exhibits are
18 missing the accounting from the date they took over
19 to the present date. We're not disputing what
20 happened between there. If you'd like to substitute
21 what Mr. Nolan has for what I have I have no
22 objection. They're the same except his goes from
23 '91 through the end of the --

1 (Thereupon, there was had a conference
2 off the record between Counsel.)

3 MS. JOLMA: We're going to substitute for
4 the ones I've given previously, Your Honor.

5 THE COURT: With that understanding
6 plaintiff's 3 and 4 will be accepted and admitted.

7 (Thereupon, the above-referred to
8 documents were marked as Plaintiff's
9 Exhibit Nos. 3 & 4, in Evidence.)

10 MS. JOLMA: And that concludes my case in
11 chief, Your Honor.

12 MR. NOLAN: Judge, I think I still have an
13 objection to exhibit 13, the proprietary lease. A
14 true and accurate land record, the Court can
15 obviously take judicial notice of, but that's not
16 what the Court has before it.

17 More importantly, what the Court has before
18 it is a completely blank copy with no signatures and
19 which plaintiff's witness says is not tendered to
20 all buyers.

21 That and that alone brings into question
22 the relevance. It's clearly not the best evidence
23 because of the form they've presented, but beyond

1 that, plaintiff's own witness says that's not
2 tendered to the buyers. And under those
3 circumstances, I don't think it is relevant and is
4 improper as an exhibit.

5 MS. JOLMA: Your Honor, she's testified
6 that she does not have in her records a completed
7 copy of this document. The original, wherever it
8 is, is nowhere to be found at River Place North. It
9 is lost.

10 She has testified that she cannot find that
11 document. But there does in fact exist that
12 document which is the only proprietary lease that
13 has ever been created. It is the form used.

14 THE COURT: Well, I'm not sure that's what
15 she said.

16 MS. JOLMA: I believe it is, Your Honor.
17 She said she's unable to locate that document from
18 her records.

19 THE COURT: No, she's not, I don't doubt
20 that, but I don't believe she said that this is the
21 only form. She said she thinks this is the form.

22 MS. JOLMA: Your Honor, my recollection of
23 her testimony was that she said that was the part of

1 the public offering statement. It was created along
2 with the public offering statement as I asked her,
3 at the birthing of River Place. This document went
4 along with the birthing of River Place.

5 THE COURT: What about the objection to the
6 fact that whether or not it was -- it was clear that
7 her testimony was that it wasn't given to everyone.

8 MS. JOLMA: Well, Your Honor, that requires
9 some legal argument. And let me explain briefly
10 what goes on, and that if you look at the -- I
11 believe I asked Ms. Lansdowne regarding the
12 assignments of the proprietary lease.

13 When they do the trustee's deed of
14 assignment of proprietary lease, that is an
15 assignment of that document. And I asked her: when
16 they say proprietary lease and the assignment of
17 proprietary lease, is that the document they're
18 referring to? She testified that was so.

19 That is what this document here refers to.
20 So when somebody takes an assignment of a
21 proprietary lease, this is part of the whole
22 package.

23 THE COURT: Mr. Nolan, do you have anything

1 further?

2 MR. NOLAN: No, Your Honor, I continue my
3 objection on those two grounds. It's not the best
4 evidence and the plaintiff's testimony is it's not
5 tendered to buyers. Therefore it would have limited
6 if any value.

7 THE COURT: What about --

8 MS. JOLMA: Your Honor, let me point out
9 one thing to you. If you look at the trustee's deed
10 of assignment/proprietary lease, on the third page
11 they state that what they're doing is conveying
12 something described as follows: the proprietary
13 lease -- the trustee's notice of sale has similar
14 language.

15 It says we're selling the proprietary lease
16 for this unit. And that fact and the records here
17 and all these documents, that's what these people
18 are buying when they bought. They're buying that
19 document. They're buying the right to live in that
20 apartment, to do the things under that document.

21 THE COURT: You have nothing further about
22 this?

23 MR. NOLAN: No, Your Honor.

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1 THE COURT: What is your position with
2 regards to the testimony of Mr. Magnon here, that
3 even though he couldn't say this -- it does appear
4 to be and there must be one just like -- but it's
5 just lost?

6 MR. NOLAN: Judge, if I understand Ms.
7 Jolma's contention then that that would get her over
8 a best evidence objection because it's lost, if it
9 is recorded then that doesn't get her past the best
10 evidence objection.

11 The fact that it was lost only reinforces
12 the argument that no one's got it. It's not
13 tendered to the buyers. It's not a document that
14 the buyers could rely on or more importantly be
15 charged with.

16 And under those circumstances it has no
17 bearing in the case. That particular document you
18 have before you has an even greater problem in that
19 it's blank, and it's not signed by anyone.

20 THE COURT: Well, I'm going to take a brief
21 recess. Do you have a copy of --

22 MS. JOLMA: Yes, Your Honor. (Peruses
23 documents.)

1 THE COURT: You want to prove that this is
2 in fact lost, or that we can accept this. I'm not
3 sure that according to this, that everything has
4 been done to do that. There's nothing done about a
5 petition in writing.

6 Is that basically what your objection would
7 be, then, that everything has not been done to
8 establish and verify that this thing was lost and
9 that this is a --

10 MR. NOLAN: Yes, Your Honor. That's part
11 of it. It is a best evidence objection.
12 Secondly, it has no, if any, probative value.
13 It's not being tendered to the buyers.

14 MS. JOLMA: Your Honor, I believe Mr.
15 Magnon did testify to the best of his knowledge he
16 signed one of those; it is recorded. There's been
17 no testimony that there isn't one that's recorded.

18 If it's recorded it's a matter of record, a
19 matter of public knowledge. So you know, the fact
20 that the purchaser isn't handed one, I don't think
21 is relevant.

22 MR. NOLAN: I agree that it's a matter of
23 record, but I disagree that it's a matter of quote,

1 "public knowledge."

2 THE COURT: Okay, again it gets to a
3 question of can anybody say that this is actually a
4 true copy of what was recorded. It's not. We can't
5 say that because it's not a copy of it. We don't
6 know that it is; it's not a true copy of it. I mean
7 a true copy would have the blanks and so forth
8 filled in which could not have been filled in
9 because it was lost.

10 So we cannot say that this is in fact a
11 true copy. So that's a problem.

12 MS. JOLMA: Well, what I'm saying is that
13 that's the document that was the only document
14 created that is a proprietary lease.

15 THE COURT: I understand.

16 MS. JOLMA: And the filled-in parts do not
17 really impact the content of the lease, Your Honor.
18 It's a matter of putting names on it and the like,
19 but it doesn't affect the content. The testimony
20 has been that the content of that lease is that,
21 except for the parts that are left blank because we
22 can't find the original filled-in one.

23 THE COURT: Well, I'm going to take a brief

1 recess. I'm going downstairs and see if I can find
2 a friend who will give me some help in this matter.

3 (Brief recess.)

4 THE COURT: Well, I think in looking at
5 these issues we've raised, there's several problems
6 to look at.

7 First of all, let me ask you this: Is your
8 objection to the admission of this -- because
9 obviously it is not the best evidence -- all right,
10 but the first question I want to ask you, counsel:
11 are you questioning the contents of the document?

12 MR. NOLAN: Yes.

13 THE COURT: As to whether those are true
14 and accurate?

15 MR. NOLAN: As to whether those are true
16 and accurate, because whatever may be recorded, as
17 Your Honor pointed out, can't possibly be identical
18 to that.

19 THE COURT: All right. That's one of the
20 things that has to be at issue, whether or not the
21 contents are at issue.

22 Are you then, Ms. Jolma, offering this as
23 secondary evidence as to what the document would

1 say?

2 MS. JOLMA: I'm not sure what Your Honor
3 means by secondary evidence, but clearly it's
4 not --

5 THE COURT: Well, it's not the best
6 evidence because it's not the original.

7 MS. JOLMA: That's correct.

8 THE COURT: And certainly that's one of the
9 first issues when we start raising the whole issue
10 of best evidence, is whether the contents are at
11 issue, and in this case obviously because it doesn't
12 say exactly what the original would say, the
13 contents are at issue.

14 MS. JOLMA: Then I guess yes, I'm offering
15 it as a secondary proof of the document.

16 THE COURT: And then we're at this next
17 issue, now: is this a lost or destroyed document.
18 And it appears that it is, lost, destroyed or --
19 you're saying it's not in your hands and you are
20 refusing to produce it; is that right, Mr. Nolan?

21 MR. NOLAN: I should make clear for the
22 record I have not been asked through any discovery
23 procedure to produce it. I didn't actually produce

1 that, the plaintiff themselves I believe created
2 that copy.

3 THE COURT: Well, obviously you're saying
4 it's lost so you don't have it. It's lost or
5 destroyed.

6 MS. JOLMA: That's correct.

7 THE COURT: So you're offering this as
8 secondary evidence, to get to the next step?

9 MS. JOLMA: Yes.

10 THE COURT: And you've made a diligent
11 search and it's not here.

12 It still is going to get into whether or
13 not -- oh, one second -- Mr. Nolan, if the original
14 were here, would you still be attacking its
15 admissibility?

16 MR. NOLAN: I would object on that one
17 ground that it lacks relevance, because plaintiff's
18 own testimony was it's not tendered to the buyer,
19 and that's really the issue here. But I would make
20 no objection in regard to the authenticity or
21 accurateness.

22 THE COURT: So you would be saying that it
23 would not necessarily be admissible because they

1 cannot show that it was tendered to the buyer?

2 MR. NOLAN: I think that's the issue at
3 hand. And therefore it is not relevant; it has
4 little if any probative value in this matter.

5 MS. JOLMA: It also is subjected to a
6 relevance issue, not a contract issue. It's purely
7 relevant. And we can argue that, I'm sure.

8 THE COURT: Well, that's the next point.
9 For you to be allowed to have this admitted as
10 secondary evidence of what was tendered, we have to
11 establish, it has to be established, that the
12 original would have been admissible.

13 MS. JOLMA: Well, Your Honor, I believe the
14 original would have been admissible. If you look at
15 the documents that are already in evidence, as I
16 think I pointed out to you before, you've got the
17 trustee's notice of sale referring to the
18 proprietary lease as the thing being sold, or the
19 rights thereto being sold.

20 You've got the deed itself, it's called a
21 deed of assignment of a proprietary lease; it would
22 seem to me that that proprietary lease is quite
23 relevant. And its contents thereto.

1 The other documents reference that
2 document, incorporate it by reference if nothing
3 else, and certainly the assignment of that
4 proprietary lease -- the proprietary lease is
5 incredibly relevant to that.

6 There are provisions in that that govern
7 what these parties bought, what they bargained for,
8 what their rights and duties and obligations are
9 defined under that proprietary lease.

10 I don't think it could be any more
11 relevant. It's the thing they bought.

12 THE COURT: That's one thing that you have
13 to say, and let's assume for just a second that you
14 have gotten beyond that, but you also have to be
15 able to prove if you are going to try to use this as
16 secondary evidence, is that it was executed, that
17 the original was executed and by what parties it was
18 executed by.

19 MS. JOLMA: Well, Mr. Magnon testified that
20 there is a signed one of those things somewhere.
21 That's what he testified: is there is a signed one.

22 Your Honor, do you have that copy of that
23 Exhibit 13? (Peruses document.)

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1 Well, Your Honor, it certainly indicates
2 that River Place Housing Corporation, I believe it
3 is, is the person doing the leasing. And Your
4 Honor, the documents that are in evidence -- if
5 you'd be kind enough to give me a moment
6 -- if you look at the declaration of covenants, Your
7 Honor, it's Exhibit Number 1.

8 It says in there: "this declaration made
9 this 10th day of May". It identifies Monument
10 Associates, River Place North Housing Corporation,
11 north, south, east and west, as the leasehold
12 owners.

13 Court's indulgence -- (Brief Pause.)

14 I can't find what I'm looking for, Your
15 Honor, I apologize.

16 THE COURT: The other thing is whether or
17 not there's been adequate testimony to prove and
18 show that the document is, in fact, lost.

19 MS. JOLMA: Well, Your Honor, you have the
20 custodian of the records for River Place North
21 saying it's just not there. It's nowhere to be
22 found. It is a thirteen-year-old document now. Or
23 eleven-year-old document, I guess, and it's just not

1 around.

2 THE COURT: Mr. Nolan?

3 MR. NOLAN: Except that the plaintiff's own
4 evidence also establishes with the second witness
5 that they called that there is a copy somewhere.
6 You know, I should make it clear to the Court, I'm
7 not contending a copy doesn't exist.

8 But at this stage in the proceedings the
9 burden is not on the defendant. I'm not offering
10 any proof or evidence of where or under what
11 circumstances a copy is kept.

12 The evidence that has been offered at this
13 point, however, is merely a blank document, a
14 document containing blanks, which we all agree
15 cannot be a true and accurate copy of the original.
16 And which is offered with little if any relevance as
17 again, plaintiff's own evidence is, that it was not
18 tendered to the purchasers.

19 I simply don't think both from a strict
20 secondary evidence standpoint and a relevance
21 standpoint that the plaintiff has established any
22 authenticity for the document or relevance such that
23 it should be received.

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1 THE COURT: Anything further?

2 MS. JOLMA: No, Your Honor, we're just back
3 to the original point that if the original were
4 here, it appears the only objection would have been
5 to relevance, and it's my position it is relevant.

6 It's referred to in all these documents,
7 and it's been testified to that that was the only
8 proprietary lease there ever was. There have never
9 been amendments or anything like that. That's what
10 you see, is it.

11 And if the original were here the only
12 objection would be relevance and the relevance is
13 all over these documents. This thing refers -- the
14 proprietary lease is all over the place.

15 MR. NOLAN: Judge, my point is, it's not
16 just the original. If the original of that were
17 here, I'd still have the same objection. That is
18 not a true and accurate copy, what the plaintiff is
19 purporting to put into evidence.

20 It contains blanks. It's unsigned. It is
21 not a true and accurate copy, what the plaintiff
22 wishes to place in evidence.

23 THE COURT: Well, the question is, okay, we

1 have a number of issues here and this is very
2 interesting. This is almost like a law school exam,
3 when we go through every particular situation that
4 one would look at in this situation.

5 Obviously, okay, it is a question. The
6 first thing we have established is that clearly
7 we're talking about the contents. Well, hold on,
8 let me ask you this, okay, going back: if the
9 original were here and you're saying that the
10 contents would be at issue?

11 If we had the original document that was
12 allegedly signed by everybody, are you saying that
13 it would be at issue?

14 MR. NOLAN: Only on the basis of relevance.
15 And a true and accurate copy of the original, I
16 would not object to.

17 THE COURT: You would not object to the
18 contents of it?

19 MR. NOLAN: I would not object to it, Your
20 Honor, best evidence basis. The contents, my only
21 objection is relevance. Claims on this; it was
22 never tendered.

23 THE COURT: All right, then I think the

1 original, every word here, I would say it was
2 relevant, because it is referenced by everything
3 that is in all these other documents and it would
4 make everything complete in terms of putting it
5 there.

6 I would say that it was admissible. She
7 gets beyond the first prong.

8 Then the next question is: is whether or
9 not this is in fact good or proper secondary
10 evidence. Then you go back to the first again and
11 you have to look again back to determine the whole
12 issue again as to whether or not it's lost,
13 destroyed, whatever.

14 The testimony of the custodian was that she
15 had looked in the records and it's just not there.
16 It's clear that you have to look at where it should
17 be and determine whether it is the type of thing
18 that could be mislaid or whatever. God knows,
19 pieces of paper get mislaid. And it's not where
20 it's supposed to be.

21 If that is in fact the case, then you get
22 to these other two issues with regards to secondary
23 evidence: whether it's proper.

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1 And you actually again go back to the
2 first, the admissibility of the original is
3 established, and I say yes, it was, because I think
4 it is. If relevance is the issue, I think it is
5 relevant, because it is referenced.

6 We have talked again about the existence of
7 -- or not an excuse for the non-production. And
8 there seems to be, I think there was an excuse made
9 which would justify that it was lost or mislaid and
10 that it is the type of document that could get lost
11 or mislaid.

12 And those are the grounds for the admission
13 of secondary evidence, are those two problems.

14 I believe that it should be admissible.
15 And we will admit this.

16 Your objection to it is noted.

17 MR. NOLAN: Thank you, Judge.

18 (Thereupon, the above-referred to
19 document was marked as Plaintiff's
20 Exhibit No. 13, in Evidence.)

21 MS. JOLMA: Thanks, Your Honor.

22 THE COURT: No, no, no. I assure you I
23 won't forget that again.

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1 MS. JOLMA: I won't either, Your Honor,
2 believe me.

3 MR. NOLAN: Judge, I appreciate the Court's
4 going through that and I'm now going to present the
5 Court with some more issues, legal issues in the
6 case.

7 I want to move to strike the plaintiff's
8 evidence on the basis that I brought up before, and
9 could not be more on point here.

10 Plaintiff's claim is barred by the statute
11 of frauds. I previously referenced the code section
12 for Ms. Jolma. If I could approach, Your Honor.

13 THE COURT: Sure.

14 MS. JOLMA: Your Honor, if I may just --

15 THE COURT: Well, okay.

16 MS. JOLMA: I want to make an objection to
17 the propriety of the motion to strike at this point.
18 He's presented evidence. I believe once he presents
19 evidence, he's not entitled to move to strike.

20 THE COURT: I don't believe he has. He had
21 a right to cross examine Mr. Magnon.

22 MS. JOLMA: He switched gears with Ms.
23 Lansdowne and started asking her non-leading

1 questions, remember you said. We asked the question
2 of --

3 THE COURT: Well, no, because remember, we
4 said we had gotten down to the last one and I said
5 just proceed then, since it was the last one.

6 MR. NOLAN: And in fact I didn't ask a
7 question. Mrs. Jolma stipulated.

8 MS. JOLMA: That's true, okay. I'll
9 withdraw that, Your Honor.

10 THE COURT: Okay.

11 MR. NOLAN: Judge, I referenced code
12 section 11.2, subsection 4, and I have circled on
13 everyone's copy in red. It is simple, it is
14 complete and this case could not be more on point.

15 The plaintiffs seek to charge this
16 defendant for the debt or default during the doings
17 of another couldn't be more on point. The
18 plaintiff's own evidence and in fact counsel
19 stipulates, they are not suing to enforce any lien;
20 they are not proceeding against the property; they
21 are proceeding for a money judgment for assessments
22 incurred as against the prior owner, Mr. Ghassemi.

23 There is absolutely no writing in evidence,

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1 none has been offered, and I will go through, Your
2 Honor, with the steps which I believe Ms. Jolma will
3 try and draw, there is no writing whatsoever in
4 evidence signed by this defendant in which they
5 agree to pay any previous debt. Absolutely none.

6 It is exactly on point in the statute of
7 frauds and it raises an affirmative defense. If
8 you look at and I think you need to go through and
9 I'm sure Ms. Jolma will point out the bylaws, the
10 provisions we talk about here.

11 The bylaws provide if you read them, that
12 the new proprietary lessee could be liable with the
13 former proprietary lessee for outstanding
14 cooperative fees.

15 However, on cross examination plaintiff's
16 witness, Ms. Lansdowne, admits the declaration
17 doesn't apply. As a matter of fact Ms. Jolma
18 stipulated, the declaration covenants, easements and
19 liens does not apply to an individual unit owner.
20 And I think we've made that clear.

21 Ms. Jolma also stipulated on not making a
22 claim for a lien, we're not proceeding against the
23 property, we're proceeding against this defendant

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1 individually.

2 That gets us to the bylaws. There's no
3 evidence in -- and I'll present to the Court and I
4 know Ms. Jolma will stipulate -- the bylaws are not
5 recorded. The bylaws say that the proprietary
6 lessee, new proprietary lessee may be liable with
7 the prior proprietary lessee for those fees.

8 But if you look to section 12.2, and this
9 is in Exhibit Number 2 of plaintiffs, the second
10 part of section 12.2 subparagraph (a) tells you that
11 the lien created by the subsection shall be prior to
12 all liens and encumbrances before and after the
13 effective date except for any mortgage as the term
14 mortgage is defined in the declaration of covenants,
15 easements and liens.

16 And Ms. Lansdowne on cross examination
17 admitted that that's the first process that we're
18 talking about if it is foreclosed. So they can't
19 proceed on a lien here. We know there's a first
20 trust foreclosure. That eliminated their right to
21 proceed on a lien. There are no outstanding
22 assessments that can proceed on a lien.

23 They then claim that allows them to proceed

1 to collect a money judgment against this defendant.
2 But there's absolutely no writing in evidence. In
3 the light most favorable to either party at this
4 stage, there is no writing in which American
5 Landmark agrees to pay the debt of Mr. Ghassemi.

6 Ms. Jolma references what I believe to be
7 marked as Exhibits: the memorandum of sale, which
8 she marks as Exhibits 7 and 8. The memorandum of
9 sale signed by the substitute trustee tells you that
10 they acknowledge the purchase is subject to the
11 terms and conditions of the attached notice of
12 trustee's sale.

13 Well, the notice of trustee's sale which is
14 Exhibit 5 tells you the following, the same language
15 that's in the bylaws: The sale is subject to all
16 existing prior deeds of trust, liens, covenants,
17 restrictions, reservations and other prior
18 encumbrances of record and the payment of any and
19 all delinquent real estate taxes, cooperative fees
20 and other proper charges.

21 THE COURT: What are you reading? I'm
22 sorry, what are you reading from again?

23 MR. NOLAN: The Exhibit Number 5, the

1 notice of trustee's sale on the last page.

2 The language almost parallels the bylaws,
3 and what it tells you is that you're subject to
4 those cooperative fees except charges due on
5 property that may have legal priority over the deed
6 of trust.

7 And again, Ms. Lansdowne on cross exam said
8 that's the deed of trust that was foreclosed. There
9 are no more cooperative fees, and all the notice of
10 trustee's sale tells you is, if you foreclose on a
11 first deed of trust you're not going to owe the
12 cooperative fees.

13 So there's no document; those memorandum of
14 sale don't reflect the defendant's agreeing to pay
15 this debt. The proprietary lease is in evidence.
16 The proprietary lease is not signed by anybody; by
17 any party, and the proprietary lease contains the
18 same or similar language.

19 As we stand here, plaintiff's evidence has
20 presented that there is absolutely no writing
21 memorializing this defendant's agreement to pay or
22 to promise to pay the debt, default or misdoings of
23 another.

1 This case could not be more on point with
2 regard to the statute of frauds in Virginia. It
3 really is a textbook statute of frauds case.

4 I believe this first and foremost as the
5 defense here, and I don't think we get to secondary
6 issues, but I want to raise a second one again that
7 I raised as an affirmative defense. That is the
8 statute of limitations.

9 Under 8.01-248 there's a one-year statute
10 of limitations for all those claims that are not
11 enumerated specifically, in section 8.01.

12 I don't know what this claim is. It's not
13 a written contract, we know that. It's not an oral
14 contract. There's absolutely no evidence, in fact
15 just the contrary, I just argued my client never
16 agreed to pay either orally or in writing this debt
17 under any circumstances. There's no oral contract.
18 There's no written contract.

19 It's not an open account because again,
20 this client never agreed to incur the debt, and
21 beyond that it's not an open account because on
22 cross examination Ms. Lansdowne admitted that the
23 bills that they tendered and the statements of

1 account for a year and three months never even
2 assessed my client any such debt.

3 So for a year and three months they were
4 out of it. Now, they claim that the debt -- and Ms.
5 Lansdowne admitted -- the date of foreclosure is
6 April, '91.

7 And she said it was an accounting error
8 that they weren't billed until July of '92, but she
9 said nevertheless they would have owed it in April
10 of '91.

11 If as they claim and the evidence they've
12 presented is, my client owed the debt in April of
13 '91, this suit was not filed until May of 1993.
14 Under those circumstances it's barred by the statute
15 of limitations.

16 I would submit to Your Honor that you
17 really don't even get to that stage. This case is a
18 perfect example of the statute of frauds. And
19 there's a reason for it, it's not just a
20 technical/legal rule.

21 There's real substance to this. Third
22 parties who don't agree for this very reason, it's
23 obvious there was a conflict, and for this very

1 reason third parties shouldn't be held liable to pay
2 the debts of others unless it's in writing, unless
3 it's memorialized, so you avoid cases just as this
4 where the parties are coming in and say: we think
5 they should be liable.

6 And it's not just a matter of the bylaws
7 might set forth this kind of claim. These bylaws
8 aren't signed. You get a notice of trustee's sale;
9 there's absolutely nothing signed.

10 They have taken an innocent third party
11 purchaser who went to a foreclosure sale and
12 purchased some property and received a deed, and a
13 year and three months later sent them a bill for
14 \$5,000 and \$6,000. Not for something they did, but
15 for something an owner more than a year and three
16 months earlier had done.

17 It's a textbook case of the statute of
18 frauds and under those circumstances I think it's
19 proper to strike the plaintiff's evidence.

20 Thank you, Judge.

21 MS. JOLMA: Can I take back from you
22 Exhibit 13 for a moment?

23 THE COURT: Yes, you may. Yes.

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1 MS. JOLMA: Your Honor, I must admit it's a
2 rather novel argument. Again, I think we're back in
3 law school. Is this a statute of frauds case? I
4 don't believe it is for a couple of reasons.

5 First of all, what the defendants bought
6 was a piece of this proprietary lease, units 1002
7 and 1003. This proprietary lease says, paragraph
8 46, the lessee and this lease are subject to
9 assignment of lease of the sponsor as defined in
10 section 38 hereof.

11 To the lessor and to the lease thereby
12 assigned to the declaration of covenants, easements
13 and lease for River Place made by the sponsor and
14 the lessor to the articles of incorporation and the
15 bylaws.

16 THE COURT: But the issue is going to get
17 down to, do you have a signed -- I mean you don't
18 have an unsigned copy of what was purported to have
19 been signed?

20 MS. JOLMA: No, it's a little more
21 complicated than that, Your Honor. When they buy a
22 piece of property or buy a unit at River Place,
23 they're buying a piece of this proprietary lease.

1 This lease says, subject to the bylaws. You're
2 buying the bylaws, you're buying the declarations,
3 you're buying the whole thing. There are covenants,
4 Your Honor, they're not contracts or not this, that
5 or the other thing. These are like covenants.
6 They're certainly covenants.

7 And Your Honor, I'd submit to you that what
8 the defendants bought is all the covenants including
9 the bylaws. And what do the bylaws say?

10 Section 7.3 of the bylaws, Your Honor,
11 that's plaintiff's 2, page 15. Each shareholder
12 shall be personally liable for all assessments
13 against him or his shares.

14 No shareholder may avoid liability for any
15 assessment by waiver, non-use or abandonment of any
16 right or real estate. The new proprietary lessee of
17 an apartment shall be jointly and severally liable
18 with the former proprietary lessee thereof for all
19 unpaid assessments against that proprietary lessee
20 or his shares, which became due before the new
21 proprietary lessee acquired ownership thereof.

22 They are in fact buying a debt. That is
23 what they bought, potential. What do they get,

1 Your Honor, what --

2 THE COURT: Okay, now, you read that from
3 what?

4 MS. JOLMA: That's the bylaws. The bylaw
5 says the new guy is liable for the old guy for the
6 outstanding assessments. This has nothing to do
7 with the liens.

8 He's alleging that the lien is extinguished
9 on foreclosure of the first trust. That is true.
10 But what we're talking about is the surviving debt.

11 The extinguishment of the lien does not
12 necessarily dissolve the debt. If the first trust
13 forecloses and there's a second trust, that second
14 trust lien might get extinguished but the debt
15 incurred, the guy who owes the money, that doesn't
16 go away. And that's the debt they're talking about
17 in the bylaws. That debt survives.

18 You take Mr. Ghassemi's debt and American
19 Landmark has to pay for it. They're on notice of
20 that, Your Honor. It's in the proprietary lease.
21 They bought the proprietary lease. That's what they
22 signed up for.

23 Your Honor, as I've discussed with you

1 before, the notice of the trustee --

2 THE COURT: One second.

3 (Brief Pause.)

4 THE COURT: All right, Ms. Jolma.

5 MS. JOLMA: The notice of the trustee's
6 sale says they're selling the proprietary lease.
7 The deed of assignment -- the deed of assignment,
8 they're assigning that document. That's what they
9 get in the deed of assignment.

10 They took the deed. Your Honor, this is an
11 executed contract. This is not one that's part
12 performed or not performed at all. Executed
13 contracts, Your Honor, are not subject to the
14 statute of frauds.

15 If I may approach, Your Honor.

16 THE COURT: Sure.

17 MS. JOLMA: Mullins Administrator versus
18 Sanders, Your Honor, is the case cited by all for
19 this proposition in Virginia. And on page 362 about
20 five-six lines down, it begins: "It may not be amiss
21 to observe however, in passing, that even as to
22 those executory contracts which are within the
23 statute, it is now well-settled that when they

1 have been fully executed, a statute has no
2 power over them and no effect upon the rights,
3 duties and obligations of the parties."

4 These people bought this property. They
5 are there. They have tenants there. And you know
6 what, Your Honor, they're paying assessments. The
7 document that sets forth the assessments and the
8 payment thereof is the bylaws.

9 They're complying with the bylaws. Are
10 they going to adopt them by the other parts, pick
11 and choose which part of the bylaws apply to them?

12 I think they've waived any objection to
13 that, Your Honor. By operating under the bylaws.
14 They're getting the benefit of the bylaws when they
15 want to and none of the benefit when they don't want
16 to. And they're not allowed to do that. The
17 statute of frauds is to prevent fraud, not create
18 one.

19 It was pointed out, Your Honor, and if I
20 may cover this a little bit: that the notice of
21 trustee's sale talked about encumbrances with legal
22 priority. Clearly these would not have legal
23 priority in terms of lien value. These are existing

1 assessments which they are obligated to pay.

2 The two documents, Your Honor, which I
3 believe were 7 and 8, the memorandums of sale --
4 these came from the records of American Landmark or
5 the agent thereof.

6 And it says, I acknowledge the trustee's
7 sale done on this date after due advertising. I
8 purchased the property described as the proprietary
9 lease. I bought it. I further acknowledge purchase
10 of it for the terms and conditions on the trustee's
11 sale, the attached now and signed by somebody from
12 American Landmark Management Corporation, and
13 American Landmark Corporation is the agent of the
14 defendant here today.

15 I don't think necessarily that you need a
16 signature in this case. I think you can obviate the
17 need for a signature because they took delivery of
18 the deed of the proprietary lease.

19 When they agreed to do that, they agreed to
20 abide by the terms of the proprietary lease and the
21 terms of the proprietary lease include the bylaws.

22 I don't think they can get out from under
23 that now by saying oh, well, you know, I didn't

1 agree to sign up for that. I might have agreed to
2 sign up to have pool rights and parking rights and
3 all that other good stuff, but I didn't agree to
4 sign and go be responsible for this. And that
5 operates as a fraud, and you can't do it.

6 It's an executed contract. The statute of
7 frauds does not apply.

8 As to the statute of limitations, Your
9 Honor.

10 THE COURT: Well, the question is the
11 contract, and that's not going to fly either.

12 MS. JOLMA: Well, it's a covenant. And it
13 is not a true contract as in, you know, I agree to
14 build your house.

15 THE COURT: Uh-huh.

16 MS. JOLMA: But covenants are contract-
17 like, even if they impose obligations or create
18 promises and that sort of thing. And the law often
19 treats them as -- we talk about breach of covenants
20 as for example to contracts.

21 So while they're similar in the way the law
22 treats them, they are in fact very different things,
23 and if a covenant runs to the land which is what it

1 does, -- I don't agree it's a contract either, so to
2 that point --

3 As to the statute of limitations, it is not
4 specifically enumerated as a breach of covenant.
5 What happens is breach of covenant. But there are
6 several lines of cases, Your Honor, that say what
7 happens when you are talking about breach of
8 covenants.

9 Excuse me, Your Honor, I want to make sure
10 I have the right one here.

11 They don't necessarily deal with co-ops
12 because there is very little co-op law in Virginia,
13 and I'm not sure there is even any. But if we're in
14 agreement that these are covenants, Your Honor, this
15 is Toll versus Foley Brothers Lumber.

16 And on the very last page, 182, this is a
17 suit over covenant of warranty, Your Honor. The
18 seller apparently promised that this guy could get
19 on the land and cut some timber, and he couldn't get
20 on the land. Breach of warranty.

21 The Court imposes a five-year statute of
22 limitations. Under the former section, 58-118 which
23 I believe, Your Honor, and I'm not sure I have

1 that -- is the breach of contract section now.

2 Just as you and I just went through,
3 covenants are sort of like contracts. They have the
4 same kind of feel to them. Promises, obligations
5 and the like.

6 And oftentimes, Your Honor, in determining
7 what the statutes of limitations are, we look to see
8 what it's like. You know, is this like a tort; is
9 this like a contract. Malpractice actions, for
10 example, against attorneys. Are they torts or are
11 they contracts?

12 The Supreme Court says they're contracts,
13 the five-year limitation then applies. It doesn't
14 say anywhere in the code, suits against attorneys
15 for malpractice have a five-year limitation. The
16 Court has figured out this is more like a contract
17 than a tort.

18 In this case, breach of covenant is in fact
19 more like a breach of contract. Breach of a
20 promise.

21 Your Honor, this is Chesapeake and Ohio
22 Railway versus Willis. Once again, another covenant
23 case. A covenant to build a fence that didn't get

1 built. This Court imposed a statute of limitations
2 for actions on contract sealed instruments. Treated
3 it like a contract. Breach of covenant.

4 And I'd submit to Your Honor that what
5 we're doing here is dealing with breach of covenant,
6 the covenant to pay those assessments. That promise
7 incorporated in all these documents.

8 And if that is in fact true, there's a
9 breach of covenant. It would impose a five-year
10 statute of limitations as you would a breach of
11 contract.

12 THE COURT: Mr. Nolan?

13 MR. NOLAN: Thank you, Judge. Judge, I
14 really haven't had a chance to take a look at
15 Chesapeake, but let me move backwards and address
16 Toll.

17 They have a written contract, and what they
18 said was a breach of certain covenants and
19 warranties within it. You've got a five-year
20 statute of limitations, I agree. We don't have a
21 written contract here.

22 The judge says this isn't a written
23 contract. He said it's a suit for false

1 representation or misrepresentation, but he goes on
2 to say, when you have a quote, "fully executed
3 agreement," those contracts are outside the statute
4 of frauds; the statute of frauds does not apply. I
5 agree.

6 What you don't have here is any written
7 agreement. Ms. Jolma talks about the bylaws.
8 Bylaws aren't signed by this party. They are not
9 signed. Again, the statute of limitations in
10 Virginia could not be more clear.

11 Unless a promise, contract, agreement --

12 THE COURT: Well, I gathered what her
13 argument is, is the fact that the deed of assignment
14 of proprietary lease, because that is signed and
15 because there's supposedly a reference of these
16 other obligations, that that -- it's like
17 incorporation by reference.

18 Basically she's saying he signed this, and
19 because this references the others, other things
20 that a person who was entering into this -- I gather
21 that's what your argument is.

22 MS. JOLMA: Yes, sir.

23 MR. NOLAN: But ~~that~~ is not signed. The

1 deed is not signed. The trustee's deed of
2 assignment and proprietary lease as given was signed
3 by the substitute trustee. Trustee sells the
4 property.

5 THE COURT: Oh, yes, it does say substitute
6 trustee, yes.

7 MR. NOLAN: The trustee is simply the party
8 holding the property in trust who sells it. This
9 defendant did not sign anything. There's a buyer.
10 They bought at foreclosure, they got a trustee's
11 deed.

12 THE COURT: Forgive me, and I can maybe
13 look at my -- Howard did not work for him.

14 MR. NOLAN: There were two separate
15 entities. Ms. Jolma asked him on cross exam if the
16 entities were somehow related? One was the
17 management company, one held it, but there are two
18 distinct entities. That evidence can't be changed.
19 I mean they are two distinct entities.

20 I mean they are of record two distinct
21 entities.

22 THE COURT: Well, I understood, but I was
23 just trying to make sure I had a recollection as to

1 what -- I'm sorry, I didn't mean to interrupt, I
2 just want to be sure.

3 MR. NOLAN: I understand Ms. Jolma's
4 position, but I keep coming back to the fact that I
5 think it is not that complicated. There is no
6 signed document and it's precisely the type of event
7 that the statute of frauds seeks to avoid, an event
8 where someone would not have notice of what Ms.
9 Jolma's is referring to as a covenant.

10 Well, a covenant can't oblige you to pay
11 for the debt of a third party without your
12 signature. I can't come to Your Honor and say Ms.
13 Jolma just signed a document that says that you're
14 going to pay for certain things. I cannot hold you
15 to that debt as a third party.

16 We are saying to this Court that any bylaw
17 provision which says that the new proprietor and
18 lessee is liable for the old proprietor and lessee's
19 debts is unenforceable, unless they have a written
20 document signed by the buyer, and they do not.

21 There is no written document signed by --
22 it's not to say that we're ignoring all the bylaws.
23 They're not, in fact plaintiff's on evidence as

1 we're current.

2 What they're saying is we didn't pay the
3 prior owner's debt and we're saying very simply,
4 very straightforward, we don't have to. We cannot
5 be charged with the debt of a third person. It fits
6 exactly within 11.2-4, that provision which seeks to
7 charge us cannot be enforced under Virginia law.

8 Ms. Jolma says well, we're on notice.
9 That's not enough. The example I just gave you,
10 it's not enough to tell someone you're going to have
11 to pay his debt. It's not enough. Virginia law
12 says there has to be a writing to charge the debt;
13 defaults of a third party.

14 The cases, I think, do not apply, the cases
15 that we pointed out there were written agreements,
16 or if there was a written agreement this statute of
17 limitations would apply.

18 Again, the statute of limitations argument
19 I think is clear. This is not an action on an oral
20 contract or a written contract or an open account.
21 If it's subject to anything it's the one-year
22 statute of limitations, and they've clearly missed
23 it.

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1 But I don't think Your Honor gets that far.
2 I think this case falls squarely within the statute
3 of frauds. There's no writing offered signed by the
4 party to be charged. Under those circumstances, the
5 plaintiffs cannot make out a prima facie case. The
6 provision is unenforceable and I'd move to strike
7 the evidence.

8 THE COURT: Would your position be
9 different if in fact instead of it being -- here it
10 says the management, American Landmark Management
11 Incorporated. Would your position be different if
12 it was in fact American Management Equity?

13 MR. NOLAN: It can't be. It would be
14 illegal. I think it would be a legal impossibility,
15 because the trustee cannot hold; the trustee and
16 beneficiary combined couldn't hold the property. So
17 it can't happen I say in Virginia.

18 There may be certain trust relationships
19 you could set up where that might exist. But this
20 is a foreclosure sale. And the buyer is a separate
21 and distinct entity.

22 If they're seeking to charge a different
23 entity who signed, they have to do that. That's not

1 what they've done here. They've sued a specific
2 legal entity, and they have no rights themselves.

3 MS. JOLMA: Just briefly, Your Honor.

4 We're not talking about unsophisticated
5 people here. These people are business people.
6 They should know what they're buying. And one of
7 the things they should know they're buying is a
8 proprietary lease, and everything in it. And if
9 they don't know what's in it --

10 THE COURT: Why don't you give me some
11 response to the last thing we argued. The fact that
12 there, you know --

13 MS. JOLMA: No signature?

14 THE COURT: Well, yes, the fact that this
15 is American Landmark Management Corporation and is
16 the only entity that signed anything.

17 MS. JOLMA: Well, Your Honor, there was
18 testimony from Ms. Lansdowne that went unrefuted,
19 that her understanding of the relationship was one
20 of agency. And nobody's said anything different so
21 far.

22 In addition, Your Honor, there's delivery
23 of the deed. I don't have the cases in front of me,

1 Your Honor, but if Your Honor would like to look at
2 the notes on 11.2, I know I've seen them, there are
3 cases that say things like, for example: an oral
4 contract between Ms. Lansdowne to buy a piece of
5 property, she delivers to me the deed, I never sign
6 anything.

7 Do I have to pay the purchase price? You
8 bet I do. I don't get to say, sorry, I didn't sign
9 to pay the purchase price.

10 When you deliver that deed, that does it.
11 You agree. That is in fact the memorialization of
12 the deed. You don't need any further signatures.
13 Deeds are funny things.

14 Buyers don't sign deeds. They never do.
15 You never, ever see buyers sign a deed. Seller
16 signs the deed, or the trustee.

17 If that were so, every buyer could walk in:
18 oh, I didn't sign anything, I don't have to pay you.
19 That's fraud. And that's the thing the statute of
20 frauds is designed to prevent, not encourage.

21 And that's what's trying to happen here.
22 Oh, well, we didn't sign the deed. We accepted it,
23 we've got tenants in there, we're renting it, it's

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1 ours. But you know, forget the rest of it, though,
2 we didn't sign anything so we don't --

3 THE COURT: Well, this is not what we're
4 talking about. We're talking about the debt of a
5 third person.

6 MS. JOLMA: Yes, Your Honor. But when they
7 accept that deed, they accept everything that goes
8 with it. Everything. The bylaws. The proprietary
9 lease. The parking space. The right to rent it.
10 The obligation to pay assessments. They accept
11 that. They're estopped or denied when they take the
12 deed.

13 They have the benefit of the deal. And now
14 they don't want the benefit of the deal. And they
15 can say: oh, gee, we didn't know. Well, they're
16 obliged to know. They're a business.

17 It says, sign a proprietary lease. If they
18 don't know what that is, they ought to look it up.
19 They clearly know about the bylaws. They're paying
20 the assessments.

21 It's the delivery of that deed, Your Honor,
22 and I encourage you to take a look at those cases.
23 I do not have them and they're not totally on point

1 in one respect, but they're all on the lines of
2 purchasers trying to weasel out; and say I didn't
3 sign it.

4 I'm taking the benefits, I've got the
5 house, got the car, whatever I bought, but I'm not
6 liable because I didn't sign for this where this
7 usually requires me to write. And that's what's
8 happened here.

9 They got the deed, they got the place and
10 all the benefits. They bought the bylaws. They
11 bought the bylaws, whether they like them or not.
12 They may not like the provisions, but they bought
13 them.

14 THE COURT: Well, as I see it, the whole
15 issue is certainly they knew that it was there. The
16 only question is: is whether they are obligated to
17 accept it. That's really what the issue is here.
18 Not that they didn't know. I know they knew that it
19 was there. But the question is: is whether they're
20 obligated.

21 They're saying that they're not because
22 there's no writing that says that they've accepted
23 it, and you're saying that because of everything

1 else, that they are.

2 I'll tell you what -- anything further?

3 MR. NOLAN: Judge, very briefly. You know,
4 we talked about the deed. Again, the deed reflects
5 the same language we're talking about. The deed
6 says sale is made subject to the prior deeds of
7 trust, liens, rights of way, easements.

8 And then it goes on to cooperative
9 delinquent real estate taxes, COMMA, cooperative
10 fees and other appropriate charges due on the
11 property which may have legal priority over the
12 aforesaid deed of trust and loan security agreement.

13 And we already know that on a first trust
14 foreclosure those delinquent cooperative fees do not
15 have priority. We've established that on the
16 record. So the deed doesn't get the plaintiff to
17 where they want to be.

18 Also, we're not talking about a suit; I
19 think we're getting sidetracked; we're not talking
20 about a lawsuit on a deed. This has nothing to do
21 with the deed. We're not denying ownership of the
22 property. We're saying it's completely different.

23 You're trying to sue us for the debt of a

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1 third party. And that you cannot do without a
2 writing.

3 I would make the analogy of a mechanic's
4 lien. A subcontractor not in privity with the owner
5 can sue in a bill of complaint to enforce his lien
6 by judicial sale of a property. But he cannot sue
7 the owner directly for the money damages and nothing
8 else. It can't be done for the very same reason.
9 He has no privity of contract, there's no written
10 agreement.

11 What he does is he sues on the lien. The
12 lien then allows him to recover his funds through a
13 forced judicial sale of a property. But the suit is
14 not a suit for money damages against the owner.
15 That's really a sharp analogy in this case.

16 However the plaintiff says, they're not
17 suing to enforce the lien. That's not at issue
18 here. That's a different matter. And they can't,
19 because it has no priority on the first trust.
20 They're suing for a third party debt, and they have
21 no right, PERIOD.

22 Thank you, Judge.

23 THE COURT: What I'm going to do in this

1 case, Ms. Jolma, I'm going to take the matter under
2 advisement, the motion to strike. I'm going to
3 allow counsel, if counsel wants, to submit me
4 anything further.

5 Because this is the only issue really as I
6 see it. That is that -- this could be a dispositive
7 issue in this whole case.

8 But I'm taking it under advisement, the
9 motion to strike.

10 Do you wish to go forward?

11 MR. NOLAN: As long as Your Honor is taking
12 under advisement the motion to strike, not at this
13 time.

14 MS. JOLMA: At this late hour, Your Honor,
15 I'm kind of inclined to agree with Mr. Nolan.

16 MR. NOLAN: I want to preserve a right to
17 do that but not at this time.

18 THE COURT: And I think that this is not
19 something that needs exhaustive -- but I mean I want
20 to see if there's anything, you know, in response to
21 his last argument. I'm going to take it under
22 advisement.

23 And as soon as you get it in, I mean I'll

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1 try to get a letter or I'll review on that or call
2 you, one or the other, very quickly.

3 I mean I have some gut feelings about it
4 but I will give opportunity to counsel if they want
5 to give me anything further.

6 MR. NOLAN: Thank you, Judge.

7 MS. JOLMA: Thank you, Your Honor.

8 THE COURT: Unless you want a definitive
9 ruling right now.

10 MS. JOLMA: Well, I mean it's up to you,
11 how you feel about it. Your Honor is the best judge
12 of that.

13 THE COURT: Well, you know, if you want my
14 gut feeling about it, I think it's a tossup, but I
15 mean I have a feeling about it, but I'm giving
16 counsel an opportunity. If you both feel very
17 strongly, I'm giving both counsel an opportunity to
18 submit anything further.

19 Speak now or forever hold your peace.

20 THE CLERK: Did you admit 13, Judge?

21 THE COURT: Yes, 13 I admitted, I'm sorry.

22 I'd ask you to have it to me, if you are
23 going to do this, two weeks. Within two weeks.

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1 MR. NOLAN: Thank you, Judge.

2 THE COURT: This is not something that
3 should drag out. This is one simple issue that will
4 dispose of this whole case.

5 MS. JOLMA: And that's just the statute of
6 frauds and not the statute of limitations?

7 THE COURT: I would have a problem with the
8 statute of limitations, actually. I think that this
9 is more in the nature of a contract, personally.
10 This is my reading of it.

11 I think it's more in that nature and I
12 would view it as such, so I don't have a problem
13 with that. So that's the only issue we're dealing
14 with.

15 - - -

16 (Thereupon, at approximately 4:30 o'clock
17 p.m., the hearing in the above-entitled matter was
18 concluded.)

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CERTIFICATE OF COURT REPORTER

I, B. CHARLES HOPCHAS, CVR, a Certified Verbatim Court Reporter, do hereby certify that I took in stenographic notes the foregoing proceedings/testimony and reduced the same to typewriting; that the foregoing is a true record of the testimony given by said witnesses; that I am neither related to, nor employed by any attorney or counsel employed by the parties hereto, nor financially interested in the action; and, I further certify the pages attached hereto, inclusive, contain a full, true and correct transcription of my stenographic notes taken therein.



B. CHARLES HOPCHAS, CVR

Court Reporter

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V I R G I N I A:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

RIVER PLACE NORTH HOUSING CORPORATION,)

Plaintiff,)

v.)

At Law No. 93-490

AMERICAN LANDMARK EQUITY CORP.)

Defendant.)

BRIEF IN SUPPORT OF MOTION TO STRIKE

COMES NOW Defendant, American Landmark Equity Corp., by counsel, and in support of the motion to strike Plaintiff's evidence, hereby submits the following:

Statement of Facts

Plaintiff, River Place North Housing Corporation ("RPNHC"), filed this lawsuit against Defendant, American Landmark Equity Corp. ("ALEC"), to recover from ALEC certain outstanding cooperative fees due and owing to RPNHC from Abbass Ghassemi and Shawna Butler ("Ghassemi"). At trial of this action on January 27, 1994, the following facts were undisputed:

Ghassemi owned two (2) cooperative apartments in Arlington County in the complex known as River Place. In 1991, Ghassemi was in default on the Deed of Trust payments on these apartments and was in arrears on the cooperative fee payments to RPNHC. In April of 1991, Monument Associates, the first trust lender on Ghassemi's apartments, foreclosed on these Deeds of Trust. ALEC purchased these two apartments at the foreclosure sales. At the time of the foreclosures, Ghassemi owed RPNHC cooperative assessments and late fees of approximately \$14,000.00.

RPNHC is governed by certain Bylaws (Plaintiff's Exhibit 2).¹ These Bylaws are not recorded in the land records of Arlington County. Section 7.3 of these Bylaws provides:

The new Proprietary Lessee of an Apartment shall be jointly and severally liable with the former Proprietary Lessee thereof for all unpaid assessments against that Proprietary Lessee or his shares which became due before the new Proprietary Lessee acquired ownership thereof...

Section 12.2 of these Bylaws provides:

Every assessment made against shares or the shareholder thereof pursuant to these Bylaws is a lien against those shares, which lien shall be effective as of the date such assessment is made. Any officer or the Managing Agent may file or record such other or further notice of such lien or such other document with respect thereto as may be required by law to confirm the establishment and priority of such lien. The lien created by this subsection shall be prior to all liens and encumbrances recorded after the effective date thereof except for any Mortgage as the term "Mortgage" is defined...

("Mortgage" is defined as a first deed of trust on the property).

RPNHC claims that pursuant to Bylaws Section 7.3, ALEC is liable for the outstanding cooperative fees due and owing to RPNHC from Ghassemi. RPNHC claims that since ALEC is the new Proprietary Lessee (owner) of Ghassemi's apartments, ALEC is jointly and severally liable with Ghassemi. RPNHC has therefore sued ALEC directly for a money judgment to recover these fees. RPNHC acknowledges that it has not and is not pursuing a lien on the apartments or suing to enforce any lien. Pursuant to Bylaws

¹ The parties stipulated that the provisions of the Declaration of Covenants, Easements and Liens (Plaintiff's Exhibit 1) which are cited in the Motion for Judgment do not actually apply to individual apartment owners.

Section 12.2, any lien claim by RPNHC was extinguished by Monument Associates' foreclosure of their first Deeds of Trust.

At trial on January 27, 1994, RPNHC presented its case, introduced evidence of the outstanding debt owed by Ghassemi, introduced evidence of the sale and transfer of the properties to ALEC, and made claim for a money judgment against ALEC. RPNHC's own evidence showed that ALEC has been current with all its cooperative fee payments since acquiring the apartments. The only claimed outstanding debt was incurred by Ghassemi.

At no time during RPNHC's case did they introduce or present any writing signed by ALEC in which ALEC promised or agreed to pay Ghassemi's debt. RPNHC rested its case and ALEC moved to strike the evidence pursuant to the Statute of Frauds, §11-2 of the Code of Virginia (1950, as amended). The Honorable William T. Newman, Jr. has taken this motion under advisement and allowed the parties to submit these briefs.

Statement of the Law

Pursuant to Virginia Code §11-2(4), unless a promise or agreement is in writing and signed by the party to be charged, no action can be maintained: "To charge any person upon a promise to answer for the debt, default or misdoings of another;". This provision of the Statute of Frauds is clearly applicable to the case at hand. There is no writing signed by ALEC in which ALEC agrees to pay the debt and default of Ghassemi. The Trustee's Deeds (Plaintiff's Exhibits 9 and 10) given to ALEC upon the sale of the properties are not signed by ALEC. Furthermore, these Deeds

reflect only that the sale is made subject to "the payment of any and all delinquent real estate taxes, cooperative fees and other proper charges due on the property which may have legal priority over the aforesaid Deed of Trust ..." (emphasis added). As previously discussed, RPNHC had no claim with priority over the foreclosed Deeds of Trust.² The Memorandum of Sale for the properties (Plaintiff's Exhibits 7 and 8) refer only to the Notice of Trustee's Sale. Again, the two Notice of Trustee's Sale (Plaintiff's Exhibits 5 and 6) indicate that the sale is only subject to: "the payment of any and all delinquent real estate taxes, cooperative fees and other proper charges due on the property which may have legal priority over the Deed of Trust." (emphasis added).

There is absolutely no signed writing in evidence which reflects ALEC's promise to pay the debt of Ghassemi. RPNHC argues that if ALEC knew of the outstanding debt at the time of the foreclosures, this is sufficient to make ALEC liable for the debt of Ghassemi. Under the Statute of Frauds, however, knowledge of a claimed debt is irrelevant. It is a signed writing that is necessary to bind a party to pay the debt or default of another.

² In Council of Co-Owners of Forest Beach Villas Horizontal Property Regime v. Smith, 428 S.E.2d 745 (S.C. App., 1993), the Court of Appeals of South Carolina did in fact find that where purchase of a condominium is made at foreclosure, the new owner is not jointly and severally liable with the prior owner for delinquent assessments. Although the court was interpreting statutory language, the facts are analogous to the case at hand, since the claim was extinguished by virtue of the foreclosure.

Even if ALEC knew of Ghassemi's outstanding cooperative fee debt, such knowledge does not remove the bar of the Statute of Frauds.

The fact that ALEC receives the benefit of RPNHC services does not render ALEC liable for Ghassemi's debt. ALEC paid good and valuable consideration for the subject apartments and ALEC has paid all its cooperative fee assessments since purchasing the property. Even where benefit accrues to the party to be charged, the Statute of Frauds bars any action to recover for the debt or default of another, absent a signed writing. Mid-Atlantic Appliances, Inc. v. Morgan, 194 Va. 324, 73 S.E.2d 385 (1952).

To the extent RPNHC sues for a money judgment only, Section 7.3 of the subject Bylaws is unenforceable against a new owner, absent a signed writing binding the new owner to pay the prior owner's debt. While the Bylaws may create certain obligations or covenants said to "run with the land", such covenants can only be enforced as liens on the property and not by an action to obtain a money judgment against an owner not incurring the debt.

An exact analogy can be made to a suit to enforce a mechanic's lien. In Virginia, a subcontractor who is owed money from a general contractor may perfect a mechanic's lien against an owner's property. The subcontractor may then sue to enforce the lien and recover the debt through a forced judicial sale of the property. However, the suit to enforce the mechanic's lien is an action against the owner's property, not against the owner personally. The subcontractor has no contract with the owner. The subcontractor does not obtain a judgment for money damages against

the owner. The subcontractor's claim is satisfied from proceeds obtained by virtue of a judicial sale of the property.

RPNHC is in no different position than a subcontractor mechanic's lien claimant. RPNHC had the opportunity to sue to enforce or foreclose on its lien prior to ALEC's purchase. RPNHC still has the opportunity to sue Ghassemi personally. However, RPNHC cannot now sue ALEC directly for money damages for a debt owed by Ghassemi, without a signed writing binding ALEC for such debt.

Enforcement of the Statute of Frauds in this case is not merely an imposition of a legal technicality in avoidance of a debt. The very facts in issue in this case demonstrate the sound equitable principles behind the Virginia Statute of Frauds. Absent reliable evidence of an agreement to assume the debt of another, no party should be held liable for such debt merely in order to increase the likelihood of collection.

With regard to real property transfers in particular, it is unreasonable to require a new owner of a cooperative or condominium interest to pay the debts or outstanding assessments incurred by the prior owner. This conclusion was reached by the court in Mountain Home Properties, Inc. v. Pine Mountain Lake Association, 135 Cal. App.3d 959, 185 Cal. Rptr. 623 (1982). In this case, a homeowner's association sought to charge an apartment purchaser with the prior owner's delinquent cooperative fees. The new owner purchased the apartment(s) at foreclosure, thus extinguishing the cooperative fee lien. Although this California appellate court

held that the new owner was not liable for the past assessments by virtue of a California statute, the court also recognized the inequity of forcing a new owner to pay the debts of another. Id., at p.972, 630.

This court need look no further than Virginia Code §11-2(4). The Statute of Frauds is an absolute bar to this action. There is no writing in evidence signed by ALEC in which ALEC agrees or promises to pay Ghassemi's debt and default. Ghassemi's debt is the only debt which RPNHC seeks to satisfy in this lawsuit against ALEC. This case should therefore be dismissed.

Conclusion

Based upon the foregoing, ALEC respectfully requests that this court grant the motion to strike the Plaintiff's evidence.

AMERICAN LANDMARK EQUITY CORP.
DEFENDANT,
BY COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February, 1994,
a true copy of the foregoing was mailed by first class mail,
postage prepaid, to:

Mary M. Jolma, Esquire
Law Office of Raymond B. Benzinger, P.C.
Counsel for Plaintiff
2009 N. 14th Street, Suite 410
Arlington, Virginia 22201



Christopher C. Nolan

FILED

FEB 10 1994

OF ARLINGTON

DAVID A. BELL, Clerk
Circuit Court Arlington County VA
By WW Deputy Clerk

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY

RIVER PLACE NORTH HOUSING CORPORATION)

Plaintiff)

v.)

AMERICAN LANDMARK EQUITY CORP.)

Defendant)

At Law No. 93-490

PLAINTIFF'S OPPOSITION TO DEFENDANT'S
MOTION TO STRIKE PLAINTIFF'S EVIDENCE

COMES NOW plaintiff River Place North Housing Corporation, by counsel, and for and as its opposition to defendant American Landmark Equity Corp.'s Motion to Strike Plaintiff's Evidence states as follows:

I. FACTS

This cause of action arose out of the foreclosure sale of two cooperative units of River Place North Housing Corporation (hereinafter "River Place"), #1002 owned by Abbas Ghassemi and Shawna L. Butler and #1003 owned solely by Abbas Ghassemi. These unit owners defaulted on the first deeds of trust and the first trust holder of both units, Monument Associates, instituted foreclosure actions. The Substitute Trustee under the Deeds of Trust, American Landmark Management Corporation issued Notices of Sale for the two units.¹ The Substitute Trustee sold the two units at public auction on April 3, 1991. Defendant herein, American Landmark Equity Corporation (hereinafter "ALEC"), purchased these two units at the foreclosure sale for valuable

¹ Plaintiff's Trial Exhibits #5 and #6.

consideration. At the time of the foreclosure sale, \$6,289.00 was owing in back cooperative fees on #1002 and \$5963.03 was owing on #1003. On the same date as the sales, the Substitute Trustee created Memoranda of Sale for the two units² and Deeds of Assignment of Proprietary Lease were executed by the Substitute Trustee conveying title to the units to ALEC.³ ALEC did not sign the Deeds of Assignment. ALEC has accepted the Deeds to these units, has paid current assessments on them and is renting them and receiving revenue from them.

Section 7.3 of the Bylaws of River Place North Housing Corporation provides:

The new Proprietary Lessee of an Apartment shall be jointly and severally liable with the former Proprietary Lessee thereof for all unpaid assessments against that Proprietary Lessee or his shares which became due before the new Proprietary Lessee acquired ownership thereof...⁴

ALEC has refused to pay to River Place the outstanding cooperative assessment which existed on April 3, 1991 despite demand. River Place North Housing Corporation filed its Motion for Judgment herein against ALEC seeking to recover these outstanding cooperative assessments.⁵

² Plaintiff's Trial Exhibits #7 and #8.

³ Plaintiff's Trial Exhibits #9 and #10.

⁴ Plaintiff's Trial Exhibit #2.

⁵ Note that Section 7.3 of the Bylaws is the only section under which River Place is claiming. The Declarations of the Cooperative empower River Place "to enforce by any proceeding at law or in equity every provision of the Association Documents and to seek to obtain any relief which may be appropriate..." (Plaintiff's Trial Exhibit

This action went to trial on January 27, 1994. At the close of River Place's evidence, defendant ALEC moved to strike the evidence arguing that the Bylaws provision was effectively a promise to pay the debt of another subject to the Statute of Frauds⁶ which requires a writing signed by ALEC, or its agent. ALEC alleges that the requirements of the Statute of Frauds have not been met by River Place. After argument of counsel, the Honorable William T. Newman, Jr., presiding, requested that plaintiff and defendant submit briefs on the issue of the application of the Statute of Frauds to this case.

II. ARGUMENT

ALEC's primary argument is that River Place has produced no writing signed by ALEC, or its agent, to charge ALEC with an obligation to pay the outstanding assessments existing at the time ALEC took title to the two units as is the requirement of the Statute of Frauds.⁷ It is the position of River Place that the Statute of Frauds does not apply, and even if it does, River Place has satisfied its requirements.

1 at p.16, section 8.2). The Declarations define "Association Documents" to include the Bylaws. (Plaintiff's Exhibit 1 at p.2, Section 1.1(4)).

6 Section 11-2(4) of the Code of Virginia (1950).

7 In its Brief, ALEC relies on Mountain Home Properties, Inc. v. Pine Mountain Lake Association, 135 Cal. App. 3d 959, 185 Cal. Rptr. 623 (1982) and Council of Co-Owners of Forest Beach Villas Horizontal Property Regime v. Smith, 428 S.E. 2d 745 (S.C. App. 1993). Both these cases involve the liability of the subsequent purchaser for the debt of a prior owner, however, both cases are decided based on the application of statutes which are not applicable here.

A. Statute of Frauds does not apply to this case.

ALEC asserts in its Brief that "the Statute of Frauds is clearly applicable to the case at hand."⁸ The Statute of Frauds is designed to prevent frauds not create them.⁹ River Place, had it been told of ALEC's intention not to honor the Bylaws provision, could have refused to transfer the proprietary lease to ALEC. ALEC has chosen to receive the benefits of ownership of these units yet seeks here to eschew the obligation created by Section 7.3 of the Bylaws. ALEC should not be permitted to pick and choose what covenants of the Bylaws, Declarations or any other Rules and Regulations of the Cooperative it will abide by.

The Statute of Frauds also does not apply to fully executed contracts.¹⁰ There is no question that ALEC paid the purchase price and accepted delivery of the Deeds completing the sales.

Additionally, the Statute of Frauds applies to the enforcement of contractual obligations.¹¹ The obligation which River Place asserts against ALEC arises out of a covenant contained in the Bylaws of River Place North which is incorporated by reference through the Deeds and the Proprietary Lease, and is not contractual, per se. Therefore, the obligation is not the type of promise, contract or agreement contemplated by the Statute of

⁸ ALEC's Brief in Support of Motion to Strike, p 3.

⁹ See generally, Murphy v. Nolte & Co., 226 Va. 76, 81 (1983). Attached hereto as Exhibit A.

¹⁰ McMullin's Administrator v. Sanders, 79 Va. 356, 362 (1884). Attached hereto as Exhibit B.

¹¹ Section 11-2(4) of the Code of Virginia (1950).

Frauds. In Vanmeter's Executors v. Vanmeter,¹² Joseph Vanmeter encumbered his properties with Deeds of Trusts for debts he owed to another. Thereafter Joseph, as grantor, executed a deed for these lands in fee to his two sons. The deed set forth as consideration, inter alia, the sons' promise to pay the debts of the father. As here, the sons did not sign the deed. The Virginia Supreme Court held that, by the sons' acceptance of the deed and enjoyment of the land, they had acknowledged their personal liability for the debts of the grantor (the father) existing at the time of the execution of the deed and the father's creditors had a right to enforce the obligation against the sons.¹³ The Court stated that this condition in the deed was "equivalent to a covenant on the part of the grantees."¹⁴

Applying Vanmeter to the facts in this case, ALEC's acceptance of the Deeds and its enjoyment of the use and ownership of these units obligates it to perform the obligations set forth in the Deeds and makes any such obligations enforceable against ALEC by River Place, notwithstanding that ALEC did not sign the Deeds. The Deeds of Assignment of Proprietary Lease plainly state that the conveyance is subject to the terms and conditions of the Proprietary Lease.¹⁵ As was noted at trial, the original

¹² 44 Va. (3 Gratt.) 148 (1846). Attached hereto as Exhibit C.

¹³ 44 Va. (3. Gratt.) at 161.

¹⁴ 44 Va. (3 Gratt.) at 161-162.

¹⁵ Plaintiff's Trial Exhibits #9 and #10 on page 3 (third sentence in paragraph following property description).

Proprietary Lease¹⁶ clearly incorporates, and makes itself subject to, the terms of the Bylaws. Hence, ALEC is bound by Section 7.3 of the Bylaws under the doctrine set forth in Vanmeter.

B. River Place has introduced into evidence a writing embodying the obligation of ALEC.

Section 11-2 of the Code of Virginia (1950) states in relevant part:

Unless a promise, contract, agreement, representation, assurance, or ratification, or some memorandum or note thereof, is in writing and signed by the party to be charged or his agent, no action shall be brought in any of the following cases:

4. To charge any person upon a promise to answer for the debt, default or misdoings of another.

Notwithstanding River Place's position that the Statute of Frauds is inapplicable to the enforcement of covenants, River Place has produced documentary evidence of a writing which sets forth the obligation which River Place seeks to enforce against ALEC.

Contrary to the assertions of ALEC in its Brief, the sale of the units was subject to more than the provision in the Deeds and in the Notices of Trustee's Sale for "the payment of any and all delinquent real estate taxes, cooperative fees and other proper charges due on the property which may have legal priority over the Deed of Trust."¹⁷ The sales were also clearly subject to the terms of the Bylaws of River Place. As a general proposition of contract law, documents incorporated by reference become a part of

¹⁶ Plaintiff's Trial Exhibit #13.

¹⁷ ALEC Brief, p. 4.

the contract.¹⁸ In this case, the terms of the Bylaws were clearly incorporated into the terms of sale.

The Memoranda of Sale states in relevant part:

...I purchased the property briefly described as:

The Proprietary Lease to Unit/Apt. No. 1002, River Place North together with 6714 shares of the capital stock of River Place North Housing Corporation, which shares entitle the owner to the foregoing Proprietary Lease

for a bid of \$12,000.00. I further acknowledge that this purchase is subject to the terms and conditions of the attached Notice of Trustee's Sale and the attached Announcements...¹⁹ (emphasis added)

The Notices of Trustee's Sale clearly indicate that what was being offered for sale was the Proprietary Lease for the units and the Memoranda of Sale clearly indicate that the Proprietary Lease was what was being purchased. As previously stated, the Deeds of Assignment of Proprietary Lease plainly state that the conveyance is subject to the terms and conditions of the Proprietary Lease.²⁰ The original Proprietary Lease²¹ clearly incorporates, and makes itself subject to, the terms of the Bylaws.

ALEC cannot escape the fact that the Memoranda of Sale reflects the purchase of the rights in the Proprietary Lease which

¹⁸ Hampton Roads Shipping Association v. International Longshoremen's Association, 597 F. Supp. 709 (E.D. Va. 1984). Attached hereto as Exhibit D.

¹⁹ Plaintiff's Trial Exhibit #8. Plaintiff's Trial Exhibit #9 contains identical language except for the unit number which is #1003.

²⁰ Plaintiff's Trial Exhibits #9 and #10 on page 3 (third sentence in paragraph following property description).

²¹ Plaintiff's Trial Exhibit #13.

itself incorporates the terms of the Bylaws including the obligations of Section 7.3.

C. River Place has produced a writing signed by the party to be charged or its agent.

River Place has introduced into evidence writings signed by the party to be charged, or its agent, namely River Place's Trial Exhibits #8 and #9, the Memoranda of Sale for units #1002 and #1003 respectively. These two documents are signed by the Substitute Trustee and the corporate name "American Landmark Equity Corp." is handwritten on the signature line marked "Purchaser."

Trustees who sell property at auction²² are the agents of both the seller and the buyer and a memorandum signed by the trustee is a sufficient memorandum to take the case out of the statute of frauds.²³ Additionally, testimony adduced at trial indicated that the Substitute Trustee, American Landmark Management Corporation acts as the agent of ALEC. The ALEC "signature", albeit placed upon the document by an unidentified individual, achieves the same result. Acts of even unauthorized agents may be ratified and bind the principal.²⁴ Even though the identity of the ALEC signer is unknown and even if the individual who placed that signature there was unauthorized to do so, ALEC completed the

²² The Deeds of Trust (Ex. #9 and #10) and the Notices of Sale (Ex. #5 and #6) indicate that the Substitute Trustee offered the properties for sale at public auction.

²³ Yaffe v. Heritage Savings and Loan, 235 Va. 577, 582-583 (1988). Attached hereto as Exhibit E.

²⁴ Bank v. Beirne, 42 Va. (1 Gratt.) 234 (1844). Attached hereto as Exhibit F.

sale, paid the purchase price and accepted the deeds to the properties thereby ratifying the acts of the agent whether authorized or not. Furthermore, the Virginia Supreme Court has held that an act of ratification ratifies the whole contract or agreement and the principal may not accept some terms and reject others.²⁵ Therefore, ALEC is bound by all the terms of the sales including the obligations of the Bylaws incorporated by reference.

III. CONCLUSION

It is well settled in Virginia, that the standard to be applied in a motion to strike is that the evidence presented is to be considered in the light most favorable to the plaintiff.²⁶

The evidence presented by plaintiff indicates that ALEC accepted the Deeds to the units and with that agreed to be bound by all the terms and conditions set forth therein, including those terms incorporated by reference. The Statute of Frauds does not apply to covenants created by accepted Deed and does not apply where the contract has been fully executed. In the event this Court finds that the Statute of Frauds applies to this case, the Statute should not be used to perpetrate a fraud. Notwithstanding the foregoing, River Place has satisfied the Statute of Frauds requirement of a writing signed by the party to be charged or its agent.

WHEREFORE, based on the foregoing, plaintiff River Place North

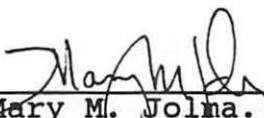
²⁵ Crump & Co. v. U.S. Mining Co., 48 Va. (7 Gratt.) 352 (1851). Attached hereto as Exhibit G.

²⁶ See generally, Meeks v. Hodges, 226 Va. 106, 109, 306 S.E. 2d 879, 881 (1983). Attached hereto as Exhibit H.

Housing Corporation, by counsel, respectfully moves this Honorable Court to deny defendant American Landmark Equity Corp.'s Motion to Strike Plaintiff's Evidence and set the matter down for further proceedings, and for such other relief as this Honorable Court deems just and meet.


Respectfully submitted,

River Place North
Housing Corporation,
by counsel


Mary M. Jolma, Esq. - VSB #27199
Law Office of Raymond B. Benzinger, P.C.
Counsel for plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was transmitted via facsimile (703) 448-8144 and mailed first-class, postage prepaid to Christopher C. Nolan, Adams, Porter & Radigan, Ltd., counsel for defendant, Suite 700, 1650 Tysons Boulevard, McLean, Virginia 22102 this 9th day of February, 1994.


Mary M. Jolma

V I R G I N I A:

IN THE CIRCUIT COURT FOR ARLINGTON COUNTY

- - - - - x

RIVER PLACE NORTH HOUSING CORP., :

Plaintiff, :

-vs- : AT LAW
No. 93-490

AMERICAN LANDMARK EQUITY CORP., :

Defendant. :

- - - - - x

Arlington, Virginia

Friday, June 24, 1994

The hearing commenced at 11:55 o'clock, a.m.

BEFORE:

The Honorable William T. Newman, Jr., Judge.

APPEARANCES:

For the Plaintiff:

MARY M. JOLMA, ATTORNEY AT LAW
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For the Defendant:

CHRISTOPHER C. NOLAN, ESQUIRE
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Suite 700
McLean, Virginia 22102

- - -

C O N T E N T S

Proceedings.....

page 3

E X H I B I T S

(No Exhibits Marked.)

- - -

P R O C E E D I N G S

THE COURT: Counsel, let me say that I have had an opportunity to read both of your briefs here, and they're both very well written.

I know that this is set for 30 minutes, but I think that, because I have read them, you may just want to emphasize the points that you think the Court really ought to pay the most attention to, so you might be able to streamline.

I mean, I'm not suggesting that you have to, but I have had the opportunity to read them, and I've also had the opportunity to look at some of the case law that has been referred to in the cases.

MR. NOLAN: Thank you, Judge.

THE COURT: Yes, sir, Mr. Nolan.

MR. NOLAN: On behalf of the defendant, as you know this is in the posture of the defendant's motion to strike.

I will streamline the facts because I know you recall River Place North Housing Corporation, the plaintiff, is claiming cooperative fees from a third party that's not before the Court, Geseme (phonetic) Butler.

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1 Monument Associates was the first
2 trustholder on these properties. They have
3 foreclosed and they've sold the properties at
4 foreclosure to the defendant, American Landmark.

5 The plaintiff is making a claim for a
6 personal money judgment against American Landmark
7 for these cooperative fees that are owed by Geseme
8 and Butler. And there's no dispute about that.

9 They're not pursuing a lien. It's a claim
10 for a personal money judgment by virtue of a
11 provision in the bylaws.

12 They're not pursuing a lien. They can't
13 pursue a lien. It was extinguished by virtue of the
14 foreclosure. There's no dispute there. There's no
15 dispute that the defendant has been current with all
16 its fees since the purchase.

17 And I believe, and, as I set forth in my
18 brief, the issue really is a quite simple one.
19 There is no writing whatsoever signed by the
20 defendant which could bind them to pay the debt or
21 default to a third party, and therefore the action
22 is barred by the statute of frauds.

23 Code Section 11-2, Subsection 4 makes it

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1 clear. When there's no writing signed, you cannot
2 bind the party to pay for the debt or default of a
3 third party.

4 There is no writing signed in this case. I
5 know we take issue with regard to some of the
6 documents that were tendered by virtue of the
7 foreclosure.

8 The trustee's deeds are not signed by
9 American Landmark. And even if you say they may be
10 subject to the things set forth, as we have said in
11 the past, the only provisions in the trustee's deeds
12 tell you that you're only liable for those
13 cooperative fees which have legal priority over the
14 deed of trust.

15 That deed of trust was foreclosed, and so
16 they can't attach and have it --

17 I know that Ms. Jolma has appropriately
18 raised the issue that we would be bound by the
19 memorandum of sale.

20 I would submit to the Court again it refers
21 only to the notice of the trustee's sale in the same
22 language: We're subject only to that mortgage.
23 That mortgage was wiped by virtue of the

1 foreclosure. So in this case there are no writings
2 signed, but I've even taken it a step beyond that.

3 If you'll look to the cases and look to the
4 support for the statute of frauds argument, Ms.
5 Jolma in her brief, I think, is attempting to
6 convince the Court that this is -- the claim for
7 these cooperative fees is a covenant running with
8 the land and therefore any buyer would be liable.

9 I would submit to the Court that the buyer,
10 my client, is liable for or is subject to, perhaps
11 is a better word because no one is really liable for
12 a covenant -- but my client is subject to covenants
13 that run with the land.

14 They're subject to those covenants that
15 regulate the use and responsibility having to do
16 with the land.

17 But what they're not liable for and what
18 they cannot be liable for under the Virginia statute
19 of frauds is a personal money judgment, a debt, a
20 personal-only debt of a third party. The statute of
21 frauds makes that clear.

22 This was the debt of a prior owner and, in
23 fact, it's even one party removed because look what

1 the sellers did. They bought it at foreclosure.
2 It's the debt of a prior owner that was foreclosed
3 upon.

4 Again, the statute of frauds makes it clear
5 and it must be in writing.

6 I can draw all the analogies I drew in my
7 brief from the subcontractors and mechanic's lien,
8 which I think is a perfect analogy.

9 I would submit to the Court that any
10 provision in a chain of title which would make a
11 subsequent owner subject to a prior owner's personal
12 money debt is unenforceable.

13 The plaintiff can call this a covenant.
14 They can call it a provision in the chain of title.
15 It doesn't really matter what you call it.

16 If it seeks to make a third party liable
17 for a personal money judgment where there is no
18 writing, it is unenforceable. The statute of frauds
19 makes that clear.

20 Now, the plaintiff does have the ability,
21 or did in this case, at least prior to foreclosure;
22 would have the ability to enforce their lien.

23 They didn't do that here. Prior to the

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1 foreclosure, they could have. They can pursue Mr.
2 Geseme and Mr. Butler personally. They did not do
3 it.

4 This isn't a case where they're completely
5 left without a remedy. And I say that because in
6 her brief Ms. Jolma makes the issue that the statute
7 of frauds is intended to prevent frauds, not create
8 them.

9 I agree with her completely. This was not
10 my client's debt. If this were my client's debt and
11 my client found a way to -- the statute of frauds
12 and kind of raise it as a technical defense, I would
13 agree with her. The statute of frauds is designed
14 to prevent frauds.

15 But you have to remember this is not their
16 debt. They never incurred this debt, and they have
17 been current on all their assessments.

18 THE COURT: What do you say, Mr. Nolan, to
19 the argument that has been made that this, because
20 of her debt -- that statute of frauds does not apply
21 to fully executed contracts?

22 MR. NOLAN: I think I understand the issue
23 that Ms. Jolma was raising. In a couple of cases

1 she brought it up. McMullen was one I think she
2 cites, and Enyahfe (phonetic) was another.

3 I agree. And I think the point that's made
4 in McMullen is in that case it was not -- they all
5 have the same dicta.

6 What they say is, if I have the language,
7 they say that this was not a case in which the
8 statute of frauds was appropriate.

9 In McMullen on page 362, the Judge says,
10 "For this is not as has been supposed, a suit upon
11 the contract. Also the language of the contract
12 could not be enforced under the statute if it were
13 not in writing."

14 But this is case, "But it is a suit brought
15 to obtain relief from the results of the false
16 representations of the party which induced the
17 plaintiff to enter into a contract."

18 "When such contracts..." -- And then you
19 skip down, "When such contracts means such contracts
20 as are within the statute are fully executed on both
21 sides, the positions of the parties are fixed."

22 I agree. You don't have a contract in this
23 case, Judge. I think McMullen simply does not

1 apply.

2 I agree with the position, but McMullen
3 doesn't affect it. There is no contract between the
4 defendant, American Landmark, and the plaintiff,
5 River Place North. It doesn't exist.

6 What they are trying to do in this case is
7 say that by virtue of the chain of title, by virtue
8 of the documents in which title is transferred, we
9 want to create in essence a personal liability for
10 the debt of a third person. That you can't do.
11 That's what the statute of frauds makes clear.

12 What they can do, what they have the
13 ability to do by virtue of the bylaws, and I think
14 this is perhaps the point that is appropriate --
15 what they can enforce is a lien against the property
16 because if it is a covenant running with the land,
17 if it's something that affects the land, if it is a
18 lien on the land, they can enforce it as a lien
19 through a forced judicial sale and recover their
20 money that way.

21 What they can't do is enforce their
22 personal money judgment against a third party. And
23 that is where I would distinguish the statute of

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1 frauds here.

2 And that leads me into -- I want to address
3 the Van Metre case which she raised, because I think
4 that's perhaps the best argument that the plaintiff
5 makes in these cases, that here the sons took the
6 property from the father, and the Court said that
7 they're liable for the father's debt.

8 But in that case, and the language is
9 crucial because it absolutely distinguishes it here
10 on page 597 of the case at the top on the right-
11 hand side, they point out that Van Meter "in
12 consideration of them bringing themselves to pay all
13 the debts due and owing by Sid Joseph, their
14 father."

15 In that case, the sale or the transfer of
16 the property was specially to pay those debts. That
17 was the consideration.

18 That's not the case here. In fact, the
19 only evidence in the plaintiff's case in chief may
20 be that ALEC didn't even know about the outstanding
21 fees, that in the chain of title they might be
22 subject to lien on the property if there were fees,
23 but there was no evidence in the case in chief that

1 they knew about it or agreed to accept those debts.

2 THE COURT: So your position is that their
3 remedy is, if they want, to try to file a lien?

4 MR. NOLAN: Absolutely. And, in fact, I'll
5 tell the Court, because this came out in Court in
6 testimony, that that is what's contemplated by
7 virtue of the documents.

8 That is not a strange incident at River
9 Place. It has happened in the past, and it will
10 undoubtedly happen in the future. That is what they
11 are permitted to do by virtue of the bylaws.

12 And I think it makes sense, not just
13 looking strictly to the Virginia statute of frauds,
14 but if you've looked at the cases I've submitted,
15 and I agree with Ms. Jolma, we didn't find any cases
16 directly on point. We both agree on that.

17 She's found some of these Virginia cases,
18 which I think I can and will distinguish. I found
19 the one case in California, Mountain Home
20 Properties, and a South Carolina case, Co-counsel,
21 Owners.

22 Both those cases dealt with statutory
23 language. We don't have that here. But what both

1 those cases do tell the Court is we're not going to
2 burden a new purchaser with some prior owner's
3 cooperative fees.

4 We can get around that by statute in our
5 state, but they also say in dicta. It simply is, I
6 think in the Mountain Home case, they go on to point
7 out that there's an inequity in forcing a new owner
8 to pay the debts of a third party. And I think
9 that's exactly on point here.

10 There's never before that I can find, there
11 any incident in Virginia where a prior owner's debt
12 can be enforced as a personal money judgment against
13 a subsequent purchaser.

14 The only way to do it, whether it be a
15 mechanic's lien, cooperative fee lien, a tax lien,
16 anything that you place on a property has to be done
17 as a forced judicial sale of the property. It's not
18 a personal money judgment against the subsequent
19 purchaser.

20 None of the cases that we cite, and the
21 only cases outside Virginia, the California and
22 South Carolina cases, that are even close to being
23 on point, both go the other way and say that the

1 subsequent purchaser is not liable for those debts.

2 In this case, I'd submit to the Court that
3 that is the path that the plaintiff had an
4 opportunity to follow and chose not to.

5 Again, I want to go back to Van Meter
6 because I think it's important. Below the language
7 in which they point out that the specific
8 consideration was to pay it off, the Court goes on
9 to say that, "It is true that there is no trust as
10 such created and that the bona fide purchases of
11 property thereby conveyed might not be bound -- the
12 application of purchase on the payment of debts, but
13 it is also true that such payment was part of the
14 consideration for conveyance."

15 That's the distinguishing feature in Van
16 Metre. That's exactly why the sons agreed to take
17 the property; it was to pay the debt. That didn't
18 happen here. There are no facts whatsoever to
19 support that.

20 The McMullen case, I think, as I have said,
21 is completely distinguished. I agree with it. If
22 it is a fully executed contract, it's not within the
23 statute.

1 That's not the case here. There was no
2 fully executed contract between the plaintiff and
3 the defendant.

4 The Murphy case, again, as I said before,
5 says -- that Ms. Jolma cites -- that the statute of
6 frauds shouldn't be used to perpetrate a fraud. I
7 agree absolutely.

8 In this case, though, my client is not the
9 one that owes the money. Had they been, I think the
10 Murphy case would be a good argument.

11 THE COURT: Let me ask you this then. What
12 about the whole question of whether or not the fact
13 that this could have been incorporated by reference
14 in the trustee's deeds for the proprietary lease?
15 What about that issue?

16 MR. NOLAN: I would not concede that it was
17 incorporated by reference because what she's really
18 doing is looking two to three tiers away and saying
19 the memorandum of sale was signed by the substitute
20 trustee and so that might bind the purchaser and
21 that incorporates the notice and the notice is
22 subject to the bylaws.

23 Even if we walk down that path and

1 incorporate it that way, to the extent that you say
2 that they are subject to that covenant, they are
3 subject to that covenant by virtue of a lien that
4 can be placed on the property -- it still doesn't
5 remove it from the statute of frauds.

6 To the extent that it --

7 THE COURT: So again you go back to: their
8 remedy is the lien as opposed to a personal money
9 judgment?

10 MR. NOLAN: Absolutely; if you want to say
11 that they're subject to that covenant, that
12 covenant, the design, the whole purpose behind it
13 was that you could have a lien on the property, that
14 you, the housing cooperative, could attach that
15 property and it would run with the land no matter
16 who bought it.

17 But it still doesn't remove it from the
18 statute of frauds. They can't charge a third party,
19 a subsequent purchaser down the road to the level of
20 a personal money judgment.

21 And that's the distinction. Under the
22 statute of frauds, you can't do it. There is no
23 exception there. There's no cases in Virginia.

1 It's never before happened. You can't charge them
2 for a personal money judgment.

3 They could recover -- there is a remedy.
4 In this case, they no longer have the remedy as to
5 the lien. It doesn't say they don't have the remedy
6 as to pursuing the original debtor.

7 But there is a remedy in this case. And to
8 say that that covenant runs with the land and can be
9 enforced, it certainly can as a lien but not as a
10 personal money judgment.

11 And that's really a distinction. Bringing
12 up with regard to the Yaffe case that Ms. Jolma
13 cites, where the memorandum of sale binds the
14 purchaser, if indeed it does, it makes no difference
15 here for that very reason.

16 And it would still only bind them to be
17 liable or to be subject to the lien on the property
18 if properly pursued.

19 We don't dispute that the memorandum of
20 sale is appropriate in this case and that they're
21 bound to purchase -- I mean, that's really what the
22 Yaffe deals with.

23 Yaffe said that, as I recall the facts in

1 the case, the purchaser ran across the street to get
2 his certified check after he bid, and then when he
3 came back, he discovered that it was subject to a
4 prior deed, and he said: No, I want out.

5 And the Court in Yaffe said once the
6 substitute trustee who was also acting as the
7 auctioneer drops the gavel, that's it, and he can
8 sign on your behalf and he has a duty to both
9 parties, and that memorandum of sale removes it from
10 the statute of frauds and you're liable to buy.

11 I agree with all of that. And we don't
12 dispute that we were liable to buy in the memorandum
13 of sale, and indeed we did.

14 But that's an entirely different step from
15 saying we're liable for a personal money judgment
16 from a prior owner. That's still barred by the
17 statute of frauds.

18 I think the case law is entirely supportive
19 of that. I think the statute of frauds is clear.

20 There is no case in Virginia which would
21 make my client liable for a personal money judgment,
22 and no case that either of us could find anywhere in
23 the country.

1 I think, under those circumstances, this
2 particular action is barred under the statute of
3 frauds, and I'd ask the Court to strike the
4 plaintiff's evidence.

5 Thank you.

6 THE COURT: Ms. Jolma?

7 MS. JOLMA: The memorandum of sale that we
8 presented to Your Honor for River Place is in trial
9 exhibits numbers 8 and 9, two memoranda of sale.

10 They are really quite important documents,
11 Your Honor, for a couple of reasons.

12 THE COURT: Which exhibit are you talking
13 about?

14 MS. JOLMA: I'm sorry, I believe it's 7 and
15 8, Your Honor; Plaintiff's 7 and 8, the memorandum
16 of sale.

17 THE COURT: Okay.

18 MS. JOLMA: They're important here for a
19 couple of reasons. As to Mr. Nolan's and American
20 Landmark's contention that there was no writing, I
21 think if writings were required here at all, that
22 this is it.

23 It clearly says on it what they're doing

1 is, "I acknowledge the trustee sale conducted this
2 day and due advertisement. I purchased the
3 property, namely the proprietary lease, together
4 with all the shares of the stock, \$120,000.

5 "I further acknowledge that this purchase
6 is subject to the terms and conditions of the
7 attached notice of trustee sale and the attached
8 announcements."

9 And it's signed, purchaser; somebody wrote
10 out in handwriting, "American Landmark Equity Corp."

11 And then it's signed on the next page or
12 acknowledged by the substitute trustee for American
13 Landmark management.

14 Whether or not -- well, apparently it's an
15 unknown person who wrote down "American Landmark
16 Equity Corporation." That doesn't really matter.
17 It could be somebody off the street who did that.

18 The fact is that he went through with this
19 deal. Even if that's the signature of an
20 unauthorized agent, it's a good one. They ratified
21 the deal. Ratification is ratification. They
22 ratified the whole deal and not part.

23 He can't come back now and say, Oh, gee, we

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1 don't like this one part. And that's what appears
2 to be happening.

3 This is the writing that charges the party.

4 Also, Your Honor, under the Yaffe case, you
5 have the signature of the substitute trustee who
6 conducted the auction. I think you've got another
7 signature there of the party to be charged.

8 And it's interesting to see what's bought.
9 They buy a proprietary lease and the proprietary
10 lease, Your Honor, which was our, I believe, Exhibit
11 13. And I can't remember the exact numbered
12 paragraph. I could probably spot it for you if I
13 saw it.

14 The proprietary lease clearly states that
15 it is subject to the bylaws, right in the
16 proprietary lease, not the assignment of the
17 proprietary lease but the big fat proprietary lease,
18 the big, huge one.

19 Those two are tied together inextricably.
20 The bylaws say you buy this property, you get to be
21 liable for Mr. Geseme's debt.

22 And I think it's kind of a red herring that
23 we're going through, the remedy and the lien and the

1 money judgment -- the lien and the money judgment.

2 There's two remedies here. There may be
3 even three, depending on how you read the bylaws --
4 as to how we could possibly collect these
5 outstanding debts.

6 You could get a personal judgment against
7 Mr. Geseme. You could get a lien on the property.
8 Or you could get it through the subsequent
9 purchaser.

10 There's nothing wrong with River Place's
11 covering their options. The reason that was done
12 originally, Your Honor, is: if you'll look in the
13 bylaws, you'll see that the liens are extinguished
14 as to the first mortgage holder, who almost
15 invariably at one part in time, was Monument
16 Associates. They held all the liens.

17 They didn't want to be stuck. The mortgage
18 company didn't want to be stuck having to satisfy
19 the lien for the cooperative phase.

20 They got out of that in a paragraph. It's
21 in there, that the mortgage company is not liable
22 for outstanding cooperative fees in terms of a lien,
23 a priority lien.

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1 River Place covered itself by putting in
2 the additional provision, the new proprietary lessee
3 gets to pay those outstanding cooperative fees.
4 It's the cost of buying the place.

5 That's easy to find out, Your Honor. The
6 provisions in the bylaws that say all you've got to
7 do is call us up and we'll send you all of the --

8 If we send you a note saying it's not owed,
9 there's not going to be any owed. You could make a
10 mistake. Get this in writing.

11 They didn't do that. So it's not like
12 these people were totally unprotected and got blind-
13 sided by very sophisticated business people in a
14 very sophisticated real estate transaction.

15 The trail of the bylaws is pretty simple.
16 You can get there a couple of ways. As I said, Your
17 Honor, you can get there with the proprietary lease,
18 you can get there by reading the notice of trustee's
19 sale.

20 They all go back in line right back, Your
21 Honor, to the bylaws. It's all incorporated by
22 reference. There's no smoking guns. It's all
23 there.

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1 In some sense, Your Honor, I get the
2 feeling I'm getting the Gee-whiz-we-didn't-know
3 defense. I just don't think that flies. These are
4 certainly clearly set forth in the bylaws, which
5 they're apprised of knowing.

6 THE COURT: Why don't you explain, and I've
7 heard some of your argument, but with regards to the
8 whole question about whether or not there is a
9 priority, the question about that.

10 MS. JOLMA: Whether there's a priority in
11 what respect, Your Honor?

12 THE COURT: Okay. It was the language that
13 talked about that this could only be -- it has to do
14 with the legal priority of --

15 MS. JOLMA: Of the bylaws?

16 THE COURT: Yes.

17 MS. JOLMA: Give me a minute, Your Honor,
18 and I'll find it. Section 12.2 of the bylaws, Your
19 Honor, but let me just check to be sure.

20 And 12.2(a), Your Honor, is the one I was
21 referring to. It says, "A lien created by this
22 subsection shall be prior to all liens and
23 encumbrances recorded after the effective date

1 hereof except for any mortgage."

2 THE COURT: Yes, that's it.

3 MS. JOLMA: And the mortgage as defined is
4 the first trust, the first deed of trust. And that
5 is the one that Monument Associates was wanting to
6 get around, and that's why that provision is in
7 there.

8 They were trying to encourage people to or
9 financial institutions and investment to replace
10 cooperatives, and that's why that was put in there
11 so that the mortgage companies at foreclosure would
12 not get stuck paying the outstanding coop fees.
13 That's for the mortgage companies' benefit.

14 MR. NOLAN: I don't want to interrupt.
15 That's absolutely correct. It's to encourage
16 buyers, the mortgage company for the buyers --
17 that's absolutely correct.

18 THE COURT: Okay.

19 MS. JOLMA: And the entirely separate
20 section, Your Honor, of 7.3, is what we're fighting
21 over.

22 THE COURT: Uh-huh.

23 MS. JOLMA: It says absolutely nothing

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1 about a lien. It doesn't say a lien has to be
2 perfected in order to make a proprietary lessee
3 liable.

4 It outright says, "A new proprietary lessee
5 of the property shall be jointly and severally
6 liable," the proprietary lessee for all liens
7 against the property. Proprietary lessee.

8 THE COURT: And your position is that by
9 signing or whoever signed the memorandum of sale,
10 that is how you can get around the whole issue that
11 Mr. Nolan has argued that no one in American
12 Landmark has acknowledged or signed off on this.

13 MS. JOLMA: I'm sorry?

14 THE COURT: Or signed off on the fact that
15 they would be responsible for the fees.

16 You say that because this memorandum of
17 sale has American Landmark's on it that that in and
18 of itself is enough of an acknowledgement that they
19 will be responsible by reference for everything --
20 for this liability for assessments.

21 MS. JOLMA: That coupled with the
22 ratification and sale, yes, ratification by
23 completion of the sale, yes.

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1 THE COURT: I see, okay.

2 MS. JOLMA: Now, if you read on a little
3 further, it gets a little more interesting. It says
4 not only are they liable for the unpaid assessments
5 up to the time they purchased, but they are without
6 prejudice of any rights of a successor in ownership
7 to recover from any of its predecessors in ownership
8 any amount which any of the latter is liable."

9 So it's not like they're without remedy. I
10 mean, they can go after Mr. Geseme. They can go
11 after Ms. Butler. They're not just out there to
12 stop.

13 But the fact is, this is here. They're on
14 notice. These documents are not hiding. They're
15 around. They're around a lot.

16 And it's not the first place American
17 Landmark ever bought. They've been around. They
18 understand these documents. This is not new stuff
19 to them.

20 Notwithstanding the fact that I think we
21 have a sufficient writing, Your Honor, I don't think
22 we need a writing at all for a couple of reasons,
23 one of which Your Honor touched on; that this is

1 really a fully executed contract, a completed
2 purchase.

3 And it's not only a completed purchase.
4 What goes on between River Place and American
5 Landmark is that River Place gives them a
6 proprietary lease that says: Here, you get to own
7 this piece of property or you own the shares that
8 gives you the right to occupy this property.

9 They rent it. They make money on it.
10 River Place put them in there in consideration of
11 -- if there's ever a question of consideration,
12 River Place gives them a proprietary lease.

13 Our consideration is: Hey, you have all
14 this stuff. No, you're going to paint your door
15 neon pink, you're not going to mess up the pool, and
16 you're going to be liable for the prior assessments.
17 That's the deal. That's the consideration.

18 Obligating themselves to this particular
19 document, the covenants, the declarations, obeying
20 these rules. You're agreeing to accept this,
21 American Landmark, then we'll give you the right to
22 use the property.

23 And that's occurred. That's a complete .

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1 executed deal. Now, we're saying: whoops, we don't
2 want to be liable for this one.

3 You can't do that, Your Honor. You take it
4 all or you take nothing. They don't want to take
5 this part.

6 I'm still not persuaded that what we have
7 here even so is necessarily a contractual
8 arrangement as much as it is truly a covenant
9 running with the land, as I still think Van Metre
10 applies and applies well.

11 This is clearly a covenant running with the
12 land. There's clearly some kind of consideration
13 going on here in terms of River Place's permitting
14 these people to use this property and transfer to
15 them the shares.

16 Again, Your Honor, I don't think the cases
17 that American Landmark has cited, Mountain Home and
18 I think it was Counsel/Co-owners, both of those deal
19 with statutes that we don't have here.

20 I mean, Mr. Nolan seems to think: Well,
21 this is a nice theory to use, that maybe it's the
22 way things are, but we don't have a statute even
23 remotely resembling any of these things.

1 This case has been decided on the bylaws,
2 the proprietary lease, the memorandum of sale, the
3 trustee's notices. Those are the only things we
4 have to work with. We do not have a statute. So
5 those cases really can't even come close to being
6 applied here.

7 I think that was all I had, Your Honor.
8 Just let me run through my notes real quick.

9 (Brief pause.)

10 MS. JOLMA: I have nothing further, Your
11 Honor.

12 THE COURT: Mr. Nolan?

13 MR. NOLAN: Just a couple of minutes. I
14 want to take issue with Ms. Jolma's explanation of
15 the transfer of rights of shares and things
16 because -- let me tell the Court that the
17 proprietary lease comes from the foreclosing
18 trustholder, Monument, not from River Place.

19 River Place is the housing corporation, but
20 the proprietary lease comes from Monument. They
21 foreclosed on their deed of trust. The proprietary
22 lease then goes to their buyer in a foreclosure.

23 Ms. Jolma is right when she says that River

1 Place is normally the party that issues the shares,
2 its shares in stock in their corporation.

3 But as I understand it, and I welcome Ms.
4 Jolma to correct me, in this particular case, River
5 Place refuses to tender the shares for this very
6 reason because we're here, because there is a
7 dispute with regard to past assessments. It's my
8 understanding to this day that they've refused to
9 tender those shares.

10 That may have changed. That was certainly
11 what I was informed by my client some months ago
12 before we started this.

13 I only raise that because Ms. Jolma says
14 that they were given all these rights and tendered
15 these things by River Place, and I don't think
16 that's entirely the case. I'm not sure it makes a
17 difference with regard to this. This is a statute
18 of frauds issue.

19 Ms. Jolma points out that you read 7.3 and
20 it says that the subsequent owner is liable with the
21 prior owner and then look to 12.2. They have to be
22 read together.

23 And the key word in these two sections

1 isn't "lien" and it isn't "proprietary lease." It's
2 "assessment".

3 Section 7.3 says, "The new proprietary
4 lessee shall be liable to the former for the unpaid
5 assessments."

6 And 12.2 says "every assessment made
7 against shares or the shareholder pursuant to these
8 bylaws is a lien against those shares which lien
9 shall be effected."

10 And then it goes on to tell you that that
11 lien is prior to all other liens except the prior
12 mortgage, which in this case was foreclosed out.

13 So assessment is the key, and that
14 assessment in this case can be enforced as a lien
15 and it was wiped out.

16 Now, finally, Judge, I'd just like to say
17 whether you walk through the memorandum of sale to
18 the trustee's deed and try and fashion a contract
19 that way or whether you say, as Ms. Jolma suggests,
20 it's a covenant with the land, I'd submit to the
21 Court it doesn't matter how you get there, if you
22 get to 7.3 and you can interpret it any way to make
23 the defendant here personally liable for a money

1 judgment for the debt or default of a third party,
2 that's a violation of the statute of frauds. It
3 cannot be enforced.

4 THE COURT: What do you say to the fact
5 that the memorandum of sale is signed by them?

6 MR. NOLAN: That, again, it's signed by
7 them. You have to read Section 7.3 and Section 12.2
8 together and it tells you what their rights are.
9 They can pursue it as a lien, and they elected not
10 to do that in this case.

11 What I'm saying is I think that they're
12 only real remedy is a lien, but even if you agree
13 that the memorandum of sale is signed and you get to
14 7.3, there is nothing in that memorandum of sale
15 which says we are liable for the debts of a third
16 party, we are liable for a debt or default of a
17 third party. It simply doesn't exist.

18 And it is a strained reading to jump
19 through all the hoops and incorporate all the
20 documents to get back to 7.3.

21 What 7.3 tells you is to the extent that
22 there is any debt, 12.2 tells you how to have a lien
23 to enforce it. They didn't do that in this case.

1 There is no writing signed that binds them to pay
2 the debt or default of a third party. It's simply a
3 violation of the statute of frauds.

4 And, again, I close by saying we've looked,
5 both Ms. Jolma and I have looked very hard. And
6 there's no case in the country where the prior
7 owner's debt, whether it be a covenant running with
8 the land or otherwise -- there's no case we can find
9 in the entire country where a prior owner's debt is
10 enforced as a personal money judgment against the
11 subsequent purchaser.

12 Thank you.

13 THE COURT: Ms. Jolma, would you like to
14 say anything?

15 MS. JOLMA: Well, I wouldn't exactly agree
16 with that, Your Honor. I think Van Metre versus Van
17 Metre is pretty clear that they're going to impose
18 the liability on the sons to pay the debts of the
19 father.

20 And that's clearly in the concept of the
21 covenant running with the land.

22 THE COURT: But isn't that case where the
23 deed reflected that that was part of the

1 consideration?

2 MS. JOLMA: Yes, Your Honor, that's true,
3 that's reflected there, but I think what you have
4 here is and what you have to keep remembering is
5 when they took the memorandum of sale and they
6 bought this property -- they're not saying they're
7 not subject to the bylaws at all.

8 They're not objecting to the fact that the
9 bylaws were incorporated by reference in this deal.
10 If it's incorporated by references in one paragraph
11 of the bylaws, Your Honor, it's incorporated by
12 reference to all of them.

13 THE COURT: What do you say when you're
14 looking back at 12.2 when it talks about the fact
15 that it's supposedly a lien against those shares
16 which shall be effective as of the date the
17 assessment is made?

18 MS. JOLMA: That's correct, Your Honor.
19 The problem is you're looking at two different sets
20 of remedies here, and you can't really read these
21 together. They're not in the same paragraph. They
22 are two separate parts of the document.

23 THE COURT: But I mean, the whole thing has

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1 to be read and then kind of looked at.

2 MS. JOLMA: But you're looking at remedies
3 against different people. When you're looking at
4 the lien, you're looking at your choice for the
5 remedy against the property which is going to be
6 prior to everything else, every other kind of lien
7 that could possibly happen, a judgment against the
8 owner, you know. It's an entirely different matter.

9 You will always have priority against
10 anybody else putting a lien on that property except
11 the first mortgage holder. That first mortgage
12 holder, he comes first, PERIOD. And that's always
13 going to be the case.

14 And that was what this section was designed
15 for. First of all, to protect the first mortgage
16 holder and encourage an investor to finance these
17 things, and, second, to protect or replace -- to
18 help to replace or collect against the original
19 obligator ahead of potential other creditors,
20 judgment creditors, for example, of the original
21 owner.

22 Section 7.2 does something entirely
23 different -- 7.3, I'm sorry.

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1 THE COURT: Excuse me one second, I'm
2 sorry.

3 (Brief pause.)

4 MS. JOLMA: And 7.3 does not address -- it
5 addresses two things really. I think it clearly
6 defines what the liability is for the current
7 shareholder, the person who owns the place now.

8 Now, is this person liable for the
9 assessments? I think that's probably clear from
10 other parts of the document as well and it just
11 restates it here.

12 But it goes on to say we're going to put
13 liability on this new person, and that's the new
14 proprietary lease. So that would preface that
15 person to go after the prior owner.

16 The sections achieve or hope to achieve, I
17 suspect, the same thing, collect the money. They
18 hope to achieve it from different folks.

19 THE COURT: But I guess I keep coming back
20 to this one thing. Okay, if 12.2 talks about the
21 fact that the remedy is a lien -- a lien, okay, as
22 the assessments become due, all right?

23 MS. JOLMA: All right.

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1 THE COURT: And then it later says, in
2 other words, if you want to then look at 7.3, it
3 says that yes, they shall be -- the new proprietary
4 lessee shall be jointly and severally liable with
5 the former lessee for all unpaid assessments.

6 MS. JOLMA: That would be number 2, Judge.

7 THE COURT: Okay. But, you know, I guess I
8 keep coming back to: But what does it say? The
9 assessments must become a lien.

10 MS. JOLMA: Yes, and that means they should
11 know about them or at least inquire as to whether
12 they exist when they purchase.

13 That lien is automatic. Automatic. You
14 don't even have to go down to the Courthouse to find
15 it. It's an automatic lien.

16 It seems to me that, if that's the case,
17 that these folks, when they buy these things, have a
18 duty, and they have a duty to check and make sure
19 none of this stuff is out there, that this apartment
20 is current. Ask the mortgage holder, they probably
21 know. Ask River Place, they'll tell you.

22 I mean, this is a default situation, Your
23 Honor. This is not a regular old sale. It's a

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1 default situation.

2 Clearly there's some kind of financial
3 problem with the owner. He puts these guys on
4 notice -- They've got to look. They've got to look.
5 They're professional people, they have to look.

6 If there's a lien on there, it's going to
7 be extinguished as the first mortgage holder.
8 That's the agreement that River Place has with the
9 first mortgage holder.

10 But the hook is the original owner stays
11 liable and the new guy stays liable or becomes
12 liable. That's River Place revenues protecting
13 itself against never collecting these fees.

14 Forget 7.3 exists for a second and just
15 look what happens if it's a lien on the property.
16 That lien is automatically extinguished every time
17 Monument Associates forecloses.

18 No one gets a dime ever, ever, on every
19 single one of these foreclosures with outstanding
20 assessments. And, believe me, every single one of
21 them has outstanding assessments.

22 That lien is extinguished as Monument never
23 has to honor that lien and they never do. River

1 Place gets nothing, zero, ever. That doesn't make
2 sense.

3 What makes sense is you put that out there
4 to keep yourself in priority. In a foreclosure
5 situation, that lien is extinguished, but we still
6 have a right to collect under 7.3.

7 That protects River Place. They're two
8 different things, two different ways to get the
9 money.

10 That's the whole idea. That's why they're
11 both here. That's why they're both in separate
12 places.

13 You can't even really read them together.
14 They don't make sense together. They are two
15 separate remedies.

16 And there's other remedies. I can go down
17 to the Court, general district Court, and file just
18 a plain, old lawsuit against an owner right now.

19 I don't have to foreclose on the property.
20 I don't have to record a lien. I don't have to
21 execute on the property. I can just go and get a
22 money judgment.

23 There's lots of ways to collect this thing,

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1 but this provides for two ways to go after it, two
2 ways to protect River Place; very different. I
3 don't think you could confuse the two. They achieve
4 different ends in different situations.

5 THE COURT: Okay. Anything further?

6 MR. NOLAN: Judge, I agree with Ms. Jolma.
7 She not only has two remedies, she has three.
8 She told you it would be unfair to River Place
9 because foreclosure would wipe out their lien.
10 Well, in fact, most of the time that's the real
11 world.

12 Monument didn't owe the money. American
13 Landmark didn't owe the money. It was the prior
14 owner that owes the money. That's the point that
15 the plaintiff skirts around.

16 But the other remedy that they have is they
17 can foreclose on that lien. They can sue; River
18 Place can sue to foreclose on that lien at any time.
19 They can do it in front of the first, second or any
20 trustholder.

21 So it's not true to say they'll never get
22 paid. They have the ability to foreclose on that
23 lien at any time they want, so they do have a

1 remedy.

2 And as Ms. Jolma says, if you take 12.2 in
3 and of itself, we would always lose. That's not
4 true. They can sue to foreclose on their lien any
5 time.

6 And I'd also get back to the point that
7 it's not a personal money judgment. And as Your
8 Honor pointed out, they have a lien; 12.2 says they
9 have a lien.

10 And Ms. Jolma says, Well, we have a duty to
11 look and see that. Absolutely. Just like on a
12 mechanic's lien, a tax lien, any of those things
13 might run with the land and could be enforced as
14 liens, absolutely.

15 And a buyer might have a duty to go in and
16 check and see if they existed, but that doesn't mean
17 he's going to be liable for a personal money
18 judgment. He's not. He can't go under the statute
19 of frauds. He's not in mechanic's liens. He's not
20 on tax liens. It's a lien.

21 If she says it's a covenant that runs with
22 the land, it goes to the land, not a personal money
23 judgment.

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1 Thank you.

2 THE COURT: Counsel, again, I think that
3 your arguments have been very good and the briefs
4 have been excellent.

5 I believe that Ms. Jolma is certainly
6 correct when she says that American Landmark did
7 acknowledge that the assessments are in fact due,
8 but as I read this and again, as I understand what
9 this is saying in the bylaws, that as the
10 assessments become due they become liens and that
11 they are not -- do not become personal money
12 judgments against American Landmark, and accordingly
13 the motion to strike is granted.

14 MR. NOLAN: Thank you, Your Honor.

15 MS. JOLMA: Thank you, Your Honor.

16 THE COURT: Yes, ma'am. Again, both of
17 you, this was really quite good and we may hear from
18 it again, but --

19 MS. JOLMA: There's no statute for -- is
0 that my understanding, or is it because they're
liens that there is no personal liability under 7.3?

THE COURT: I believe there is no personal
liability.

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MS. JOLMA: No

7.3?

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AUG 10 1994

DAVID A. BELL, CLERK
Arlington County Circuit Court
By 93-490 Deputy Clerk

VIRGINIA:

RIVER PLACE NORTH HOUSING CORPORATION
Plaintiff

v.

AMERICAN LANDMARK EQUITY CORP.
Defendant

MOTION FOR CLARIFICATION

COMES NOW plaintiff River Place North Housing Corporation, by counsel, and respectfully moves this Honorable Court for clarification of Judge Newman's ruling of June 24, 1994 granting defendant's motion to strike the evidence, and in support thereof states as follows:

1. That defendant's motion to strike was based upon the applicability of the Statute of Frauds.
2. Judge Newman held that there was no personal liability for defendant under Bylaws paragraph 7.3 without further explanation or basis.

WHEREFORE, plaintiff respectfully requests clarification of Judge Newman's ruling in this case of June 24, 1994 and such further relief as this Honorable Court deems just and meet.

Respectfully requested,

River Place North Housing Corporation
by counsel


Mary M. Jolma, Esq. - VSB #27199
Counsel for plaintiff

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2009 NORTH 14TH STREET
ARLINGTON, VIRGINIA 22201
(703) 525-1362

1 Thank you.

2 THE COURT: Counsel, again, I think that
3 your arguments have been very good and the briefs
4 have been excellent.

5 I believe that Ms. Jolma is certainly
6 correct when she says that American Landmark did
7 acknowledge that the assessments are in fact due,
8 but as I read this and again, as I understand what
9 this is saying in the bylaws, that as the
10 assessments become due they become liens and that
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14 MR. NOLAN: Thank you, Your Honor.

15 MS. JOLMA: Thank you, Your Honor.

16 THE COURT: Yes, ma'am. Again, both of
17 you, this was really quite good and we may hear from
18 it again, but --

19 MS. JOLMA: There's no statute for -- is
20 that my understanding, or is it because they're
21 liens that there is no personal liability under 7.3?

22 THE COURT: I believe there is no personal
23 liability.

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1 MS. JOLMA: No personal liability under
2 7.3?

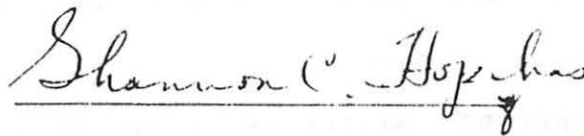
3 THE COURT: Yes.

4 (Thereupon, at approximately 12:40
5 o'clock p.m., the hearing in the above-entitled
6 matter was concluded.)
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CERTIFICATE OF COURT REPORTER

I, SHANNON C. HOPCHAS, a Verbatim Court Reporter, do hereby certify that I took in stenographic notes the foregoing testimony/ proceeding and reduced the same to typewriting; that the foregoing is a true record of the proceeding; that I am neither related to, nor employed by any attorney or counsel employed by the parties hereto, nor financially interested in the action; and, I further certify the pages attached hereto, inclusive, contain a full, true and correct transcription of my stenographic notes taken therein.



SHANNON C. HOPCHAS

Court Reporter

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V I R G I N I A:

RECEIVED

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

AUG 10 1994

RIVER PLACE NORTH HOUSING CORPORATION)

Plaintiff)

v.)

AMERICAN LANDMARK EQUITY CORP.)

Defendant)

DAVID A. BELL, CLERK

Arlington County Circuit Court

At Law No. 93-490 Deputy Clerk

MOTION FOR CLARIFICATION

COMES NOW plaintiff River Place North Housing Corporation, by counsel, and respectfully moves this Honorable Court for clarification of Judge Newman's ruling of June 24, 1994 granting defendant's motion to strike the evidence, and in support thereof states as follows:

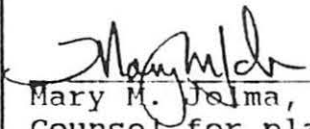
1. That defendant's motion to strike was based upon the applicability of the Statute of Frauds.

2. Judge Newman held that there was no personal liability for defendant under Bylaws paragraph 7.3 without further explanation or basis.

WHEREFORE, plaintiff respectfully requests clarification of Judge Newman's ruling in this case of June 24, 1994 and such further relief as this Honorable Court deems just and meet.

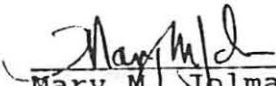
Respectfully requested,

River Place North Housing Corporation
by counsel


Mary M. Jelma, Esq. - VSB #27199
Counsel for plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was transmitted via facsimile and mailed first class, postage prepaid this 10th day of August, 1994 to Christopher Nolan, Esq., Counsel for defendant, Adams, Porter & Radigan, Ltd., 1650 Tysons Boulevard, Suite 700, Vienna, Virginia 22102.



Mary M. Jolma

V I R G I N I A:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

----- X
:
RIVER PLACE NORTH HOUSING CORPORATION, :
:
Plaintiff, :
:
-vs- : LAW No. 93-490
:
AMERICAN LANDMARK EQUITY CORP., :
:
Defendant. :
:
----- X

Circuit Courtroom No. 703
Arlington County Courthouse
Arlington, Virginia

Friday; August 12, 1994

The above-entitled matter came on for
hearing before THE HONORABLE WILLIAM T. NEWMAN, JR., Judge,
in and for the Circuit Court of Arlington County, Virginia,
commencing at 11:50 a.m.

- - -



1 APPEARANCES:

2 On behalf of the plaintiff:

3 MS. MARY M. JOLMA, Attorney-at-Law
4 Law Office of Raymond B. Benzinger, P.C.
5 2009 North 14th Street, Suite 410
Arlington, Virginia 22201

6 On behalf of the defendant:

7 CHRISTOPHER C. NOLAN, Esquire
8 Adams, Porter & Radigan, Ltd.
1650 Tysons Boulevard, Suite 700
McLean, Virginia 22102

9 - - -



P R O C E E D I N G S

(Whereupon, the court reporter was previously duly sworn by the Clerk of Court.)

MS. JOLMA: Your Honor, I believe this comes on Mr. Nolan's motion for entry of the order and for consideration and support for attorney's fees.

Your Honor, before we start that, I'd like Your Honor to ask -- request to Your Honor to briefly -- if you could give me a little bit of clarification on the final ruling that was made.

I have reread the transcript and Mr. Nolan and I have discussed this at length, and I'm still a little unclear and maybe it would help me sort out where we're going from here, even in terms of the attorney's fees argument that needs to be made today.

Your Honor ruled that there was no personal liability under the clause 7.3, which was the bylaws, and Your Honor never made any conclusion, at least articulated conclusion, as to why you believe that was so.

The majority of the argument -- In fact, almost all the argument in the briefing on the motion to strike was all related to the statute of frauds. I think it's unclear also from your decision whether the statute of



1 frauds applied or not.

2 If Your Honor would be kind enough to give
3 me a little clarification of that, I may be able to make
4 some decisions on the way we proceed from here, including
5 in this argument.

6 MR. NOLAN: Your Honor, let me -- I think
7 the appropriate thing to do is let me present the final
8 order that I have prepared --

9 THE COURT: Okay.

10 MR. NOLAN: -- which has the language. And
11 I also have an attorney's fees affidavit which I'll pass up
12 now.

13 Your Honor, just let me say I believe the
14 decision was clear and I have the transcript and I can read
15 you what is about ten lines and is the pertinent part. I
16 know Your Honor is familiar with the case.

17 THE COURT: I am familiar, but I don't
18 remember -- It's been a little while. I don't remember
19 what I said at that time.

20 MR. NOLAN: At the -- We both argued. And
21 then on the second-to-the-last page, page 43:

22 THE COURT: "Counsel, I think
23 your argument has been very good and the



1 briefs have been excellent."

2 You go on to say:

3 "I believe Ms. Jolma is
4 certainly correct when she says that
5 American Landmark did acknowledge that the
6 assessments are in fact due. But as I read
7 this -- and, again, as I understand what
8 this is saying in the bylaws, that as the
9 assessments become due, they become liens,
10 and that they are not -- do not become
11 personal money judgments against American
12 Landmark. And, accordingly, the motion to
13 strike is granted."

14 "Thank you" from Mr. Nolan. "Thank you"
15 from Mr. Nolan. And then the court: "Yes, ma'am. Again,
16 both of you, this is really quite good. We may hear from
17 it again, but --" And then Ms. Jolma asked you, "There's no
18 statute for it? Is that my understanding? Or is it
19 because they are liens that there is no personal liability
20 under 7.1?"

21 THE COURT: "I believe there
22 is no personal liability.

23 MS. JOLMA: "Again, no



1 personal liability under 7.3?

2 THE COURT: "Yes."

3 It concludes. It was repeated three times.
4 I think the ruling is clear -- your findings with regard to
5 the bylaw that there was no personal liability.

6 And I understand Ms. Jolma wants a
7 clarification, but I think she got just that. And it was
8 clarified and there is no personal liability. That is
9 exactly what the final order reflects.

10 Thank you.

11 MS. JOLMA: Your Honor, I don't doubt the
12 conclusion there is no personal liability. I just don't
13 understand what the basis for that opinion is. You know,
14 is it because there are liens under other sections? Is it
15 because the statute of frauds -- You know, I'd like to have
16 some kind of basis for that ultimate conclusion and I don't
17 think it is clear from there what the basis was.

18 THE COURT: Well, in all candor, without my
19 going back and reviewing what were, again, some lengthy --
20 and very good, by the way -- lengthy briefs on this matter,
21 I concluded clearly that -- as I looked at the bylaws, that
22 I was persuaded that these did not become personal money
23 judgments against American Landmark. There's no question



1 in my mind.

2 But as to the other -- any other specifics,
3 I would have to go back and review the brief at this point.
4 I just don't recall. It's been some -- you know, a little
5 while. You know, maybe if it had been a week later, I
6 could have done it very quickly. But it has been a while.
7 I just don't remember.

8 Because as I recall, you had -- Mr. Nolan
9 had -- with regards to the statute of frauds, you had --
10 What what was your -- The argument was...

11 MR. NOLAN: That the sections speak of a
12 liability, but they permit the lien to run with -- I think
13 that's where we got into the argument, is that a covenant
14 that runs with the land -- And, indeed, it may be.

15 And we did not dispute that they would have
16 a lien on that property, but the personal liability
17 wouldn't run to a subsequent purchaser. They had a remedy
18 in the fact that they chose not to exercise it.

19 THE COURT: Yeah. That goes back to -- And
20 that was basically the court's reasoning as to why they did
21 not become a personal liability.

22 MS. JOLMA: Because there was a lien that
23 was not pursued? Is that what it is?



1 THE COURT: Yes, exactly.

2 MS. JOLMA: Thank you, Your Honor.

3 As to the order itself, I have no objection
4 with the exception of whether or not the attorney's fees
5 are fully recoverable in this case. The attorney's fees
6 affidavit sets forth some \$12,804.04 in attorney's fees.
7 That's almost the amount sued for here in this case. I
8 think that, in and of itself, is excessive.

9 And in addition, Your Honor, the authority
10 for attorney's fees awards in this case, if it's governed
11 by the bylaws, is governed by Section 12.1(b) of the
12 bylaws.

13 THE COURT: Okay. Hold on one second. Let
14 me just look at the bylaws. At one point I felt I knew
15 them, but I'm afraid it has become...

16 Okay. I'm sorry, it's section what?

17 MS. JOLMA: It's 12.1(b), on page 25.

18 THE COURT: Okay. All right.

19 MS. JOLMA: The key word in that provision,
20 Your Honor -- it says, "In any proceeding arising out of an
21 alleged default by a shareholder, the prevailing party
22 shall be entitled to recover the costs of such proceeding
23 and such reasonable attorney's fees that may be determined

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1 by the court."

2 I think the key word here, Your Honor, is
3 "shareholder." I think Mr. Nolan conceded at the last
4 hearing that American Landmark Equity Corporation is in
5 fact not a shareholder with respect to the units in dispute
6 here. They've never been issued the shares, ever, and I
7 believe that continues until today.

8 So, first of all, they are not shareholders.
9 And I think if they're not shareholders, they don't get to
10 recover costs and attorney's fees.

11 And second, Your Honor, it also speaks to
12 reasonable attorney's fees. I don't think \$12,000 -- It
13 seems like an awful lot of money and that's about the
14 amount we were suing for.

15 It really was not a terribly complex case.
16 There was not a lot of extended discovery. There were not
17 a lot of motions. It was very straightforward. And it
18 seems to me that the clause "as may be determined by the
19 court" really leaves a great deal to your discretion in
20 what's reasonable.

21 Your Honor, this is a cooperative
22 association. These folks aren't I.B.M. by any stretch of
23 the imagination. This is a dispute that was brought --



1 this action was brought in good faith. It was a number of
2 years trying to negotiate this thing out between the
3 parties. The parties, quite frankly, agreed to do this
4 just to have this court make a determination as to their
5 other units in issue as well, to make a determination.

6 I think this was brought in infinitely good
7 faith. It was not intended to harass these people or
8 anything like that. There was, in fact, a legitimate
9 dispute. And the suit really was almost in the nature of a
10 declaratory judgment action to have this court tell us --
11 tell them -- whether there was any liability here or not.

12 So I would ask Your Honor, if Your Honor is
13 inclined to award at all, to substantially reduce the
14 amount of the attorney's fees requested. I think they're
15 excessive for what was done in this case. And I don't
16 think there is any liability because they, quite frankly,
17 are not shareholders.

18 MR. NOLAN: Your Honor, let me say that
19 there is no dispute, the bylaws provide for costs and
20 attorney's fees.

21 And I -- while I agree that these parties
22 know each other and everyone knew this was coming, I don't
23 think Ms. Jolma can argue that somehow it was an agreed



1 dispute that we would take up, basing it on an attorney's
2 fees affidavit six or eight months ago. We all knew that
3 that was a possibility.

4 The costs and attorney's fees, I should tell
5 -- I want to tell the court before I go on, they are lumped
6 together. I have split them out in the affidavit and they
7 would be separated in the order. The amount is not that
8 much different. It's \$12,300.

9 I agree that that is a lot of money given
10 the -- given the amount at issue, but let me tell the
11 court, with regard to Ms. Jolma's argument that American
12 Landmark is not a shareholder, well, that begs the point.
13 If you recall, the testimony was that they refused to give
14 us our share because we won't pay the debt that the Circuit
15 Court has now determined is not due and owing.

16 So I don't think that that's a valid
17 argument. That is something we have no control over. And
18 she's right, they won't give us the shares. And I don't
19 know that they've tendered them today.

20 I do want to point out to the court that I
21 agree with Ms. Jolma when she says it's almost in the
22 nature of a declaratory judgment action because, in fact,
23 there are other people out there.



1 There are -- It is an issue that you know is
2 unique and we briefed and it required a good deal of work.
3 There was discovery. We had the trial. We had subsequent
4 hearings, briefs, motions. It is a unique issue. It is an
5 issue that may come up again and a good deal of work was
6 put into it.

7 I agree with Ms. Jolma. If this were a run-
8 of-the-mill collection case, these would be too much. I
9 would expect Your Honor to reduce them. This was no run-
10 of-the-mill collection case. Your Honor knows we were here
11 for quite some time and the issue is a unique one and it's
12 one that the parties were aware has some impact.

13 The fees, I've submitted an attorney's fees
14 affidavit and I have also brought with me today all the
15 back-up. I don't think anyone could question that, in
16 fact, a great deal of work was put into the research and
17 the background material. I'm happy to submit all the
18 background billing if the court wishes.

19 The costs are minimal. I think the number
20 that I have is \$415.98, and that covers court reporters,
21 copies, faxes and deliveries. Let me get Your Honor the
22 exact figures because I left them blank in the order. The
23 costs are \$415.98. The fees requested are \$12,388.06.



1 The attorney's fees affidavit sets forth the
2 time in general terms. I actually have the specific -- our
3 specific billing prebills here which I'm happy to submit to
4 the court if necessary. And in fact, this doesn't include
5 today. It only includes the numbers running up.

6 I will submit to the court -- I indicated to
7 Ms. Jolma and I would tell the court that if there is some
8 talk about where the plaintiff would go from here, if they
9 wish to appeal or a motion to reconsider, I vehemently
10 oppose a motion to reconsider. This has been before the
11 court three times. I think Your Honor has made it clear
12 and I indeed would request fees if we're back again and
13 again.

14 I think it's clear that costs and fees are
15 provided for, and I think that they are reasonable under
16 the unique circumstances of this case. This was by no
17 means a standard collection matter.

18 I would ask the court for those amounts in
19 costs and fees. And I would ask the court also that the
20 order which I've submitted to you, Ms. Jolma has a copy of
21 it but she hasn't actually signed the original.

22 Thank you.

23 THE COURT: Okay. Ms. Jolma.

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1 MS. JOLMA: Your Honor, again, River Place
2 has intentionally withheld those shares and they've
3 intentionally withheld them for a long time because of the
4 non-payment in this case. So if American Landmark wanted
5 to be a shareholder, they could have brought that as a part
6 of this action, certainly in a counterclaim, to force us to
7 issue the shares. The fact is, right now they are not in
8 fact a shareholder.

9 MR. NOLAN: Well, Judge, that's kind of like
10 -- I don't know. It's almost like telling a criminal
11 defendant, "Well, you're in jail, so you can't get to court
12 because you don't have a guardian, even though we admit
13 there's no reason to keep you in jail."

14 They are the ones who hold the shares. In
15 other words, they want to hold us hostage and not issue the
16 shares in order to come before the court and argue we can't
17 get anything. They don't deny that we're entitled to those
18 shares. They can't deny that at that point. There's just
19 no burden on us to make a counterclaim to bring this matter
20 into equity to have them issue the shares. They have to
21 issue the shares.

22 I hope Ms. Jolma is not right. I hope she's
23 not forcing us to file suit just to get the shares that

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1 we're entitled to. I don't think that's a valid argument
2 with regard to the attorney's fees.

3 THE COURT: All right. Well, what the court
4 is going to do in this case, the court is certainly going
5 to award the costs in the case and the court will award
6 attorney's fees in the amount of \$6,194.03.

7 MS. JOLMA: I'm sorry, Your Honor? Could
8 you say that again?

9 THE COURT: \$6,194.03.

10 Ms. Jolma, you need to sign the order and
11 object.

12 MR. NOLAN: Your Honor, I think I may have
13 -- when I filed the original motion, I might have even --
14 The correct order is the one with the envelope on it.
15 There might be another original in the file which is not to
16 be entered. That was the one that was filed with the --

17 THE COURT: I'll give it back to you.

18 MR. NOLAN: Thank you, Your Honor.

19 MS. JOLMA: Your Honor, may I have ten days
20 to note exceptions?

21 THE COURT: Certainly.

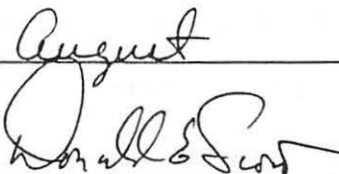
22 (Whereupon, at 12:05 p.m., the hearing in
23 the above-entitled matter was concluded.)



CERTIFICATE OF REPORTER

I, DONALD E. SCOTT, a Certified Verbatim Reporter duly sworn to well and truly report the foregoing proceeding, do hereby certify that the transcript of proceeding is true and correct to the best of my knowledge and ability, and that I have no interest in said proceeding, financial or otherwise, nor through relationship with any of the parties in interest, nor their counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of August, 1994.



DONALD E. SCOTT, CVR-CM

August 15, 1994 9:57am

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Anita B. Glover & Associates, Ltd.

10521 West Drive
Fairfax, Virginia 22030

(703) 591-3004

V I R G I N I A:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

RIVER PLACE NORTH HOUSING CORPORATION,)

Plaintiff,)

v.)

At Law No. 93-490

AMERICAN LANDMARK EQUITY CORP.)

Defendant.)

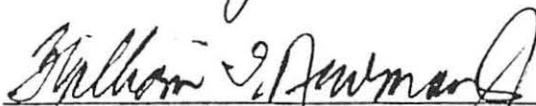
FINAL ORDER

THIS CAUSE came before the Court for trial on the merits on January 27, 1994, and for further oral argument on Defendant's motion to strike on June 24, 1994. The parties were present and represented by counsel;

AND IT APPEARING TO THE COURT, based on the evidence presented, the briefs and authority submitted, the arguments of counsel, and for the reasons set forth in the record, that there is no personal liability of the Defendant for the debt claimed by the Plaintiff under the BYLAWS introduced into evidence, and Defendant's motion to strike should therefore be granted, it is hereby

ORDERED, ADJUDGED AND DECREED that Defendant's motion to strike Plaintiff's evidence is granted, and judgment is entered in favor of Defendant and Defendant is awarded \$ 6,194.03 attorneys fees and \$ 415.98 costs against Plaintiff.

ENTERED this 15th day of August, 1994.


Judge William T. Newman, Jr.

I ASK FOR THIS:

ADAMS, PORTER & RADIGAN, LTD.
1650 Tysons Boulevard
Suite 700
McLean, Virginia 22102
(703) 448-6600

By: 

Christopher C. Nolan
Counsel for Defendant

SEEN AND

Excepted to : Ten days to not-excepting



Mary M. Jolma, Esquire
Counsel for Plaintiff
Law Office of Raymond B. Benzinger, P.C.
2009 N. 14th Street, Suite 410
Arlington, Virginia 22201

A Copy,
Teste: David A. Bell, Clerk

By 

Deputy Clerk

RECEIVED

AUG 22 1994

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF

DAVID A. BELL, CLERK
ARLINGTON
Arlington County Circuit Court
By TSC Deputy Clerk

RIVER PLACE NORTH HOUSING CORPORATION)

Plaintiff)

v.)

At Law No. 93-490

AMERICAN LANDMARK EQUITY CORP.)

Defendant)

PLAINTIFF'S EXCEPTIONS TO ORDER

COMES NOW plaintiff River Place North Housing Corporation, by counsel and for and as its exceptions to this Court's Order of August 12, 1994 submits the following:

1. The Court erroneously granted defendant's Motion to Strike in that:

a. nothing in the plaintiff's Bylaws, the terms of which are accepted by defendant, precludes plaintiff from seeking to hold defendant personally liable under paragraph 7.3;

b. nothing in the Bylaws, or elsewhere, requires plaintiff to exhaust any lien remedies as a prerequisite to exercising remedies under paragraph 7.3 of the Bylaws;

c. any lien rights or remedies provided in the Bylaws are exclusive of the rights and remedies under paragraph 7.3.

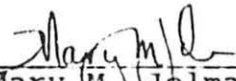
2. The Court erroneously awarded defendant attorney's fees under paragraph 12.1(b) of the Bylaws in that defendant is not, and has not proved, that it is a "shareholder" as it must be to recover attorney's fees under paragraph 12.1(b).

3. In a Motion to Strike, the evidence, and specifically the terms of the Bylaws, must be read in the light most favorable to plaintiff.

4. Plaintiff renews any and all objections made by plaintiff at the trial in this matter.

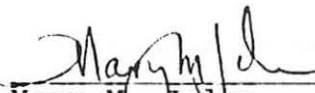
Respectfully submitted,

River Place North Housing Corporation
by counsel


Mary M. Jolma, Esq. - VSB #27199
Counsel for plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was transmitted via facsimile and mailed first-class, postage prepaid to Christopher Nolan, Esq., Adams, Porter & Radigan, Counsel for defendant, 1650 Tysons Boulevard, #700, McLean, Virginia 22102 this 22nd day of August, 1994.


Mary M. Jolma

RECEIVED

AUG 22 1994

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

DAVID A. BELL, CLERK
Arlington County Circuit Court
By 71 Deputy Clerk

RIVER PLACE NORTH HOUSING CORPORATION)

Plaintiff)

v.)

At Law No. 93 490

AMERICAN LANDMARK EQUITY CORP.)

Defendant)

NOTICE AND MOTION FOR RECONSIDERATION

PLEASE TAKE NOTICE that on August 26, 1994 at 10:00 a.m. or as soon thereafter as counsel may be heard, plaintiff River Place North Housing Corporation will move this Honorable Court to reconsider its grant of defendant's Motion to Strike the Evidence on the following grounds:

1. The Court erroneously granted defendant's Motion to Strike in that nothing in the plaintiff's Bylaws precludes plaintiff from seeking to hold defendant personally liable under paragraph 7.3.

2. Nothing in the Bylaws, or elsewhere, requires plaintiff to exhaust any lien remedies as a prerequisite to exercising remedies under paragraph 7.3 of the Bylaws.

3. Any lien rights or remedies provided in the Bylaws are exclusive of the rights and remedies under paragraph 7.3.

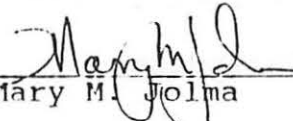
Respectfully submitted,

River Place North Housing Corporation
by counsel


Mary M. Jolma, Esq. - VSB #27199
Counsel for plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was transmitted via facsimile and mailed first-class, postage prepaid to Christopher Nolan, Esq., Adams, Porter & Radigan, Counsel for defendant, 1650 Tysons Boulevard, #700, McLean, Virginia 22102 this 22nd day of August, 1994.



Mary M. Jolma

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

RIVER PLACE NORTH HOUSING CORPORATION)

Plaintiff)

v.)

At Law No. 93-490)

AMERICAN LANDMARK EQUITY CORP.)

Defendant)

ORDER

THIS CAUSE came on to be heard upon the joint request of the parties to suspend the finality of this Court's Order of August 15, 1994; and

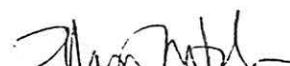
IT APPEARING that said request should be granted; it is

ADJUDGED, ORDERED and DECREED that the finality of the Order of August 15, 1994 is hereby suspended through September 7, 1994.

ENTERED THIS 7th DAY OF SEPTEMBER, 1994.

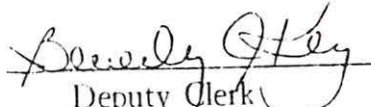

JUDGE

WE ASK FOR THIS:


Mary M. Jojma, Esq. - VSB #27199
Counsel for plaintiff

Christopher C. Nolan, Esq.
Counsel for defendant

A Copy,
Teste: David A. Bell, Clerk

By 
Deputy Clerk

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

| | | |
|---------------------------------------|---|-------------------|
| RIVER PLACE NORTH HOUSING CORPORATION |) | |
| |) | |
| Plaintiff |) | |
| v. |) | At Law No. 93-490 |
| |) | |
| AMERICAN LANDMARK EQUITY CORP. |) | |
| |) | |
| Defendant |) | |

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR RECONSIDERATION

COMES NOW plaintiff River Place North Housing Corporation, by counsel, and for and as its Memorandum in support of its Motion for Reconsideration of this Court's Order granting defendant's Motion to Strike states as follows:

1. On or about June 24, 1994 the Honorable William T. Newman, Jr., after oral argument of counsel, granted defendant's Motion to Strike the evidence and held that defendant was not personally liable for unpaid assessments on the prior unit owner under Section 7.3 of the Bylaws of River Place. In so holding, Judge Newman concluded that the back assessment operated as liens on the property but did not create a money judgment against defendant. (See transcript extract pages 4-5 attached hereto, August 12, 1994 Motion for Clarification)

2. During plaintiff's request for clarification, the following exchange occurred:

Mr. Nolan: ...And we did not dispute that they would have a lien on that property, but the personal liability wouldn't run to a subsequent purchaser. They had a remedy in the fact that they chose not to exercise

it.

The Court: Yeah. That goes back to -- And that was basically the court's reasoning as to why they did not become a personal liability.

Ms. Jolma: Because there was a lien that was not pursued? Is that what it is?

The Court: Yes, exactly.

(See transcript attached, p. 7, line 17 - p. 8, line 2.)

3. In the case of In Re Rosenfeld,¹ the Fourth Circuit, United States Court of Appeals had an opportunity to construe River Place Cooperative Association documents. Rosenfeld argued, inter alia, that he could not be held personally liable for post-bankruptcy petition cooperative assessments because River Place had alternative remedies for recovery of the assessments including foreclosure of the lien for the assessments, eviction, and reletting the unit and applying the proceeds to the unpaid assessment. The Fourth Circuit rejected this argument stating, "Rosenfeld's personal liability under the covenant to pay assessments is not destroyed by River Place's access to alternative remedies..."²

4. Plaintiff, therefore respectfully requests that this Court adopt a similar view of the River Place documents in this case. The Bylaws provide for a several methods of collection of

¹ 23 F.3d 833 (4th Cir. 1994). A copy of which is attached hereto. This case was decided on May 4, 1994 and had not come to counsel's attention before the June 24, 1994 argument.

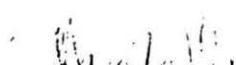
² 23 F.3d. 833, 838.

back assessments. Nothing in the Bylaws limits or precludes any of these possible remedies or dictates the priority in which the remedies must be pursued. The Bylaws provide for several remedies available to River Place to effect collection of back assessments and, therefore, American Landmark should be held personally liable under Section 7.3 of the Bylaws for the back assessments in this case. In requiring plaintiff to elect its remedies when the operative documents provide multiple, cumulative remedies, the Court did not give the Bylaws the effect intended by the drafter and, in fact, has restricted the rights provided therein.

WHEREFORE, based on the foregoing, plaintiff River Place North Housing Corporation respectfully moves this Honorable Court to reconsider its granting of defendant's Motion to Strike the Evidence and order further proceedings in this matter, and for such further relief as this Honorable Court deems just and meet.


Respectfully requested,

River Place North Housing Corporation
plaintiff
by counsel


Mary M. Jolma, Esq. - VSB #27199
Counsel for plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing with attachments was transmitted via facsimile to Christopher Nolan, Esq., counsel for defendant this 7th day of September, 1994 after close of business.


Mary M. Jolma

1 frauds applied or not.

2 If Your Honor would be kind enough to give
3 me a little clarification of that, I may be able to make
4 some decisions on the way we proceed from here, including
5 in this argument.

6 MR. NOLAN: Your Honor, let me -- I think
7 the appropriate thing to do is let me present the final
8 order that I have prepared --

9 THE COURT: Okay.

10 MR. NOLAN: -- which has the language. And
11 I also have an attorney's fees affidavit which I'll pass up
12 now.

13 Your Honor, just let me say I believe the
14 decision was clear and I have the transcript and I can read
15 you what is about ten lines and is the pertinent part. I
16 know Your Honor is familiar with the case.

17 THE COURT: I am familiar, but I don't
18 remember -- It's been a little while. I don't remember
19 what I said at that time.

20 MR. NOLAN: At the -- We both argued. And
21 then on the second-to-the-last page, page 43:

22 THE COURT: "Counsel, I think
23 your argument has been very good and the



1 briefs have been excellent."

2 You go on to say:

3 "I believe Ms. Jolma is
4 certainly correct when she says that
5 American Landmark did acknowledge that the
6 assessments are in fact due. But as I read
7 this -- and, again, as I understand what
8 this is saying in the bylaws, that as the
9 assessments become due, they become liens,
10 and that they are not -- do not become
11 personal money judgments against American
12 Landmark. And, accordingly, the motion to
13 strike is granted."

14 "Thank you" from Mr. Nolan. "Thank you"
15 from Mr. Nolan. And then the court: "Yes, ma'am. Again,
16 both of you, this is really quite good. We may hear from
17 it again, but --" And then Ms. Jolma asked you, "There's no
18 statute for it? Is that my understanding? Or is it
19 because they are liens that there is no personal liability
20 under 7.1?"

21 THE COURT: "I believe there
22 is no personal liability.

23 MS. JOLMA: "Again, no

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1 personal liability under 7.3?

2 THE COURT: "Yes."

3 It concludes. It was repeated three times.

4 I think the ruling is clear -- your findings with regard to
5 the bylaw that there was no personal liability.

6 And I understand Ms. Jolma wants a
7 clarification, but I think she got just that. And it was
8 clarified and there is no personal liability. That is
9 exactly what the final order reflects.

10 Thank you.

11 MS. JOLMA: Your Honor, I don't doubt the
12 conclusion there is no personal liability. I just don't
13 understand what the basis for that opinion is. You know,
14 is it because there are liens under other sections? Is it
15 because the statute of frauds -- You know, I'd like to have
16 some kind of basis for that ultimate conclusion and I don't
17 think it is clear from there what the basis was.

18 THE COURT: Well, in all candor, without my
19 going back and reviewing what were, again, some lengthy --
20 and very good, by the way -- lengthy briefs on this matter,
21 I concluded clearly that -- as I looked at the bylaws, that
22 I was persuaded that these did not become personal money
23 judgments against American Landmark. There's no question

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1 in my mind.

2 But as to the other -- any other specifics,
3 I would have to go back and review the brief at this point.
4 I just don't recall. It's been some -- you know, a little
5 while. You know, maybe if it had been a week later, I
6 could have done it very quickly. But it has been a while.
7 I just don't remember.

8 Because as I recall, you had -- Mr. Nolan
9 had -- with regards to the statute of frauds, you had --
10 What what was your -- The argument was...

11 MR. NOLAN: That the sections speak of a
12 liability, but they permit the lien to run with -- I think
13 that's where we got into the argument, is that a covenant
14 that runs with the land -- And, indeed, it may be.

15 And we did not dispute that they would have
16 a lien on that property, but the personal liability
17 wouldn't run to a subsequent purchaser. They had a remedy
18 in the fact that they chose not to exercise it.

19 THE COURT: Yeah. That goes back to -- And
20 that was basically the court's reasoning as to why they did
21 not become a personal liability.

22 MS. JOLMA: Because there was a lien that
23 was not pursued? Is that what it is?

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Fairfax, Virginia 22030

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1 THE COURT: Yes, exactly.

2 MS. JOLMA: Thank you, Your Honor.

3 As to the order itself, I have no objection
4 with the exception of whether or not the attorney's fees
5 are fully recoverable in this case. The attorney's fees
6 affidavit sets forth some \$12,804.04 in attorney's fees.
7 That's almost the amount sued for here in this case. I
8 think that, in and of itself, is excessive.

9 And in addition, Your Honor, the authority
10 for attorney's fees awards in this case, if it's governed
11 by the bylaws, is governed by Section 12.1(b) of the
12 bylaws.

13 THE COURT: Okay. Hold on one second. Let
14 me just look at the bylaws. At one point I felt I knew
15 them, but I'm afraid it has become...

16 Okay. I'm sorry, it's section what?

17 MS. JOLMA: It's 12.1(b), on page 25.

18 THE COURT: Okay. All right.

19 MS. JOLMA: The key word in that provision,
20 Your Honor -- it says, "In any proceeding arising out of an
21 alleged default by a shareholder, the prevailing party
22 shall be entitled to recover the costs of such proceeding
23 and such reasonable attorney's fees that may be determined



distributed to the participants who made such contributions...."

This language of § 1344 demonstrates clearly that "benefits" are elements that are conceptualized and treated differently in a plan termination than are the "assets" of that plan. "Benefits" are computed in a different manner than "assets." Accrued benefits are placed on the liability side, rather than on the asset side of the balance sheet. "Residual assets" are computed only after liability for accrued benefits has been satisfied; "residual assets" are payable to the employer only after assets attributable to employee contributions have been returned to the employees.

The Treasury Regulation, interpreting pension plan mergers, corroborates this distinction between "benefits" and "assets" which is made in § 1344. It provides:

(e) Merger of defined benefit plans—(1) General rule. Section 414(1) compares the benefits on a termination basis before and after the merger. If the sum of the assets of all plans is not less than the sum of the present values of the accrued benefit (whether or not vested) of all plans, the requirements of section 414(1) will be satisfied merely by combining the assets and preserving each participant's accrued benefits. This is so because all the accrued benefits of the plan as merged are provided on a termination basis by the plan as merged. However, if the sum of the assets of all plans is less than the sum of the present values of the accrued benefits (whether or not vested) in all plans, the accrued benefits in the plan as merged are not provided on a termination basis.

Moreover, the district court, in its opinion dismissing appellants' claims, correctly noted that "benefits" under § 1058 have consistently been held under both regulations and case law to refer to "accrued benefits" and not to include projected residual assets of a plan

4. These regulations were promulgated under 26 U.S.C. § 414(1), the Internal Revenue Code counterpart to ERISA § 1058 which has almost the same language as § 1058. In the ERISA Reorganization Plan of 1978 the Treasury Department was assigned responsibility for issuing

after termination. *Malia v. General Electric Co.*, slip op. at 6-7, (E.D.Pa., Aug. 10, 1992). The district court cited both *Van Orman & American Ins. Co.*, 608 F.Supp. 13, 25 (D.N.J.1984) and *In re Gulf Pension Litigation*, 764 F.Supp. 1149, 1185 (S.D.Tex.1991) for the proposition that the relevant Treasury Department regulations correctly interpreted "benefits" under § 1058 as being limited to "accrued benefits," rather than including all benefits to which a plan participant would be entitled upon termination.

Appellants attempt to discredit the district court's opinion as relying on "irrelevant and obsolete authority." However, the 1987 changes in 29 U.S.C. § 1344(d)(3) raised by appellants are not relevant to this issue, and the facts of *Van Orman* and *Gulf Pension* are quite similar to the case at issue.

Our interpretation of this ERISA language is supported by the recent decision of the Seventh Circuit in *Johnson v. Georgia-Pacific Corp.*, 19 F.3d 1184 (7th Cir.1994). *Johnson* involved a suit by pensioners who complained that the promised pension benefits of current employees could not be increased without a corresponding increase in the retirees' pensions. The retirees asserted that it was their contributions that had produced the surplus by which the current employees' benefits were increased; in other words, that they owned the "surplus" of the plan which had enabled the employer to increase the current employees' benefits. In holding that the employer did not exceed its powers under ERISA to amend the plan, the court described the same distinction under the ERISA defined benefit plan between "benefits" and "assets":

A defined-benefit plan gives current and former employees property interests in their pension benefits but not in the assets held by the trust. (Citation omitted). If the investments appreciate, the plan need not devote that increase to improving benefits; it may retain the surplus as a cushion

attached to D's brief). Thus, "all regulations implementing the provisions of [sections 1058 and 414(1)] have been promulgated by the Secretary of the Treasury, mostly under § 414(1) of the Internal Revenue Code." *Van Orman & American Ins. Co.*, 608 F.Supp. 13, 24 n. 3 (D.N.J.1984).

ion against the day when yields decrease, or the employer may cease making contributions and allow the surplus to erode as liabilities continue to increase. 19 F.3d at 1189.

We conclude, therefore, in light of the language of the statute that §§ 1058 and 1344(d)(3) cannot be combined to provide plan participants with a right to residual assets in the context of a plan merger. The district court correctly granted appellees' motion to dismiss on this claim.

B. Fiduciary Duty to Notify

(4) Appellants next claim that RCA should have notified them that they would not in the future be entitled to residual assets if they withdrew their contributions from the RCA Pension Plan prior to its merger with the GE plan. However, the reporting and disclosure provisions of ERISA, and regulations adopted pursuant to these code sections, impose no requirement that a pension plan sponsor notify beneficiaries of the possibility of forfeiture of interest in residual assets resulting from the early withdrawal of employee contributions. See 29 U.S.C. §§ 1021-25.

Under ERISA, stringent fiduciary duties attach when an employer acts directly as the pension plan administrator or makes decisions directly affecting the administration of the plan. See 29 U.S.C. §§ 1002(21)(A), 1104. However, employers take on fiduciary obligations of the type alleged in appellants' second claim only to the extent that they act as the actual plan administrators:

Under ERISA, the roles of plan administrator and plan sponsor are distinct. The plan administrator owes a fiduciary duty to the plan participants; the plan sponsor, as long as it is not acting as an administrator, generally does not.

Payton v. HMW Indus., Inc., 883 F.2d 221, 221 (3d Cir.1989) (Stapleton, J., concurring in the judgment).

Only plan administrators are required to disclose benefits information to beneficiaries, and such information typically involves an accounting of the plan's assets and liabilities and of the actual benefits accrued by individ-

which might be recouped should the plan be terminated. See 29 U.S.C. §§ 1021-25. Thus, given that appellant Malia sought relief under a fiduciary duty not borne by GE, the district court correctly granted appellees' motion to dismiss on this claim.

C. Fiduciary Duty to Appoint Independent Manager

(5) The district court found that under the circumstances of a pension plan merger as presented here, the only fiduciary duties borne by the appellees were the anti-dilution obligations imposed by § 1058. As the district court held that GE complied with the requirements of § 1058, it properly dismissed appellants' claim on this issue. Efforts by an employer to merge two pension plans do not invoke the fiduciary duty provisions of ERISA. Such duties do not attach to business decisions related to modification of the design of a pension plan, and in such circumstances the plan sponsor is free to act "as an employer and not a fiduciary." See *Hlinka v. Bethlehem Steel Corp.*, 863 F.2d 279, 285 (3d Cir.1988).

V.

For all the reasons discussed above, we will affirm the opinion of the district court.



In re Jeffrey ROSENFELD, Debtor.

RIVER PLACE EAST HOUSING CORPORATION, Board of Directors,
Plaintiff-Appellee,

v.

Jeffrey ROSENFELD, Defendant-Appellant.

No. 93-1596.

United States Court of Appeals,
Fourth Circuit.

Argued Oct. 26, 1993.

Decided May 4, 1994.

ing that Chapter 7 debtor's personal liability for postpetition cooperative dues had been discharged and association violated permanent stay by attempting to collect postpetition dues. The United States District Court for the Eastern District of Virginia, Albert V. Bryan, Jr., Senior District Judge, reversed and debtor appealed. The Court of Appeals, Chapman, Senior Circuit Judge, held that: (1) association's right to payment for assessments did not arise until postpetition, and, thus, debtor's liability for postpetition assessments was not discharged, and (2) debtor's obligation to pay postpetition dues was not terminated by trustee's failure to assume proprietary lease.

Affirmed.

1. Bankruptcy \Rightarrow 3782, 3786

Court of Appeals reviews district court's conclusions of law, in appeal from bankruptcy court, de novo and its findings of fact under clearly erroneous standard.

2. Bankruptcy \Rightarrow 3718(5.1)

Discharge in bankruptcy relieves debtor of personal liability for all prepetition debts other than those excepted under Bankruptcy Code. Bankr.Code, 11 U.S.C.A. \S 727.

3. Bankruptcy \Rightarrow 2364, 3718(5.1)

Any right to payment that arises prior to filing of bankruptcy petition constitutes prepetition debt and is discharged, absent applicable exception, and discharge operates to permanently stay any attempt to hold debtor personally liable for discharged debts. Bankr.Code, 11 U.S.C.A. \S 524(a)(2), 727.

4. Bankruptcy \Rightarrow 3718(5.1)

Housing cooperative association's claim for postpetition dues owed by Chapter 7 debtor did not arise until dues were assessed postpetition, rather than arising from prepetition contractual obligation, and debtor's obligation to pay dues was therefore not discharged and association did not violate discharge injunction by attempting to collect dues; declaration creating and governing cooperative included covenant running with land obligating owners to pay dues as they were assessed, and, thus, obligation to pay assessments was function of owning land

with which covenant ran. Bankr.Code, 11 U.S.C.A. \S 524(a)(2), 727; Va.Code 1950, \S 55-444.

5. Bankruptcy \Rightarrow 2442, 2832.1

Chapter 7 debtor's consent to order granting holder of mortgage on his cooperative apartment relief from automatic stay did not end his ownership interest and did not terminate his responsibility for postpetition cooperative association dues; in order to terminate his responsibility for postpetition dues, debtor had to transfer title to property, by deed in lieu of foreclosure if necessary. Bankr.Code, 11 U.S.C.A. \S 524(a)(2), 727.

6. Landlord and Tenant \Rightarrow 359.1

Under Virginia law, any transfer of ownership interest in housing cooperative association, without possessory interest in apartment unit to which ownership interest is related, is void. Va.Code 1950, \S 55-444, subd. E.

7. Bankruptcy \Rightarrow 3115.1

Chapter 7 debtor's obligation to pay postpetition housing cooperative association dues was not terminated by trustee's failure to assume proprietary lease for particular apartment unit, since possessory interest granted by proprietary lease was inseparable under Virginia law from ownership interest in cooperative, and proprietary lease was method of indicating in which commonly owned apartment particular owner had possessory interest, rather than lease in traditional sense; debtor retained title to his cooperative interest and possessory interest in apartment as well. Va.Code 1950, \S 55-426, 55-444, subd. E; Bankr.Code, 11 U.S.C.A. \S 365(d)(1).

8. Federal Courts \Rightarrow 830

District court's refusal to award attorney's fees and costs is reviewed for abuse of discretion.

9. Landlord and Tenant \Rightarrow 362

Under Virginia law, prevailing party in action to recover nonpayment of housing cooperative association assessments is entitled to attorney's fees and costs. Va.Code 1950, \S 55-472, subd. G.

ARGUED: Robert Benton Baumgartner, Fairfax, VA. for appellant. Denise Lenore Palmieri, Palmieri & Palmieri, P.C., Vienna, VA. for appellee. ON BRIEF: Robert L. Isaacs, Third Year Law Student, Fairfax, VA. for appellant.

Before HAMILTON, Circuit Judge, CHAPMAN, Senior Circuit Judge, and YOUNG, Senior United States District Judge for the District of Maryland, sitting by designation.

Affirmed by published opinion. Senior Judge CHAPMAN wrote the opinion, in which Judge HAMILTON and Senior District Judge JOSEPH H. YOUNG joined.

OPINION

CHAPMAN, Senior Circuit Judge:

The issue presented is whether a discharge in bankruptcy relieves a debtor from personal liability for post-petition assessments of cooperative housing dues. The bankruptcy court held that post-petition assessments arise from a pre-petition contract and are therefore included in the discharge. The district court reversed and concluded that a cooperative's right to payment of post-petition dues does not arise until the dues are assessed and were not discharged. We affirm the decision of the district court.

I.

River Place East Housing Corporation is a housing cooperative association which came into existence in 1982. In January 1983, Jeffrey Rosenfeld, an attorney, acquired 1590 shares of River Place and a possessory interest in a River Place apartment under a proprietary lease assigned to him by the prior owner. TrustBank Savings financed and holds a first deed of trust on Rosenfeld's River Place apartment. Rosenfeld acquired the River Place apartment as an investment and has never resided there.

A Declaration of Covenants, Easements and Liens ("the Declaration") creates and governs the River Place cooperative. The Declaration includes a covenant running with the land which obligates the owners of the cooperative to pay cooperative association

dues as they are assessed. At some point Rosenfeld ceased to pay his dues, and River Place suspended his right to use the association's common areas and has never reinstated that right. This has caused appellant no inconvenience as he has never occupied his apartment nor recently rented it.

Rosenfeld filed Chapter 7 bankruptcy in October 1990. River Place was named, scheduled and noticed as a creditor. Rosenfeld listed the debt to River Place for unpaid pre-petition dues, but did not schedule post-petition dues as a potential liability or a contingent future obligation. He did not list his covenant to pay association dues as an executory contract. He did not list his cooperative interest as an asset or a lease interest, but incorrectly stated that it was being foreclosed.

When Rosenfeld realized that TrustBank Savings had not foreclosed, he signed a consent order granting TrustBank relief from the automatic stay. Rosenfeld claimed that he intended to abandon all interest in the unit. TrustBank has not foreclosed, and Rosenfeld has asserted no ownership interest in the unit and has not leased the apartment to anyone since his bankruptcy petition, but he has not conveyed his interest to TrustBank in lieu of foreclosure or otherwise disposed of his interest. He is still the record title holder.

On February 13, 1991 the bankruptcy court granted Rosenfeld a discharge, which included \$2300 in pre-petition assessments of River Place dues.

In December 1991, River Place brought suit against Rosenfeld in state court seeking cooperative association dues from November 1, 1990 through April 30, 1992 and costs, attorney's fees, and interest. The post-petition assessments exceeded \$3000 as of the date of the lawsuit.

In June 1992, Rosenfeld filed a Motion for Contempt against River Place in the bankruptcy court claiming that his bankruptcy discharge extinguished any personal liability for pre-petition and post-petition cooperative assessments, and therefore River Place's suit to collect dues was barred.

the permanent stay. Alternatively, Rosenfeld argued that the post-petition assessments were invalid because he had abandoned his cooperative interest and because the proprietary lease under which he held his possessory interest was unenforceable because such lease was not assumed by the bankruptcy trustee. Rosenfeld sought attorney's fees under Virginia Code Section 55-472(G).

The bankruptcy court found that River Place's right to payment for future assessments arose when Rosenfeld contracted to purchase his cooperative interest, but was contingent on Rosenfeld's continued ownership of the interest. It concluded that this debt was pre-petition because the obligation to pay existed pre-petition, even though payment was not due until post-petition, citing *In re A.H. Robins Co., Inc.*, 63 B.R. 986 (Bankr.E.D.Va.1986), *aff'd*, 339 F.2d 198 (4th Cir.1988). The bankruptcy court found that Rosenfeld's personal liability for post-petition assessments had been discharged, and none of the exceptions to discharge contained in the Bankruptcy Code applied and that River Place violated the permanent stay by attempting to collect the post-petition assessments. It ordered River Place to discontinue any further collection efforts, but denied Rosenfeld's request for sanctions because there was legal authority to support River Place's argument that the petition assessments were not discharged.

River Place appealed to the federal district court. Rosenfeld cross-appealed the bankruptcy court's failure to award attorney's fees or rule on the abandonment and lease rejection issues. The district court found that 1) Rosenfeld is still the record owner of the River Place cooperative interest; 2) the post-petition assessments were not discharged; 3) River Place's suit to collect the post-petition assessments did not violate the permanent stay; 4) Rosenfeld did not effectively abandon his River Place interest; 5) Rosenfeld's River Place interest was never treated as a leasehold interest; and 6) Rosenfeld was not entitled to attorneys' fees

because the issue of the prevailing party in the state court proceeding had not yet been resolved.

II.

[1] We review the district court's conclusions of law *de novo* and its findings of fact under the "clearly erroneous" standard. *In re Green*, 934 F.2d 568, 570 (4th Cir.1991).

[2,3] A discharge in bankruptcy relieves the debtor of personal liability for all pre-petition debts but those excepted under the Bankruptcy Code. 11 U.S.C.A. § 727 (West 1993). The Code defines "debt" as "liability on a claim." 11 U.S.C.A. § 101(12) (West 1993). A "claim" is defined as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured..." 11 U.S.C.A. § 101(5) (West 1993). Consequently, any right to payment which arises prior to the bankruptcy constitutes pre-petition debt and is discharged, absent an applicable exception. The discharge operates to permanently stay any attempt to hold the debtor personally liable for discharged debts. 11 U.S.C.A. §§ 524(a)(2) (West 1993).

The question of whether a bankruptcy discharge encompasses post-petition assessments has been addressed in the context of condominium association and homeowners' association dues with inconsistent results.* One line of cases treats the covenant to pay assessments as a contract. Under this view, an association's right to payment arises when the contract is made and is merely contingent on the debtor's continued ownership of the property. Thus, a claim for post-petition assessments arises pre-petition and is extinguished by the bankruptcy discharge. *In re Rostock*, 899 F.2d 694, 697 (7th Cir.1990); *Matter of Wasp*, 137 B.R. 71, 73 (Bankr. M.D.Fla.1992); *In re Hodge*, Case No. 90-10275-AT (Bankr.E.D.Va. July 20, 1992); *In re Miller*, 125 B.R. 441, 443 (Bankr.W.D.Pa. 1991); *In re Cohen*, 122 B.R. 755, 758

Liability for post-petition assessments is extin-

(Bankr.S.D.Cal.1991); *In re Turner*, 101 B.R. 751, 754-55 (Bankr.D.Utah 1989); *In re Eliot*, 98 B.R. 332, 337 (N.D.Ill.1989); *In re Montoya*, 95 B.R. 511, 514 (Bankr.S.D.Ohio 1988); *In re Behrens*, 87 B.R. 971, 975 (Bankr.N.D.Ill.1988). The bankruptcy court in this case followed this analysis.

[4] The district court's view was consistent with that line of cases which holds an association's claim for post-petition dues does not arise until the dues are assessed. *In re Raymond*, 129 B.R. 354, 364 (Bankr.S.D.N.Y. 1991); *In re Hill*, 100 B.R. 907, 909 (Bankr. N.D.Ohio 1989); *In re Harvey*, 88 B.R. 360, 362 (Bankr.N.D.Ill.1988); *In re Rink*, 37 B.R. 653, 654 (Bankr.D.Colo.1987); *In re Horton*, 37 B.R. 650, 652 (Bankr.D.Colo. 1987). We agree with the district court.

The Virginia Real Estate Cooperative Act provides for allocation of a cooperative's common expenses among its owners pursuant to its declaration. Va.Code Ann. § 55-444 (Michie 1986). Under River Place's declaration, assessments are made on an annual basis and each owner pays one twelfth of his annual assessment each month of the fiscal year. Assessments are used to pay for the upkeep of River Place's parking and recreational facilities and other common expenses. Each owner must pay assessments when due and is personally liable for assessments, but is not responsible for assessments or installments due after his ownership interest ceases.

The Declaration expressly states that it is a covenant running with the land and binds and inures to the benefit of all present and future owners. The Act requires that the Declaration be executed and recorded in the same manner as a deed. Va.Code Ann. § 55-438 (Michie 1986). Rosenfeld never signed the Declaration itself, but his proprietary lease expressly provides that it is subject to the Declaration.

Under the Declaration, the obligation to pay assessments is a function of owning the land with which the covenant runs. Thus, Rosenfeld's obligation to pay the assessments arose from his continued post-petition ownership of the property and not from a pre-

assessments were for the upkeep of common areas and other common expenses during Rosenfeld's post-petition ownership. River Place's right to payment for post-petition assessments did not arise pre-petition and was not extinguished by Rosenfeld's bankruptcy discharge.

This court's decision in *Grady v. A.H. Robins Co., Inc.*, 839 F.2d 198 (4th Cir.), *cert. dismissed*, 487 U.S. 1260, 109 S.Ct. 201, 101 L.Ed.2d 972 (1988), does not require a contrary result. *Grady* involved a plaintiff whose injuries from use of a Dalkon Shield did not become manifest until after the manufacturer had petitioned for bankruptcy. *Grady* argued that, under California law, her claim against Robins arose post-petition, when she knew or should have known of her injuries, and therefore the automatic stay did not apply to her claim. This court first found that bankruptcy law, not state law, determines which claims are covered by the automatic stay. *Id.* at 201-02. It then found that Mrs. Grady had a contingent pre-petition claim which was barred by the automatic stay. *Id.* at 203. The court stated:

We do not believe that there must be a right to the immediate payment of money in the case of a tort or allied breach of warranty or like claim, as present here, when the acts constituting the tort or breach of warranty have occurred prior to the filing of the petition, to constitute a claim under § 362(a)(1).

Id. at 203. Mrs. Grady's claim alleged a tort and arose from the insertion of the Dalkon Shield, which occurred pre-petition. River Place's claim is for assessments to cover expenses incurred during Rosenfeld's post-petition ownership of real property. *Grady* deals with a claim arising from a pre-petition tort, while this case involves a breach of a covenant running with the land that occurred post-petition, and we find *Grady* is clearly distinguishable.

Rosenfeld argues that under *Gregory v. Peoples*, 30 Va. 355 (1885), the fact that the covenant to pay dues runs with the land is irrelevant to a determination of his liability

* Although these cases involve slightly different

similar to a mortgage in that the personal liability is distinct from the burden on the land, and once personal liability is discharged, the covenant remains attached to the land only, and binds future owners of the land, but not the current owner. We disagree. We have considered the opinion in *Gregory v. Peoples*, and we find it not applicable to the present case.

Finally, Rosenfeld argues that it would be manifestly unfair and contrary to the Bankruptcy Code's policy of giving the debtor a "fresh start" to hold him personally liable for the post-petition assessments. He notes that River Place has alternative remedies for recovery of the assessments, because under Virginia law, a cooperative association has a lien on a cooperative interest for unpaid assessments and may evict the proprietary lessee and foreclose the lien. Va.Code Ann. § 55-472(A) (Michie Supp.1993). Rosenfeld's proprietary lease provides that River Place may then relet the unit and apply the proceeds to unpaid assessments. Rosenfeld also argues that it is unfair to hold him responsible for the cooperative dues when he has not exercised his possessory rights in the apartment by either residing in it or renting it out. He contends he is unable to sell his cooperative interest because the debt encumbering it exceeds its fair market value, and he is thus permanently saddled with an ever-increasing liability for cooperative dues.

[5] We find these arguments unconvincing. Rosenfeld's personal liability under the covenant to pay assessments is not destroyed by River Place's access to alternative remedies, and even if Rosenfeld has not exercised the benefits of ownership, as title holder he has the legal right to do so. In order to terminate his responsibility for assessments, Rosenfeld must transfer title to the property, if necessary by a deed in lieu of foreclosure. *In re Horton*, 37 B.R. at 652; *In re Rink*, 37 B.R. at 654. His consent to an order granting the mortgage holder relief from the automatic stay did not end his ownership.

We find that River Place's right to payment for the assessments at issue did not arise until post-petition, and we affirm the district court's holdings that Rosenfeld's liability for the post-petition assessments was

not discharged and that River Place did not violate the permanent stay by suing to collect the post-petition assessments.

III.

Rosenfeld contends that he is no longer the record owner of the apartment because by granting TrustBank Savings relief from the automatic stay he abandoned his interest in the apartment in a court of law. He argues that ownership of real property may be disclaimed in a court of record, as well as by deed, citing *Southern Ry. v. Gregg*, 101 Va. 308, 43 S.E. 570, 573 (1903). Rosenfeld cites no support for the proposition that granting a secured creditor relief from the automatic stay divests the debtor of ownership of the property that secures the debt. The *Gregg* facts are so dissimilar and the legal question so different that it has no application here. In addition, the Declaration provides that an owner may not avoid personal liability for assessments by waiver, non-use or abandonment of the property.

We agree with the district court that Rosenfeld remains the owner of the River Place apartment.

IV.

Rosenfeld argues that his cooperative interest is an unexpired lease which was deemed rejected by operation of law because the bankruptcy trustee did not assume it within 60 days of his petition. See 11 U.S.C.A. § 365(d)(1) (West 1993). He contends that the trustee's failure to assume the proprietary lease terminated his obligation to pay cooperative dues. The facts contradict Rosenfeld's characterization of the cooperative interest, as he did not list the cooperative interest as a lease on his bankruptcy petition and obtained a mortgage on his cooperative interest.

[6, 7] More importantly, Rosenfeld's argument is not supported by the statute. The cooperative interest is defined as "an ownership interest in the [cooperative] association coupled with a possessory interest in a unit under a proprietary lease." Va.Code Ann. § 55-426 (Michie 1986). Any transfer of an

ownership interest in an association without the possessory interest in the unit to which the ownership interest is related is void. Va. Code Ann. § 55-444(E) (Michie 1986). Thus, the possessory interest granted by the proprietary lease is inseparable from the ownership interest in the cooperative. The proprietary lease is not a lease in the traditional sense, but a method of indicating in which of the commonly-owned apartments a particular owner has a possessory interest. Rosenfeld retains title to his cooperative interest and the possessory interest in his apartment as well.

If the cooperative interest is considered a lease and deemed rejected by the trustee, the lease would not necessarily have been terminated. There is case law holding that rejection of a lease does not automatically terminate the lease, but abandons the lease to the debtor's control outside the bankruptcy estate. *In re Empire Knitting Mills, Inc.*, 123 B.R. 688, 691 (Bankr.D.Me.1991); *In re Picnic 'N Chicken, Inc.*, 58 B.R. 523, 526 (Bankr.S.D.Cal.1986); *In re Storage Technology Corp.*, 53 B.R. 471, 475 (Bankr.D.Colo.1985).

V.

[8, 9] The district court's refusal to award attorney's fees and costs is reviewed for abuse of discretion. See *In re Riverside-Linden Inv. Co.*, 945 F.2d 320, 322 (9th Cir. 1991). The prevailing party in an action to recover nonpayment of cooperative assessments is entitled to attorney's fees and costs. Va.Code Ann. § 55-472(G) (Michie Supp. 1993). The district court correctly found that the matter of the prevailing party in state court had not yet been resolved. We find no abuse of discretion, and therefore affirm.

VI.

For the reasons herein stated, the decision of the district court is affirmed.

AFFIRMED.



UNITED STATES of America,
Plaintiff-Appellant,

v.

Emanuel BROWN, Defendant-Appellee.

UNITED STATES of America,
Plaintiff-Appellee,

v.

Emanuel BROWN, Defendant-Appellant.

Nos. 93-5653, 93-5654.

United States Court of Appeals,
Fourth Circuit.

Argued Feb. 11, 1994.

Decided May 5, 1994.

Defendant was convicted in the United States District Court for the Eastern District of Virginia, James C. Cacheris, Chief Judge, on a guilty plea to single count of distributing crack cocaine. Appeals were taken. The Court of Appeals, Butzner, Senior Circuit Judge, held that Sentencing Commission adequately considered drug quantity in formulating career offender guideline and, thus, sentencing court could not depart downward from career offender sentence on basis that prior state conviction involved only small quantity of drugs.

Vacated and remanded.

1. Criminal Law §1202.5(4)

Authorizing statute permits career offender sentencing guideline to include reference to both state and federal crimes. 28 U.S.C.A. § 994(h); U.S.S.G. § 4B1.2, 18 U.S.C.A.App.

2. Criminal Law §1203.26(1)

District court's downward departure from career offender sentence is reviewed by applying *de novo* standard to determine whether reasons used by court to support departure encompassed factor not adequately

V I R G I N I A

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

- - - - - x

RIVER PLACE N. HOUSING, :

Plaintiff, :

v. : CL93-490

AMERICAN LANDMARK EQUITY, :

Defendant. :

- - - - - x

Friday, September 9, 1994

Circuit Courtroom 703
Arlington County Courthouse
Arlington, Virginia

The above-entitled matter came on to be
heard before THE HONORABLE WILLIAM T. NEWMAN,
JR., Judge, in and for the Circuit Court of
Arlington County, beginning at 11:15 o'clock
a.m.

APPEARANCES:

On behalf of the Plaintiff:

MARY JOLMA, ATTORNEY AT LAW

On behalf of the Defendant:

CHRISTOPHER NOLAN, ESQUIRE

P R O C E E D I N G S

MS. JOLMA: This is on for my motion for reconsideration, Your Honor. I'm sure you're familiar with this case at this point. The last time we met, I had asked you briefly for a quick clarification of your ruling regarding the motion to strike. At that time, you had stated, and I quoted in my memorandum, that there was personal liability on American Landmark under Section 7.3 of the bylaws because there was a lien that River Place couldn't pursue and did not pursue, and, therefore, you felt there was no personal liability for American Landmark.

Your Honor, I founds a case that amazingly enough deals with another River Place building. It comes out of the 4th Circuit. It's not wholly on point. I couldn't find anything on point in this case. But it does contain a very interesting discussion, and it does deal with an argument that's made by Mr. Rosenfeld with respect to alternative remedies in collection of these assessments. And Mr. Rosenfeld attempted to argue that River Place

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1 has the availability of several possible
2 collection remedies for assessments, and those
3 included such things as foreclosing on the
4 property, the prior lien that we discussed
5 earlier, and that keeps eviction of the
6 proprietary listing, foreclosure of the lien.
7 He had argued that there were alternatives to
8 his personal liability, and the Court held that
9 his personal liability under the covenant to pay
10 assessments was not destroyed by River Place's
11 access to alternative remedies. It's a question
12 of how these alternative remedies apply. And I
13 don't think there are really alternative
14 remedies in terms of what the bylaws say here,
15 Your Honor. I think the remedies are really
16 cumulative, that River Place can resort to any
17 of the remedies contained in the bylaws, in
18 fact, contained in the Virginia statutes to try
19 to collect this money, including the remedy
20 provided in the bylaws of being able to hold
21 American Landmark, the subsequent purchaser,
22 personally liable for this debt. And I don't
23 think there is anywhere in the bylaws that I've

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1 read, that there is anywhere in the statutes
2 that I've read, that says River Place must
3 foreclose, serve the lien, or give something
4 before it can seek the remedy against American
5 Landmark, or that those remedies were even in
6 the alternative. And, for those reasons, Your
7 Honor, I would ask you to reconsider your
8 granting the motion to strike.

9 THE COURT: All right. Mr. Nolan.

10 MR. NOLAN: Your Honor, I'm going to
11 preface my comments by saying that this is
12 really the second motion to reconsider. It's
13 probably the fourth time we've argued the point.
14 As Your Honor knows, we've gone through this
15 issue in detail over a period of time, and I
16 think we've come to the end. The integrity and
17 finality of the judgment is paramount here.
18 There are simply no grounds to reconsider the
19 first time, or clarify, if you will, that we
20 talked about a month ago, much less any grounds
21 to reconsider the second time. There are no new
22 facts. There is no new law. The Rosenfeld case
23 is clearly distinguishable on one major point.

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1 Rosenfeld was the debtor. He was the party that
2 owed the money in this 4th Circuit case.

3 Remember, in our case, my client didn't owe the
4 money. He didn't incur the debt. He merely
5 bought the property after the debt was incurred.

6 That's a pretty clear distinction to make. If
7 anything, the Rosenfeld case supports my

8 position and your decision. The Rosenfeld case
9 in the 4th Circuit says that original debtor
10 remains on the book for the debt, even after he
11 abandons the property. That's what the

12 Rosenfeld case was about. I think it supports
13 your decision. Absolutely nowhere in that case
14 does it indicate that the subsequent purchaser
15 will be personally liable. And, as you recall,
16 we've never disputed that there is a covenant
17 that comes with the land, and, in fact, we paid
18 those assessments. Since we've owned the
19 property, we've always paid those assessments.

20 We have never been the original debtor. We're
21 not liable for that. Ms. Jolma's client had the
22 right and still has the right, as you recognized
23 as a basis for your decision. They always had

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1 the right to pursue that original debtor, to do
2 exactly what was done in the Rosenfeld case.
3 They haven't done it, or they didn't do it.
4 They still have a right to do it.

5 There is absolutely nothing new in
6 Rosenfeld. There are no new facts. This is the
7 second time we've been here to reconsider it.
8 There is simply no reason to reconsider the
9 decision. It's time for the decision to be
10 final.

11 We all agreed that this was a case of
12 first impression. Your Honor considered it
13 carefully. There were briefs given. The
14 correct decision was made. It was a first
15 decision. The parties were -- My client was
16 notified; Ms. Jolma's client was notified of
17 your decision three months ago. It's simply
18 inappropriate to reconsider at this time with no
19 new facts and no new law. Again, it is
20 paramount that the finality of that judgment,
21 the integrity of that judgment remain. There
22 are no new grounds to reconsider. And, again, I
23 would ask the Court to award at this point to

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1 award the attorneys fees which are provided for
2 by the bylaws. I'm asking the Court to award
3 \$300 in fees for today. There is no reason in
4 the world that my client should have to
5 continually pay to come back and come back and
6 argue these three months after the decision was
7 rendered and they were told that a decision was
8 rendered in their favor. I don't think there
9 are grounds to reconsider. I would ask the
10 Court to deny the motion. Thank you.

11 MS. JOLMA: Your Honor, just briefly,
12 the fact that we may or may not have a right to
13 pursue the original debtor is once again the
14 same argument, that we have to have
15 alternatives, and there is some type of priority
16 as to how we have to proceed in terms of
17 remedies. There is nothing in the bylaws; there
18 is nothing in the Virginia statutes that sets
19 forth the priority of collection, that we have
20 to try one version before we can try another
21 remedy. We have a wide variety of remedies we
22 can pick from. We can pick all of them, if we
23 want to, until we collect. There is nothing

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1 that limits our ability in the bylaws, nothing
2 that says we have to follow priority.

3 Your Honor, this is not my second motion
4 for reconsideration. If you look at the
5 documents, I filed the last one clearly asking
6 for clarification. All I asked for last time
7 was a clarification. I argued no law. I asked
8 you to answer me one single question last time
9 in terms of clarification, Your Honor. This is
10 not my second motion for reconsideration.

11 THE COURT: Well, as counsel stated,
12 this was kind of, in many ways, a case of first
13 impression. For the reasons that have been
14 previously stated, the motion for
15 reconsideration is denied. I'm sure we will
16 hear more about this again, or perhaps we will
17 all be edified.

18 MS. JOLMA: Thank you, Your Honor.

19 MR. NOLAN: Thank you.

20 (Whereupon, at approximately 11:22
21 o'clock a.m., the hearing in the above-entitled
22 matter was concluded.)
23

CERTIFICATE OF REPORTER

I, William Finley, a stenographic reporter who was duly sworn to well and truly report the foregoing proceedings, do hereby certify that they are true and correct to the best of my knowledge and ability; and that I have no financial interest in said proceedings, nor am I employed by any of the parties to the case or their counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of September, 1994.

William Finley

William Finley
Verbatim Reporter

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RECEIVED

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON SEP 14 1994

RIVER PLACE NORTH HOUSING CORPORATION)

Plaintiff)

v.)

AMERICAN LANDMARK EQUITY CORP.)

Defendant)

DAVID A. BELL, CLERK
Arlington County Circuit Court
By Deputy Clerk

At Law No. 93-490

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Plaintiff River Place North Housing Corporation hereby notes its appeal to the Supreme Court of Virginia of the Order of August 15, 1994 granting defendant's Motion to Strike the Evidence and the denial of plaintiff's Motion for Reconsideration.

Plaintiff shall file transcript of the incidents of this case and hereby certifies that as of this date such transcripts have been ordered from the Court reporters who reported the case.

Respectfully submitted,

River Place North Housing Corporation
by counsel

Mary M. Jolma
Mary M. Jolma, Esq. - VSB #27199
Law Office of Raymond B. Benzinger, P.C.
Counsel for plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true copy the foregoing was transmitted via facsimile and mailed to Christopher C. Nolan, Esq. Adams, Porter & Radigan, Ltd., Counsel for defendant, 1650 Tysons Boulevard, Suite 700, McLean, Virginia 22101 this 13th day of September, 1994.

Mary M. Jolma
Mary M. Jolma

V I R G I N I A:

RECEIVED

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON
OCT 15 1994

RIVER PLACE NORTH HOUSING CORPORATION)

Plaintiff)

v.)

AMERICAN LANDMARK EQUITY CORP.)

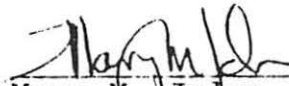
Defendant)

DAVID A. BELL, CLERK
Arlington County Circuit Court
By Law No. 93-490 Deputy Clerk

NOTICE OF FILING OF TRANSCRIPTS

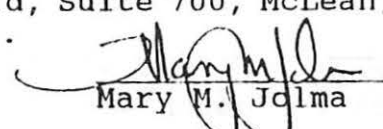
PLEASE TAKE NOTICE that on October 13, 1994 plaintiff River Place North Housing Corporation caused to be filed in the Clerk's Office transcripts of the proceedings in the above-captioned matter in accordance with Rule 5:11 of the Rules of the Supreme Court of Virginia.

River Place North Housing Corporation
By Counsel


Mary M. Jolma, Esq. - VSB #27199
Law Office of Raymond B. Benzinger, P.C.
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true copy the foregoing "Plaintiff's Objections to Defendant's First Interrogatories" was mailed to Christopher C. Nolan, Adams, Porter & Radigan, Ltd., Counsel for defendant, 1650 Tysons Boulevard, Suite 700, McLean, Virginia 22101 this 13th day of October, 1994.


Mary M. Jolma

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

RIVER PLACE NORTH HOUSING CORPORATION)

Plaintiff)

v.) At Law No. 93-490 ✓

AMERICAN LANDMARK EQUITY CORP.)

Defendant)

ORDER

THIS CAUSE came on to be heard upon plaintiff's Motion for Reconsideration, upon the papers filed herein and upon argument of counsel on September 9, 1994; and

IT APPEARING to the Court that plaintiff's Motion for Reconsideration should be denied; it is

ADJUDGED, ORDERED and DECREED that plaintiff's Motion for Reconsideration shall be and is hereby DENIED.

AND THIS CAUSE IS FINAL.

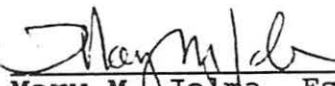
ENTERED THIS 29th DAY OF SEPTEMBER, 1994.


Judge William T. Newman, Jr.

I ASK FOR THIS:

Christopher C. Nolan, Esq.
Counsel for defendant

SEEN AND EXCEPTED TO FOR THE REASONS STATED IN PLAINTIFF'S MEMORANDUM AND IN THE ORAL ARGUMENT ON SEPTEMBER 9, 1994:


Mary M. Jolga, Esq. - VSB #27199
Counsel for plaintiff

324

ASSIGNMENT OF ERROR

The Trial Court erroneously granted American Landmark Equity Corp.'s (hereinafter "ALEC") Motion to Strike the Evidence and improperly held, in contravention of the express terms of River Place's Bylaws and the Virginia Real Estate Cooperative Act, that as unpaid assessments become due, they become liens and collection cannot be had by way of personal money judgment but only through enforcement of the lien.

NOTICE OF TRUSTEE'S SALE

PLAINTIFF'S
EXHIBIT

5 *WPK*

Under and by virtue of the authority vested in American Landmark Management Corporation, a Virginia corporation, Substitute Trustee, under that certain Deed of Appointment of Substitute Trustee, dated January 16, 1991 and recorded in Deed Book 2463 at page 1425 among the land records of Arlington County, Virginia, under that certain Cooperative Leasehold Deed of Trust from Shawna L. Butler and Abbas Ghassemi, Joint Tenants, dated February 5, 1988, and recorded in Deed Book 2319 at page 1411 among the land records of Arlington County, Virginia, and under that certain Cooperative Apartment Loan Security Agreement, dated February 5, 1988, between Shawna L. Butler and Abbas Ghassemi and Monument Associates, default having been made in the payment of the indebtedness secured thereby, and having been directed by the party secured so to do, the Substitute Trustee will, on

WEDNESDAY
APRIL 3, 1991
AT 10:20 A.M.

in front of the main entrance to the Arlington County Courthouse (1400 North Court House Road, Arlington, Virginia 22201), offer for sale at public auction the following property mentioned in the aforesaid Deed of Trust and Loan Security Agreement, including all of the improvements thereon, situated and lying in Arlington County, Virginia, and more particularly described as follows:

The Proprietary Lease to Unit/Apt. No. N-1002 and Parking Spaces MP-159 and MP-160, as described in the Declaration of Covenants, Easements and Liens for "River Place" and the Exhibits attached thereto, together with and subject to all rights, covenants and easements contained therein, as recorded May 10, 1982 in Deed Book 2061 at Page 38, et seq., as amended in Deed Book 2079 at page 21 among the land records of Arlington County, Virginia and as the same have been and may be lawfully amended further from time to time;

AND

6714 shares of the capital stock of River Place North Housing Corporation, which shares entitle the owner thereof to the Proprietary Lease above described (the leasehold interest and shares collectively referred to as the "Property").

Street Address: Apartment H-1002
1011 Arlington Boulevard
Arlington, Virginia 22209.

TERMS OF SALE: ALL CASH

The successful bidder at such sale shall be required to pay a deposit of ten percent (10%) of the successful bidder's offer, such deposit to be in the form of cash or a cashier's or certified check, at the time the bid is formally accepted by the Substitute Trustee. The Substitute Trustee unconditionally reserves the right: (i) to waive the deposit requirement; (ii) to approve the creditworthiness of any bidder and final purchaser; (iii) to withdraw the property from sale at any time before the termination of the bidding; (iv) to keep the bidding open for any length of time; (v) to reject all bids; (vi) to postpone or set over the date of sale; and (vii) to extend the period of time within which the purchaser is to make full settlement.

The successful bidder shall comply with all of the terms of sale and shall complete settlement on the purchase of the Property at the offices of the Substitute Trustee, within fifteen (15) days from the date of sale. The balance of the purchase price, over and above the retained deposit, shall be due in cash or equivalent available funds at the time of settlement and the conveyance shall be by Trustee's Deed of Assignment of Proprietary Lease with special warranty of title. At such time, the successful bidder shall pay for and bear any and all costs incident to the said settlement and conveyance, including, by way of illustration and not of limitation, recording charges and fees for examination of title and settlement, including preparation of deed and grantor's tax thereon. Real estate taxes and cooperative fees for the current year, if applicable, shall be prorated to the date of settlement. In the event the purchaser fails to complete settlement in accordance with the terms of sale, the deposit shall be forfeited and applied to the costs of sale, including the Trustee's fees, and the Property shall be resold at the cost and expense of the defaulting purchaser. Time

TERMS OF SALE: ALL CASH

The successful bidder at such sale shall be required to pay a deposit of ten percent (10%) of the successful bidder's offer, such deposit to be in the form of cash or a cashier's or certified check, at the time the bid is formally accepted by the Substitute Trustee. The Substitute Trustee unconditionally reserves the right: (i) to waive the deposit requirement; (ii) to approve the creditworthiness of any bidder and final purchaser; (iii) to withdraw the property from sale at any time before the termination of the bidding; (iv) to keep the bidding open for any length of time; (v) to reject all bids; (vi) to postpone or set over the date of sale; and (vii) to extend the period of time within which the purchaser is to make full settlement.

The successful bidder shall comply with all of the terms of sale and shall complete settlement on the purchase of the Property at the offices of the Substitute Trustee, within fifteen (15) days from the date of sale. The balance of the purchase price, over and above the retained deposit, shall be due in cash or equivalent available funds at the time of settlement and the conveyance shall be by Trustee's Deed of Assignment of Proprietary Lease with special warranty of title. At such time, the successful bidder shall pay for and bear any and all costs incident to the said settlement and conveyance, including, by way of illustration and not of limitation, recording charges and fees for examination of title and settlement, including preparation of deed and grantor's tax thereon. Real estate taxes and cooperative fees for the current year, if applicable, shall be prorated to the date of settlement. In the event the purchaser fails to complete settlement in accordance with the terms of sale, the deposit shall be forfeited and applied to the costs of sale, including the Trustee's fees, and the Property shall be resold at the cost and expense of the defaulting purchaser. Time is of the essence with respect to the completion of settlement by the purchaser.

is of the essence with respect to the completion of settlement by the purchaser.

The subject Property and the improvements thereon shall be sold in an "as is" condition without warranty of any kind. It will be the responsibility of the purchaser to obtain possession of the Property at his expense. The purchaser shall assume the risk of loss and shall be responsible for any damage, vandalism, theft, destruction, or the like, of the Property occurring after the date of the above sale at public auction.

This sale is made subject to any and all existing prior deeds of trust, liens, covenants, conditions, restrictions, rights of way, easements, reservations, and other prior encumbrances of record, and to the payment of any and all delinquent real estate taxes, cooperative fees and other proper charges due on the property that may have legal priority over the Deed of Trust.

The Substitute Trustee has given written notice of this sale, as required by Section 55-59.1 of the 1950 Code of Virginia, as amended, by certified mail to the present owner of the property at his last known address as such address appears on the records of the Noteholder.

AMERICAN LANDMARK MANAGEMENT
CORPORATION,
Substitute Trustee

By: 

James A. Howard,
Senior Vice President

FOR INFORMATION CONTACT:

William T. Freyvogel
William L. Matson
ADAMS, PORTER & RADIGAN, LTD.
The Corporate Office Center at Tysons II
1650 Tyson's Boulevard, Suite 700
McLean, Virginia 22102
Telephone: (703) 448-6600
Counsel for Noteholder

Publish: March 19, March 26 and April 2, 1991

NOTICE OF TRUSTEE'S SALE

**PLAINTIFF'S
EXHIBIT**

6 *gh*

Under and by virtue of the authority vested in American Landmark Management Corporation, a Virginia corporation, Substitute Trustee, under that certain Deed of Appointment of Substitute Trustee, dated January 16th, 1991 and recorded in Deed Book 2463 at page 1425 among the land records of Arlington County, Virginia, under that certain Cooperative Leasehold Deed of Trust from Abbas Ghassemi, unmarried, Sole, dated July 31, 1987, and recorded in Deed Book 2295 at page 327 among the land records of Arlington County, Virginia, and under that certain Cooperative Apartment Loan Security Agreement, dated July 31, 1987, between Abbas Ghassemi and Monument Associates, default having been made in the payment of the indebtedness secured thereby, and having been directed by the party secured so to do, the Substitute Trustee will, on

WEDNESDAY
APRIL 3, 1991
AT 10:30 A.M.

in front of the main entrance to the Arlington County Courthouse (1400 North Court House Road, Arlington, Virginia 22201), offer for sale at public auction the following property mentioned in the aforesaid Deed of Trust and Loan Security Agreement, including all of the improvements thereon, situated and lying in Arlington County, Virginia, and more particularly described as follows:

The Proprietary Lease to Unit/Apt. No. N-1003, and parking spaces MP-152 and MP-169 as described in the Declaration of Covenants, Easements and Liens for "River Place" and the Exhibits attached thereto, together with and subject to all rights, covenants and easements contained therein, as recorded May 10, 1982 in Deed Book 2061 at Page 38, et seq., as amended in Deed Book 2079 at page 21 among the land records of Arlington County, Virginia and as the same have been and may be lawfully amended further from time to time;

AND

6160 shares of the capital stock of River Place North Housing Corporation, which shares entitle the owner thereof to the Proprietary Lease above described (the leasehold interest and shares collectively referred to as the "Property").

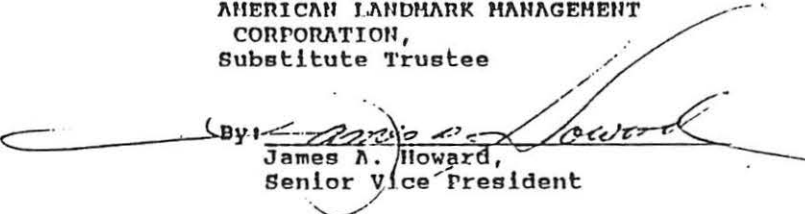
Street Address: Apartment N-1003
1121 Arlington Boulevard
Arlington, Virginia 22209.

The subject Property and the improvements thereon shall be sold in an "as is" condition without warranty of any kind. It will be the responsibility of the purchaser to obtain possession of the Property at his expense. The purchaser shall assume the risk of loss and shall be responsible for any damage, vandalism, theft, destruction, or the like, of the Property occurring after the date of the above sale at public auction.

This sale is made subject to any and all existing prior deeds of trust, liens, covenants, conditions, restrictions, rights of way, easements, reservations, and other prior encumbrances of record, and to the payment of any and all delinquent real estate taxes, cooperative fees and other proper charges due on the property that may have legal priority over the Deed of Trust.

The Substitute Trustee has given written notice of this sale, as required by Section 55-59.1 of the 1950 Code of Virginia, as amended, by certified mail to the present owner of the property at his last known address as such address appears on the records of the Noteholder.

AMERICAN LANDMARK MANAGEMENT
CORPORATION,
Substitute Trustee

By: 
James A. Howard,
Senior Vice President

FOR INFORMATION CONTACT:

William T. Freyvogel
William L. Matson
ADAMS, PORTER & RADIGAN, LTD.
The Corporate Office Center at Tysons II
1650 Tyson's Boulevard, Suite 700
McLean, Virginia 22102
Telephone: (703) 448-6600
Counsel for Noteholder

Publish: March 19, March 26 and April 2, 1991

MEMORANDUM OF SALE

PLAINTIFF'S
EXHIBIT

7 *WMA*

I acknowledge that at the Trustee's Sale conducted this date after due advertisement, I purchased the property briefly described as:

The Proprietary Lease to Unit/Apt. No. 1002,
River Place North together with 6714 shares
of the capital stock of River Place North
Housing Corporation, which shares entitle the
owner to the foregoing Proprietary Lease

for a bid of \$ 120,000.00. I further acknowledge that this purchase is subject to the terms and conditions of the attached Notice of Trustee's Sale and the attached Announcements, and that I paid a deposit of \$ N/A in the form of N/A.

Witness my signature on this 3rd day of April

1971.

American Landmark Realty Corp.
Purchaser

Address: *1011 Arlington Blvd.*
Suite 350

Arlington, VA 22209


Telephone: home _____

office *525-5500*

Purchaser's Attorney:

I acknowledge receipt of the foregoing deposit.

AMERICAN LANDMARK MANAGEMENT
CORPORATION,
Substitute Trustee



MEMORANDUM OF SALE

**PLAINTIFF'S
EXHIBIT**

8 *[Signature]*

I acknowledge that at the Trustee's Sale conducted this date after due advertisement, I purchased the property briefly described as:

The Proprietary Lease to Unit/Apt. No. 1003,
River Place North together with 4360 shares
of the capital stock of River Place North
Housing Corporation, which shares entitle the
owner to the foregoing Proprietary Lease

for a bid of \$ 120,000.00. I further acknowledge that this purchase is subject to the terms and conditions of the attached Notice of Trustee's Sale and the attached Announcements, and that I paid a deposit of \$ 210 in the form of cash.

Witness my signature on this 3rd day of April
1951.

[Signature]
Purchaser

Address: 1003 River Place North

North

Washington, D.C. 20001

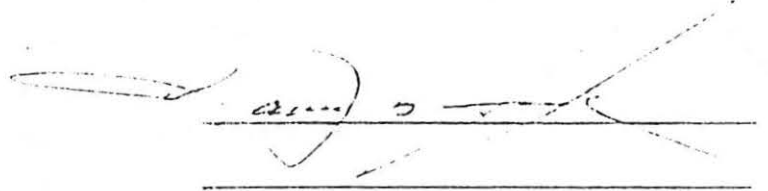
Telephone: home _____

office 200-1000

Purchaser's Attorney:

I acknowledge receipt of the foregoing deposit.

AMERICAN LANDMARK MANAGEMENT
CORPORATION,
Substitute Trustee

A handwritten signature, possibly "J. M. [unclear]", is written over two horizontal lines. The signature is in dark ink and is somewhat stylized.

RIVER PLACE NORTH HOUSING CORPORATION

PROPRIETARY LEASE

THIS PROPRIETARY LEASE is a deed of lease made this ____ day of _____, 198____, by and between RIVER PLACE NORTH HOUSING CORPORATION, a Virginia corporation, having an office at 1121 Arlington Boulevard, in the County of Arlington, Virginia (hereinafter called the "Lessor"), and _____ (hereinafter called the "Lessee").

WHEREAS, the Lessor is the leasehold owner of the building in the County of Arlington, Virginia, known as the River Place North Building (hereinafter called the "Building") located at 1121 Arlington Boulevard; and

WHEREAS, the Lessee is the owner of _____ shares of the Lessor which have been allocated to Apartment _____ in the Building and to which this lease is appurtenant;

NOW, THEREFORE, in consideration of the premises, the Lessor hereby leases to the Lessee, and the Lessee leases from the Lessor, subject to the terms and conditions hereof, Apartment _____ (hereinafter referred to as "the apartment") in the Building for a term from _____, 19____, until December 20, 2052 (unless sooner terminated as hereinafter provided). As used herein, "the apartment" means the rooms in the Building as partitioned on the date of the execution of this lease designated by the above-stated apartment number, together with their appurtenances and fixtures and any patios, balconies or terraces designed to serve that apartment exclusively.

1. (a) The rent payable by the Lessee for each year, or portion of a year, during the term shall equal that portion of the Lessor's cash requirements for such year, or portion of a year, which the number of shares of the Lessor allocated to the apartment bears to the total number of shares of the Lessor issued and outstanding on the date of the determination of such cash requirements. Such rent shall be payable, without notice or demand, in equal monthly installments, in advance, on the first day of each month, unless the Board of Directors of the Lessor (hereinafter called the "Board") at the time of its determination of the cash requirements shall otherwise direct. The Lessee shall also pay when due such additional rent as may be provided for herein.

(b) In every proprietary lease heretofore executed by the Lessor there has been specified, and in every proprietary lease

hereafter executed by it there will be specified, the number of shares of the Lessor issued to a lessee simultaneously therewith, which number, in relation to the total number of shares of the Lessor issued and outstanding, shall constitute the basis for fixing, as hereinbefore provided, the proportionate share of the Lessor's cash requirements which shall be payable as rent by the Lessee.

(c) "Cash requirements" whenever used herein shall mean the estimated amount in cash which the Board shall from time to time in its judgment determine to be necessary or proper for (1) the operation, maintenance, care, alteration and improvement of the corporate property during the year or portion of the year for which such determination is made, (2) the creation of such reserves for contingencies as it may deem proper, and (3) the payment of any obligations, liabilities or expenses incurred (even though incurred during a prior period) or to be incurred, after giving consideration to (i) income expected to be received during such period (other than rent from proprietary lessees), and (ii) cash on hand which the Board in its discretion may choose to apply. The Board may from time to time modify its prior determination and increase or decrease the amount previously determined as cash requirements of the corporation for a year or portion thereof. No determination of cash requirements shall have any retroactive effect on the amount of rent payable by the Lessee for any period prior to the date of such determination. All determinations of cash requirements shall be conclusive as to all lessees.

(d) Whenever in this Section or any other Section of this lease, a power or privilege is given to the Board, the same may be exercised only by the Board, and in no event may any such power or privilege be exercised by a creditor, receiver or trustee.

(e) If the Lessor shall hereafter issue shares (whether now or hereafter authorized) in addition to those issued on the date of the execution of this lease, the holders of the shares hereafter issued shall be obligated to pay rent at the same rate per share as the other proprietary lessees from and after the date of issuance. If any such shares be issued on a date other than the first or last day of the month, the rent for the month in which issued shall be prorated to the date of issuance. The cash requirements as last determined shall, upon the issuance of such shares, be deemed increased by an amount equal to such rent.

(f) The Board may from time to time as may be proper determine how much of the rent and other receipts, when received (but not more than such amount as represents payments on amount of principal of mortgages on the property and other capital expenditures), shall be credited on the corporate accounts to "Paid-in-Surplus". Unless the Board shall determine otherwise, the amount of payments which the Lessor receives from the Lessee on account of principal of any indebtedness secured by mortgages or deeds of trust shall be credited to Paid-in-Surplus and shall not be deemed income to the Lessor.

(g) The failure of the Board to determine the Lessor's cash requirements for any year or portion thereof shall not be deemed a waiver or modification in any respect of the covenants and provisions hereof, or a release of the Lessee from the obligation to pay the rent or any installment thereof, but the rent computed on the basis of the cash requirements as last determined for any year or portion thereof shall thereafter continue to be the rent until a new determination of cash requirements shall be made.

(h) To the extent any provision of this proprietary lease is or hereafter becomes inconsistent with any provision of the Bylaws of the Lessor or of any rule or regulation promulgated

thereunder, the provision of the said Bylaws or rule or regulation shall control.

2. The Lessor shall at its expense keep in good repair all of the Building including all of the apartments and the canopies, patios, balconies, terraces, conduits and other fixtures attached to or exclusively serving the Building, except for those items the maintenance and repair of which are stated to be the responsibility of the Lessee pursuant to Section 18 hereof.

3. The Lessor shall maintain and manage the Building as a first-class apartment building, and shall keep the elevators and the public halls, cellars and stairways clean and properly lighted and heated. All public portions of the Building which are painted shall be painted not less frequently than every five years and all such wallpapered public portions shall be re-wallpapered not less frequently than every ten years. The Lessor shall provide the number of attendants requisite, in the judgment of the Board, for the proper care and service of the Building, and shall provide the apartment with a proper and sufficient supply of hot and cold water and of heat, and if there be central air-conditioning equipment supplied by the Lessor, air-conditioning when deemed appropriate by the Board. The covenants by the Lessor herein contained are subject, however, to the discretionary power of the Board to determine from time to time what services and what attendants shall be proper and the manner of maintaining and operating the Building, and also what existing services shall be increased, reduced, modified or terminated.

4. (a) If the apartment or the means of access thereto or the Building shall be damaged by fire or other cause covered by multiperil policies commonly carried by corporations owning "cooperative apartment buildings" in the Washington, D.C. metropolitan area (any other damage to be repaired by the Lessor and/or the Lessee pursuant to Section 2 and/or 18, as the case may be), the Lessor shall at its own cost and expense, with reasonable dispatch after receipt of notice of said damage, repair or replace or cause to be repaired or replaced (with materials of a kind and quality then customary in buildings of the same type as the Building) the Building, the apartment, and the means of access thereto, including the walls, floors, ceilings, pipes, wiring and conduits in the apartment. Anything in this Section or Section 2 to the contrary notwithstanding, the Lessor shall not be required to repair or replace, or cause to be repaired or replaced, equipment, fixtures, furniture, furnishings or decorations installed by the Lessee or any of his predecessors in title nor shall the Lessor be obligated to repaint or replace wallpaper or other decorations in the apartment or to refinish floors located therein.

(b) In case the damage resulting from fire or other cause shall be so extensive as to render the apartment partly or wholly untenable, or if the means of access thereto shall be destroyed, the rent hereunder shall proportionately abate until the apartment shall again be rendered wholly tenable or the means of access restored; but if said damage shall be caused by the act or negligence of the Lessee or the agents, employees, guests or members of the family of the Lessee or any occupant of the apartment, such rental shall abate only to the extent of the rental value insurance, if any, collected by the Lessor with respect to the apartment.

(c) The Lessor and the Lessee hereby release each other from any and all liability or responsibility to the other or to anyone claiming through or under the Lessor or the Lessee by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage casualties, even

if such fire or other casualty shall have been caused by the fault or negligence of the Lessor or the Lessee or anyone for whom the Lessor or the Lessee may be responsible, provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as the Lessor's or the Lessee's insurance policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair such insurance policies or prejudice the right of the Lessor and the Lessee to recover thereunder and further provided that such waiver shall be limited to the proceeds of such insurance policies. Lessor and Lessee agree that they will request their insurance carriers to include in each of their policies a suitable clause or endorsement, as aforesaid, provided that no extra cost shall be charged therefor, and upon request, Lessor and Lessee shall each advise the other whether or not it has been able to obtain such a clause or endorsement in its policies.

5. The Lessor shall keep full and correct books of account at its principal office or at such other place as the Board may from time to time determine, and the same shall be open during all reasonable hours to inspection by the Lessee or a representative of the Lessee. The Lessor shall deliver to the Lessee within a reasonable time after the end of each fiscal year an annual report of corporate financial affairs, including a balance sheet and a statement of income and expenses, certified by an independent public accountant.

6. Each proprietary lease made by the Lessor shall be in the form of this lease, except with respect to the statement as to the number of shares owned by the Lessee, unless a variation of any lease is authorized, as hereinafter provided, by lessees owning at least two-thirds (2/3) of the Lessor's shares then issued and executed by the Lessor and Lessee affected. The form and provisions of all the proprietary leases then in effect and thereafter to be executed may be changed by the approval of lessees owning at least two-thirds (2/3) of the Lessor's shares then issued and outstanding, and such changes shall be binding on all lessees even if they did not vote for such changes except that (i) the proportionate share of rent or cash requirements payable by any lessee may not be increased without the written consent of such lessee and (ii) the right of any lessee to cancel his lease under the conditions set forth in Section 35 may not be eliminated or impaired without the written consent of such lessee. Approval by lessees as provided for herein shall be evidenced by written consent or by affirmative vote taken at a meeting called for such purpose.

7. If the apartment includes a patio, terrace or balcony, the Lessee shall have and enjoy the exclusive use of the patio, terrace or balcony, subject to the applicable provisions of this lease and to the use of the patio, terrace or balcony by the Lessor to the extent herein permitted. The Lessee's use thereof shall be subject to such rules and regulations as may, from time to time, be prescribed by the Board. The Lessor shall have the right to erect equipment on the roof, including radio and television antennae, for its use and the use of the lessees in the Building and shall have the right of access thereto for such installations and for the repair thereof. The Lessee shall keep any patio, terrace or balcony appurtenant to his apartment clean and free from snow, ice, leaves and other debris and shall maintain all screens and drain boxes in good condition. No planting, fences, structures or lattices shall be erected or installed on the patios, terraces or balconies of the Building without the prior written approval of the Lessor. No cooking shall be permitted on any patios, terraces or balconies, nor shall the walls thereof be painted by the Lessee, without the prior written approval of the Lessor. Any permitted planting or other structure erected by the Lessee or his predecessor in interest may be

removed and restored by the Lessor at the expense of the Lessee for the purpose of repairs, upkeep or maintenance of the Building.

8. If at the date of the commencement of this lease, any third party shall be in possession or have the right to possession of the apartment, then the Lessor hereby assigns to the Lessee all of the Lessor's rights against said third party from and after the date of the commencement of the term hereof, and the Lessee by the execution hereof assumes all of the Lessor's obligations to said third party from said date. The Lessor agrees to cooperate with the Lessee, but at the Lessee's expense, in the enforcement of the Lessee's rights against said third party.

9. If at the date of the commencement of this lease, the Lessee has the right to possession of the apartment under any agreement or statutory tenancy, this lease shall supersede such agreement or statutory tenancy which shall be of no further effect after the date of commencement of this lease, except for claims theretofore arising thereunder.

10. The Lessee, upon paying the rent and performing the covenants and complying with the conditions on the part of the Lessee to be performed as herein set forth, shall, at all times during the term hereby granted, quietly have, hold and enjoy the apartment without any let, suit, trouble or hindrance from the Lessor, subject, however, to the rights of present tenants or occupants of the apartment, and subject to any and all mortgages, deeds of trust, and underlying leases of or encumbering the land and Building, as provided in Section 22.

11. The Lessee agrees to save the Lessor harmless from all liability, loss, damage and expense arising from injury to person or property occasioned by the failure of the Lessee to comply with any provision hereof, or due wholly or in part to any act, default or omission of the Lessee or of any person dwelling or visiting in the apartment, or by the Lessor, its agents, servants or contractors when acting as agent for the Lessee as in this lease provided. This section shall not apply to any loss or damage when the Lessor is covered by insurance which provides for waiver of subrogation against the Lessee.

12. The Lessee will pay the rent to the Lessor upon the terms and at the times herein provided, without any deduction on account of any set-off or claim which the Lessee may have against the Lessor, and if the Lessee shall fail to pay any installment of rent promptly, the Lessee shall pay interest thereon at the rate of eighteen percent (18%) per annum, or at such other lawful rate as may be fixed from time to time by resolutions of the Board, from the date when such installment shall have become due to the date of the payment thereof, and such interest shall be deemed additional rent hereunder.

13. The Lessor has adopted Rules and Regulations which are appended hereto, and the Board may alter, amend or repeal such Rules and Regulations and adopt new Rules and Regulations. This lease shall be in all respects subject to such Rules and Regulations which, when a copy thereof has been furnished to the Lessee, shall be taken to be part hereof, and the Lessee hereby covenants to comply with all such Rules and Regulations and see that they are faithfully observed by the family, guests, employees and subtenants of the Lessee. Breach of a Rule or Regulation shall be a default under this lease. The Lessor shall not be responsible to the Lessee for the non-observance or violation of Rules and Regulations by any other lessee or person.

14. Except as may be otherwise permitted by the Bylaws of the Lessor, the Lessee shall not, without the written consent of the Lessor on such conditions as Lessor may prescribe, occupy or use the apartment or permit the same or any part thereof to be occupied or used for any purpose other than as a private dwelling for the Lessee and Lessee's spouse, their children, grandchildren, parents, grandparents, brothers and sisters and domestic employees, and in no event shall more than one married or unmarried couple occupy the apartment without the written consent of the Lessor. In addition to the foregoing, the apartment may be occupied from time to time by guests of the Lessee for a period of time not to exceed one month, unless a longer period is approved in writing by the Lessor, but no guests may occupy the apartment unless one or more of the permitted adult residents are then in occupancy or unless consented to in writing by the Lessor.

15. The Lessee shall not sublet the apartment, or renew or extend any previously authorized sublease, except in accordance with Section 7.12(f) (and any other applicable Sections) of the Bylaws of the Lessor, but such restriction shall not apply to the Sponsor as defined in Section 38.

16. Except as provided in Section 39 of this lease:

(a) The Lessee shall not assign this lease or transfer the shares to which it is appurtenant or any interest therein, and no such assignment or transfer shall take effect as against the Lessor for any purpose, until

(i) an instrument of assignment in form approved by the Lessor executed and acknowledged by the assignor shall be delivered to the Lessor; and

(ii) an agreement executed and acknowledged by the assignee in form approved by Lessor assuming and agreeing to be bound by all the covenants and conditions of this lease to be performed or complied with by the Lessee on and after the effective date of said assignment shall have been delivered to the Lessor, or, at the request of the Lessor, the assignee shall have surrendered the assigned lease and entered into a new lease in the same form for the remainder of the term, in which case the Lessee's lease shall be deemed cancelled as of the effective date of said assignment; and

(iii) all shares of the Lessor to which this lease is appurtenant shall have been transferred to the assignee, with any applicable transfer taxes paid and all other legal requirements satisfied; and

(iv) all sums due from the Lessee shall have been paid to the Lessor, together with a sum to be fixed by the Board to cover reasonable legal and other expenses of the Lessor and its managing agent in connection with such assignment and transfer of shares; and

(v) a search or certification from an attorney or a title insurance company, as the Board may require, shall have been completed to the satisfaction of the Board; and

(vi) except (i) in the case of an assignment, transfer or bequest to the Lessee's spouse of the shares and this lease, (ii) in the case of an assignment or transfer by the Sponsor as defined in Section 38, and (iii) except as provided in Section 39 of this lease, prior written consent to such assignment shall have been given as contemplated by Section 11.3 (and any other applicable Sections) of the Bylaws of the Lessor.

(b) If this lease shall be assigned in compliance herewith, the Lessee-assignor shall have no further liability on any of the covenants of this lease to be thereafter performed.

(c) Regardless of any prior consent theretofore given, neither the Lessee nor his executor, administrator, any trustee or receiver of the property of the Lessee, or anyone to whom the interests of the Lessee shall pass by law, shall be entitled further to assign this lease, or to sublet the apartment, except upon compliance with the requirements of this lease. The restrictions on the assignment of this lease, as hereinbefore set forth, constitute special consideration and inducement for the granting of this lease by the Lessor to the Lessee. No demand or acceptance of rent from any assignee hereof shall constitute or be deemed to constitute a consent to or approval of any assignment.

(d) If this lease is then in force and effect, the Lessor will, upon request of the Lessee, deliver to the assignee a written statement that this lease remains on the date thereof in force and effect; but no such statement shall be deemed an admission that there is no default under this lease.

17. The execution and delivery of a leasehold mortgage or deed of trust and/or the creation of a security interest in the lease and the shares to which this lease is appurtenant shall not be a violation of this lease; but, except as provided in Section 39 of this lease, neither the secured party nor the leasehold mortgagee, nor any transferee of the security shall be entitled to have the shares transferred of record on the books of the Lessor, or to vote such shares, or to occupy or permit the occupancy by others of the apartment, or to sell such shares or this lease, without first complying with all of the provisions of Sections 15 and 16 except subsections (a)(iv) and (vi) of Section 16. The acceptance by the Lessor of payments by the secured party or leasehold mortgagee or any transferee of the security on account of rent or additional rent shall not constitute a waiver of the aforesaid provision. The provisions of this Section are subject to the provisions of Section 39.

18. (a) The Lessee shall take possession of the apartment and its appurtenances and fixtures "as is" as of the commencement of the term hereof. Subject to the provisions of Section 4 hereof, the Lessee shall keep the interior of the apartment (including interior walls, floors and ceilings, but excluding windows, window panes, window frames, sashes, sills, entrance and terrace doors, frames and saddles) in good repair, shall do all of the painting and decorating required for his apartment, including the interior window frames, sashes and sills, and shall be solely responsible for the maintenance, repair, and replacement of plumbing, gas and heating fixtures and equipment and such refrigerators, dishwashers, removable and through-the-wall air-conditioners, washing machines, ranges and other appliances, as may be in the apartment. Plumbing, gas and heating fixtures as used herein shall include exposed gas, steam and water pipes attached to fixtures, appliances and equipment, as well as the fixtures, appliances and equipment to which they are attached, and any special pipes or equipment which the Lessee may install within any wall or ceiling, or under the floor, but shall not include gas, steam, water or other pipes or conduits within the walls, ceilings or floors or air-conditioning or heating equipment which is part of the standard Building equipment. The Lessee shall be solely responsible for the maintenance, repair and replacement of all lighting and electrical fixtures, appliances, and equipment, and all meters, fuse boxes or circuit breakers and electrical wiring and conduits from the junction box at the riser into and through the Lessee's apartment. Any ventilator or air-conditioning device which shall be visible from the outside of the building shall at all times be

painted by the Lessee in a standard color which the Lessor may select for the Building.

(b) The Lessee shall not permit unreasonable cooking or other odors to escape into the Building. The Lessee shall not permit or suffer any unreasonable noises or anything which will interfere with the rights of other lessees or unreasonably annoy them or obstruct the public halls or stairways.

(c) If, in the Lessor's sole judgment, any of the Lessee's equipment or appliances shall result in damage to the Building or poor quality or interruption of service to other portions of the Building, or overloading of, or damage to, facilities maintained by the Lessor for the supplying of water, gas, electricity or air conditioning to the Building, or if any such appliances visible from the outside of the Building shall become rusty or discolored, the Lessee shall promptly, on notice from the Lessor, remedy the condition and, pending such remedy, shall cease using any appliance or equipment which may be creating the objectionable condition.

(d) The Lessee will comply with all the requirements of the Board of Fire Underwriters, insurance authorities and all governmental authorities and with all laws, ordinances, rules and regulations with respect to the occupancy or use of the apartment. If any mortgage or deed of trust affecting the Building or the land on which it stands shall contain any provisions pertaining to the right of the Lessee to make changes or alterations in the apartment, or to remove any of the fixtures, appliances, equipment or installations, the Lessee shall comply with all such provisions. Upon the Lessee's written request, the Lessor will furnish the Lessee with copies of applicable provisions of all such mortgages and deeds of trust.

19. If the Lessee shall fail for thirty (30) days after notice to make repairs to any of the apartment, its fixtures or equipment as herein required, or shall fail to remedy a condition which has become objectionable to the Lessor for reasons above set forth, or if the Lessee or any person dwelling in the apartment shall request the Lessor, its agents or servants to perform any act not hereby required to be performed by the Lessor, the Lessor may make such repairs, or arrange for others to do the same, or remove such objectionable condition or equipment, or perform such act, without liability on the Lessor; provided that, if in the opinion of the Board the condition requires prompt action, notice of less than thirty (30) days may be given or, in case of emergency, no notice need be given. In all such cases the Lessor, its agents, servants and contractors shall, as between the Lessor and the Lessee, be conclusively deemed to be acting as agents of the Lessee and all contracts therefor made by the Lessor shall be so construed whether or not made in the name of the Lessee. If Lessee shall fail to perform or comply with any of the other covenants or provisions of this lease within the time required by a notice from the Lessor, then the Lessor may, but shall not be obligated to, comply therewith, and for such purpose may enter the apartment. The Lessor shall be entitled to recover from the Lessee all expenses incurred or for which it has contracted hereunder, such expenses to be payable by the Lessee on demand as additional rent.

20. The Lessee shall not permit or suffer anything to be done or kept in the apartment which will increase the rate of fire insurance on the Building or the contents thereof. If, by reasons of the occupancy or use of the apartment by the Lessee, the rate of fire insurance on the Building or an apartment or the contents of either shall be increased, the Lessee shall (if such occupancy or use continues for more than thirty (30) days after

written notice from the Lessor specifying the objectionable occupancy or use) become personally liable for the additional insurance premiums incurred by the Lessor or any lessee or lessees of apartments in the Building on all policies so affected, and the Lessor shall have the right to collect the same for its benefit or the benefit of any such lessees as additional rent for the apartment due on the first day of the calendar month following written demand therefor by the Lessor.

21. (a) The Lessee shall not, without first obtaining the written consent of the Lessor, which consent shall not be unreasonably withheld or delayed, make in the apartment, or on any patio, terrace or balcony appurtenant thereto, any alteration, enclosure or addition or any alteration of or addition to the water, gas, or steam risers or pipes, heating or air-conditioning system or units, electrical conduits, wiring or outlets, plumbing fixtures, intercommunication or alarm system, or any other installation or facility in the apartment or Building, or, except as hereinafter authorized, remove any additions, improvements or fixtures from the apartment. The performance by Lessee of any work in the apartment shall be in accordance with any applicable rules and regulations of the Lessor and governmental agencies having jurisdiction thereof. The Lessee shall not in any case install any appliances which will overload the existing wires or equipment in the Building. Anything contained herein or in subsection (b) hereinbelow to the contrary notwithstanding, the written consent of the Lessor shall not be required for any of the foregoing alterations, enclosures, additions made by, or the removal of any additions, improvements or fixtures from the apartment by the "Sponsor" as defined in Section 38 of this lease.

(b) Without the Lessor's prior written consent, the Lessee shall not remove any fixtures, appliances, additions or improvements from the apartment except as hereinafter provided. If the Lessee, or a prior lessee, shall have heretofore placed, or the Lessee shall hereafter place in the apartment, any additions, improvements, appliances or fixtures, including but not limited to fireplace mantels, lighting fixtures, refrigerators, air-conditioners, dishwashers, washing machines, ranges, wood-work, wall paneling, ceilings, special doors or decorations, special cabinet work, special stair railings or other built-in ornamental items, which can be removed without structural alterations or permanent damage to the apartment, then title thereto shall remain in the Lessee and the Lessee shall have the right, prior to termination of this lease to remove the same at the Lessee's own expense, provided: (i) that the Lessee at the time of such removal shall not be in default in the payment of rent or in the performance or observance of any other covenants or conditions of this lease; (ii) that prior to any such removal, the Lessee shall give written notice thereof to the Lessor; (iii) that the Lessee shall, at the Lessee's own expense, prior to the termination of this lease, repair all damage to the apartment which shall have been caused by either the installation or removal of any of such additions, improvements, appliances or fixtures; (iv) that if the Lessee shall have removed from the apartment any articles or materials owned by the Lessor or its predecessor in title, or any fixtures or equipment necessary for the use of the apartment, the Lessee shall either restore such articles, and materials, fixtures and equipment and repair any damage resulting from their removal and restoration, or replace them with others of a kind and quality customary in comparable buildings and satisfactory to the Lessor; and (v) that if any mortgagee had acquired a lien on any such property prior to the execution of this lease, the Lessor shall have first procured from such mortgagee its written consent to such removal, and any cost and expense incurred by the Lessor in respect thereof shall have been paid by the Lessee.

(c) On the expiration or termination of this lease, the Lessee shall surrender to the Lessor possession of the apartment with all additions, improvements, appliances and fixtures then included therein, except as hereinabove provided. Any additions, improvements, fixtures or appliances not removed by the Lessee on or before such expiration or termination of this lease shall, at the option of the Lessor, be deemed abandoned and shall become the property of the Lessor and may be disposed of by the Lessor without liability or accountability to the Lessee. Any other personal property not removed by the Lessee at or prior to the termination of this lease may be removed by the Lessor to any place of storage and stored for the account of the Lessee without the Lessor in any way being liable for trespass, conversion or negligence by reason of any acts of the Lessor or of the Lessor's agents, or of any carrier employed in transporting such property to the place of storage, or by reason of the negligence of any person in caring for such property while in storage.

22. This lease is and shall be subject and subordinate to all present and future ground or underlying leases relating to the building and the land on which it stands, and to any and all extensions, modifications, and amendments thereof. This clause shall be self-operative and no further instrument of subordination shall be required by the holder of any such ground or underlying lease. In confirmation of such subordination the lessee shall at any time, and from time to time on demand execute any instruments that may be required by the lessor, for the purpose of more formally subjecting his lease to the lien of any such ground or underlying leases, and the duly elected officers, for the time being, of the lessor are and each of them is hereby irrevocably appointed the attorney-in-fact and agent of the lessee to execute the same upon such demand, and the lessee hereby ratifies any such instrument hereafter executed by virtue of the power of attorney hereby given.

23. In case a notice of mechanic's lien against the Building shall be filed purporting to be for labor or material furnished or delivered at the Building or the apartment to or for the Lessee, or anyone claiming under the Lessee, the Lessee shall forthwith cause such lien to be discharged by payment, bonding or otherwise; and if the Lessee shall fail to do so within ten (10) days after notice from the Lessor, then the Lessor may cause such lien to be discharged by payment, bonding or otherwise, without investigation as to the validity thereof or of any offsets or defenses thereto, and shall have the right to collect, as additional rent, all amounts so paid and all costs and expenses paid or incurred in connection therewith, including reasonable attorney's fees and disbursements, together with interest thereon from the time or times of payment.

24. The Lessee shall always in good faith endeavor to observe and promote the cooperative purposes for the accomplishment of which the Lessor is incorporated.

25. The Lessor and its agents and their authorized workmen shall be permitted to visit, examine, or enter the apartment and

any storage space assigned to the Lessee at any reasonable hour of the day upon notice, or at any time and without notice in case of emergency, to make or facilitate repairs in any part of the Building or to cure any default by the Lessee and to remove such portions of the walls, floors and ceilings of the apartment and storage space as may be required for any such purpose, but the Lessor shall thereafter restore the apartment and storage space to its proper and usual condition at the Lessor's expense if such repairs are the obligation of the Lessor, or at the Lessee's expense if such repairs are the obligation of the Lessee or are caused by the act or omission of the Lessee or any of the Lessee's family, guests, agents, employees or subtenants. In order that the Lessor shall at all times have access to the apartment or storage rooms for the purposes provided for in this lease, the Lessee shall provide the Lessor with a key to each lock providing access to the apartment or the storage space, and if any lock shall be altered or new lock installed, the Lessee shall provide the Lessor with a key thereto immediately upon installation. If the Lessee shall not be personally present to open and permit an entry at any time when an entry therein shall be necessary or permissible hereunder and shall not have furnished a key to the Lessor, the Lessor or the Lessor's agent (but, except in an emergency, only when specifically authorized by an officer of the Lessor or an officer of the managing agent) may forcibly enter the apartment or storage space without liability for damages by reason thereof (if during such entry the Lessor shall accord reasonable care to the Lessee's property), and without in any manner affecting the obligations and covenants of this lease. The right and authority hereby reserved do not impose, nor does the Lessor assume by reason thereof, any responsibility or liability for the care or supervision of the apartment, or any of the pipes, fixtures, appliances or appurtenances therein contained, except as herein specifically provided.

26. The failure of the Lessor to insist, in any one or more instances, upon a strict performance of any of the provisions of this lease, or to exercise any right or option herein contained, or to serve any notice, or to institute any action or proceeding, shall not be construed as a waiver, or a relinquishment for the future, of any such provisions, options or rights, but such provision, option or right shall continue and remain in full force and effect. The receipt by the Lessor of rent, with knowledge of the breach of any covenants hereof, shall not be deemed a waiver of such breach, and no waiver by the Lessor of any provision hereof shall be deemed to have been made unless in a writing expressly approved by the Directors.

27. Any notice by or demand from either party to the other shall be duly given only if in writing and sent by certified or registered mail, return receipt requested: if by the Lessee, addressed to the Lessor at the Building with a copy sent by regular mail to the Lessor's managing agent; if to the Lessee, addressed to the Lessee at the Building. Either party may by notice served in accordance herewith designate a different address for service of such notice or demand. Notices or demands shall be deemed given on the date when mailed.

28. If the Lessee shall at any time be in default hereunder and the Lessor shall incur any expense (whether paid or not) in performing acts which the Lessee is required to perform, or in instituting any action or proceeding based on such default, or defending, or asserting a counterclaim in any action or proceeding brought by the Lessee, the expense thereof to the Lessor, including but not limited to reasonable attorneys' fees and disbursements, shall be paid by the Lessee to the Lessor, on demand, as additional rent.

29. (a) The Lessor shall not be liable, except by reason of the Lessor's negligence, for any failure or insufficiency of heat, or of air-conditioning (where air-conditioning is supplied or air-conditioning equipment is maintained by the Lessor), water supply, electric current, gas, telephone, or elevator service or other service to be supplied by the Lessor hereunder, or for interference with light, air, view or other interests of the Lessee. No abatement of rent or other compensation or claim of eviction shall be made or allowed because of the making or failure to make or delay in making any repairs, alterations, or decorations to the Building, or any fixtures or appurtenances therein, or for space taken to comply with any law, ordinance or governmental regulation, or for interruption or curtailment of any service agreed to be furnished by the Lessor due to accidents, alterations or repairs, or to difficulty or delay in securing supplies or labor or other cause beyond Lessor's control, unless due to the Lessor's negligence.

(b) If the Lessor shall furnish to the Lessee any storage bins or other storage space, the use of the laundry, or any facility outside the apartment, including but not limited to a television antenna, the same shall be deemed to have been furnished gratuitously by the Lessor under a revocable license. The Lessee shall not use such storage space for the storage of valuable or perishable property and any such storage space assigned to the Lessee shall be kept by the Lessee clean and free of combustibles. If washing machines or other equipment are made available to the Lessee, the Lessee shall use the same on the understanding that such machines or equipment may or may not be in good order and repair and that the Lessor is not responsible for such equipment, nor for any damage caused to the property of the Lessee resulting from the Lessee's use thereof and that any use that the Lessee may make of such equipment shall be at his own cost, risk and expense.

(c) The Lessor shall not be responsible for any damage to any automobile or other vehicle left in the care of any employee of the Lessor by the Lessee, and the Lessee hereby agrees to hold the Lessor harmless from any liability arising from any injury to person or property caused by or with such automobile or other vehicle while in the care of such employee. The Lessor shall not be responsible for any property left with or entrusted to any employee of the Lessor, or for the loss of or damage to any property within or without the apartment by theft or otherwise.

30. The Lessee will not require, permit, suffer or allow the cleaning of any window in the premises from the outside unless the equipment and safety devices required by any law, ordinance, rules and regulations, are provided and used in compliance with such law, ordinance, rules and regulations; and the Lessee hereby agrees to indemnify the Lessor and its employees, other lessees, and the managing agent, for all losses, damages or fines suffered by them as a result of the Lessee's requiring, permitting, suffering or allowing any window in the premises to be cleaned from the outside in violation of the requirements of the aforesaid laws, ordinances, regulations and rules.

31. If upon, or at any time after, the happening of any of the events mentioned in subsections (a) through (h) inclusive of this Section 31, the Lessor shall give to the Lessee a notice stating that the term hereof will expire on a specified date not less than five (5) days thereafter, the term of this lease shall expire on the date so fixed in such notice as fully and completely as if it were the date herein fixed for the expiration of the term, and all right, title and interest of the Lessee hereunder shall thereupon wholly cease and expire, and the Lessee shall

thereupon quit and surrender the apartment to the Lessor, it being the intention of the parties hereto to create hereby a conditional limitation; and thereupon the Lessor shall have the right to reenter the apartment and to remove all persons and personal property therefrom, either by summary disposes proceedings, or by any suitable action or proceeding at law or in equity, or by force or otherwise, and to repossess the apartment in its former state as if this lease had not been made, and no liability whatsoever shall attach to the Lessor by reason of the exercise of the right of re-entry, re-possession and removal herein granted and reserved:

(a) If the Lessee shall cease to be the owner of the shares to which this lease is appurtenant, or if this lease shall pass or be assigned to anyone who is not then the owner of all of said shares;

(b) If at any time during the term of this lease (i) the then holder hereof shall be adjudicated a bankrupt under the laws of the United States; or (ii) a receiver of all of the property of such holder or of this lease shall be appointed under any provision of the laws of the State of Virginia, or under any statute of the United States, or any statute of any state of the United States and the order appointing such receiver shall not be vacated within thirty (30) days; or (iii) such holder shall make a general assignment for the benefit of creditors; or (iv) any of the shares owned by such holder to which this lease is appurtenant shall be duly levied upon under the process of any court whatever unless such levy shall be discharged within thirty (30) days; or (v) this lease or any of the shares to which it is appurtenant shall pass by operation of law or otherwise to anyone other than the Lessee herein named or a person to whom such Lessee has assigned this lease in the manner herein permitted, but this item (v) shall not be applicable if this lease shall devolve upon the executors or administrators of the Lessee and provided that within eight (8) months (which period may be extended by the Board) after the death said lease and shares shall have been transferred to any assignee in accordance with Section 16 hereof; or (vi) this lease or any of the shares to which it is appurtenant shall pass to anyone other than the Lessee herein named by reasons of a default by the Lessee under a pledge or security agreement or a leasehold mortgage made by the Lessee;

(c) Subject to the provisions of Section 39, if there be an assignment of this lease, or any subletting hereunder, without full compliance with the requirements of Section 15 or 16; or if any person not authorized by Section 14 shall be permitted to use or occupy the apartment, and the Lessee shall fail to cause such unauthorized person to vacate the apartment within ten (10) days after written notice from the Lessor;

(d) If the Lessee shall be in default for a period of thirty (30) days in the payment of any rent or additional rent or of any installment thereof and shall fail to cure such default within ten days after written notice from the Lessor;

(e) If the Lessee shall be in default in the performance of any covenant or provision hereof, other than the covenant to pay rent, and such default shall continue for thirty (30) days after written notice from the Lessor; provided, however, that if said default consists of the failure to perform any act, the performance of which requires any substantial period of time, then if within said period of thirty (30) days such performance is commenced and thereafter diligently prosecuted to conclusion without delay and interruption, the Lessee shall be deemed to have cured said default;

(f) If at any time the Lessor shall determine, upon the affirmative vote of (i) eighty percent (80%) of the members of the then Board and (ii) the record holders of at least two-thirds (2/3) of its then issued and outstanding shares, at a shareholders' meeting duly called for that purpose, that because of objectionable conduct on the part of the Lessee, or of a person dwelling or visiting in the apartment, repeated after written notice from the Lessor, the tenancy of the Lessee is undesirable (it being understood, without limiting the generality of the foregoing, that repeatedly to violate or disregard the Rules and Regulations hereto attached or hereafter established in accordance with the provisions of this lease shall be deemed to be objectionable conduct);

(g) If at any time the Lessor shall determine, upon the affirmative vote of at least two-thirds (2/3) of its then Board at a meeting of such directors duly called for that purpose, and the affirmative vote of the record holders of at least two-thirds (2/3) of its then issued and outstanding shares, at a shareholders' meeting duly called for that purpose, to terminate all proprietary leases;

(h) If at any time the Building or a substantial portion thereof shall be taken by condemnation proceedings.

32. (a) In the event the Lessor resumes possession of the apartment, either by summary proceedings, action of ejectment or otherwise, because of default by the Lessee in the payment of any rent or additional rent due hereunder, or on the expiration of the term pursuant to a notice given as provided in Section 31 upon the happening of any event specified in subsections (a) to (f), inclusive, of Section 31, the Lessee shall continue to remain liable for payment of a sum equal to the rent which would have become due hereunder and shall pay the same in installments at the time such rent would be due hereunder. No suit brought to recover any installment of such rent or additional rent shall prejudice the right of the Lessor to recover any subsequent installment. After resuming possession, the Lessor may, at its option, from time to time (i) relet the apartment for its own account, or (ii) relet the apartment as the agent of the Lessee, in the name of the Lessee or in its own name, for a term or terms which may be less than or greater than the period which would otherwise have constituted the balance of the term of this lease, and may grant concessions or free rent, in its discretion. Any reletting of the apartment shall be deemed for the account of the Lessee, unless within ten (10) days after such reletting the Lessor shall notify the Lessee that the premises have been relet for the Lessor's own account. The fact that the Lessor may have relet the apartment as agent for the Lessee shall not prevent the Lessor from thereafter notifying the Lessee that it proposes to relet the apartment for its own account. If the Lessor relets the apartment as agent for the Lessee, it shall, after reimbursing itself for its expenses in connection therewith, including leasing commissions and a reasonable amount for attorneys' fees and expenses, and decorations, alterations and repairs in and to the apartment, apply the remaining avails of such reletting against the Lessee's continuing obligations hereunder. There shall be a final accounting between the Lessor and the Lessee upon the earliest of the four following dates: (A) the date of expiration of the term of this lease as stated on page 1 hereof; (B) the date as of which a new proprietary lease covering the apartment shall have become effective; (C) the date the Lessor gives written notice to the Lessee that it has relet the apartment for its own account; and (D) the date upon which all proprietary leases of the Lessor terminate. From and after the date upon which the Lessor becomes obligated to account to the Lessee, as above provided, the Lessor shall have no further duty to

account to the Lessee for any avails of reletting and the Lessee shall have no further liability for sums thereafter accruing hereunder, but such termination of the Lessee's liability shall not affect any liability theretofore accrued.

(b) If the Lessee shall at any time sublet the apartment and shall default in the payment of any rent or additional rent, the Lessor may, at its option, so long as such default shall continue, demand and receive from the subtenant the rent due or becoming due from such subtenant to the Lessee, and apply the amount to pay sums due and to become due from the Lessee to the Lessor. Any payment by a subtenant to the Lessor shall constitute a discharge of the obligation of such subtenant to the Lessee, to the extent of the amount so paid. The acceptance of rent from any subtenant shall not be deemed a consent to or approval of any subletting or assignment by the Lessee, or a release or discharge of any of the obligations of the Lessee hereunder.

(c) Upon the termination of this lease under the provisions of subsections (a) to (f), inclusive, of Section 31, the Lessee shall surrender to the Lessor the certificate for the shares of the Lessor owned by the Lessee to which this lease is appurtenant. Whether or not said certificate is surrendered, the Lessor may issue a new proprietary lease for the apartment and issue a new certificate for the shares of the Lessor owned by the Lessee and allocated to the apartment when a purchaser therefor is obtained, provided that the issuance of such shares and such lease to such purchaser is authorized by a resolution of the Board, or by a writing signed by a majority of the Board or by Lessees owning, of record, at least a majority of the shares of the Lessor accompanying proprietary leases then in force. Upon such issuance the certificate owned or held by the Lessee shall be automatically cancelled and rendered null and void. The Lessor shall apply the proceeds received for the issuance of such shares towards the payment of the Lessee's indebtedness hereunder, including interest, attorneys' fees and other expenses incurred by the Lessor, and, if the proceeds are sufficient to pay the same, the Lessor shall pay over any surplus to the Lessee, but, if insufficient, the Lessee shall remain liable for the balance of the indebtedness. Upon the issuance of any such new proprietary lease and certificate, the Lessee's liability hereunder shall cease and the Lessee shall only be liable for rent and expenses accrued to that time. The Lessor shall not, however, be obligated to sell such shares and appurtenant lease or otherwise make any attempt to mitigate damages.

33. The Lessee hereby expressly waives any and all right of redemption in case the Lessee shall be dispossessed by judgment or warrant of any court or judge. The words "enter", "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning.

34. Upon termination of this lease under the provisions of subsections (a) to (f), inclusive, of Section 31, the Lessee shall remain liable as provided in Section 32 of this lease. Upon the termination of this lease under any other of its provisions, the Lessee shall be and remain liable to pay all rent, additional rent and other charges due or accrued and to perform all covenants and agreements of the Lessee up to the date of such termination. On or before any such termination the Lessee shall vacate the apartment and surrender possession thereof to the Lessor or its assigns, and upon demand of the Lessor or its assigns, shall execute, acknowledge and deliver to the Lessor or its assigns any instrument which may reasonably be required to evidence the surrendering of all estate and interest of the Lessee in the apartment, or in the Building of which it is a part.

35. (a) This lease may be cancelled by the Lessee on September 30, 1985, or on any September 30th thereafter, upon complying with all the provisions hereinafter set forth. Irrevocable written notice of intention to cancel must be given by the Lessee to the Lessor on or before April 1 in the calendar year in which such cancellation is to occur. At the time of the giving of such notice of intention to cancel there must be deposited with the Lessor by the Lessee:

(i) the Lessee's counterpart of this lease with a written assignment in the form required by the Lessor, in blank, effective as of August 31 of the year of cancellation, free from all subleases, tenancies, liens, encumbrances and other charges whatsoever (except rights of occupancy of third parties existing on the date the Lessor acquired title to the building);

(ii) the Lessee's certificate for his shares of the Lessor, endorsed in blank for transfer and with any necessary transfer tax stamps affixed and with payment of any transfer taxes due thereon;

(iii) a written statement setting forth in detail those additions, improvements, fixtures or equipment which the Lessee has, under the terms of this lease, the right to and intends to remove.

(b) All additions, improvements, appliances and fixtures which are removable under the terms of this lease and which are enumerated in the statement made as provided in subdivision (iii) above shall be removed by the Lessee prior to August 31st of the year of cancellation, and on or before said August 31st the Lessee shall deliver possession of the apartment to the Lessor in good condition with all required equipment, fixtures and appliances installed and in proper operating condition and free from all subleases, tenancies, liens, encumbrances and other charges (except as aforesaid) and pay to the Lessor all rent and other charges which shall be payable under this lease up to and including the following September 30th.

(c) The Lessor and its agents may show the apartment to prospective lessees, contractors and architects at reasonable times after notice of the Lessee's intention to cancel. After August 31st or the earlier vacating of the apartment, the Lessor and its agents, employees and lessees may enter the apartment, occupy the same and make such alterations and additions therein as the Lessor may deem necessary or desirable without diminution or abatement of the rent due hereunder.

(d) If the Lessee is not otherwise in default hereunder and if the Lessee shall have timely complied with all of the provisions of subsections (a) and (b) hereof, then this lease shall be cancelled and all rights, duties and obligations of the parties hereunder shall cease as of the September 30th fixed in said notice, and the shares of the Lessor shall become the absolute property of the Lessor, provided, however, that the Lessee shall not be released from any indebtedness owing to the Lessor on said last mentioned date.

(e) If the Lessee shall give the notice but fail to comply with any of the other provisions of this section, the Lessor shall have the option at any time prior to September 30th (i) of returning to the Lessee this lease, the certificate for shares and other documents deposited, and thereupon the Lessee shall be deemed to have withdrawn the notice of intention to cancel this lease, or (ii) of treating this lease as cancelled as of the September 30th named in the notice of intention to cancel as the date for the cancellation of such lease, and bringing such

proceedings and actions as it may deem best to enforce the covenants of the Lessee hereinabove contained and to collect from the Lessee the payments which the Lessee is required to make hereunder, together with reasonable attorneys' fees and expenses.

36. (a) If on April 1st in any year the total number of shares owned by lessees holding proprietary leases for apartments in the Building, who have given notice pursuant to Section 35 of intention to cancel such proprietary leases on September 30th of said year, shall aggregate ten percent (10%) or more of the Lessor's outstanding shares, exclusive of treasury shares, then the Lessor shall, prior to April 30th in such year, give a written notice to the holders of all issued and outstanding shares of the Lessor, stating the total number of shares then outstanding and in its treasury and the total number of shares owned by lessees holding proprietary leases who have given notice of intention to cancel. In such case the proprietary lessees to whom such notice shall have been given shall have the right to cancel their leases in compliance with the provisions of Section 35, provided that written notice of the intention to cancel such leases shall be given on or before July 1st (instead of April 1st) of that year.

(b) If lessees owning at least two-thirds (2/3) of the then issued and outstanding shares of the Lessor shall exercise the option to cancel their leases in one year, then this and all other proprietary leases shall thereupon terminate on the September 30th of the year in which such options shall have been exercised, as though every lessee had exercised such option. In such event, none of the lessees shall be required to surrender his shares to the Lessor and all certificates for shares delivered to the Lessor by those who had, during that year, served notice of intention to cancel their leases under the provisions hereof, shall be returned to such lessees.

37. No later than thirty (30) days after the termination of all proprietary leases for apartments in the Building, whether by expiration of their terms or otherwise, a special meeting of shareholders of the Lessor shall take place to determine, subject to the provisions of any ground or underlying lease, whether (a) to continue to operate the Building as a residential apartment building, (b) to alter, demolish or rebuild the Building or any part thereof, or (c) to sell the real estate and liquidate the assets of the Lessor, and the Board shall carry out the determination made by the holders of a majority of the shares of the Lessor then issued and outstanding at said meeting of shareholders of the Lessor, and all of the holders of the then issued and outstanding shares of the Lessor shall have such rights as enure to shareholders of corporations having title to real estate.

38. The term "Sponsor" means Monument Associates, a Virginia general partnership. From and after the date of recordation of document assigning to another person or entity all of the rights reserved to the Sponsor under the Declaration referenced in Section 46, the term "Sponsor" shall mean that assignee.

39. (a) The Lessor agrees that it shall give to any holder of a security interest in the shares of the Lessor specified in the recitals of this lease or holder of an indebtedness secured by a mortgage or deed of trust on this lease ("Secured Party"), who so requests in writing, a copy of any notice of default which the Lessor gives to the Lessee pursuant to the terms of this lease, and if the Lessee shall fail to cure the default specified in such notice within the time and in the manner provided for in this lease, then the Secured Party shall have an additional period of time, equal to the time originally given to the Lessee, to cure said default for the account of the Lessee or to cause

same to be cured, and the Lessor will not act upon said default unless and until the time in which the Secured Party may cure said default or cause same to be cured as aforesaid, shall have elapsed, and the default shall not have been cured.

(b) If this lease is terminated by the Lessor as provided in Section 31 or 35 or by the Lessee as provided in Section 35 or 36 of this lease, or by agreement with the Lessee, (1) the Lessor promptly shall give notice of such termination to the Secured Party and (2) upon request of the Secured Party made within thirty (30) days of the giving of such notice the Lessor (i) shall to the extent permitted by law commence and prosecute a summary dispossession proceeding or other appropriate proceeding to obtain possession of the apartment, and (ii) shall, within sixty (60) days of its receipt of the aforesaid request by the Secured Party, reissue the aforementioned shares to, and shall enter into a new proprietary lease for the apartment with, any individual designated by the Secured Party, or the individual nominee of the individual so designated by the Secured Party, all without the consent of the Board to which reference is made in Sections 16(a)(vi) and 32(c), provided, however, that the Lessor shall have received payment, on behalf of the Lessee, of all rent, additional rent and other sums owed by the Lessee to the Lessor under this lease for the period ending on the date of reissuance of the aforementioned shares of the Lessor including, without limitation, sums owed under Sections 32(a) and (c) of this lease; the individual designated by the Secured Party (if and as long as such individual, by himself or a member of his family, does not actually occupy the apartment) shall have all of the rights provided for in Sections 15, 16 and 21 of this lease as if he were "Sponsor" as defined in Section 38 of this lease; and, accordingly, no surplus shall be payable by the Lessor to the Lessee notwithstanding the provisions of Section 32(c) to the contrary.

(c) If the purchase by the Lessee of the shares allocated to the apartment was financed by a loan made by any lender, whether an individual, corporation, partnership, or other entity, privately or publicly controlled, including, without limitation, the Sponsor or any partner therein, or if the shares allocated to the apartment are security for a loan at any time made or held by or for any other indebtedness or obligation to a lender, and a default or an event of default shall have occurred under the terms of the security agreement, leasehold mortgage, leasehold deed of trust, or any of them entered into between the Lessee and the Secured Party, and if all of the following conditions are complied with: (1) notice of said default or event of default shall have been given to the Lessor, (2) an individual designated by the Secured Party, or the individual nominee of the individual so designated by the Secured Party, shall be entitled to become the owner of the shares and the Lessee under this lease pursuant to the terms of said security agreement, leasehold mortgage, or either of them, (3) not less than five days' written notice of an intended transfer of the shares of this lease shall have been given to the Lessor and the Lessee, (4) there has been paid, on behalf of the Lessee, all rent, additional rent and other sums owed by the Lessee to the Lessor under this lease for the period ending on the date of transfer of the aforementioned shares as hereinafter provided, and (5) the Lessor shall be furnished with such affidavits, certificates and opinions of counsel, in form and in substance reasonably satisfactory to the Lessor, indicating that the foregoing conditions (1)-(4) have been met, then (a) a transfer of the shares and the proprietary lease shall be made to such individual, upon request, and without the consent of the Board to which reference is made in Section 16, provided such transfer is approved by the Lessor's then managing agent (such approval not to be unreasonably withheld or delayed) and (b) the individual to whom such transfer is made (if and as long as such

individual, by himself or a member of his family, does not actually occupy the apartment) shall have all of the rights provided for in Sections 15, 16 and 21 of this lease as if he were a "Sponsor" as defined in Section 38 of this lease.

(d) Without the prior written consent of any Secured Party who has requested a copy of any notice of default as hereinbefore provided in subsection (a) of this Section 39, (a) the Lessor and the Lessee will not enter into any agreement modifying or cancelling this lease, (b) no change in the form, terms or conditions of this lease, as permitted by Section 6, shall eliminate or modify any rights, privileges or obligations of a Secured Party as set forth in this Section 39, (c) the Lessor will not terminate or accept a surrender of this lease, except as provided in Section 31 or 35 of this lease and in subsections (a) and (b) of this Section 39, (d) the Lessee will not assign this lease or sublet the apartment, (e) any modification, cancellation, surrender, termination or assignment of this lease or any sublease of the apartment not made in accordance with the provisions hereof shall be void and of no effect, (f) the Lessor will not consent to any further encumbrance on this lease or secured interest created in the shares, (g) the Lessee will not make any further encumbrance on or create any further security interest in the shares or this lease, and (h) any such further encumbrance or security interest shall be void and of no effect.

(e) Any designee of a Secured Party to whom a transfer of a lease shall have been made pursuant to the terms of subsections (b) and (c) hereof may cancel this lease under the terms of Section 35 hereof; except that such designee (a) may cancel this lease at any time after the designee acquires this lease and the shares appurtenant hereto due to foreclosure of the security agreement-leasehold mortgage; (b) need give only thirty (30) days' notice of its intention to cancel; and (c) may give such notice at any time during the calendar year.

(f) Without limiting the generality of the foregoing, the Lessor agrees to execute and deliver to any lender which holds a security interest in shares of the Lessor owned by the Sponsor, as defined in Section 38 of this lease, a recognition agreement in form and substance acceptable to such lender.

(g) A Secured Party shall be entitled to require of the Lessee an irrevocable proxy to vote Lessee's shares in Lessor (in accordance with Section 37 of this Lease) upon the happening of the events described in Section 36(b) of this Lease.

(h) The provisions of Section 17 are subject to the provisions of this Section.

40. Notwithstanding anything to the contrary contained in this lease, if any action shall be instituted to foreclose any mortgage or deed of trust on the leasehold of the land or the Building, the Lessee shall, on demand, pay to the receiver of the rents appointed in such action, rent, if any, owing hereunder on the date of such appointment and shall pay thereafter to such receiver in advance, on the first day of each month during the pendency of such action, as rent hereunder, the rent for the apartment as last determined and established by the Board prior to the commencement of said action, and such rent shall be paid during the period of such receivership, whether or not the Board shall have determined and established the rent payable hereunder for any part of the period during which such receivership may continue. The provisions of this Section are intended for the benefit of present and future holders of indebtedness secured by mortgages and deeds of trust on the leasehold of the land or the Building and may not be modified or annulled without the prior written consent of any such holder.

41. The references herein to the Lessor shall be deemed to include its successors and assigns, and the references herein to the Lessee or to a shareholder of the Lessor shall be deemed to

include the executors, administrators, legal representatives, legatees, distributees and assigns of the Lessee or of such shareholder; and the covenants herein contained shall apply to, bind and inure to the benefit of the Lessor and its successors and assigns, and the Lessee and executors and administrators, legal representatives, legatees, distributees and assigns of the Lessee, except as hereinabove stated.

42. To the extent permitted by law, the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this lease, the Lessee's use or occupancy of the apartment, or any claim of damage resulting from any act or omission of the parties in any way connected with this lease or the apartment.

43. In the event of a breach or threatened breach by the Lessee of any provision hereof, the Lessor shall have the right of injunction and the right to invoke any remedy at law or in equity, as if re-entry, summary proceedings and other remedies were not herein provided for, and the election of one or more remedies shall not preclude the Lessor from any other remedy.

44. If more than one person is named as Lessee hereunder, the Lessor may require the signatures of all such persons in connection with any notice to be given or action to be taken by the Lessee hereunder, including, without limiting the generality of the foregoing, the surrender or assignment of this lease, or any request for consent to assignment or subletting. Each person named as Lessee shall be jointly and severally liable for all of the Lessee's obligations hereunder. Any notice by the Lessor to any person named as Lessee shall be sufficient, and shall have the same force and effect, as though given to all persons named as Lessee.

45. The Lessee may not institute an action or proceeding against the Lessor or defend, or make a counterclaim in any action by the Lessor related to the Lessee's failure to pay rent, if such action, defense or counterclaim is based upon the Lessor's failure to comply with its obligations under this lease or any law, ordinance or governmental regulation unless such failure shall have continued for thirty (30) days after the giving of written notice thereof by the Lessee to the Lessor.

46. The Lessee and this lease are subject to the Assignment of Lease from the Sponsor, as defined in Section 38, to the Lessor and to the Lease thereby assigned, to the Declaration of Covenants, Easements and Liens for River Place made by the Sponsor and the Lessor, to the Articles of Incorporation and Bylaws of (i) River Place Owners' Association, a Virginia corporation, and (ii) the Lessor, and to the Rules and Regulations promulgated under the Bylaws of either, all as any of the same have been or shall hereafter be duly amended.

47. The shares of the Lessor held by the Lessee and allocated to the apartment have been acquired and are owned subject to the following conditions agreed upon with the Lessor and with each of the other proprietary lessees for their mutual benefit:

(a) the shares represented by each certificate are transferable only as an entirety; and

(b) the shares shall not be sold except to the Lessor or to an assignee of this lease after compliance with all of the provisions of Section 16 of this lease relating to assignments.

48. If any clause or provision herein contained shall be adjudged invalid, the same shall not affect the validity of any other clause or provision of this lease, or constitute any cause of action in favor of either party as against the other.

49. The provisions of this lease cannot be changed orally.

IN WITNESS WHEREOF, the parties have executed this lease as of the date and year first above written.

RIVER PLACE NORTH HOUSING CORPORATION

Lessor

By _____ [SEAL]

_____, Lessee [SEAL]

WITNESS: _____ [SEAL]
_____, Lessee

STATE OF VIRGINIA)
) To wit:
COUNTY OF ARLINGTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 198____, by _____, who executed the foregoing instrument pursuant to a resolution of the Board of Directors of River Place North Housing Corporation, a Virginia stock corporation, dated _____, 1982.

Given under my hand and seal this _____ day of _____, 198____.

_____, Notary Public [SEAL]

My commission expires _____.

RULES AND REGULATIONS

(1) The public halls and stairways of the Building shall not be obstructed or used for any purpose other than ingress to and egress from the apartments in the Building, and the fire towers shall not be obstructed in any way.

(2) No patient, client, customer or invitee of any doctor or other person who has offices or other commercial space in the Building shall be permitted to wait in the lobby.

(3) Children shall not play in the public halls, courts, stairways, fire towers or elevators and shall not be permitted on the roof unless accompanied by a responsible adult.

(4) No Lessee shall make or permit any disturbing noises in the Building or do or permit anything to be done therein which will interfere with the rights, comfort or convenience of other Lessees. No Lessee shall play upon or suffer to be played upon any musical instrument or permit to be operated a phonograph or a radio or television loud speaker in such Lessee's apartment between the hours of 10:00 p.m. and the following 8:00 a.m. if the same shall disturb or annoy other occupants of the Building. No construction or repair work or other installation involving noise shall be conducted in any apartment except on weekdays (not including legal holidays) and only between the hours of 9:00 a.m. and 5:00 p.m.

(5) No article shall be placed in the halls or on the staircase landings or fire towers, nor shall anything be hung or shaken from the doors, windows, terraces or balconies or placed upon the window sills of the Building.

(6) No awnings, window air-conditioning units or ventilators shall be used in or about the Building except such as shall have been expressly approved by the Lessor or the managing agent, nor shall anything be projected out of any window of the Building without similar approval.

(7) No sign, notice, advertisement or illumination shall be inscribed or exposed on or at any window or other part of the Building, except such as shall have been approved in writing by the Lessor or the managing agent.

(8) No bicycles, scooters or similar vehicles shall be allowed in a passenger elevator and baby carriages and the above-mentioned vehicles shall not be allowed to stand in the public halls, passageways, areas or courts of the Building.

(9) Messengers and tradespeople shall use such means of ingress and egress as shall be designated by the Lessor.

(10) Kitchen supplies, market goods and packages of every kind are to be delivered only through the service elevator to the apartments when such elevator is in operation.

(11) Trunks and heavy baggage shall be taken in or out of the Building through the service entrance.

(12) Garbage and refuse from the apartments shall be disposed of only at such times and in such manner as the superintendent or the managing agent of the Building may direct.

(13) Water closets and other water apparatus in the Building shall not be used for any purposes other than those for which they were constructed, nor shall any sweeping, rubbish, rags or

any other article be thrown into the water closets. The cost of repairing any damage resulting from misuse of any water closets or other apparatus shall be paid for by the Lessee in whose apartment it shall have been caused.

(14) No Lessee shall send any employee of the Lessor out of the Building on any private business of a Lessee.

(15) No pets or any other animals of any kind shall be permitted anywhere in the Building.

(16) No radio or television antenna shall be attached to or hung from the exterior of the Building without the prior written approval of the Lessor or the managing agent.

(17) No vehicle belonging to a Lessee or to a member of the family or guest, subtenant or employee of a Lessee shall be parked in such manner as to impede or prevent ready access to any entrance of the Building by another vehicle.

(18) The Lessee shall use the available laundry facilities only upon such days and during such hours as may be designated by the Lessor or the managing agent.

(19) The Lessor shall have the right from time to time to curtail or relocate any space devoted to storage or laundry purposes.

(20) Unless expressly authorized by the Board of Directors in each case, the floors of each apartment must be covered with rugs or carpeting or equally effective noise-reducing material, to the extent of at least 80% of the floor area of each room excepting only kitchens, pantries, bathrooms, maid's rooms, closets, and foyer.

(21) No group tour or exhibition of any apartment or its contents shall be conducted, nor shall any auction sale be held in any apartment without the consent of the Lessor or its managing agent.

(22) The Lessee shall keep the windows of the apartment clean. In case of refusal or neglect of the Lessee during ten (10) days after notice in writing from the Lessor or the managing agent to clean the windows, such cleaning may be done by the Lessor, which shall have the right, by its officers or authorized agents, to enter the apartment for the purpose and to charge the cost of such cleaning to the Lessee.

(23) Complaints regarding the service of the Building shall be made in writing to the managing agent of the Lessor.

(24) Any consent or approval given under these Rules and Regulations by the Lessor shall be revocable at any time.

(25) If there be a garage in the Building, the Lessee will abide by all arrangements made by the Lessor with the garage operator with regard to the garage and the driveways thereto.

(26) The following rules shall be observed with respect to garbage disposal equipment:

(i) All wet debris is to be securely wrapped or bagged in small package size to fit easily into the hopper panel.

(ii) Debris should be completely drip-free before it leaves the apartment and carried to the garbage disposal closet

in a careful manner and in a drip-proof container; then placed into the chute hopper so it will drop into the flue for disposal.

(iii) No bottles or cans shall be dropped down the chute before 10:00 a.m. or after 5:00 p.m.

(iv) Cartons, boxes, crates, sticks of wood or other solid matter shall not be stuffed into hopper opening. Bulky items should be disposed of in the dumpsters located near the service entrance of the Building.

(v) Under no circumstances should carpet sweepings containing naphthalene, camphor balls or flakes, floor scrapings, plastic wrappings or covers, oil soaked rags, empty paint or aerosol cans or any other inflammable, explosive, highly combustible substances or lighted cigarettes or cigar stubs be thrown into the chute.

(vi) Vacuum cleaner bags must never be emptied into the chute. Such dust, dirt, etc., should be wrapped in a securely tied bag or package and then placed through the hopper door panel into the chute.

(vii) The superintendent shall be notified of any drippings, or moist refuse, appearing on garbage disposal closet floor and corridors.

(27) No Lessee shall install any plantings on his patio, terrace or balcony without the prior written approval of the Lessor. Plantings shall be contained in boxes of wood lined with metal or other material impervious to dampness and standing on supports at least two inches from the patio, terrace or balcony surface, and if adjoining a wall, at least three inches from such wall. Suitable weep holes shall be provided in the boxes to draw off water. In special locations, such as a corner abutting a parapet wall, plantings may be contained in masonry or hollow tile walls which shall be at least three inches from the parapet and flashing, with the floor of drainage tiles and suitable weep holes at the sides to draw off water. It shall be the responsibility of the Lessee to maintain the containers in good condition, and the drainage tiles and weep holes in operating condition.

(28) The agents of the Lessor, and any contractor or workman authorized by the Lessor, may enter any apartment at any reasonable hour of the day for the purpose of inspecting such apartment to ascertain whether measures are necessary or desirable to control or exterminate any vermin, insects or other pests and for the purpose of taking such measures as may be necessary to control or exterminate any such vermin, insects or other pests. If the Lessor takes measures to control or exterminate carpet beetles, the cost thereof shall be payable by the Lessee, as additional rent.

(29) These Rules and Regulations may be added to, amended or repealed at any time by resolution of the Board of Directors of the Lessor.