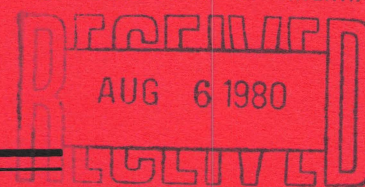


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CLERK
SUPREME COURT OF VIRGINIA



RICHMOND, VIRGINIA

IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 800180

UNIT OWNERS ASSOCIATION OF
BUILDAMERICA-1, A CONDOMINIUM,
Appellant

v.

HARRY F. GILLMAN, et ux.,
Appellee

JOINT APPENDIX

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

Counsel for Appellant

Frederick H. Goldbecker, Esq.
Attorney at Law
P.O. Box 517
Fairfax, Virginia 22030

Counsel for Appellee

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FILED
IN COUNTY COURT
CLERK OF THE CIRCUIT COURT

NOV 12 1978

WRIT TAKEN BY VA.
DEPOSIT ... 5 ...

BILL TO ENFORCE CONDOMINIUM LIEN
AND PETITION FOR INJUNCTIVE RELIEF

COMES NOW the UNIT OWNERS ASSOCIATION OF BUILDAMERICA-1, an unincorporated association (hereinafter referred to as "Association"), and files this Bill to Enforce Condominium Lien And Petition For Injunctive Relief against the Defendants, respectfully stating as follows:

1. By Master Deed dated August 16, 1974, recorded in Deed Book 4088 beginning at Page 266 among the land records of Fairfax County, Virginia (annexed hereto and incorporated herein as Exhibit "A"), BuildAmerica-1 was established as a condominium under the Condominium Act, Va. Code § 55-79.39, et seq. (hereinafter referred to as the "Condominium").

2. Under Article 6 of the Master Deed, "all present and future owners, tenants, visitors and occupants of (the BuildAmerica-1 condominium units) shall be subject to, and shall comply with the provisions of (the Master Deed), the By-laws and the Rules and Regulations" of the Condominium.

3. Article 5 of the Master Deed provides that the Condominium shall be administered by the Unit Owners Association (hereinafter referred to as the "Association"), the membership of which shall be comprised of the owners of Condominium units (hereinafter referred to as "Units").

4. The Bylaws of the Condominium, recorded among the

land records of Fairfax County in Deed Book 4088 beginning at Page 278 (a copy of which is annexed hereto and incorporated herein as Exhibit "B"), promulgates in Article III, Section 2 the powers and duties of the Board of Managers of the Association, which include (a) the operation, care, upkeep and maintenance of the Common Elements; (n) controlling the use of all the general Common Elements; and (p) taking all other necessary and proper actions for the sound management of the Condominium.

5. Use of the Condominium is limited by the provisions of Article V, Section 11 of the Bylaws, which include the limitation in Paragraph (c) that no nuisance shall be allowed nor shall any use or practice be allowed which is a source of reasonable annoyance or which unreasonably interferes with the peaceful possession of the Condominium owners.

6. The Rules and Regulations of the Condominium, recorded among the land records of Fairfax County in Deed Book 4088 beginning at Page 313 (a copy of which is annexed hereto and incorporated by this reference as Exhibit "C") provides in Paragraph 15 that no noxious or offensive activity shall be permitted in the Common Elements, nor shall anything be done which may become an annoyance or nuisance to other Unit Owners.

7. By Deed dated July 12, 1976 and recorded in Deed Book 4454 at Page 213 among the land records of Fairfax County (a copy of which is annexed hereto and incorporated herein as Exhibit "D"), the Defendants HARRY F. GILLMAN and SAUNDRA K. GILLMAN, his wife (hereinafter referred to as the "Gillmans") took title to Unit 17 of the Condominium, subject to:

the reservations, restrictions on use, and all covenants and obligations set forth in the Master Deed, ... and as set forth in the Bylaws..., all of which restrictions, payments of charges and all other covenants, agreements, obligations, conditions and provisions...shall constitute covenants running with the land,...and all of which are accepted by the Grantees as binding....

8. Unit 17 was conveyed to the Defendants R. DENNIS McARVER and OSCAR W. SELLARS, TRUSTEES (hereinafter referred to as the "Trustees") by Deed of Trust recorded in Deed Book 4454 at Page 215 among the land records of Fairfax County, to secure payment of a promissory note.

9. By Deed dated July 13, 1977 and recorded in Deed Book 4679 at Page 292 among the land records of Fairfax County (a copy of which is annexed hereto and incorporated herein as Exhibit "E") the Gillmans took title to Unit 21 of the Condominium subject to the same reservations, restrictions, covenants and obligations described in Paragraph 7.

10. Unit 21 was conveyed to the Trustees by Deed of Trust recorded in Deed Book 4679 at Page 294 among the land records of Fairfax County, to secure payment of a promissory note.

11. The Gillmans, trading as Gillman's Five Star Trash Service, have operated and continue to operate a trash collection service from Units 17 and 21 from the date of purchase of each Unit, and in the course of such business they have been using the Common Elements as a location on which to clean and park overnight at least five garbage trucks daily.

12. The odor emanating from these trucks and from their effluent is and has been offensive and intolerable to the other Unit Owners for months, without ceasing, interfering with their right of quiet possession and enjoyment of their respective Units, and threatening their health, safety and welfare.

13. Despite repeated requests, the Gillmans have refused to eliminate the noxious smells and have refused to park and clean the garbage trucks elsewhere.

14. The presence of these trucks, exuding such smells, is an annoyance and nuisance in direct violation of the Bylaws and Rules and Regulations of the Condominium.

COUNT ONE

15. Paragraphs 1 - 14 are incorporated herein by this reference.

16. Article III, Section 2(m) of the Bylaws vests in the Board of Managers of the Association the right to levy fines against a Unit Owner for violation of the Rules and Regulations in a maximum amount of \$25.00 per violation per day.

17. The Gillmans were notified by letter dated June 6, 1978 that the stench from the trucks was not to be tolerated, and that the Board of Managers would take action against the Gillmans in the event that problem was not rectified immediately.

18. After receipt of said notice, the Gillmans refused to remove or clean the trucks, and the nuisance continued without abatement.

19. By letter dated August 10, 1978, the Board of Managers, by counsel, notified the Gillmans of an assessment against their Units of the total amount of \$8,000, comprised of fines in the amount of \$25.00 per day for each of five garbage trucks parked overnight on the Common Elements of the Condominium after notice described in Paragraph 16 above, through and including August 10, 1978, each such truck continuing to cause an odoriferous nuisance over such period without abatement. This letter also gave the Gillmans notice that additional fines would be imposed for failure to pay this assessed fine and for prospective violations.

20. To enforce this assessment, a Memorandum of Lien was filed by the duly authorized agent of the Association on October 19, 1978 against Unit 17, which Memorandum was recorded in Deed Book 5016 at Page 770 of the land records of Fairfax County (a copy of which Memorandum is annexed hereto and incorporated herein as Exhibit "F"), and this action to enforce the lien has been filed within six (6) months from the time of filing of said Memorandum.

21. Further to enforce this assessment, a Memorandum of Lien was filed by the duly authorized agent of the Association on October 19, 1978 against Unit 21, which Memorandum was recorded in Deed Book 5016 at Page 774 of the land records of Fairfax County (a copy of which Memorandum is annexed hereto and incorporated herein as Exhibit "G"), and this action to enforce the lien has been filed within six (6) months from the time of filing of said Memorandum.

22. WHEREFORE the Association moves this Court to enter judgment against the Defendants in the principal sum of \$8,000.00, plus interest from date of filing and costs and attorneys fees as provided in Va. Code § 55-79.84(e).

COUNT TWO

23. Paragraphs 1 - 19 are hereby incorporated by this reference.

24. Article III, Section 2(m) of the Bylaws further provides that the Board of Managers of the Association may levy an additional fine or fines against any Unit Owner who fails to pay a fine previously assessed within ten (10) days of notification thereof.

25. The Gillmans failed to pay the original fine totalling \$8,000.00 described in Count One within ten (10) days of notice, and still have failed to pay such fine, or any portion thereof, despite notice that an additional fine could be imposed.

26. The Board of Managers therefore has imposed an additional fine of \$25.00 for each fine of \$25.00 previously assessed and levied, for a total additional fine of \$8,000.00.

27. To enforce this assessment of an additional fine, a Memorandum of Lien was filed by the duly authorized agent of the Association on October 19, 1978 against Unit 17, which Memorandum was recorded in Deed Book 5016 at Page 771 of the land records of Fairfax County (a copy of which Memorandum is annexed hereto and incorporated herein as Exhibit "H"), and this action to enforce the lien has been filed within six (6) months from the time of filing of said Memorandum.

28. Further to enforce this assessment of an additional fine, a Memorandum of Lien was filed by the duly authorized agent of the Association on October 19, 1978 against Unit 21, which Memorandum was recorded in Deed Book 5016 at Page 775 of the land records of Fairfax County (a copy of which Memorandum is annexed hereto and incorporated herein as Exhibit "I"), and this action to enforce the lien has been filed within six (6) months from the time of filing of said Memorandum.

29. WHEREFORE the Association moves this Court to enter judgment against the Defendants in the additional principal sum of \$8,000.00, plus interest from date of filing and costs and attorneys fees as provided in Va. Code § 55-79.84(e).

COUNT THREE

30. Paragraphs 1 - 19 are hereby incorporated by this reference.

31. Since August 10, 1978, the intolerable nuisance has continued without abatement or relief through and including September 15, 1978, with at least five odoriferous garbage trucks parked each night on the Common Elements of the Condominium.

32. In accordance with the notice of August 10, 1978, the Board of Managers has assessed and levied a fine of \$25.00 per day for each of five (5) trucks emitting a vile odor which remain overnight on the Common Elements, for a total amount of \$4,500.00 through September 15, 1978.

33. To enforce this assessment, a Memorandum of Lien was filed by the duly authorized agent of the Association on October 19, 1978 against Unit 17, which Memorandum was recorded in Deed Book 5016 at Page 772 of the land records of Fairfax County (a copy of which Memorandum is annexed hereto and incorporated herein as Exhibit "J"), and this action to enforce the lien has been filed within six (6) months from the time of filing of said Memorandum.

34. Further to enforce this assessment, a Memorandum of Lien was filed by the duly authorized agent of the Association on October 19, 1978 against Unit 21, which Memorandum was recorded in Deed Book 5016 at Page 776 of the land records of Fairfax County (a copy of which Memorandum is annexed hereto and incorporated herein as Exhibit "K") and this action to enforce the lien has been filed within six (6) months from the time of filing of said Memorandum.

35. WHEREFORE the Association moves this Court to enter judgment against the Defendants in the principal sum of \$4,500.00, plus interest from date of filing and costs and attorneys fees as provided in Va. Code § 55-79.84(e). 007

COUNT FOUR

36. Paragraphs 1 - 14, 17, 18 and 31 are hereby incorporated by this reference.

37. Since September 15, 1978 the intolerable nuisance caused by the filthy trucks has continued without relief through the date of the filing of this suit, resulting in the irreparable loss by the members of the Association of the use and enjoyment of their property.

38. Further the Gillmans' garbage trucks have and continue to discharge or leak automotive engine oil and/or hydraulic system oil on the asphalt surfacing in the parking area of the Common Elements of the Condominium, causing severe and permanent damage thereto.

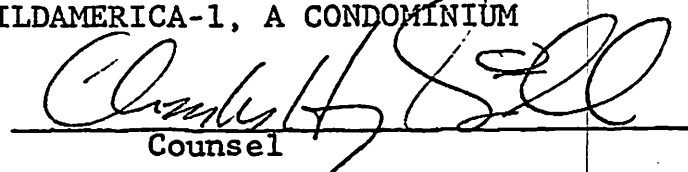
39. The Gillmans' garbage truck fleet, each truck weighing in excess of 10,000 lbs., has caused and continues to cause by its cumulative effect an undue strain on the paved areas of the Common Elements, far in excess of the Gillmans' proportionate share for wear and tear on said Common Elements and in violation of the number of such trucks permitted by the Rules and Regulations, as amended.

WHEREFORE the Complainants move this Court for entry of an injunction pursuant to Va. Code § 8.01-620 permanently enjoining the Gillmans from allowing their garbage trucks on the Common Elements of the Condominium for any purpose whatsoever, from the date of entry of a Decree, forward, for costs and attorneys fees as provided in Va. Code § 55-79.84(e), and for such other relief as this Court may deem appropriate.

UNIT OWNERS ASSOCIATION OF
BUILDAMERICA-1, A CONDOMINIUM

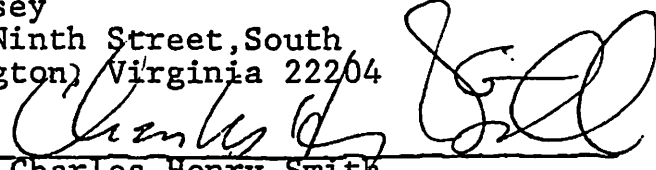
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By


Counsel

Tolbert, Smith, FitzGerald
& Ramsey
2300 Ninth Street, South
Arlington, Virginia 22204

By


Charles Henry Smith
Counsel for the Complainant

32562

BUILDAmericA -1, a Condominium

MASTER DEED

This MASTER DEED made in Fairfax County, Commonwealth of Virginia, on the 16th day of August, 1974, by John R. Pflug, Jr., Trustee, (hereinafter referred to as the "Grantor"), pursuant to the provisions of the Condominium Act of the Code of Virginia.

WHEREAS, Chapter 4.2 of Title 55 of the Code of Virginia, (1950), as amended, (hereinafter referred to as the "Condominium Act" or "Act"), provides for the creation of condominiums in the Commonwealth of Virginia; and

WHEREAS, the Grantor is the owner in fee of a parcel of land situate in Fairfax County, Virginia, more particularly described by metes and bounds on the attached document labeled Exhibit B which is attached hereto and made a part of this Master Deed, said land being also shown on Exhibit C which is a plat attached hereto and made a part of this Master Deed (which parcel of land is hereinafter referred to as the "Land")

WHEREAS, the Grantor intends to construct a building containing twenty-six (26) warehouse bays with non-residential space in accordance with plans prepared by Thomas H. Madigan, A.I.A., dated March 1, 1974 and as subsequently revised;

WHEREAS, the Grantor desires and intends by the recording of this Master Deed to submit the Land together with the improvements to be constructed thereon to the provisions of the Condominium Act;

NOW, THEREFORE,

010

PLF-DEF-EX # 1
DATE 6-14-79
JUNE 14 1979
CASE # 2898

TOLBERT, SMITH, FITZGERALD & ASSOCIATES
2323 Columbia Pike
Arlington, Virginia 22204

1. Submission of the Land: The Grantor hereby establishes a Condominium in accordance with Chapter 4.2 of Title 55 (Condominium Act) upon the Land described in Exhibit B and shown on Exhibit C both of which are attached hereto. It is the purpose of the Grantor by this Master Deed, to subdivide and to impose covenants and restrictions as herein described upon the Land all of which shall run with the Land so that the Land together with the improvements thereof shall constitute a Condominium as defined in the Condominium Act. The submission of the Land to the Condominium Act as aforesaid is subject to all covenants, conditions and restrictions now recorded or hereafter to be placed on the record.

2. Name: The name of the condominium shall be BUILDAMERICA-1, a Condominium.

3. Building: The Condominium consists in part of a one story warehouse building having frontage on Fullerton Road in the Fullerton Industrial Park as more particularly shown on the attached drawing labeled Exhibit C.

4. The Units and General Common Elements:

A. The Building shall contain twenty-six (26) Units which shall be and hereby are limited to "non-residential" uses as that term is used in the Condominium Act.

(1) For the purpose of identification, all Units in the Building located on the Land, are given identifying numbers from one to twenty-six as shown on Exhibit C, which depicts the location of all Units, and the General Common Areas of the Condominium and which exhibit is attached hereto and made a part of this Master Deed. Every Unit bears

an identifying number and no unit bears the same identifying number as does any other Unit.

(2) As of the date of the execution of this Deed, the Building which will contain the Units may not have been completely constructed, but will be constructed substantially in accordance with the plans prepared by Thomas J. Madigan A.I.A., dated March 1, 1974, and as subsequently revised.

(3) Unit Boundaries: Each Unit shall include that part of the Condominium which lies within the following boundaries all as shown on Exhibit D which is attached hereto and made a part of this Deed:

(a) Upper and Lower Boundaries: The upper and lower boundaries of each Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:

(i) Upper Boundary: The horizontal plane of the bottom surface of the concrete ceiling;

(ii) Lower Boundary: The horizontal plane of the top surface of the undecorated concrete floor slab.

(b) Perimetrical Boundaries: The perimetrical boundaries of the Unit shall be the vertical plane which includes the innermost surface of the unfinished masonry wall bounding the condominium unit extended to intersections with each other and with the upper and lower boundaries. The owner of the condominium Unit shall be deemed to own the walls and partitions which are contained within said owner's condominium Unit, the heating and cooling units serving the Unit,

and toilet fixtures contained therein.

B. General Common Elements; Allocation of Interest in General Common Elements: The General Common Elements consist of the entire Condominium, including all parts of the Building other than the Units, including, without limitation, the following:

- (1) The Land;
- (2) All foundations and loadbearing walls;
- (3) All exterior walls of the Building, not including the portions thereof on the Unit side of the masonry of such walls; all walls and partitions separating Units; and all concrete floors and concrete ceilings;
- (4) All roofs and other areas used in connection therewith, and all landscaped, parking, and driveway areas;
- (5) All central and appurtenant installations for services such as electricity, telephone, gas, and water.
- (6) All tanks, pumps, motors, fans, compressors and control or other equipment, if any, to be used in common;
- (7) All sewer pipes;
- (8) All Units which may hereafter be acquired and held by the Board of Managers on behalf of all Unit owners;
- (9) All other parts of the Condominium and all apparatus and installations existing in the Building or on the Land for common use or necessary or convenient to the existence, maintenance or safety of the Condominium, which are not specifically made part of a the Unit by the terms of this Deed.

(10) Exhibits E, F, G, and H attached hereto and made a part of this Deed depict and describe all easements appurtenant to the Condominium and all easements to which the Condominium is subject.

5. Administration: The administration of the BuildAmerica-1, a Condominium shall be conducted in accordance with the provisions of this Master Deed and the By-Laws of the Unit Owners Association as set forth in Exhibit A which is attached hereto and made a part of this Deed. Every owner or owners of a Unit shall automatically become a member of the Unit Owners Association and shall remain a member of such Association until such time as his ownership ceases for any reason at which time his membership in said association shall automatically cease. Other than as an incident to a lawful transfer of the title to a Unit, membership in the Unit Owners Association shall be non-transferrable and any attempt to transfer the same shall be null and void.

6. Persons Subject to Declaration, By-Laws and Rules and Regulations: All present and future owners, tenants, visitors and occupants of Units shall be subject to, and shall comply with the provisions of this Deed, the By-Laws and the Rules and Regulations, as set forth in Exhibit B and as they may be amended from time to time. Acceptance of a deed of conveyance, or the entering into a lease, or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Deed, By-Laws and the Rules and Regulations, as the same may be amended from time to time, are accepted and ratified by such owner, tenant, or

occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, although such provisions were recited and stipulated at length in each and every deed, conveyance or lease thereof.

7. Liability for Assessments:

A. No Unit owner may exempt himself from liability for assessments to his Unit for the cost of the maintenance and operation of the General Common Elements by waiver of the use or enjoyment of any of the General Common Elements or by the abandonment of his Unit.

B. The assessments imposed by the Unit Owners Association in accordance with the provisions of its By-Laws for the maintenance and operation of the General Common Elements and all other proper purposes shall constitute a lien upon each of the condominium Units superior to all other liens, other than liens for real estate taxes and liens for first trust or first mortgage financing. In addition, each Unit owner shall be personally liable for all such assessments imposed by the Unit Owners Association which may be due but unpaid at the time he acquires a condominium Unit. This lien shall be a lien on the real estate subordinate to the above mentioned real estate taxes and first deeds of trust or first mortgages, but will be fully assessed against the real estate and will be enforceable in a Court of competent jurisdiction as prescribed in the Act. If the Unit is sold this lien must be satisfied or it will be a burden upon the subsequent Grantees taking title to said Unit.

8. Use and Ownership of General Common Elements:

A. An equal undivided interest in General Common Elements is hereby allocated to each Unit and each Unit owner shall own an equal share of the excess funds of the Unit Owners Association.

B. The use of the General Common Elements shall be limited to owners of Units, their officers, directors, and employees and to their customers, guests, invitees, and licensees.

C. The General Common Elements shall remain undivided and no Unit owner may bring any action for partition or division of these General Common Elements.

D. The undivided interest in the General Common Elements shall not be separate from the Unit and shall be deemed to be conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the document of conveyance or encumbrance.

E. The use of the General Common Elements shall be governed by the By-laws attached hereto as Exhibit A and as they may hereafter be amended, and by the Rules and Regulations attached hereto and as they may hereafter be amended.

F. The cost of maintenance, repair or replacement of the General Common Elements shall be paid by the Unit Owners Association and shall be borne among the Unit owners in equal proportion and treated as a common expense of the Unit Owners Association unless the same shall be caused by the negligence or deliberate act of the individual Unit

owner or other person having his actual or implied consent or permission in which case expenses of maintenance, repair or replacement relating to such General Common Elements shall be borne by and assessed against the individual Unit owner.

G. The Unit Owners Association may suspend or limit the right of any Unit owner or other person to use any part of the General Common Elements upon the failure of such Unit owner or other person to observe all By-Laws, or Rules and Regulations governing the use of such General Common Elements.

9. Encroachments: If any portion of the General Common Elements encroaches upon any Unit, or if any Unit encroaches upon any other Unit or upon any portion of the General Common Elements, as a result of alteration or refurbishing of the General Common Elements of one or more Units made by or with the consent of the Unit Owners Association, a valid easement for the encroachment and for the maintenance of the same as long as the Building stands shall exist. In the event the Building, the Unit, any adjoining Unit, or any adjoining General Common Element, shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the General Common Element upon any Unit, or of any Unit upon any other Unit or upon any portion of the General Common Elements, due to such rebuilding, shall be permitted, and valid easement for such encroachments and the maintenance thereof shall exist so long as the Building shall stand.

10. Pipes, Ducts, Cables, Wires, Conduits, Public Utility Lines and Other General Common Elements Located Inside of Units:

Each Unit owner shall have an easement in common with the owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other General Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the owners of all other Units to use the pipes, ducts, cables, wires, conduits, public utility lines and other General Common Elements serving such other Units and located in such Unit. The Unit Owners Association shall have a right of access to each Unit to inspect the same, to remove violations therefrom and to maintain, repair or replace the General Common Elements contained therein or elsewhere in the Building.

11. Persons to Receive Process: The President of the Condominium, and each person serving as a member of the Unit Owners Association of the Condominium and having a place of business at the Condominium are hereby designated to receive service of process in any action which may be brought against the Condominium. For this purpose, the President shall be deemed to reside at the Condominium. Notice of the pendency of any such action shall be promptly given by the Unit Owners Association to mortgagees holding liens on two or more Units.

12. Easements: To the extent permitted by law, the Unit Owners Association, when authorized by a vote of the majority of Unit owners, may grant easements and re-locate easements for the installation of utilities, improvement of the Condominium and similar purposes. No easement hereafter granted

or re-located shall effect or impair the rights of existing mortgagees who have not consented to the same in writing.

13. Use of Units: Each of the units may be used for any lawful use. A Unit owner may lease his Unit provided terms of said lease are approved in accordance with the procedures set forth in the Condominium's By-Laws.

14. Exemption of the Grantor From Obligation to Pay Common Charges: The Grantor shall possess all the rights of a Unit owner with respect to each Unit owned by the Grantor, until the same is conveyed to a purchaser of such Unit. The Grantor however, shall not be liable for or charged with any common charge or common expense, or any portion thereof, with respect to any Unit owned by him. This exemption from the obligation to pay common charges shall cease with respect to a Unit owned by the Grantor: (a) when such Unit is conveyed by the Grantor to a third party purchaser; or (b) at such time as the Grantor leases the Unit or occupies the Unit for his own purposes, whichever event shall first occur. Notwithstanding the foregoing, if at the end of two years from the date of this Deed the Grantor shall own one or more Units, the Grantor shall be charged with and pay all future common charges and common expenses assessed against said Unit or Units, pursuant to the provisions of the By-Laws. In no event shall this exemption enure to the benefit of a party other than the Grantor. While this exemption is in effect with respect to any Unit owned by the Grantor, the Unit Owners Association shall, to the extent obtainable, secure a rider to the master liability policy extending the coverage of such policy to the interior of Units held by the Grantor, as long as the same

remain unoccupied. Such rider shall name the Grantor as an additional insured, and the cost of such coverage (if any), shall be borne by the Unit owners, other than the Grantor, as a common expense. The terms of this paragraph shall supercede any contrary direction, express or implied, contained in any other provision of this Deed or of the By-Laws and Regulations.

15. Right of Grantor to Combine, Subdivide or Re-align Units Held By the Grantor: Notwithstanding any other provision of this Deed or the By-Laws, as long as the Grantor owns one or more Units in the Condominium, the Grantor shall have the right, without further authorization from the Unit owners or Unit Owners Association, to combine or subdivide or otherwise re-align Units held by the Grantor in order to facilitate their sale, and to reflect such changes in the affected Unit or Units in a duly recorded amendment to this Deed. In no event, however, shall such combining, subdividing or other re-aligning of units held by the Grantor: (a) alter or diminish the General Common Elements; (b) alter or diminish the undivided interest in the General Common Elements, and voting rights, of Units not then owned by the Grantor or Units owned by Grantor but under a contract of sale not then in default; or (c) diminish the total undivided interest in the General Common Elements, voting rights and share of common charges previously allocated to the Units undergoing such combining, subdividing or re-aligning. Neither this provision nor the authority of the Grantor to record an amendment of

the Deed pursuant thereto may be modified or deleted by amendment of the Deed on or By-Laws or otherwise, until such time as the Grantor shall have sold all units held by him.

16. Amendment or Termination of Deed: This Deed may be amended or the Condominium terminated by a vote of at least sixty-six and two-thirds (66-2/3%) percent in number of all Unit owners, cast in person or by proxy at a meeting duly held in accordance with the provisions of the By-Laws, provided, however, that any such amendment or termination shall have been approved in writing by all mortgagees holding liens on two or more Units. No such amendment shall be effective until recorded among the land records of Fairfax County, Virginia. In case of termination any liens affecting any of the Units shall be transferred in accordance with existing priorities to the percentage of the undivided interest of the Unit owner of the condominium Unit upon which the lien was originally imposed.

17. Invalidity: The invalidity of any of this Deed, or any portion thereof, shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Deed and, in such event, all of the other provisions of this Deed shall continue in full force and effect as if such invalid provisions had never been included herein.

18. Waiver: No provision contained in this Deed shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

19. Captions: The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Deed nor the intent of any provision hereof.

20. Gender: The use of the masculine gender in this Deed shall be deemed to refer to the feminine gender and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context so requires.

IN WITNESS WHEREOF, the Grantor has executed this Master Deed this *16th* day of *August*, 1974.

John R. Pflug, Jr., Trustee

John R. Pflug, Jr., Trustee

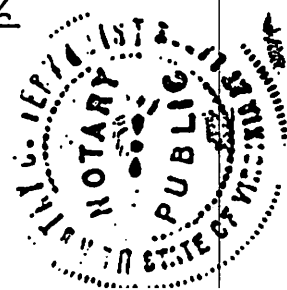
STATE OF

COUNTY OF *Taiwan*, TO-WIT:

I, *Dorothy C. Verugish*, a Notary Public in and for the State and County aforesaid, whose commission expires on the *10th* day of *October*, 1977, do hereby certify that John R. Pflug, Jr., Trustee, whose name is signed to the foregoing Deed bearing date on the *16* day of *August*, 1974, has acknowledged the same before me in my State and County aforesaid

Given under my hand this *16th* day of *August*, 1974.

Dorothy C. Verugish



BY-LAWS FOR THE UNIT OWNERS ASSOCIATION
OF THE BUILDAMERICA-1, a Condominium

ARTICLE I

1. That property located on Fullerton Road and known as Parcel 3, Fullerton Industrial Park, Fairfax County, Virginia has been or will be submitted by John R. Pflug, Jr., Trustee to the provisions of Chapter 4.2, Title 55 of the Code of Virginia of 1950, as amended (Condominium Act), by Master Deed recorded among the land records of Fairfax County, Virginia simultaneously herewith and shall hereinafter be known as the BuildAmerica-1 a Condominium (hereinafter called the "Condominium").

2. Applicability of By-Laws: The provisions of these By-Laws are applicable to the Condominium and to the use and occupancy thereof.

3. Application: All present and future owners, mortgagees, lessees and occupants of units and their employees, and any other persons who may use the facilities of the Condominium in any manner are subject to these By-Laws, the Master Deed, and the Rules and Regulations made in accordance therewith.

4. Office: The office of the Condominium and of the Board of Managers shall be located in the Condominium in an office to be designated by the Board of Managers.

ARTICLE II

1. Annual Meetings: The Grantor shall notify the Unit owners of the time and place of the first annual meeting of Unit

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owners to be held within 60 days after 22 Units have been conveyed, or on January 15, 1976 whichever shall first occur.

Thereafter, the annual meeting of Unit owners shall be held on the 15th day of January of each succeeding year, unless such date shall occur on "Saturday, Sunday or legal-holiday," in which event the meeting shall be held on the succeeding Monday. At such meetings, the Board of Managers shall be designated by the Unit owners in accordance with the requirements of Paragraph 4 of Article III of these By-Laws. The Unit owners may transact such other business at such meetings as may properly come before them.

2. Place of Meetings: Meetings of the Unit owners shall be held at the principal office of the Condominium or at such other suitable place convenient to the Unit owners as may be designated by the Board of Managers.

3. Special Meetings: It shall be the duty of the President to call a special meeting of the Unit owners if so directed by resolution of the Board of Managers or upon a petition signed and presented to the Secretary by not less than 25% of the Unit owners. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

4. Notice of Meetings: It shall be the duty of the Secretary to mail a notice of each annual meeting, other than the first annual meeting, and each special meeting of the Unit owners, at least ten but not more than twenty days prior to such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Unit owner of record, at the Building or at such

other address as such unit owner shall have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Paragraph shall be considered service of notice.

5. Adjournment of Meetings: If any meeting of Unit owners cannot be held because a quorum is not present, a majority of the Unit owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

6. Order of Business: The order of business at all meetings of the unit owners shall be as follows:

- (a) Roll call.
- (b) Proof of notice of meeting.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers.
- (e) Report of Board of Managers.
- (f) Reports of committees.
- (g) Designation of new members of the Board of Managers
(when so required).
- (h) Unfinished business.
- (i) New business.

7. Title to Units: Title to Units may be taken in the name of an individual or in the name of two or more persons as tenants in common, joint tenants with right of survivorship or as tenants by the entirety, or in the name of a corporation, partnership or fiduciary.

8. Voting: The owner or owners of each Unit, or some person designated by such owner or owners to act as proxy on his or their behalf and who need not be an owner, shall be entitled to cast

the votes appurtenant to such Unit at all meetings of Unit owners. The designation of any such proxy shall be made in writing to the Secretary, and shall be revocable at any time by written notice to the Secretary by the owner or owners so designating. Any or all of such owners may be present at any meeting of the Unit owners and (those constituting a group acting unanimously), may vote or take any other action as a Unit owner either in person or by proxy. Each Unit owner (including the Grantor and the Board of Managers, if the Grantor shall then own, or the Board of Managers, or its designee, shall then hold title to one or more units) shall be entitled to cast a number of votes at all meetings of the Unit owners equal to the number of units owned. A fiduciary shall be the voting member with respect to any Unit owned in a fiduciary capacity.

9. Majority of Unit Owners: As used in these By-Laws the term "Majority of Unit owners" shall mean those Unit owners having more than 50% of the total authorized votes of all Unit owners present in person or by proxy and voting at any meeting of the Unit owners, determined in accordance with the provisions of Paragraph 8 of the Article II.

10. Quorum: Except as otherwise provided in these By-Laws, the presence in person or by proxy of Unit owners having one-half of the total authorized votes of all Unit owners shall constitute a quorum at all meetings of the Unit owners.

11. Majority Vote: The vote of a majority of Unit owners at a meeting at which a quorum shall be present shall be binding upon all unit owners for all purposes except where in the Master Deed or these By-Laws or by law, a higher percentage vote is required.

ARTICLE III

BOARD OF MANAGERS

1. Number and Qualification: The Board of Managers shall be composed of from five(5) to nine(9) members. All such members shall be Unit owners or spouses of Unit owners, or in the case of partnership owners, members or employees of such partnership, or in the case of corporate owners, officers, stockholders or employees of such corporation, or in the case of fiduciary owners, fiduciaries or officers or employees of such fiduciary. Any Board member who ceases to be associated in one of the enumerated capacities with the Unit owner shall be deemed to have resigned as of the date upon which such association terminates. The initial members of the Board of Managers shall be selected by the Grantor and need not be Unit owners or associated in any capacity with a Unit owner. Such members shall serve until the first annual meeting of the Unit Owners Association, or until such time as their successors are duly chosen.

2. Powers and Duties: The Board of Managers shall have the powers and duties necessary for administration of the affairs of the Condominium and may do all such acts and things except as by law or by the Master Deed or by these By-Laws may not be delegated to the Board of Managers by the Unit owners. Such powers and duties of the Board of Managers shall include, but shall not be limited to, the following:

(a) Operation, care, upkeep and maintenance of the common elements.

(b) Determination of the common expenses required for the affairs of the Condominium, including, without limitation, oper-

ation and maintenance of the Condominium.

(c) Collection of the common charges from the Unit owners.

(d) Employment and dismissal of the personnel necessary for the maintenance and operation of the common elements.

(e) Adoption and amendment of rules and regulations covering the details of the operation and use of the Condominium.

(f) Opening of bank accounts on behalf of the Condominium and designating the signatories required thereof.

(g) Purchasing or leasing or otherwise acquiring in the name of the Board of Managers, or its designee, corporate or otherwise, on behalf of all Unit owners, units offered for sale or lease or surrendered by their owners to the Board of Managers.

(h) Purchasing of units at foreclosure or other judicial sales in the name of the Board of Managers, or its designee, corporate or otherwise, on behalf of all Unit owners.

(i) Selling, leasing, mortgaging, voting the votes appurtenant to, or otherwise dealing with units acquired by, and subleasing units leased by, the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit owners.

(j) Organizing corporations to act as designees of the Board of Managers in acquiring title to or leasing of units on behalf of all Unit owners.

(k) Obtaining insurance for the Condominium, including the Units pursuant to the provisions of Article V, Paragraph 2 hereof.

(l) Making of repairs, additions and improvements to or alterations of the Condominium and repairs to and restoration of

the Condominium in accordance with the other provisions of these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.

(m) Levying fines against Unit owners for violation of the Rules and Regulations established by it to govern the conduct of the Unit owners, provided, however, that no fine may be levied in an amount in excess of \$25 for any one violation. But for each day a violation continues after notice, it shall be considered a separate violation. Such fines may be collected as if they were common charges owed by the Unit(s) unit(s) against whom the fines were levied. Where a Unit owner is fined for an infraction of the Rules and Regulations and fails to pay the fine within ten days after notification thereof, the Board may levy an additional fine or fines to enforce payment of the initial fine. Where a Unit owner persists in violating the Rules and Regulations, the Board may require him to post a bond to secure future compliance with the Rule and Regulations.

(n) Controlling the use of all General Common Elements adjoining the Building, including, but not limited to, designating parking spaces therein for use by the respective Unit owners and leasing such common elements to third parties, provided, however, that no lease or other legal transaction shall be entered into without the approval of a majority of the Unit owners, and of the Grantor, as long as the Grantor owns two or more units.

(o) Controlling power shut-offs and other interruptions of the normal functioning of the Condominium, to facilitate renovation of particular units and/or of the General Common Elements. In making determinations in this area, the Board will make every effort to disrupt the business operations of the Unit owners as little as

possible under the circumstances then prevailing.

(p) Taking all other necessary and proper actions for the sound management of the Condominium and fulfillment of the terms and provisions of the Master Deed and By-Laws.

3. Managing Agent and Manager: The Board of Managers may employ for the Condominium a managing agent and/or a manager at a compensation established by the Board of Managers, to perform such duties and services as the Board of Managers shall authorize, including but not limited to the duties listed in subdivisions (a), (c), (d), (j), (k), and (l) of Paragraph 2 of this Article III. The Board of Managers may delegate to the manager or managing agent, all of the powers granted to the Board of Managers by these By-Laws other than the powers set forth in subdivisions (b), (e), (f), (g), (h), (i), (m), (n), (o), and (p) of Paragraph 2 or this Article III.

4. Designation and Term of Office: At each annual meeting of the Unit owners, the Unit owners shall decide the number of and elect the members of the Board of Managers. Each Unit owner should have as many votes as there are members on the Board of Managers. Votes may not be cumulated. The members of the Board of Managers shall hold office for a term of one year and until their respective successors shall have been designated, provided, however, that a Board member shall be deemed to have resigned whenever such member, his spouse, or firm, corporation or other entity he is associated with, sells the unit which qualified such individual to become a member of the Board of Managers.

5. Removal of Members of the Board of Managers: At any regular or special meeting of Unit owners, any one or more of the

members of the Board of Managers may be removed for cause by a majority of the Unit owners.

6. Vacancies: Any vacancy in the Board of Managers shall be filled forthwith by majority vote of the remaining members even if such members do not constitute a quorum. Such new members shall serve to the next annual meeting of the Unit owners.

7. Organization Meeting: The first meeting of the members of the Board of Managers following the annual meeting of the Unit owners shall be held within ten(10) days thereafter, at such time and place as shall be fixed by the Unit owners at the meeting at which such Board Managers shall have been elected by the Unit owners, and no notice shall be necessary to the newly designated members of the Board of Managers in order legally to constitute such meeting, providing a quorum, as that term is defined in Article III, Paragraph 11 of these By-Laws, of the Board of Managers shall be present thereat.

8. Regular Meetings: Regular meetings of the Board of Managers may be held at such time and place as shall be determined from time to time by a majority of the members of the Board of Managers, but at least two such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Managers shall be given to each member of the Board of Managers, by mail or telegraph, at least three(3) business days prior to the day named for such meeting.

9. Special Meetings: Special meetings of the Board of Managers may be called by the President on two(2) business days' notice to each member of the Board of Managers, given by mail or telegraph, which notice shall state the time, place and purpose of

the meeting. Special meetings of the Board of Managers shall be called by the President or Secretary in like manner and on like notice on the written request of any member of the Board of Managers.

10. Waiver of Notice: Any member of the Board of Managers may, at any time waive notice of any meeting of the Board of Managers in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all the members of the Board of Managers are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

11. Quorum and Voting of Board of Managers: A majority of the members shall constitute a quorum and a majority vote by those members present shall constitute an act of the Board. If at any meeting of the Board of Managers there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called, may be transacted without further notice.

12. Fidelity Bonds: The Board of Managers may obtain fidelity bonds for all officers and employees of the Condominium and its managing agent, if any, handling or responsible for Condominium funds. The premiums on such bonds shall constitute a common expense.

13. Compensation: No member of the Board of Managers shall receive any compensation from the Condominium for acting as such.

14. Liability of the Board of Managers: The members

of the Board of Managers shall not be liable to the Unit owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Unit owners shall indemnify and hold harmless each of the members of the Board of Managers against all contractual liability to others arising out of contracts made by the Board of Managers on behalf of the Condominium unless any such contract shall have been made in bad faith or contrary to the provisions of the Master Deed or of these By-Laws.

It is intended that the members of the Board of Managers shall have no personal liability with respect to any contract made by them on behalf of the Condominium. It is also intended that the liability of any Unit owner arising out of any contract made by the Board of Managers or out of the aforesaid indemnity in favor of the members of the Board of Managers shall be limited to such proportion of the total liability thereunder as his interest in the General Common Elements bears to the interests of all the Unit owners in the General Common Elements. In every agreement made by the Board of Managers or by the managing agent, or the manager, as the case may be, they are deemed to be acting only as agents for the Unit owners and shall have no personal liability thereunder (except as Unit owners), and each Unit owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the General Common Elements bears to the interest of all Unit owners in the General Common Elements.

ARTICLE IV

OFFICERS

1. Designation: The principal officers of the Con-

dominium shall be the President, the Vice President, the Secretary, and the Treasurer, all of whom shall be elected by the Board of Managers. The Board of Managers may appoint an assistant treasurer, an assistant secretary, and such other officers as in its judgment may be necessary. The President and Vice President, but no other officers, need be members of the Board of Managers.

2. Election of Officers: The officers of the Condominium shall be elected annually by the Board of Managers at the organizational meeting of each new Board of Managers and shall hold office at the pleasure of the Board of Managers.

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

4. President: The President shall be the chief executive officer of the Condominium. He shall preside at all meetings of the Unit owners and of the Board of Managers. He shall have all of the general powers and duties which are incident to the office of president, including but not limited to the power to appoint committees from among the Unit owners from time to time as he may in his discretion decide are appropriate to assist in the conduct of the affairs of the Condominium.

5. Vice President: The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Managers shall appoint some other member of the Board of Managers to act in the place of

the President, on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed on him by the Board of Managers or by the President.

6. Secretary: The Secretary shall keep the minutes of all meetings of the Unit owners and of the Board of Managers; he shall have charge of such books and papers as the Board of Managers may direct; and he shall, in general, perform all the duties incident to the office of secretary.

7. Treasurer: The Treasurer shall have the responsibility for Condominium funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data. He shall be responsible for the deposit of all moneys and other valuable effects in the name of the Board of Managers, or the managing agent, in such depositories as may from time to time be designated by the Board of Managers, and he shall, in general, perform all the duties incident to the office of treasurer.

8. Agreements, Contracts, Deeds, Checks, etc.: All agreements, contracts, deeds, leases, checks and other instruments of the Condominium shall be executed by any two officers of the Condominium or by such other person or persons as may be designated by the Board of Managers.

9. Compensation of Officers: No officer shall receive any compensation from the Condominium for acting as such.

ARTICLE V

OPERATION OF THE PROPERTY

1. Determination of Common Expenses and Fixing of

Common Charges: The Board of Managers shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of the common charges payable by the Unit owners to meet the common expenses of the Condominium, and allocate and assess such common charges among the unit owners according to their respective common interests. The common expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board of Managers pursuant to the provisions of Paragraph 2 of this Article V and the fees and disbursements of the Insurance Trustee. The common expenses may also include such amounts as the Board of Managers may deem proper for the operation and maintenance of the Condominium, including, without limitation, for payment of accounting, counsel, architectural or other professional or service fees, an amount for working capital of the Condominium, for a general operating reserve, for a reserve fund for replacements, and to make up any deficit in the common expenses for any prior year. All reserve funds shall be reasonable and in accordance with accepted accounting procedures. The common expenses may also include such amounts as may be required for the purchase or lease by the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit owners, of any unit whose owner has elected to sell or lease such unit or of any unit which is to be sold at a foreclosure or other judicial sale. The Board of Managers shall advise all Unit owners, promptly, in writing, of the amount of common charges payable by each of them, respectively, as determined by the Board of Managers, as aforesaid, and shall furnish copies of each budget on which such common charges are based, to all Unit owners.

A copy of the annual budget shall be sent to mortgagees holding liens on two or more units within 10 days of adoption of the same.

2. Insurance: The Board of Managers shall be required to obtain and maintain, to the extent obtainable, the following insurance: (1) fire insurance with extended coverage, vandalism and malicious mischief endorsements, insuring the entire Building (including all of the units but not including machinery, fixtures, furniture, furnishings or other personal property supplied or installed by unit owners), together with all air-conditioning equipment if any used in common and other service machinery contained therein and covering the interests of the Condominium, the Board of Managers and all Unit owners and their mortgagees, as their interests may appear, in an amount equal to the full replacement value of the Building, without deduction for depreciation; each of said policies shall contain a standard mortgagee clause in favor of each mortgagee of a Unit which shall provide that the loss, if any, thereunder shall be payable to such mortgagee as its interest may appear, subject however, to the loss payment provisions in favor of the Board of Managers and the Insurance Trustee hereinafter set forth, provided further no payment of insurance proceeds shall be payable to mortgagees of units unless 75% of the Unit owners do not duly and promptly resolve to proceed with the repair or restoration of the Building in accordance with the provisions of these By-Laws; (2) workmen's compensation insurance; (3) boiler and machinery insurance on commonly-owned equipment; (4) plate glass insurance; (5) water damage insurance; and (6) such other insurance as the Board of Managers

may determine. All such policies shall provide that adjustment of loss shall be made by the Board of Managers with the approval of the Insurance Trustee, and that the net proceeds thereof, if \$50,000 or less, shall be payable to the Board of Managers, and if more than \$50,000, shall be payable to the Insurance Trustee. The Board of Managers shall promptly notify mortgagees holding liens on two or more units of any claim made under any such insurance policies and such mortgagees shall have the right to participate in loss adjustment negotiations with the insurance company. All such insurance policies, and the companies writing the same, must be approved in writing by mortgagees holding liens on two or more units.

All policies of physical damage insurance shall contain if obtainable, waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured, and shall provide that such policies may not be cancelled or substantially modified without at least ten(10) days' prior written notice to all of the insureds, including all mortgagees of Units. Duplicate originals of all policies of physical damage insurance and of all renewals thereof, together with proof of payment of premiums, shall be delivered to all mortgagees of Units at least ten(10) days prior to expiration of the then current policies. Prior to obtaining any policy of fire insurance or any renewal thereof, the Board of Managers shall obtain an appraisal from a fire insurance company or otherwise of the full replacement value of the Building, including all of the Units and all of the common elements therein, without deduction for depreciation, for the purpose of determining the amount of fire insurance to be effected pursuant to this paragraph.

The Board of Managers shall also be required to obtain and maintain, to the extent obtainable, public liability insurance with respect to liability claims arising out of the General Common Elements, in such limits as the Board of Managers may from time to time determine, covering each member of the Board of Managers, the managing agent, the manager, and each Unit owner. Such public liability coverage shall also cover cross liability claims of one insured against another. The Board of Managers shall review such limits once each year.

Unit owners shall not be prohibited from carrying other insurance for their own benefit provided that all such policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Board of Managers shall not be affected or diminished by reason of any such additional insurance carried by any Unit owner.

3. Repair or Reconstruction After Fire or Other

Casualty: In the event of damage to or destruction of the Building as a result of fire or other casualty (unless 75% or more of the Building is destroyed or substantially damaged and 75% or more of the Unit owners do not duly and promptly resolve to proceed with repair and restoration), the Board of Managers shall arrange for the prompt repair and restoration of the Building (including any damaged units, but not including any wall, ceiling, or floor decorations or coverings or other furniture, furnishings, fixtures or equipment installed by Unit owners in their units), and the Board of Managers or the Insurance Trustee, as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Any cost of such repair and restoration in excess of the insurance proceeds shall constitute

a common expense, and the Board of Managers may assess all the Unit owners for such deficit as part of the common charges.

If 75% or more of the Building is destroyed or substantially damaged and 75% or more of the Unit owners do not duly and promptly resolve to proceed with repair or restoration, the Condominium shall be subject to an action for partition at the suit of any Unit owner or lienor, as if owned in common, in which event the net proceeds of sale, together with the net proceeds of insurance policies (or if there shall have been a repair or restoration pursuant to the first paragraph of this Paragraph 3, and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration, then the excess of such insurance proceeds) shall be divided by the Board of Managers or the Insurance Trustee, as the case may be, among all the Unit owners in proportion to their respective common interests, after first paying out of the share of each Unit owner the amount of any unpaid liens on his unit, in the order of the priority of such liens.

4. Payment of Common Charges: All Unit owners shall be obligated to pay the common charges assessed by the Board of Managers pursuant to the provisions of Paragraph 1 of this Article V at such time or times as the Board of Managers shall determine. Notwithstanding the foregoing, although the Grantor shall possess all the rights of a Unit owner with respect to each unit owned by it, the Grantor shall not be liable for or charged with any common charge or common expense, or any portion thereof with respect to any unit owned by it. This exemption from the obligation to pay common charges shall cease with respect to a Unit owned by the Grantor (a) when such

unit is conveyed by the Grantor to a third party purchaser or (b) at such time as the Grantor leases the unit or utilizes the same for its own purposes, whichever event shall first occur. Notwithstanding the foregoing, if at the end of two years from the date of the Master Deed, the Grantor shall own one or more units, the Grantor shall be charged with and pay all future common charges and common expenses assessed against said unit or units, pursuant to the provisions of these By-Laws. In no event shall this exemption enure to the benefit of a party other than the Grantor as that term is defined in these By-Laws.

No unit owner shall be liable for the payment of any part of the common charges assessed against his Unit subsequent to a sale, transfer or other conveyance by him (made in accordance with the provisions of Paragraph 1 of Article VII of these By-Laws) of such Unit, together with the Appurtenant Interests, as defined in Paragraph 1 of Article VII hereof. In addition, any Unit Owner may, subject to the terms and conditions specified in these By-Laws, provided that his Unit is free and clear of liens and encumbrances other than permissible mortgages and the statutory lien for unpaid common charges convey his Unit, together with the "Appurtenant Interests" to the Board of Managers, or its designee, corporate or otherwise, on behalf of all other Unit owners, and in such event be exempt from common charges thereafter assessed. A purchaser of a Unit shall be liable for the payment of common charges assessed against such a Unit prior to the acquisition by him of such Unit, except that a mortgagee or other purchaser of the Unit at a foreclosure sale of such Unit shall not be liable, and such Unit shall not be subject to a lien, for the payment of common charges assessed prior to the foreclosure sale.

5. Collection of Assessments: The Board of Managers shall assess common charges against the Unit owners from time to time and at least annually and shall take prompt action to collect any common charge due from any Unit owner which remains unpaid for more than thirty days from the due date for payment thereof.

6. Default in Payment of Common Charges: In the event of default by any Unit owner in paying to the Board of Managers the common charges as determined by the Board of Managers, such Unit owner shall be obligated to pay interest at the legal rate on such common charges from the due date thereof, together with all expenses, including attorneys' fees, incurred by the Board of Managers in any proceeding brought to collect such unpaid common charges. The Board of Managers shall have the right and duty to attempt to recover such common charges, together with interest thereon, and the expenses of the proceeding, including attorneys' fees, in an action to recover the same brought against such Unit owner, or by proceedings brought under Section 55-79.84 of the Condominium Act. The Board of Managers shall give notice of any such default continuing for more than 30 days to mortgagees holding liens upon the Units owned by the defaulting Unit owner.

7. Foreclosure of Liens for Unpaid Common Charges: In any action brought by the Board of Managers to foreclose a lien on a Unit because of unpaid common charges, the Unit owner shall be required to pay a reasonable rental for the use of his Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Board of Managers, acting on behalf of all Unit owners, shall have power to purchase such unit at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same. A

suit to recover a money judgment for unpaid common charges shall be maintainable without foreclosing or waiving the lien securing the same.

8. Statement of Common Charges: The Board of Managers shall promptly provide any Unit owner so requesting the same in writing with a written statement of all unpaid common charges due from such Unit owner.

9. Abatement and Enjoinment of Violations by Unit Owners: The violation of any rule or regulation adopted by the Board of Managers, or the breach of any By-Law contained herein, or the breach of any provision of the Master Deed, shall give the Board of Managers the right, in addition to any other rights set forth in these By-Laws: (a) to enter the unit in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit owner, any structure thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Managers shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

10. Maintenance and Repair: (a) All maintenance of and repairs to any Unit, structural or non-structural, ordinary or extraordinary (other than maintenance of and repairs to any General Common Elements contained therein, and not necessitated by the negligence, misuse or neglect of the owner of such Unit and maintenance of and repairs to outside surfaces of doors and windows), shall be made by the owner of such Unit; each Unit owner shall be responsible for all damages to any and all other units and/or to the common elements, that his failure so to do may engender.

(b) All maintenance, repairs and replacements to the General Common Elements, whether located inside or outside of the Units (unless necessitated by the negligence, misuse or neglect of a Unit owner, in which case such expense shall be charged to such Unit owner and maintenance of and repairs to outside surfaces of doors and windows), shall be made by the Board of Managers and be charged to all the Unit owners as a common expense.

11. Restrictions on Use of Units: In order to provide for congenial occupancy of the Condominium and for the protection of the value of the Units, the use of the Condominium shall be limited in accordance with the following provisions:

(a) The Units may be used for any lawful purpose.

(b) The General Common Elements shall be used only for the furnishing of the services and facilities for which they are reasonably suited.

(c) No nuisances shall be allowed on the Condominium nor shall any use or practice be allowed which is a source of reasonable annoyance or which unreasonably interferes with the peaceful possession or proper use of the Condominium by its owners and occupants.

(d) No immoral, improper, offensive, or unlawful use shall be made of the Condominium or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Condominium, shall be corrected or removed with, by and at the sole expense of the Unit owners or the Board of Managers, whichever shall have the obligation to maintain or repair such portion of the Condominium.

(e) In the event any use shall lead to an increase in fire or other insurance premiums otherwise payable on the insurance obtained by the Board of Managers pursuant to these By-Laws, or insurance procured by the individual Unit owner, the party causing such increase shall be liable for payment of the same, to the Board of Managers or individual Unit owner, as the case may be. The party so charged with increasing premium costs shall have the right to contest the validity of such increase. A levy made against such Unit owner for such increase in premiums may be enforced by the Board of Managers by adding the same to the common charges allocable to such Unit owner.

12. Additions, Alterations, or Improvements by Board of Managers: Whenever in the judgment of the Board of Managers the common elements shall require additions, alterations, or improvements costing in excess of \$5,000, and the making of such additions, alterations or improvements shall have been approved by a majority of the Unit owners and by those mortgagees holding mortgages constituting liens upon two or more units, the Board of Managers shall proceed with such additions, alterations or improvements and shall assess all Unit owners for the cost thereof as a common charge. Any additional alterations or improvements costing \$5,000 or less may be made by the Board of Managers without the approval of the Unit owners or any mortgagees of units and the cost thereof shall constitute part of the common expenses.

13. Additions, Alterations, or Improvements by Unit Owners: No Unit owner shall make any structural addition, alteration, or improvement in or to his Unit, without the prior written consent thereto of the Board of Managers, which consent shall not be unreason-

ably withheld. The Board of Managers shall have the obligation to answer any written request by a Unit owner for approval of a proposed structural addition, alteration, or improvement in such Unit owner's unit, within ten (10) days after such request, and failure to do so within the stipulated time shall constitute consent by the Board of Managers to the proposed addition, alteration, or improvement. Any application to any department of Fairfax County or to any other governmental authority for a permit to make an addition, alteration, or improvement in or to any unit shall be executed by the Board of Managers only, without, however, incurring any liability on the part of the Board of Managers or any of them to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having any claim for injury to person or damage to property arising therefrom. The provisions of this Paragraph shall not apply to units owned by the Grantor until such units shall have been sold and paid for.

No Unit owner shall construct any additions to the exterior of his Unit, modify the appearance to doors or windows, make structural changes to any of the General Common Elements, or excavate or otherwise alter common elements, whether such common elements be located in, under or adjacent to the Building.

14. Use of Common Elements and Facilities: A Unit owner shall not place or cause to be placed in any common area, or common facility any furniture; stored autos, trucks, campers or other inoperable motor or non-motor vehicles; packages; raw materials; finished products; or objects of any kind.

15. Right of Access: A Unit owner shall grant a right of access to his Unit to the manager and/or the managing agent and/or any other person authorized by the Board of Managers, the manager or the managing agent, for the purpose of making inspections or for the purpose of correcting any condition originating in his Unit and threatening another Unit or a General Common Element, or for the purpose of performing installations, alterations, or repairs to the mechanical or electrical services or other General Common Elements in his Unit or elsewhere in the Building, or to correct any condition which violates the provisions of any mortgage covering another Unit, provided that requests for entry are made in advance and that any such entry is at a time reasonable convenient to the Unit owner. In case of an emergency, such right of entry shall be immediate, whether the Unit owner is present at the time or not.

16. Rules of Conduct: Rules and regulations concerning the use of the Units and the General Common Elements may be promulgated and amended by the Board of Managers with the approval of a majority of the Unit owners. Copies of such rules and regulations shall be furnished by the Board of Managers to each Unit owner prior to the time when the same shall become effective. Initial rules and regulations, which shall be effective until amended by the Board of Managers with the approval of a majority of the Unit owners, are annexed hereto and made a part hereof as Schedule A.

ARTICLE VI

MORTGAGES

1. Notice to Board of Managers: A Unit owner who mortgages his Unit shall notify the Unit Owners Association of

the name and address of his mortgagee and shall file a conformed copy of the note and mortgage with the Unit Owners Association; the Unit Owners Association shall maintain such information in a book entitled "Mortgages of Units".

2. Notice of Unpaid Common Charges: The Unit Owners Association, whenever so requested in writing by a mortgagee of a Unit, shall promptly report any then unpaid common charges due from, or any other default by, the owner of the mortgaged Unit.

3. Notice of Default: The Unit Owners Association, when giving notice to a Unit owner of a default in paying common charges or other default, shall send a copy of such notice to each holder of a mortgage covering such Unit whose name and address has theretofore been furnished to the Unit Owners Association.

4. Examination of Books: Each Unit owner and each mortgagee of a Unit shall be permitted to examine the books of account of the Condominium at reasonable times, on business days, but not more often than once a month.

ARTICLE VII

SALES AND LEASES OF UNITS

1. Sales and Leases: No Unit owner or lessee may sell, lease or sublease a Unit, a part of a Unit or any interest therein except by complying with the following provisions:

Any Unit owner who receives a bona fide offer (hereinaft called an "Outside Offer") for the sale of his Unit together with: (i) the undivided interest in the General Common Elements

appurtenant thereto; (ii) the interest of such Unit owner in any Units theretofore acquired by the Unit Owners Association, or its designee, on behalf of all Unit owners, or the proceeds of the sale or lease thereof, if any; and (iii) the interest of such Unit owner in any other assets of the Condominium (hereinafter collectively called the "Appurtenant Interests") which he intends to accept, shall give notice to the Unit Owners Association and to each Unit owner of such offer and of such intention the name and address of the proposed purchaser, the terms of the proposed transaction and such other information as the Unit Owners Association may reasonably require, and shall offer to sell such Unit, together with the Appurtenant Interests, first to the Unit Owners Association, or its designee, corporate or otherwise, on behalf of the owners of all other Units, and then to each of the remaining Unit owners on the same terms and conditions as contained in such Outside Offer. The giving of such notice shall constitute a warranty and representation by the Unit owner to the Unit Owners Association on behalf of the other Unit owners that such Outside Offer is bona fide in all respects. Within fifteen days after receipt of such notice, the Board of Managers may elect, by notice to such Unit owner, to purchase such Unit, together with the Appurtenant Interest (or to cause the same to be purchased by its designee, corporate or otherwise), on behalf of all other Unit owners, on the same terms and conditions as contained in the Outside Offer and as stated in the notice from the offering Unit owner. In the event the Board of Managers shall elect to purchase such Unit, together with the Appurtenant Interests, or to cause the same to be purchased by its designee, corporate or otherwise, title shall close at the office of

the attorneys for the Condominium forty-five (45) days after the giving of notice by the Board of Managers of its election to accept such offer. At the closing the Unit Owner shall convey the Unit to the Unit Owners Association or its designee, by general warranty deed, and shall be responsible for all taxes arising out of such sale except for those recording taxes normally paid by the Grantee. In the event the Unit Owners Association does not signify its intention to exercise its right of first refusal within fifteen days after receipt of notice of the Outside Offer, an individual Unit owner may exercise such right of first refusal, on his own behalf, provided he notifies the Unit owner desiring to sell his Unit, within five days after expiration of the fifteen day period enjoyed by the Unit Owners Association. In the event two or more Unit owners exercise such right of first refusal, the selling Unit owner shall determine by lot which Unit owner shall purchase his Unit. The procedure to be employed in consummating a sale to a Unit owner who exercises his right of first refusal shall be the same as that set forth above for the consummating a sale to the Unit Owners Association. In the event that neither the Unit Owner Association nor any Unit owner exercises the right of first refusal within the time period herein specified, the Unit owner shall be free to sell such Unit together with the Appurtenant Interests within the next 120 days to the proposed purchaser on the terms and conditions set forth in the notice from such Unit owner of such Outside Offer. The Unit Owners Association shall promptly furnish to any Unit owner or perspective purchaser requesting the same, a recordable statement certifying to the waiver of or failure or refusal to exercise the rights and restraints granted by this paragraph

and such statement shall be binding on all Unit owners, and the Unit Owners Association. The Unit Owners Association may require a fee not to exceed \$25.00 as a prerequisite to the issuance of such statement. The deed to the purchaser shall provide that acceptance thereof by the purchaser shall constitute an assumption of the provisions of the Master Deed, the ByLaws and the Rules and Regulations, as same may be amended from time to time. In the event the Unit owner shall not, within such 120 day period, sell such unit, together with the Appurtenant Interests, to the proposed purchaser on the terms and conditions contained in the Outside Offer, then should such Unit owner thereafter elect to sell such unit, together with the Appurtenant Interests, to the same or another proposed purchaser on the same or other terms and conditions, such Unit owner shall be required to again comply with all of the terms and provisions of this Paragraph 1 of this Article VII.

Before a Unit, or any part thereof, may be leased or subleased, a copy of the proposed lease or sublease shall be filed with the Board of Managers. Approval of the Board, which approval may not be unreasonably upheld, must be obtained with respect to all terms thereof, except the amount of rent stipulated therein. Any such instrument shall be consistent with the terms of the Master Deed and these By-Laws and shall provide that it cannot be modified, amended, extended or assigned, without the prior written consent of the Board of Managers, that the tenant shall not sublet all or part thereof without the Board's written consent, and that the Board of

Managers shall have power to terminate such lease and/or sub-lease, and to bring summary proceedings to evict the tenant in the name of the landlord, in the event of a default by the tenant or subtenant in the performance of the lease or sub-lease, or in the event such persons shall violate the terms of the Master Deed, ByLaws or Rules and Regulations of the Condominium as the same shall exist from time to time.

Any purported sale or lease in violation of this section shall be voidable at the election of the Board of Managers, or in the case of a sale, at the election of the Unit Owners Association or a Unit owner seeking to exercise a right of first refusal.

2. Consent of Unit Owners to the Purchase of Units by Unit Owners Association. The Unit Owners Association shall not exercise any option hereinabove set forth to purchase a Unit without the prior approval of two-thirds of the remaining Unit owners.

3. No Severance of Ownership. No Unit owner shall execute any deed, mortgage, or other instrument conveying or mortgaging any Unit without including therein the Appurtenant Interests, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the Appurtenant Interests of any Unit may be sold, transferred or otherwise disposed of, except as part of

a sale, transfer or other disposition of the Unit to which such interests are appurtenant, or as part of a sale, transfer or other disposition of such part of the Appurtenant Interests of all units.

4. Release by Unit Owners Association of Right of First Refusal. The right of first refusal or approval contained in Section 1 of this Article VII may be released or waived prior to a Unit owner making or receiving an Outside Offer for the purchase or lease of his Unit by the Unit Owners Association in which event the Unit together with the Appurtenant Interests, may be sold, or conveyed free and clear of the provisions of such section. Any such waiver may only be granted by an affirmative vote of two-thirds of the Unit owners, and when so granted, shall include a waiver of the right of first refusal of both the Unit Owners Association and of the individual Unit owners set forth in Section 1 of Article V of these By-Laws.

6. Financing of Purchase of Units by Unit Owners Association. Acquisition of units by the Unit Owners Association, or its designee, on behalf of all Unit owners, may be made from the working capital and common charges in the hands of the Board of Managers, or if such funds are insufficient, the Board of Managers may levy an assessment against each unit owner in proportion to his ownership in the common elements, as a common charge, which assessment shall be enforceable in the same manner as provided in Paragraphs 6 and 7 of Article V. The Board of Managers, in its discretion, may borrow money to finance the acquisition of such unit, provided, however, that

no financing may be secured by an encumbrance or hypothecation of any property other than the unit being acquired by the Unit Owners Association.

7. Exceptions. The provisions of Paragraph 1 of of this Article VII shall not apply with respect to any sale or conveyance by a Unit owner of his unit, together with the Appurtenant Interests, to his spouse or to any of his children or to his parent or parents or to his brothers or sisters, or any one or more of them, or to any person, partnership or corporation that acquires or succeeds to, the business of the Unit owner, or to any corporation into which or with which a corporate Unit owner merges or consolidates or which acquires all of the assets of any such corporate Unit owner, or to any corporation which is a subsidiary of a Unit owner, or to any Unit owned by the Grantor, or to the acquisition or sale of a Unit, together with the Appurtenant Interests by a mortgagee herein authorized who shall acquire title to such Unit by foreclosure or by deed in lieu of foreclosure. However, the provisions of this section shall apply with respect to any purchaser of such unit from such mortgagee or governmental agency.

8. Gifts and Devises, etc. Any individual Unit owner shall be free to convey or transfer his Unit by gift, or to devise his Unit by will, or to pass the same by intestacy, without restriction.

9. Waiver of Right of Partition With Respect to Such Units as Are Acquired by the Board of Managers, or its Designee, on Behalf of All Unit Owners as Tenants in Common.

In the event that a Unit shall be acquired by the Unit Owners Association, or its designee, on behalf of all Unit owners as tenants in common, all such Unit owners shall be deemed to have waived all rights of partition with respect to such Unit.

10. Mortgage of Units. No Unit owner shall mortgage his Unit except by mortgages made to a commercial or savings bank, trust company, insurance company, savings and loan association, pension fund, governmental agency or other institutional lender, or to the seller of such Unit (purchase money mortgage) including, without limitation, the Grantor.

ARTICLE VIII

EMINENT DOMAIN

1. Condemnation. In the event of a taking in condemnation or by eminent domain of part or all of the General Common Elements, the award made for such taking shall be payable to the Board of Managers if such award amounts to \$50,000 or less, and to the Insurance Trustee if such award amounts to more than \$50,000. If 75% or more of the Unit owners duly and promptly approve the repair and restoration of such General Common Elements, the Board of Managers shall arrange for the repair and restoration of such common elements, and the Board of Managers or the Insurance Trustee, as the case may be, shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that 75% or more of Unit owners do not duly and promptly approve the repair and restoration of such General Common Elements, the Board of Managers or the

Insurance Trustee, as the case may be, shall disburse the net proceeds of such award in the same manner as they are required to distribute insurance proceeds where there is no repair or restoration of the damage, as provided in Paragraph 3 of Article V of these By-Laws.

2. Condemnation of Part of a Unit. Where part of a Unit has been taken by eminent domain and 75% or more of the Unit owners duly approve the repair and restoration of the Building and common elements, the Board of Managers shall adjust such loss with the affected Unit owner, including, but not limited to, the payment of compensation and reduction or elimination of the Unit owner's undivided interest in the common elements. Any such settlement shall not be effective unless approved by the mortgagee(s) of the affected Unit, a majority of the Unit owners, and the Grantor, if the Grantor shall then own two or more Units in the Condominium. In no event shall the Board of Managers be required to make any payment in excess of that portion of the over-all condemnation award that is reasonably attributable to the particular Unit owner's loss. In no event shall the Board of Managers be required to make any payment pursuant to the terms of this Paragraph prior to receipt of sufficient funds by the Board for such purpose from the condemning authority and Insurance Trustee. However, nothing contained in this Paragraph shall be deemed to prohibit the Board of Managers from making an advance or partial payment to such Unit owner when the Board, in its discretion, deems such advance or partial payment to

be reasonable and proper. Nothing contained in this Paragraph shall be deemed to relieve such Unit owner of the obligation or contribute to repair or restoration of the Building and General Common Elements, although the Board of Managers may, in a proper case, reduce the amount of such obligation or eliminate the same.

3. Awards for Trade Fixtures and Relocation Allowances. Where all or part of the Condominium is taken by eminent domain, each Unit owner shall have the exclusive right to claim all of the award made for trade fixtures installed by such Unit owner, and any relocation, moving expense, or other allowance of a similar nature designed to facilitate relocation of a displaced business concern.

4. Notice to Mortgagees. The Board of Managers immediately upon having knowledge of the institution, or threat of institution of any proceedings or other action with respect to the taking of condominium units or the General Common Elements, or any portion of any condominium unit or common element in condemnation, eminent domain, or other proceedings or actions involving any unit of government or any other person having power of eminent domain shall notify mortgagees holding liens on two or more Units thereof. Such mortgagee may, at its option, if permitted by the court, participate in any such proceedings or actions or, in any event, may, at its option, participate in negotiations in connection therewith, but shall have no obligation to do so.

ARTICLE IX

RECORDS

1. Records and Audits. The Board of Managers or the managing agent shall keep detailed records of the actions of the Board of Managers and the managing agent, minutes of meetings of the Board of Managers, minutes of the meetings of the Unit Owners Association, and financial records and books of account of the Condominium, including a chronological listing of receipts and expenditures, as well as separate account for each Unit which, among other things, shall contain the amount of each assessment of common charges against such Unit, the date when due, the amounts paid thereon, and the balance remaining unpaid. A written report summarizing all receipts and expenditures of the Condominium shall be rendered by the Board of Managers to all Unit owners at least quarterly. In addition, an annual report of the receipts and expenditures of the Condominium, certified by an independent certified public accountant, shall be rendered by the Board of Managers to all Unit owners and to all mortgagees of Units who have requested the same, within 4 months after the end of each fiscal year.

ARTICLE X

MISCELLANEOUS

1. Notices. All notices hereunder shall be sent by registered or certified mail to the Board of Managers c/o the managing agent, or if there be no managing agent, to the office of the Board of Managers or to such other address as Board of Managers may hereafter designate from time to time, by

notice in writing to all Unit owners and to all mortgagees of Units. All notices to any Unit owner shall be sent by registered or certified mail to the Building or to such other address as may have been designated by him from time to time, in writing, to the Board of Managers. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

2. Invalidity. The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these By-Laws.

3. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these By-Laws, or the intent of any provision thereof.

4. Gender. The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

5. Waiver. No restriction, condition, obligation, or provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

6. Insurance Trustee. The Insurance Trustee shall be a bank or trust company in the Commonwealth of Virginia, designated by the Board of Managers and having a capital,

surplus and undivided profits of \$10,000,000 or more. In the event that the Insurance Trustee shall resign, the new Insurance Trustee shall be a bank or trust company in the Commonwealth of Virginia, designated by the Board of Managers and having a capital, surplus and undivided profits of \$10,000,000 or more. The Board of Managers shall pay the fees and disbursements of any Insurance Trustee and such fees and disbursements shall constitute a common expense of the Condominium.

ARTICLE XI

AMENDMENTS TO BY-LAWS

Section 1. Amendments to By-Laws. Except as provided otherwise herein, these By-Laws may be modified or amended by the vote of 66-2/3% in number of all Unit owners at a meeting of Unit owners duly held for such purpose, but only with the written approval of those mortgagees holding mortgages constituting first liens upon two or more units. Paragraph 8 of Article II, insofar as it provides that the Grantor, as long as it is the owner of one or more units, may vote the votes appurtenant thereto; Paragraph 4 of Article V, insofar as it provides that the Grantor shall not be charged with any common charges or common expense; Paragraph 13 of Article V, insofar as it provides that the provisions of such section shall not apply to any units owned by the Grantor; Paragraph 7 of Article VII, insofar as it provides that the Grantor shall be exempt from that portion of the provisions

of Paragraph 1 of Article VII which provide for a right of first refusal to the Board of Managers; and this Paragraph 1 of Article XI, however, may not be amended without the consent in writing of the Grantor, so long as the Grantor shall be the owner of one or more units.

ARTICLE XII

CONFLICTS

1. Conflicts. These By-Laws are set forth to comply with the requirements of Chapter 4.2 of Title 55 Code of Virginia, 1950, as amended (Condominium Act). In case any of these By-Laws conflict with the provisions of said Condominium Act or with the Master Deed, the Condominium Act or the Master Deed, as the case may be, shall control.

RULES AND REGULATIONS OF THE BUILDAMERICA-1, A CONDOMINIUM

1. Each Unit owner shall keep his Unit in a good state of preservation and cleanliness. He shall not sweep or throw from the premises any dirt or other substance upon the grounds. Refuse shall be placed in containers in such manner and at such times and places at the Board of Managers or its agent may direct.

2. The sidewalks, entrances and fire exits must not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the Units in the Building.

3. Employees of the Unit owners may not gather or lounge in the common areas of the Condominium.

4. Supplies, goods and packages of every kind are to be delivered in such manner as the Board of Managers or its agent may prescribe and the said Board is not responsible for the loss or damage of any such property, notwithstanding such loss or damage may occur through the negligence of employees or agent of the Board of Managers.

5. Unit owners shall not cause or permit any excessive noises or objectionable odors to be produced upon or to emanate from their Units. Doors shall be kept closed at all times except when in actual use for ingress and egress.

6. Unit owners shall not permit or keep in their unit any inflammable, combustible or explosive material, chemical or substance, which may make insurance on the Building unobtainable or unenforceable. All such substances

shall be kept in containers or other receptacles as directed by applicable Fire Department or other governmental authority.

7. Water closets and other water apparatus in the Building shall not be used for any purpose other than those for which they were designed, nor shall any sweepings, rubbish, rags or other articles be thrown into same. Any damage resulting from misuse of any water closets or other apparatus in a Unit shall be repaired and paid for by the owner of such Unit. |

8. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted, or affixed by any Unit owner on any part of the outside of the Building hung from windows or placed on window sills, without the prior consent of the Board of Managers.

9. No aerials or other projections except originally affixed awnings shall be attached to the outside walls of the Building, and no blinds, shades or screens shall be attached to, hung or used on the exterior of any window or door of any Unit without the prior written consent of the Board of Managers.

10. No animals of any kind shall be kept or harbored on the premises. |

11. No vehicle belonging to a Unit owner or to an employee, customer, or visitor of a Unit owner shall be parked in such manner as to impede or prevent ready access to any entrance to or exit from the Building or parking lot by any other vehicle.

12. Unit owners, their employees, customers and visitors shall not at any time or for any reason whatsoever

enter upon the roof of the Building, without the prior written consent of the Board of Managers.

13. The Board of Managers or its designee shall have the right of access to any Unit for the purpose of making inspections, repairs, replacements or improvements, or to remedy certain conditions which would result in damage to other portions of the Building. In the event it finds vermin, insects or other pests, it may take such measures as it deems necessary to control or exterminate same.

To facilitate compliance with this Regulation, each unit owner shall furnish the Board of Managers or managing agent with keys to locked entrances to their respective units, and shall promptly furnish new keys when and if such locks are supplemented or changed. No entrances to a Unit shall be barred by a sliding bolt or other device which renders access by such keys difficult or impossible.

14. Nothing shall be done or kept in any Unit or in the common elements which will increase the rate of insurance for the Building or contents thereof, without the prior written consent of the Board of Managers. No Unit owner shall permit anything to be done or kept in his Unit or in the General Common Elements which will result in the cancellation of insurance on the Building or contents thereof or which would be in violation of any law.

15. No noxious or offensive activity shall be carried on in any Unit or in the common elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit owners or occupants.

16. No "For Sale", "For Rent" or "For Lease" signs or other window displays or advertising are permitted on any part of the Property. The right is reserved by the Grantor and the Board of Managers to place "For Sale", "For Rent" or "For Lease" signs on any unsold or unoccupied units or on the Building, and the right is hereby given to any mortgagee, who may become the owner of any Unit, to place such signs on any Unit owned by such mortgagee, but in no event will any such sign be larger than one (1') foot by two (2') feet.

17. If any key or keys are entrusted by a Unit owner or occupant or by any member of his family or by his agent, servant, employee, licensee or visitor to an employee of the Board of Managers, except pursuant to the provisions of Paragraph 13 of these Rules and Regulations, whether for such Unit or an automobile, trunk or other item of personal property, the acceptance of the key shall be at the sole risk of such Unit owner or occupant, and the Board of Managers shall not be liable for injury, loss or damage of any nature whatsoever directly or indirectly resulting therefrom or connected therewith.

18. No Unit owner shall alter, impair or otherwise affect the common elements without the prior written consent of the Board of Managers.

19. Complaints regarding services or operation of the Building shall be made in writing to the Board of Managers or managing agent.

20. Any consent or approval given under these Rules

and Regulations may be added to, amended or repealed at any time by resolution of the Board of Managers.

21. A Unit owner may apply to the Board of Managers for a temporary waiver of one or more of the foregoing rules. Such temporary waiver may be granted by a majority of the Board of Managers, for good cause shown, if, in the Board's judgment, such temporary waiver will not interfere with the purposes for which the Condominium was formed.

22. These Rules and Regulations may be supplemented from time to time, repealed or modified by a majority vote of the Board of Managers. No such additional or modified Rule or Regulation adopted by the Board of Managers can take effect until communicated in writing to the Unit Owners.

Exhibit B to BuildAmerica-1, a Condominium Master Deed

JAMES A. SMITH AND ASSOCIATES

CIVIL ENGINEERING AND LAND SURVEYING

JAMES A. SMITH, P.E., C.L.S.

ANDREW P. DUNN, C.L.S.

SUITE 703, MCLEAN OFFICE CENTER

PHONE: 790-0668

6845 ELM STREET, MCLEAN, VIRGINIA 22101

July 11, 1974

DESCRIPTION

Parcel 3

Fullerton Industrial Park

Springfield District

Fairfax County, Virginia

BEGINNING at a point on the north side of Fullerton Road, being the southeast corner of Parcel 1, Fullerton Industrial Park;

THENCE departing from Fullerton Road and with Parcel 1, in part and Parcel 2, in part,

N. $00^{\circ} 02' 11''$ W., 480.00'

to a corner of Parcel 2;

THENCE with the south line of Parcel 2

N. $89^{\circ} 57' 49''$ E., 238.88'

to a point in the west line of Property of Lewis and Besley, Trs.;

THENCE with the west line of Property of Lewis and Besley, Trs.

S. $00^{\circ} 02' 11''$ E., 480.00'

to a point on the north side of Fullerton Road, being the southwest corner of Property of Lewis and Besley, Trs.;

THENCE with Fullerton Road

S. $89^{\circ} 57' 49''$ W., 238.90'

to the point of beginning.

CONTAINING 114,667 square feet or 2.6324 acres.



Andrew P. Dunn, C.L.S.

Exhibit E to BuildAmerica -1, a Condominium Master Deed

JAMES A. SMITH AND ASSOCIATES

CIVIL ENGINEERING AND LAND SURVEYING

JAMES A. SMITH, P.E., C.L.S.

ANDREW P. DUNN, C.L.S.

SUITE 709, MCLEAN OFFICE CENTER

PHONE: 790-9666

6845 ELM STREET, MCLEAN, VIRGINIA 22101

July 11, 1974

DESCRIPTION

Centerline of 15' F.C.W.A. Easements
Parcel 3
Fullerton Industrial Park
Now or formerly Fullerton Associates
Springfield District
Fairfax County, Virginia

BEGINNING at a point on the north side of Fullerton Road bearing
N. 89° 57' 49" E., 35.00' from the southwest corner of Parcel 3;
THENCE departing from Fullerton Road and through Parcel 3

N. 00° 02' 11" W., 472.50'

N. 89° 57' 49" E., 168.88'

S. 00° 02' 11" E., 425.50'

S. 45° 02' 11" E., 31.11'

S. 00° 02' 11" E., 25.00'

to a point on the north side of Fullerton Road bearing S. 89° 57' 49"
W., 13.00' from the southeast corner of Parcel 3.

BEGINNING at a point in the centerline of the afore described F.C.W.A.
easement, said point being N. 89° 57' 49" E., 35.00 and S. 00° 02' 11"
E., 242.5' from the northwest property corner of Parcel 3;
THENCE through Parcel 3

S. 89° 57' 49" W., 35.00'

to a point in the property line common to Parcels 1 and 3.

BEGINNING at an angle point in the first described F.C.W.A. easement
centerline, said point being N. 89° 57' 49" E., 35.00' and
S. 00° 02' 11" E., 7.50' from the northwest corner of Parcel 3;
THENCE through Parcel 3

S. 89° 57' 49" W., 20.00'

to the end of the easement.

DESCRIPTION Cont'd.


Centerline of 15' F.C.W.A. Easements
Parcel 3
Fullerton Industrial Park
Now or formerly Fullerton Associates
Springfield District
Fairfax County, Virginia

BEGINNING at an angle point in the first described F.C.W.A.
easement centerline, said point being N. 89° 57' 49" E., 203.88'
and S. 00° 02' 11" E., 7.50' from the northwest corner of Parcel 3;
THENCE through Parcel 3

N. 89° 57' 49" E., 20.00'
to the end of the easement.

BEGINNING at a point in the first described F.C.W.A. easement,
said point being S. 89° 57' 49" W., 13.00' and N. 00° 02' 11" W.,
18.00' from the southeast corner of Parcel 3;
THENCE through Parcel 3

S. 89° 57' 49" W., 20.00'
to the end of the easement.



Andrew P. Dunn, C.L.S.

JAMES A. SMITH AND ASSOCIATES

CIVIL ENGINEERING AND LAND SURVEYING

JAMES A. SMITH, P.E., C.L.S.

ANDREW P. DUNN, C.L.S.

SUITE 709, MCLEAN OFFICE CENTER

PHONE: 790-9656

6845 ELM STREET, MCLEAN, VIRGINIA 22101

July 11, 1974

DESCRIPTION

Centerline of 10' Storm Sewer Easements
Parcels 2 and 3
Fullerton Industrial Park
Springfield District
Fairfax County, Virginia

BEGINNING at a point on the north side of Fullerton Road, bearing
S. 89° 57' 49" W., 48.00' from the southeast corner of Parcel 3,
THENCE departing from Fullerton Road and through Parcel 3
N. 00° 02' 11" W., 25.00'
to the end of the easement.

BEGINNING at a point on the north side of Fullerton Road bearing
N. 89° 57' 49" E., 7.00' from the southwest corner of Parcel 3,
THENCE departing from Fullerton Road and through Parcel 3
N. 00° 02' 11" W., 36.00'
to the end of the easement.

BEGINNING at a point in the line common to Parcels 2 and 3, bearing
S. 00° 02' 11" E., 15.00' from the northwest corner of Parcel 3,
THENCE through Parcel 3
N. 89° 57' 49" E., 233.88'
to a point;
THENCE

N. 00° 02' 11" W., 35.00'
crossing the property line common to Parcels 2 and 3 at 15.00' and
extending into Parcel 2 20.00', to the end of the easement.

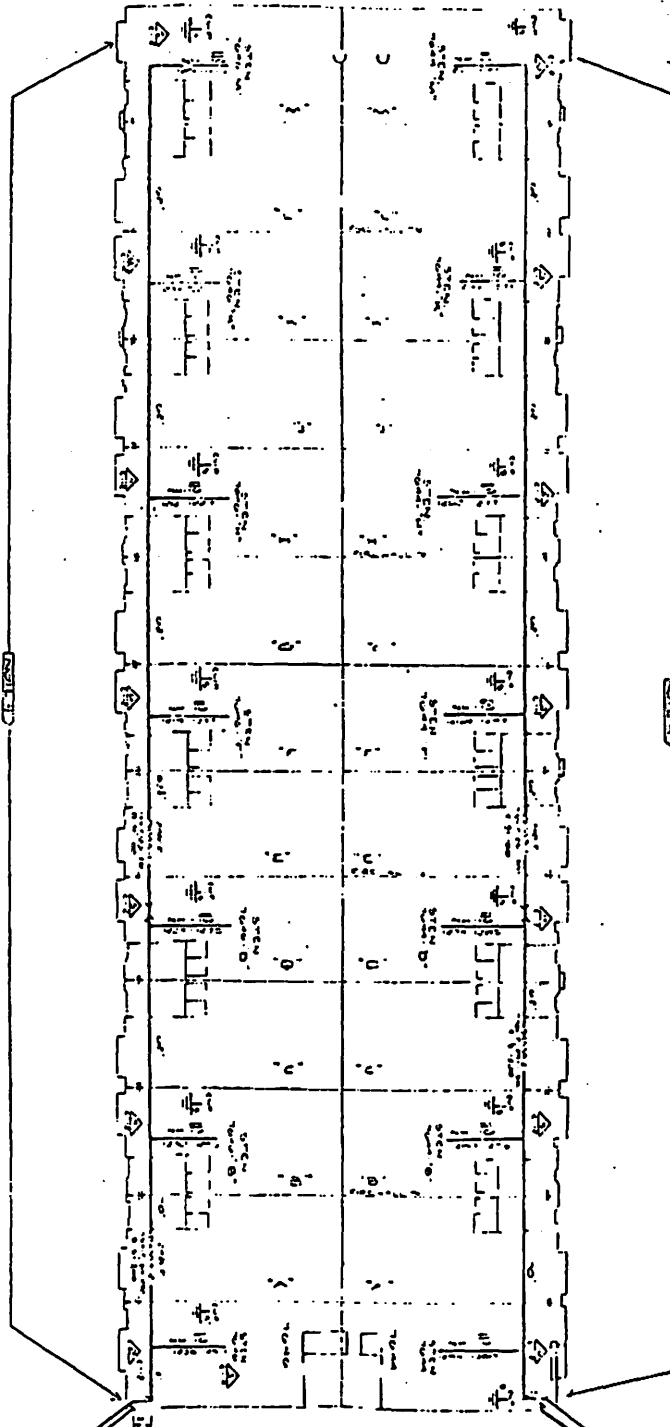
BEGINNING at a point in the line common to Parcel 3, and property of
Lewis and Besley, Trs., said point bearing S. 00° 02' 11" E., 166.50'
from the northeast corner of Parcel 3,
THENCE through Parcel 3
S. 72° 15' 00" W., 8.00'
to the end of the easement.

069

Andrew P. Dunn, C.L.S.

UNIT USE
AS STATED IN PLAN
AND STRENGTH IN ROOM

FULLERTON CONDOMINIUM WAREHOUSES
FULLERTON INDUSTRIAL PARK
MILWAUKEE, WISCONSIN 53204
R/W 74.1143 A
MR OWENS SUPT. PHONE 435-3408



P A R K I N G S P A C E S

~ CONIT NO. 1 ~
PLACE ONE END OF CONIT
CORD RUN UP INTO CA SUBA.
ELEVATOR. ELEVATOR TO BE PLACED BY
FULLERTON AND OWENS. AS
A PART OF THE BUILDING AS
PART OF THE BUILDING AS

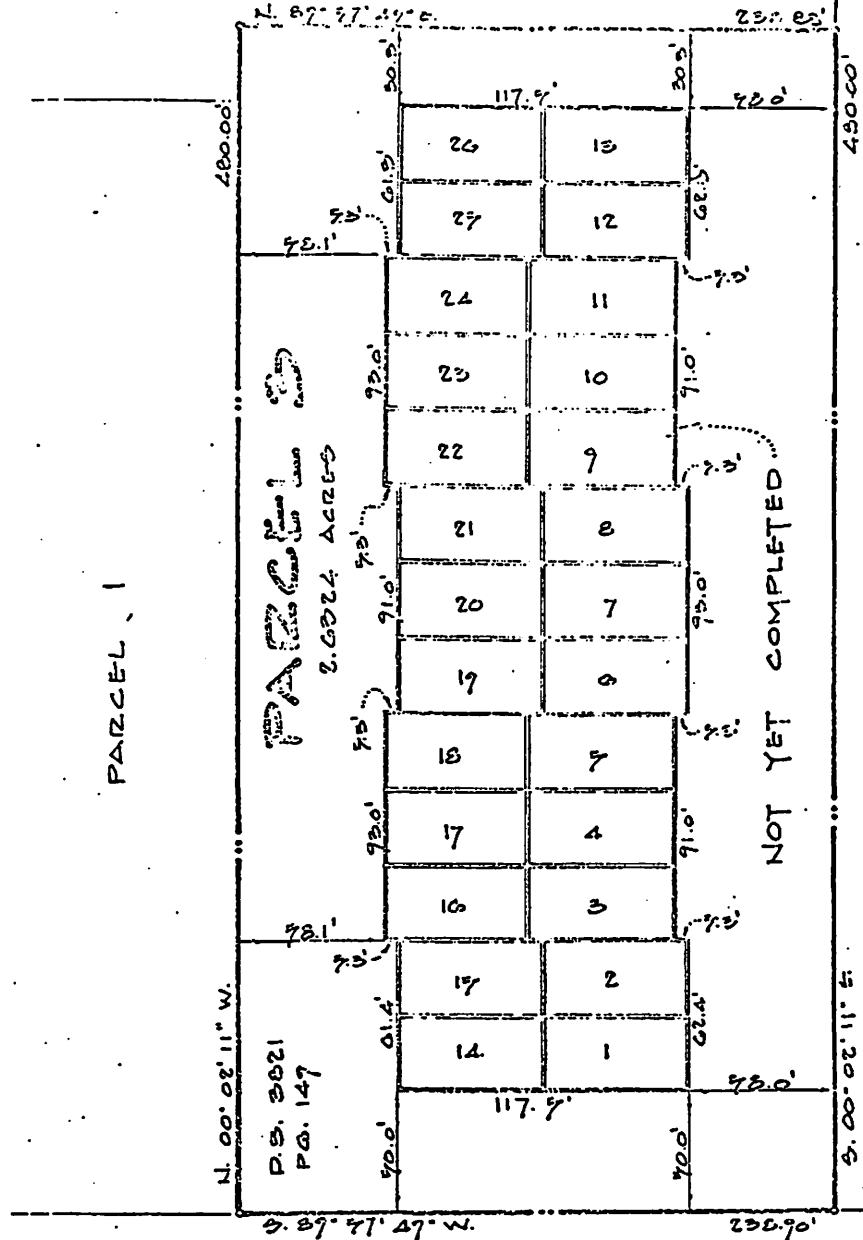
SEE DETAIL "A" ON P. 300
TERMINAL LOCATION

20 FT. 10.333
R/W 74.1143
R/W 74.1143
R/W 74.1143

070

FULLERTON WAREHOUSE

PARCEL 2

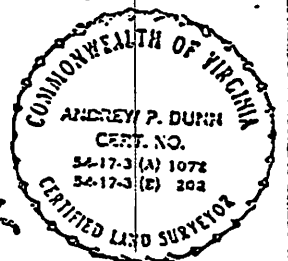


Fullerton Road
60' WIDE

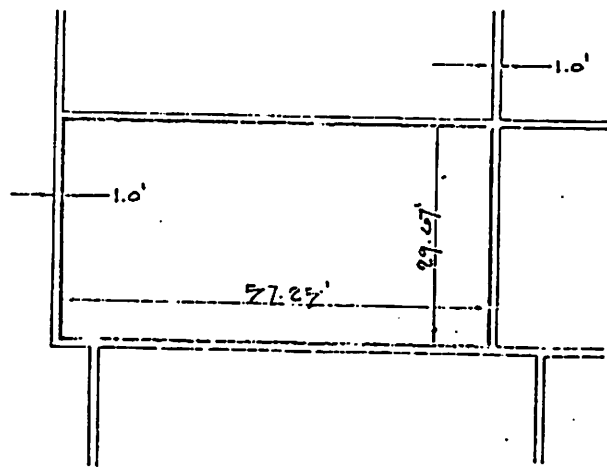
BUILDING LOCATION SURVEY
PARCEL 3

Fullerton
INDUSTRIAL PARK

SPRINGFIELD DISTRICT
FAIRFAX COUNTY, VIRGINIA

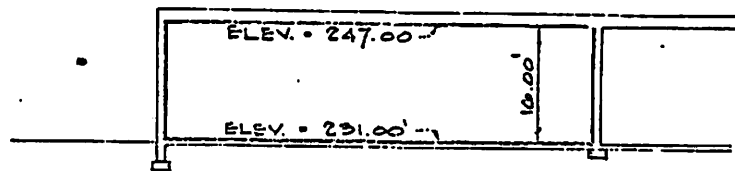


DATE 7-11-74	JAMES A. SMITH and ASSOCIATES CIVIL ENGINEERS-LAND SURVEYORS MCLEAN / VIRGINIA	CERTIFIED CORRECT
SCALE 1" = 60'		<i>[Signature]</i>



HORIZONTAL BOUNDARY

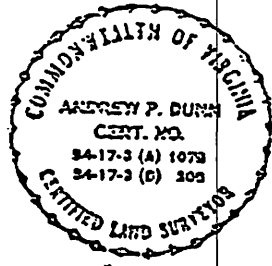
AREA = 27,178 CUBIC FEET



VERTICAL BOUNDARY

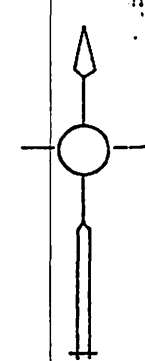
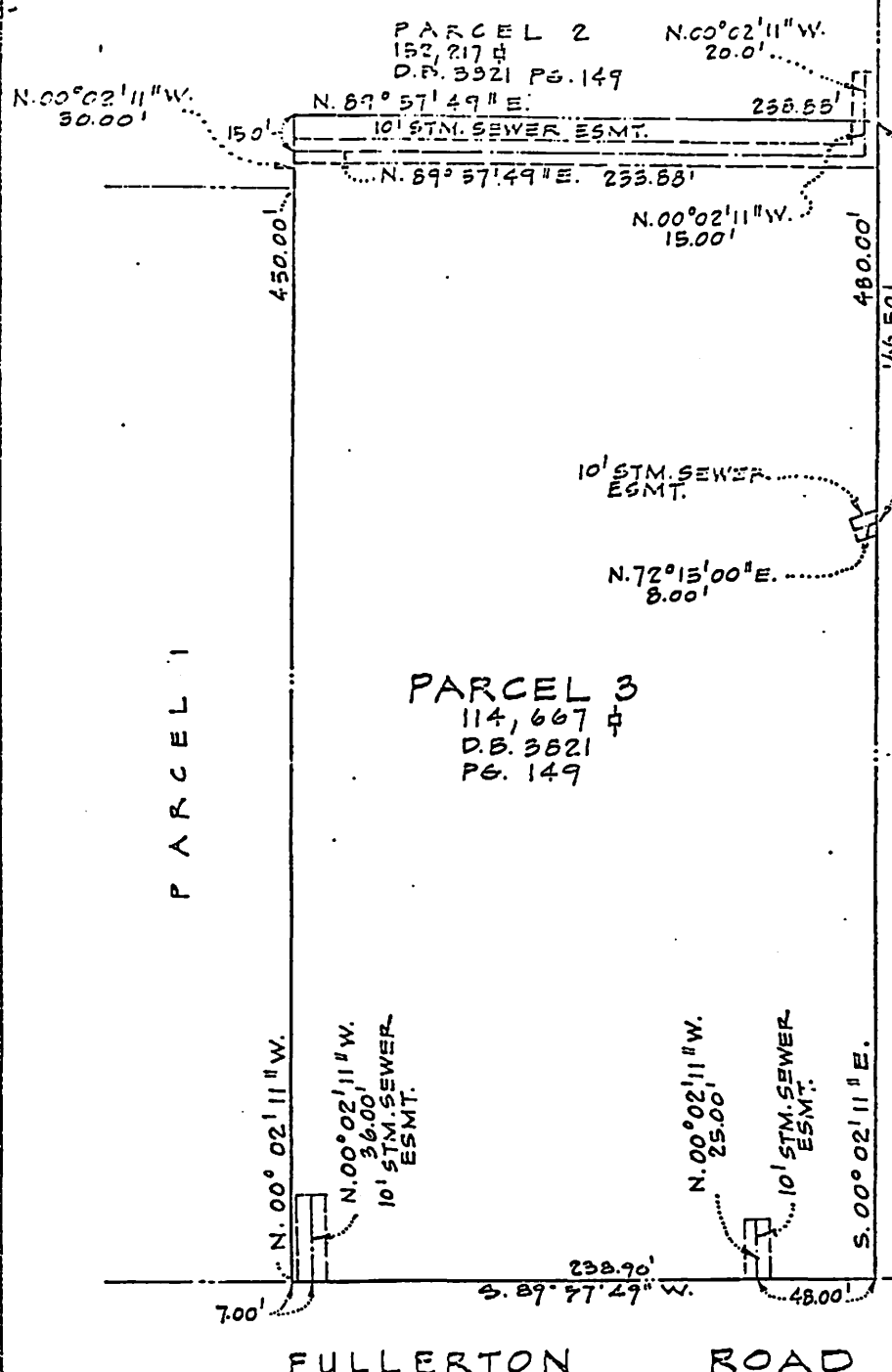
PLAT SHOWING
HORIZONTAL AND VERTICAL BOUNDARIES
TYPICAL UNIT

PARCEL 3
FULLERTON
INDUSTRIAL PARK
SPRINGFIELD DISTRICT
FAIRFAX COUNTY, VIRGINIA



072

DATE 7-11-74	JAMES A. SMITH and ASSOCIATES CIVIL ENGINEERS—LAND SURVEYORS MCLEAN / VIRGINIA	CERTIFIED CORRECT
SCALE 1" = 20'		

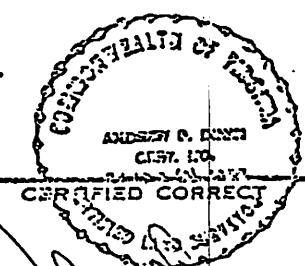


LEWIS & BESLEY, TRS.

PLAT SHOWING
STORM SEWER EASEMENTS
PARCELS 2 & 3 FULLERTON IND. PARK
SPRINGFIELD DISTRICT
FAIRFAX COUNTY, VIRGINIA

DATE
4-18-74
SCALE
1" = 60'

JAMES A. SMITH
and ASSOCIATES
CIVIL ENGINEERS - LAND SURVEYORS
MCLEAN / VIRGINIA



THIS DEED, Made this 12th day of July, 1976, by and between JOHN R. PFLUG, JR., TRUSTEE and CAROLYN R. PFLUG, his wife, who joins in this Deed solely to convey any dower interest which she may have, herein called Grantors; and HARRY F. GILLMAN and SAUNDRA K. GILLMAN, his wife, herein called Grantees.

WITNESSETH: That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, receipt of which is hereby acknowledged, Grantors do hereby grant and convey unto Grantees, in fee simple and with Special Warranty, all of that Condominium Unit located in Fairfax County, Virginia, and more particularly described as follows:

Condominium Unit 17, BUILDAMERICA-1, a Condominium, as the same is described in a Master Deed recorded among the land records of Fairfax County, Virginia, in Deed Book 4088 at page 266, together with said Unit's appurtenant interest in the Common Areas of the Condominium as is more particularly specified in the Master Deed;

SUBJECT TO the reservations, restrictions on use, and all covenants and obligations set forth in the Master Deed, dated August 16, 1974 and recorded in Deed Book 4088 at page 266 and as set forth in the By-laws of the Unit Owners Association attached thereto and as it may be amended from time to time, all of which restrictions, payments of charges and all other covenants, agreements, obligations, conditions and provisions are incorporated in this Deed by reference and shall constitute covenants running with the land, to the extent set forth in said documents and as provided by law and all of which are accepted by the Grantees as binding and to be binding on the

075

4454/213

P1 Exh #15

6/14/79

Judge: *Em*

LAW OFFICES
ALBERT. SMITH.
FITZGERALD
& RAMSEY
NINTH STREET, SOUTH
INGTON, VIRGINIA
703 521-5252

Grantees and their successors, heirs and administrators, executors and assigns or the heirs and assigns of the survivor of them, as the same may be.

AND the Grantors do hereby covenant and agree that the purpose for which the Unit may be used is for such uses as may be permitted under the zoning ordinances subject to such limitations as may be contained in the Master Deed and the By-laws of the Unit Owners Association.

TO HAVE AND TO HOLD the said land and premises unto and to the use of the said Grantees, as Tenants by the Entirety and not as Tenants in Common, with the full common law rights of survivorship, it being the purpose and intent of the parties to this Deed that upon the death of either of said Grantees, all of the right, title, interest, estate and part of the one dying shall then vest in and belong to the survivor, in fee simple.

WITNESS the following signatures and seals:

John R. Pflug, Jr., Trustee (SEAL)

Carolyn R. Pflug (SEAL)

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

The foregoing instrument was acknowledged before me this _____ day of July, 1976, by John R. Pflug, Jr., Trustee, and Carolyn R. Pflug.

My commission expires:

Notary Public

THIS DEED, Made this 13th day of July, 1977, by and between JOHN R. PFLUG, JR., TRUSTEE and CAROLYN R. PFLUG, his wife, who joins in this Deed solely to convey any dower interest which she may have, herein called Grantors; and HARRY F. GILLMAN and SAUNDRA K. GILLMAN, his wife, herein called Grantees;

WITNESSETH: That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, receipt of which is hereby acknowledged, Grantors do hereby grant and convey unto Grantees, in fee simple and with General Warranty, all of that Condominium Unit located in Fairfax County, Virginia, and more particularly described as follows:

Condominium Unit 21, BUILDAMERICA-1, a Condominium, as the same is described in a Master Deed recorded among the land records of Fairfax County, Virginia, in Deed Book 4088 at page 266, together with said Unit's appurtenant interest in the Common Areas of the Condominium as is more particularly specified in the Master Deed;

SUBJECT TO the reservations, restrictions on use and all covenants and obligations set forth in the Master Deed, dated August 16, 1974 and recorded in Deed Book 4088 at page 266 and as set forth in the By-laws of the Unit Owners Association attached thereto and as it may be amended from time to time, all of which restrictions, payments of charges and all other covenants, agreements, obligations, conditions and provisions are incorporated in this Deed by reference and shall constitute covenants running with the land, to the extent set forth in said documents and as provided by law and all of which are accepted by the Grantees as binding and to be binding

077

P1 Exh #16

6/14/79

Judge

LAW OFFICES
TOLBERT, SMITH,
FITZGERALD
& RAMSEY
100 NINTH STREET, SOUTH
ARLINGTON, VIRGINIA
703 521-5252

on the Grantees and their successors, heirs and administrators, executors and assigns or the heirs and assigns of the survivor of them, as the same may be.

AND the Grantors do hereby covenant and agree that the purposes for which the Unit may be used is for such uses as may be permitted under the zoning ordinances subject to such limitations as may be contained in the Master Deed and the By-laws of the Unit Owners Association.

TO HAVE AND TO HOLD the said land and premises unto and to the use of the said grantees, as Tenants by the Entirety, and not as Tenants in Common, with the full common law rights of survivorship, it being the purpose and intent of the parties to this Deed that upon the death of any of said Grantees, all all of the right, title, interest, estate and part of the one dying shall then vest in and belong to the survivor, in fee simple.

WITNESS the following signatures and seals:

John R. Pflug, Trustee

(SEAL)

Carolyn R. Pflug

(SEAL)

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

The foregoing instrument was acknowledged before me this _____ day of July, 1976, by John R. Pflug, Jr., Trustee and Carolyn R. Pflug.

My commission expires:

078

Notary Public

No. 635004

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL
(See Reverse)

SENT TO			
STREET AND NO.			
P. O., STATE AND ZIP CODE			
POSTAGE \$			
CONSULT POSTMASTER FOR FEES	CERTIFIED FEE	¢	
	SPECIAL DELIVERY	¢	
	RESTRICTED DELIVERY	¢	
	OPTIONAL SERVICES	SHOW TO WHOM AND DATE DELIVERED	¢
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
	RETURN RECEIPT SERVICE		
TOTAL POSTAGE AND FEES \$			
POSTMARK OR DATE			

PS Form 3800, Apr. 1976

PS Form 3811, Apr. 1977

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

① SENDER: Complete items 1, 2, and 4. Add your address in the "RETURN TO" space on reverse.		
1. The following service is requested (check one). <input checked="" type="checkbox"/> Show to whom and date delivered. <input type="checkbox"/> Show to whom, date, and address of delivery. <input type="checkbox"/> RESTRICTED DELIVERY Show to whom and date delivered. <input type="checkbox"/> RESTRICTED DELIVERY. Show to whom, date, and address of delivery. \$ (CONSULT POSTMASTER FOR FEES)		
2. ARTICLE ADDRESSED TO: Mr. and Mrs. Harry Gillman P. O. Box 175 Lorton, Virginia 22079		
3. ARTICLE DESCRIPTION:		
REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	635004	
(Always obtain signature of addressee or agent)		
I have received the article described above. SIGNATURE <input type="checkbox"/> Addressee <input type="checkbox"/> Authorized agent <i>W. H. Gillman</i>		
4. DATE OF DELIVERY	POSTMARK AUG 14 1978 LORTON VA	
5. ADDRESS (Complete only if requested)		
6. UNABLE TO DELIVER BECAUSE:		CLERK'S INITIALS <i>[Signature]</i>

☆ GPO : 1977 - C-234-337

ASSESSMENTS

1. DESCRIPTION:

Condominium Unit 17, BUILDAMERICA-1, a Condominium, as the same is described in a Master Deed recorded among the land records of Fairfax County, Virginia, in Deed Book 4088 at page 266, together with said Unit's appurtenant interest in the Common Areas of the Condominium as is more particularly specified in the Master Deed;

2. UNIT OWNERS: Harry F. Gillman and Saundra K. Gillman his wife; and/or R. Dennis McArver and Oscar W. Sellars, Trustees.

3. AMOUNT AND DATE DUE: \$8,000.00 August 20, 1978

4. DATE OF ISSUANCE: October 18, 1978

John R. Pflug, Jr.
John R. Pflug, Jr.
President and Authorized Agent
Unit Owners Association of
BuildAmerica-1, a Condominium

STATE OF VIRGINIA

COUNTY OF *Fairfax*, to-wit:

I, *Sandra M. McFain*, a Notary Public in and for the state and county aforesaid, do certify that John R. Pflug, Jr., President and Authorized Agent, Unit Owners Association of BuildAmerica-1, a Condominium, this day made oath before me in my county aforesaid that Harry F. Gillman and Saundra K. Gillman and/or R. Dennis McArver and Oscar W. Sellars, Trustees, are justly indebted to Unit Owners Association of BuildAmerica-1, in the sum of \$8,000.00 plus interest for the consideration stated in the foregoing memorandum, and that the same is payable as therein stated.

Given under my hand this *19th* day of *October* 1978.

Sandra M. McFain
Notary Public

My Commission Expires *12/21/82*

081

EXH. B-D

This instrument with certificate annexed, admitted to record-Office of Circuit Court at 10:30 AM
Fairfax County, Va. OCT 19 1978
Jenna E. [illegible] Clerk
P1 EXH 18D
6114179

RECEIVED, JUDITH, HIZENBOLD & KAMSEY
2300 SOUTH MAIN STREET
ARLINGTON, VIRGINIA 22204



77040

ASSESSMENTS

1. DESCRIPTION;

Condominium Unit 21, BUILDAMERICA-1, a Condominium, as the same is described in a Master Deed recorded among the land records of Fairfax County, Virginia, in Deed Book 4088 at page 266, together with said Unit's appurtenant interest in the Common Areas of the Condominium as is more particularly specified in the Master Deed;

2. UNIT OWNERS: Harry F. Gillman and Sandra K. Gillman his wife; and/or R. Dennis McArver and Oscar W. Sellars, Trustees.

3. AMOUNT AND DATE DUE: \$8,000.00 August 20, 1978

4. DATE OF ISSUANCE: October 18, 1978

John R. Pflug, Jr.
John R. Pflug, Jr.
President and Authorized Agent
Unit Owners Association of
BuildAmerica-1, a Condominium

STATE OF VIRGINIA

COUNTY OF *Fairfax*, to-wit:

I, *Sandra M. McKain*, a Notary Public in and for the state and county aforesaid, do certify that John R. Pflug, Jr., President and Authorized Agent, Unit Owners Association of BuildAmerica-1, a Condominium, this day made oath before me in my county aforesaid that Harry F. Gillman and Sandra K. Gillman and/or R. Dennis McArver and Oscar W. Sellars, Trustees, are justly indebted to Unit Owners Association of BuildAmerica-1, in the sum of \$8,000.00 plus interest for the consideration stated in the foregoing memorandum, and that the same is payable as therein stated.

Given under my hand this *19th* day of *October* 1978.

Sandra M. McKain
Notary Public

My Commission Expires *12/21/80*

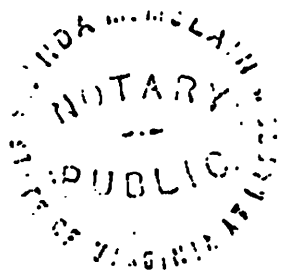
082

EXH. 18-A

This instrument with certificate annexed, admitted to record-Office of Circuit Court, Fairfax County, Va. OCT 19 1978 at 10:30 A.M.
Foster
Anna S. McArthur Clerk

PIE Xh #18A
6/14/99
56461

2300 SOUTH NINTH STREET
ARLINGTON, VIRGINIA 22204



ASSESSMENTS

1. DESCRIPTION:

Condominium Unit 17, BUILDAMERICA-1, a Condominium, as the same is described in a Master Deed recorded among the land records of Fairfax County, Virginia, in Deed Book 4088 at page 266, together with said Unit's appurtenant interest in the Common Areas of the Condominium as is more particularly specified in the Master Deed;

2. UNIT OWNERS: Harry F. Gillman and Sandra K. Gillman his wife; and/or R. Dennis McArver and Oscar W. Sellars, Trustees.

3. AMOUNT AND DATE DUE: \$8,000.00 August 21, 1978

4. DATE OF ISSUANCE: October 18, 1978

John R. Pflug, Jr.
John R. Pflug, Jr.
President and Authorized Agent
Unit Owners Association of
BuildAmerica-1, a Condominium

STATE OF VIRGINIA

COUNTY OF Fairfax, to wit:

I, Sinda M. McSain, a Notary Public in and for the state and county aforesaid, do certify that John R. Pflug, Jr., President and Authorized Agent, Unit Owners Association of BuildAmerica-1, a Condominium, this day made oath before me in my county aforesaid that Harry F. Gillman and Sandra K. Gillman and/or R. Dennis McArver and Oscar W. Sellars, Trustees, are justly indebted to Unit Owners Association of BuildAmerica-1, in the sum of \$8,000.00 plus interest for the consideration stated in the foregoing memorandum, and that the same is payable as therein stated.

Given under my hand this 19th day of October 1978.

Sinda M. McSain
Notary Public

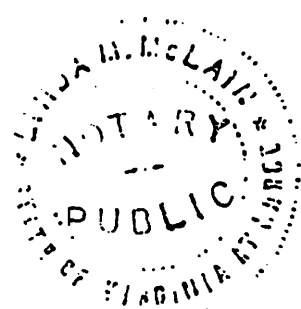
My Commission Expires 12/21/80

083

P/ Exh 18E
6/14/79
Judge.

This instrument with certificate annexed, admitted to record-Office of Circuit Court Fairfax County, Va. OCT 19 1978 at 10:30 AM
Fenton
Sinda M. McSain Clerk

2300 SOUTH NINTH STREET
ARLINGTON, VIRGINIA 22204



77041

ASSESSMENTS

1. DESCRIPTION:

Condominium Unit 21, BUILDAMERICA-1, a Condominium, as the same is described in a Master Deed recorded among the land records of Fairfax County, Virginia, in Deed Book 4088 at page 266, together with said Unit's appurtenant interest in the Common Areas of the Condominium as is more particularly specified in the Master Deed;

2. UNIT OWNERS: Harry F. Gillman and Saundra K. Gillman his wife; and/or R. Dennis McArver and Oscar W. Sellars, Trustees.
3. AMOUNT AND DATE DUE: \$8,000.00 August 21, 1978
4. DATE OF ISSUANCE: October 18, 1978

John R. Pflug, Jr.
John R. Pflug, Jr.
President and Authorized Agent
Unit Owners Association of
BuildAmerica-1, a Condominium

STATE OF VIRGINIA

COUNTY OF Fairfax, to-wit:

I Linda M. McKain, a Notary Public in and for the state and county aforesaid, do certify that John R. Pflug, Jr., President and Authorized Agent, Unit Owners Association of BuildAmerica-1, a Condominium, this day made oath before me in my county aforesaid that Harry F. Gillman and Saundra K. Gillman and/or R. Dennis McArver and Oscar W. Sellars, Trustees, are justly indebted to Unit Owners Association of BuildAmerica-1, in the sum of \$8,000.00 plus interest for the consideration stated in the foregoing memorandum, and that the same is payable as therein stated.

Given under my hand this 17th day of October 1978.

Linda M. McKain
Notary Public

My Commission Expires 12/2/80

084

EXH. 18-B

This instrument with certificate annexed,
admitted to record, Office of Circuit Court
Fairfax County, Va. OCT 19 1978 at 10:30A-
Section 3-11 Clerk 5089

PI EXH 18B
6/14/792300 SOUTH NINTH STREET
ARLINGTON, VIRGINIA 22204

REVENUE



MEMORANDUM OF LIEN FOR CONDOMINIUM

ASSESSMENTS

1. DESCRIPTION:

Condominium Unit 17 BUILDAMERICA-1, a Condominium, as the same is described in a Master Deed recorded among the land records of Fairfax County, Virginia, in Deed Book 4088 at page 266, together with said Unit's appurtenant interest in the Common Areas of the Condominium as is more particularly specified in the Master Deed;

2. UNIT OWNERS: Harry F. Gillman and Sandra K. Gillman, his wife, and/or R. Dennis McArver and Oscar W. Sellars, Trustees.

3. AMOUNT AND DATE DUE:

\$ 125.00	August 11, 1978
125.00	August 12, 1978
125.00	August 13, 1978
125.00	August 14, 1978
125.00	August 15, 1978
125.00	August 16, 1978
125.00	August 17, 1978
125.00	August 18, 1978
125.00	August 19, 1978
125.00	August 20, 1978
125.00	August 21, 1978
125.00	August 22, 1978
125.00	August 23, 1978
125.00	August 24, 1978
125.00	August 25, 1978
125.00	August 26, 1978
125.00	August 27, 1978
125.00	August 28, 1978
125.00	August 29, 1978
125.00	August 30, 1978
125.00	August 31, 1978
125.00	September 1, 1978
125.00	September 2, 1978
125.00	September 3, 1978
125.00	September 4, 1978
125.00	September 5, 1978
125.00	September 6, 1978
125.00	September 7, 1978
125.00	September 8, 1978
125.00	September 9, 1978
125.00	September 10, 1978
125.00	September 11, 1978
125.00	September 12, 1978
125.00	September 13, 1978
125.00	September 14, 1978
125.00	September 15, 1978

P1 Exh 18F
6/14/79
Judge: *[Signature]*

TOTAL:

\$4,500.00

77042

MEMORANDUM OF LIEN FOR CONDOMINIUM

ASSESSMENTS

1. DESCRIPTION:

Condominium Unit 21 BUILDAMERICA-1, a Condominium, as the same is described in a Master Deed recorded among the land records of Fairfax County, Virginia, in Deed Book 4088 at page 266, together with said Unit's appurtenant interest in the Common Areas of the Condominium as is more particularly specified in the Master Deed;

2. UNIT OWNERS: Harry F. Gillman and Sandra K. Gillman, his wife; and/or R. Dennis McArver and Oscar W. Sellars, Trustees.

3. AMOUNT AND DATE DUE:	\$ 125.00	August 11, 1978
	125.00	August 12, 1978
	125.00	August 13, 1978
	125.00	August 14, 1978
	125.00	August 15, 1978
	125.00	August 16, 1978
	125.00	August 17, 1978
	125.00	August 18, 1978
	125.00	August 19, 1978
	125.00	August 20, 1978
	125.00	August 21, 1978
	125.00	August 22, 1978
	125.00	August 23, 1978
	125.00	August 24, 1978
	125.00	August 25, 1978
	125.00	August 26, 1978
	125.00	August 27, 1978
	125.00	August 28, 1978
	125.00	August 29, 1978
	125.00	August 30, 1978
	125.00	August 31, 1978
	125.00	September 1, 1978
	125.00	September 2, 1978
	125.00	September 3, 1978
	125.00	September 4, 1978
	125.00	September 5, 1978
	125.00	September 6, 1978
	125.00	September 7, 1978
	125.00	September 8, 1978
	125.00	September 9, 1978
	125.00	September 10, 1978
	125.00	September 11, 1978
	125.00	September 12, 1978
	125.00	September 13, 1978
	125.00	September 14, 1978
	125.00	September 15, 1978

TOTAL:

\$4,500.00

PI EXH 18C
6/14/79
Judge: [signature]

TOLBERT, SMITH, HIGDON & MARSH
2300 SOUTH NINTH STREET
ARLINGTON, VIRGINIA 22204

4. DATE OF ISSUANCE:

October 18, 1978

John R. Pflug, Jr.
John R. Pflug, Jr.
President and Authorized Agent
Unit Owners Association of
BuildAmerica-1, a Condominium

STATE OF VIRGINIA

COUNTY OF Fairfax, to-wit:

I, Sinda M. McLean, a Notary Public in and for the county and state aforesaid, do certify that John R. Pflug, Jr., President and Authorized Agent, Unit Owners Association of BuildAmerica-1, a Condominium, this day made oath before me in my county aforesaid that Harry F. Gillman and Saundra K. Gillman and/or R. Dennis McArver and Oscar W. Sellars, Trustees are justly indebted to Unit Owners Association of BuildAmerica-1, in the sum of \$4,500.00 plus interest for the consideration stated in the foregoing Memorandum, and that the same is payable as therein stated.

Given under my hand this 19th day of October 1978.

Sinda M. McLean
Notary Public

My Commission expires 12/21/80

This instrument with certificate annexed,
admitted to record-Office of Circuit Court
Fairfax County, Va. OCT 19 1978 at 10:30 A.M.

Testen

James E. Hoggins Clerk

4. DATE OF ISSUANCE;

October 18, 1978

John R. Pflug, Jr.
John R. Pflug, Jr.
President and Authorized Agent
Unit Owners Association of
BuildAmerica-1, a Condominium

STATE OF VIRGINIA

COUNTY OF Fairfax, to-wit:

I, Linda M. McLain, a Notary Public in and for the county and state aforesaid, do certify that John R. Pflug, Jr., President and Authorized Agent, Unit Owners Association of BuildAmerica-1, a Condominium, this day made oath before me in my county aforesaid that Harry F. Gillman and Sandra K. Gillman and/or R. Dennis McArver and Oscar W. Sellars, Trustees are justly indebted to Unit Owners Association of BuildAmerica-1, in the sum of \$4,500.00 plus interest for the consideration stated in the foregoing Memorandum, and that the same is payable as therein stated.

Given under my hand this 19th day of October 1978.

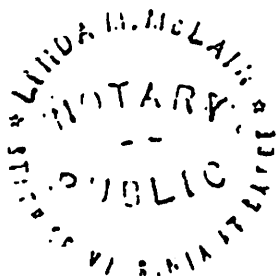
Linda M. McLain
Notary Public

My Commission expires 12/21/80

This instrument with certificate annexed,
admitted to record-Office of Circuit Court
Fairfax County, Va. OCT 19 1978 at 10:30 AM

Testes

James E. Hoffinger Clerk





NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA
COUNTY OF FAIRFAX CITY OF FAIRFAX
CITY OF FALLS CHURCH

BARNARD F. JENNINGS
JAMES KEITH
WILLIAM G. PLUMMER
LEWIS D. MORRIS
BURCH MILLSAP
JAMES C. CACHERIS
THOMAS J. MIDDLETON
RICHARD J. JAMBORSKY
JUDGES

FAIRFAX COUNTY COURTHOUSE
4000 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030

January 3, 1979

Charles Henry Smith, Esq.
2300 Ninth Street, South
Arlington, Virginia 22204

Fredrick H. Goldbecker, Esq.
Box 517
Fairfax, Virginia 22030

Re: Unit Owners Association v. Gillman, et al.
Chancery No. 59858

Gentlemen:

The Court has carefully considered your helpful and thoughtful memoranda. Counsel have presented excellent argument in support of their positions.

The Court previously overruled defendants' demurrer, paragraphs III, IV, V and VI. The Court is now persuaded that paragraphs I and II should also be overruled.

Based on the argument and case authority cited in complainant's memorandum, the Court concludes that complainant has the authority to levy and to enforce reasonable fines pursuant to a reasonable procedure. A fair reading of complainant's Bill, resolving all reasonable inferences in favor of the complainant, supports a cause of action for the relief sought.

Very truly yours,

Richard J. Jamborsky

RJJ:jah

DECREE

THIS CAUSE came to be heard on the Demurrer of the Defendants, Harry F. Gillman and Saundra K. Gillman on December 8, 1978, and upon consideration of the oral argument, the memoranda filed herein, and the cases and other authorities cited;

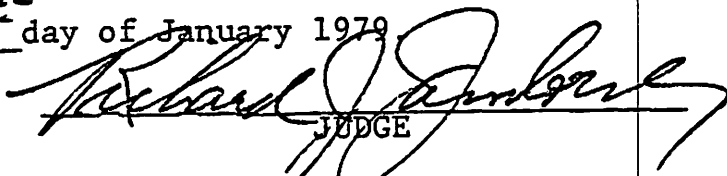
IT APPEARING to the Court that the Complainant has the authority to levy fines and to file a lien to enforce them in accordance with Va. Code § 55-79.84, provided that the amount of the fines and the procedure for levying them is reasonable, and

IT APPEARING to the Court that all grounds for the Demurrer should be overruled, it is

DECREED that the Demurrer be and hereby is overruled, and it is

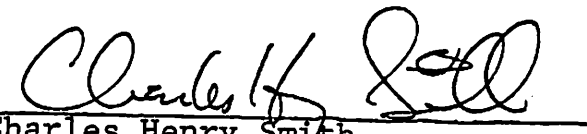
DECREED FURTHER that the Defendants, Harry F. Gillman and Saundra K. Gillman have ten (10) days from the date of entry of this Decree to file an Answer.

ENTERED this 12th day of January 1979

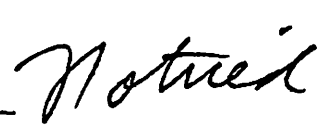

JUDGE

WE ASK FOR THIS:

Tolbert, Smith, FitzGerald & Ramsey
2300 Ninth Street, South
Arlington, Virginia 22204

By 
Charles Henry Smith
Counsel for Complainant

SEEN:


Frederick H. Goldbecker
Counsel for Defendants



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA
COUNTY OF FAIRFAX CITY OF FAIRFAX
CITY OF FALLS CHURCH

BARNARD F. JENNINGS
WILLIAM G. PLUMMER
LEWIS D. MORRIS
BURCH MILLSAP
JAMES C. CACHERIS
THOMAS J. MIDDLETON
RICHARD J. JAMBORSKY
LEWIS HALL GRIFFITH
F. BRUCE BACH
JUDGES

JAMES KEITH
RETIRED JUDGE

September 18, 1979

FAIRFAX COUNTY COURTHOUSE
4000 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030

Charles Henry Smith, Esq.
2300 Ninth Street, South
Arlington, Virginia 22204

Frederick H. Goldbecker, Esq.
Box 517
Fairfax, Virginia 22030

Re: Unit Owners Association of BuildAmerica-1
v. Harry F. Gillman, et al.-Chancery No. 59858
and Harry F. Gillman, et ux. v. John R. Pflug,
Jr., Trustee, and Board of Managers of the
Unit Owners Association of BuildAmerica-1,
Chancery No. 59884
(consolidated for trial)

Gentlemen:

After consideration of the evidence heard ore tenus on June 14 and 18, 1979, the pleadings, exhibits and memoranda of counsel submitted at court's request in lieu of final argument, as well as my independent research, I have reached the following conclusions:

1. With great deference to Judge Jamborsky, I am of the opinion that the Unit Owners Association of BuildAmerica-1 (hereinafter referred to as Unit Owners Association) does not have the authority to levy fines and to file a lien to enforce them in accordance with provisions of Virginia Code, Sec. 55-79.84. I have read the memoranda filed by counsel in support of their argument on the demurrer and the authorities cited therein. Article III, sub-par.(m) of the bylaws, which creates the power and authority of the Board of Managers of the association to levy fines against unit owners for violation of the Rules and Regulations established by it to govern the conduct of unit owners, and providing that such fines may be collected as if they were common charges owed by the unit or units against whom the fines were levied is unlawful and unconstitutional. To permit such action would be offensive and violative of the due process guarantees of federal

and state constitutions. A careful and exhaustive search of the Condominium Act, its legislative history, and case law has not convinced the court that the Legislature ever intended to grant such broad power to any condominium association.

Section 55-79.84 provides in part, "(a) The Unit Owners' Association shall have a lien on every condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments....." (emphasis added). The court having declared Article III, sub-par.(m) of the bylaws as being unlawful and unconstitutional, it follows that the above section of our statute would not be applicable. The court's ruling applies only to that section of Article III and does not affect any other sections or provisions of the condominium instruments. Section 55-79.52 of the Code provides in part--"(a) All provisions of the condominium instruments shall be deemed severable, and any unlawful provision thereof shall be void..."

Strict construction of the condominium statute to protect the rights of the unit owners is mandated by Section 55-79.73(d) of our Code. Levying of fines and collecting them as if they were common charges owed by the unit owner under the provisions of the condominium instruments would be tantamount to taking of one's property without due process. There is no provision in the statutes or condominium instruments which prescribe any procedural guidelines or standards for a hearing. The court disagrees with the contention of counsel for the Unit Owners Association that the hearing on the merits in the suit to enforce the lien in this court fulfills the due process requirements. That could very well be true if the fine levied was a lawful assessment which became a lien on unit owner's property (emphasis added).

2. Complainant's request for relief by way of judgment against defendants in Count I, Count II and Count III, with interest and attorneys fees, is denied. The liens are declared invalid and should be released of record.

3. Complainants are entitled to the following injunctive relief as requested in Count IV.

(a) The defendants (hereinafter referred to as Gillmans) are hereby enjoined from maintaining, parking or retaining its trash collecting vehicles on the premises or common areas until after they have been thoroughly washed and sprayed with a disinfectant/insecticide substance designed to reduce odor and kill insects.

Charles Henry Smith, Esq.
Frederick H. Goldbecker, Esq.
Page 3
September 18, 1979

(b) The Gillmans are hereby enjoined from having, keeping, parking or maintaining at any given time any vehicles on the premises or common areas in excess of the number permitted by the Condominium Rules and Regulations.

4. The court will make an allowance for counsel fees to complainant's counsel as requested in Count IV, however, complainant will have to pay its costs. I suggest that Mr. Smith submit a statement reflecting time he has spent in prosecuting this suit at such time as the order is presented.

5. The order submitted should also reflect the court's ruling on trial date denying defense counsel's motion for a continuance, and granting his motion to nonsuit his cross-bill in Chancery No. 59858.

6. The relief payed for by the Gillmans in their Bill for Delcaratory Judgment in Chancery No. 59884 is denied.

I suggest that Mr. Smith prepare an order incorporating the above findings.

Please accept my apologies for not having rendered this opinion letter sooner. The delay has been due to my being on vacation and an extremely heavy court docket.

With kindest personal regards, I remain

Very truly yours,

Lewis D. Morris

LDM:jah

cc: J. Jay Corson, IV, Esq.

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

UNIT OWNERS ASSOCIATION OF
BUILDAmerica-1, A CONDOMINIUM,

Complainant,

v.

HARRY F. GILLMAN, et ux.,

Defendants.

HARRY G. GILLMAN, et ux.,

Complainants,

v.

JOHN R. PFLUG, JR., TRUSTEE, et al.,

Defendants.

In Chancery No. 59858

In Chancery No. 59884

DECREE

THIS CAUSE came to be heard before the Court on June 14, 1979 and June 18, 1979 upon testimony of witnesses and exhibits introduced by the parties, and the Court having considered the pleadings, briefs on demurrer, post trial briefs and reply briefs of the parties; and the Court having sent to counsel a letter opinion dated September 18, 1979; and

IT APPEARING to the Court that the motion by counsel for the Gillmans made at the time of trial that the trial be continued should be denied, and

IT FURTHER APPEARING to the Court that the motion by counsel for the Gillmans to nonsuit claims against the Unit Owners Association of BuildAmerica-1, a Condominium (hereinafter referred to as the "Association") in each action for willful and malicious interference with the Gillmans' business and for violation of Va. Code § 18.2-499 should be granted; and

IT FURTHER APPEARING to the Court that Article III, Paragraph 2(m) of the Bylaws of BuildAmerica-1, a Condominium is unlawful and unconstitutional because it is violative of the due process guarantees of the United States Constitution and of the Constitution of Virginia, and, therefore, that the Association is not entitled to relief under Counts I, II and III, Chancery No. 59858; and

IT FURTHER APPEARING to the Court that the Association is entitled to certain injunctive relief prayed for in Count IV, Chancery No. 59858 and an award of attorneys fees; and

IT FURTHER APPEARING to the Court that the Gillmans should be denied the relief prayed for in Chancery No. 59884; it is

DECREED as follows:

1. The motion by the Gillmans to continue the trial be and hereby is denied;

2. The motion by the Gillmans to nonsuit in each action their claims regarding willful and malicious interference with their business and violation of Va. Code § 18.2-499 be and hereby is granted;

3. Complainant's prayer for relief in Counts I, II, and III, Chancery No. 59858 be and hereby is denied; and the Clerk is directed to release of record these assessment liens recited therein; and

4. Complainant's prayer for relief in Count IV, Chancery No. 59858 be and hereby is granted as follows:

(A) Harry F. Gillman and Saundra K. Gillman are hereby enjoined from maintaining, parking or retaining their trash collecting vehicles on the premises or common areas until the trucks have been washed thoroughly

with a disinfectant/insecticide substance designed to reduce odor and kill insects.

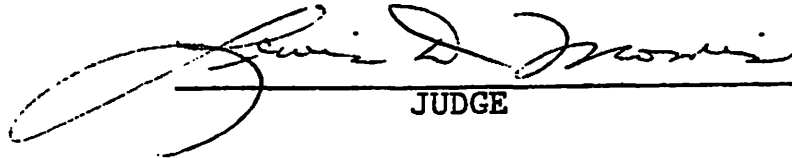
(B) Harry F. Gillman and Sandra K. Gillman are hereby enjoined from having, keeping, parking, or maintaining at any given time any vehicles in any Unit or Common Area of BuildAmerica-1, a Condominium in excess of the number permitted by the Rules and Regulations of the Condominium.

5. A judgment in the amount of \$ 1,250⁰⁰ shall be entered against Harry F. Gillman and Sandra K. Gillman in favor of the Association, representing counsel fees incurred by the Association;

6. The relief sought by the Gillmans in Chancery No. 59884 be and hereby is denied.


This Decree is final.

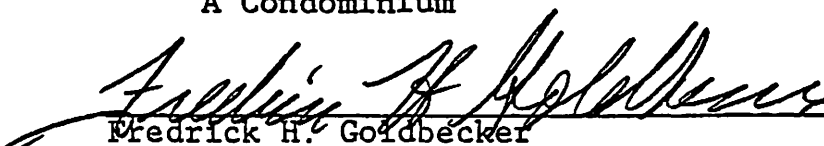
Entered this 3 day of NOVEMBER 1979.


JUDGE

SEEN AND OBJECTED TO:

TOLBERT, SMITH, FITZGERALD & RAMSEY

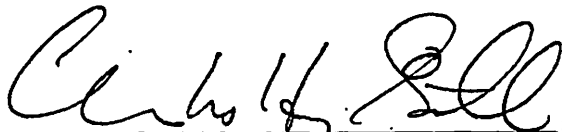
By 
Charles Henry Smith
Counsel for John R. Pflug, Jr.,
Unit Owners Association of
BuildAmerica-1, A Condominium and
Board of Managers of BuildAmerica-1,
A Condominium


Fredrick H. Goldbecker
Counsel for Harry F. Gillman and
Sandra K. Gillman

NOTICE OF APPEAL

COMES NOW the UNIT OWNERS ASSOCIATION OF BUILDAMERICA-1, A CONDOMINIUM, and files this Notice of Appeal in accordance with Rule 5:6 of the Rules of the Supreme Court of Virginia. A written statement of facts shall become a part of the record in accordance with Rule 5:9 of the Rules of the Supreme Court of Virginia.

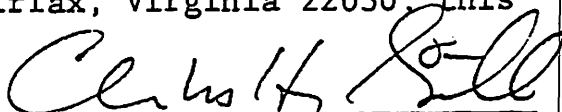
UNIT OWNERS ASSOCIATION OF
BUILDAMERICA-1, A CONDOMINIUM

By 
Charles Henry Smith

Tolbert, Smith, FitzGerald & Ramsey
2300 Ninth Street South
Arlington, Virginia 22204

Certificate of Service

I hereby certify that a copy of the foregoing Notice of Appeal was mailed first class mail, postage prepaid, to Fredrick H. Goldbecker, Esq., Box 517, Fairfax, Virginia 22030, this 25th day of November 1979.


Charles Henry Smith

ASSIGNMENTS OF ERROR

The Trial Court erred in denying the Complainant's prayer for relief in Counts I, II and III, Chancery No. 59853, and in directing the Clerk to release of record the liens sought to be enforced by said Counts; and erred in its determination of the amount of attorney's fees awarded to the Complainant.

1. Contrary to the ruling of the Trial Court, Virginia Code § 55-79.84 does grant a lien to the Unit Owners Association for fines levied in accordance with the condominium documents.

2. Contrary to the ruling of the Trial Court, Article III, paragraph 2(m) of the Bylaws for the Unit Owners Association of the BuildAmerica-1 is not unlawful or unconstitutional as violative of the due process guarantees of either the Constitution of Virginia, or the Constitution of the United States.

3. The Trial Court's award of attorney's fees to the Association was inadequate.

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

UNIT OWNERS ASSOCIATION OF
BUILDAMERICA-1, A CONDOMINIUM,

Complainant,

vs.

IN CHANCERY NO. 59858

HARRY F. GILLMAN, et al.,

Defendants.

AND

HARRY F. GILLMAN, et ux.,

Complainants,

vs.

IN CHANCERY NO. 59884

JOHN R. PFLUG, JR., Trustee
and
BOARD OF MANAGERS OF THE UNIT
OWNERS ASSOCIATION OF BUILD-
AMERICA-1,

Defendants.

(Consolidated Cases)

STATEMENT OF FACTS AND TESTIMONY

John H. Ariail, Jr.
TOLBERT, SMITH, FITZGERALD & RAMSEY
2300 Ninth Street, South
Arlington, Virginia 22204
(703) 521-5252

December 28, 1979

COMPLAINANT'S WITNESS ROGER THORNTON

Direct Examination

1. Mr. Thornton testified that he was a professional real estate agent in the service of John R. Pflug, Jr., developer of the condominium known as BuildAmerica-1, and in 1976 handled the sales of the Units of the condominium in question, and continues to perform similar duties for said principal in condominium developments undertaken since 1976. Mr. Thornton received no compensation from Mr. Pflug other than the commissions generated by the sale of condominium Units.

2. Mr. Thornton testified that he had negotiated the sale of Unit 17 to Gillman in 1976, and of Unit 21 to Gillman in 1977.

3. Mr. Thornton testified that at the time of the purchase of Unit 17, Gillman had stated that he wanted the Unit solely for the purpose of repair of his garbage truck fleet, not for the purpose of storage of those trucks. It was the understanding of Mr. Thornton that the Gillman trucks would be parked on the public street, Fullerton Road, and the vehicles would enter the condominium parking and driveways only to enter Unit 17 for repairs.

4. In accordance with this understanding, the entrance bay to Unit 17 was raised above the height of the other Units to accommodate the full height of the garbage trucks.

COMPLAINANT'S WITNESS JOHN R. PFLUG, JR.

Direct Examination

1. Mr. Pflug testified that he, as Trustee, is the condominium declarant and the grantor on the deeds conveying Units 17 and 21 to Gillman (Complainant's Exhibits 15 and 16).

2. Mr. Pflug testified that he is the president of the Board of Managers, and that he owns one Unit at the condominium.

3. Mr. Pflug testified that problems concerning Gillman's spillage of oil on the parking pavement, congestion, and odor began in approximately August, 1977. The Unit Owners Association received a letter from Mr. Crawford (Complainant's Exhibit 8) demanding that the Association resolve the problem with the Gillmans trash trucks.

4. The Association sent notices to Gillman in August, 1977, September, 1977, and May, 1978, regarding Gillmans' use of the common elements. (Complainant's Exhibits 10, 13, 14). The Gillmans never corrected any of the conditions recited in those notices.

5. When the Gillmans refused to take corrective action, the Unit Owners Association authorized its counsel to send a letter dated June 6, 1978, (Complainant's Exhibit 11) to the Gillmans, demanding that the garbage trucks be removed forthwith from the condominium.

COMPLAINANT'S WITNESS JOHN R. PFLUG, JR.

Direct Examination (Cont.)

6. The Gillmans ignored this notice, and the warm summer weather compounded the already intolerable problem.

7. In August, 1978, the Association, by counsel, notified the Gillmans (Complainant's Exhibit 17) that a fine had been imposed for their continued violation of Rules and Regulations, that an additional fine would be imposed for failure to pay the fine assessed. Further, the Gillmans were put on notice that an additional fine would be imposed for each day that conditions remained unimproved.

8. The Declaration, Bylaws, and Rules and Regulations of the condominium provide for imposition of a fine for violations of the Rules and Regulations, and further permit an additional fine for failure to pay an initial fine.

9. Conditions failed to improve through 1978, and the Gillmans refused to pay any portion of the fine assessed.

10. The Association authorized its counsel to file a lien for a condominium assessment to enforce the unpaid fines.

11. Counsel stipulated to the authenticity of the copies of liens filed (Complainant's Exhibit 18), as attached to the Bill to Enforce Condominium Lien and Petition for Injunctive relief.

DEFENDANTS' WITNESS SAUNDRA GILLMAN

Direct Examination (Cont.)

14. Mrs. Gillman testified that Gillman sought a restraining order, which was denied, but in any event the threat was not carried out.

15. Mrs. Gillman testified that without notice or opportunity to defend, Gillman was notified that fines had been levied for alleged violation of the Bylaws.

16. Mrs. Gillman testified that Gillman was informed, by way of a copy of the Board of Managers Minutes of August 31, 1978, that a regulation had been passed limiting each Unit to a maximum of three trucks over ten thousand pounds axle weight (Defendants' Exhibit 6).

17. Mrs. Gillman testified that they have not been found in violation of any zoning ordinance or violation of Department of Health regulations, and the trucks have always passed stringent inspections by Fairfax and Prince William Counties, these inspections being special ones required for trash collection vehicles (Defendants' Exhibits 7 and 8).

Cross Examination

1. Mrs. Gillman testified that she and her husband had received a copy of the Declaration, Bylaws and Rules and Regulations prior to the conveyance of the first Unit they purchased (Complainant's Exhibits 1, 2, 3, and 4), and that they had

DEFENDANTS' WITNESS SAUNDRA GILLMAN

Cross Examination (Cont.)

reviewed these documents generally and were aware of the prohibition regarding noxious activities. She could not understand, however, how such regulations would apply to their use of the property.

2. Mrs. Gillman admitted that even had notice of a hearing to fine Gillman been received there was not much Gillman could do since they were already keeping the trucks clean and were in compliance with the Board of Health.

3. Mrs. Gillman testified that a manual hand-held sprayer, like that used to spray house plants, was used on occasion to spray disinfectant on garbage trucks.

May 2, 1978

Mr. & Mrs. Harry Gillman
Gillman's 5 Star Trash Service
P. O. Box 175
Lorton, Virginia 22079

Re: BuildAmerica One

Dear Mr. & Mrs. Gillman:

I have had several complaints about the parking situation at subject project and have been advised by numerous people that you are using more than your share of parking spaces which is cramping the parking on your side of the project. At one particular time you had 14 vehicles including cars and trucks using the spaces of which you are only entitled to 8. This is in violation of the Condominium By-laws and should be corrected immediately.

Also, I have noticed that the parking lot near your units is in terrible condition because of the oil and grease from your trucks either from leaking or when they are worked on in the parking lot. We have had the lot cleaned and even the chemicals would not remove the oil and grease near your unit because it has become so bad. This is in violation of Article V of the Condominium By-laws, Sec. 10 concerning "Maintenance and Repair" of the General Common Elements wherein all maintenance and repairs necessitated by the negligence, misuse or neglect of a unit owner are charged to that unit owner.

You are hereby given 14 days to cease and desist from the above violations or further action will be taken. We regret that this letter is necessary because we have tried to work out this situation previously to everyone's satisfaction and apparently it has not been resolved.

Sincerely yours,

BUILDAMERICA

Linda M. McLain,
Property Management

PI EXH #10
6/14/79
Judge [signature]

PS Form 3811, Nov. 1976

● SENDER: Complete items 1, 2, and 4.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☒ Show to whom and date delivered25¢
 - ☐ Show to whom, date, & address of delivery45¢
 - ☐ RESTRICTED DELIVERY.
Show to whom and date delivered85¢
 - ☐ RESTRICTED DELIVERY.
Show to whom, date, and address of delivery ..\$1.05
- (Fees shown are in addition to postage charges and other fees).

2. ARTICLE ADDRESSED TO:
Mr. & Mrs. Harry Gillman
Gillman's 5 Star Trash Service
P. O. Box 175
Lorton, Virginia 22079

3. ARTICLE DESCRIPTION:
REGISTERED NO. CERTIFIED NO. INSURED NO.

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY
5-4-78

POSTMARK
MAY
4
1978

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆ GPO: 1976-O-203-456

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

PS Form 3800, Apr. 1976

No. 764296
RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL
(See Reverse)

SENT TO		Mr. & Mrs. Harry Gillman	
STREET AND NO.		P. O. Box 175	
P. O. STATE AND ZIP CODE		Lorton, Virginia 22079	
POSTAGE		\$1.13	
CERTIFIED FEE		.60	
SPECIAL DELIVERY		.60	
RESTRICTED DELIVERY		.60	
SHOW TO WHOM AND DATE DELIVERED		.60	
SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY		.60	
SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY		.60	
SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY		.60	
TOTAL POSTAGE AND FEES		\$1.33	
POSTMARK OR DATE		5/2/78	

LAW OFFICES
TOLBERT, SMITH, FITZGERALD & RAMSEY

2300 NINTH STREET, SOUTH
ARLINGTON, VIRGINIA 22204

TELEPHONE
(703) 521-5252

EDWARD M. SMITH
C. WYNNE TOLBERT
HENRY ST. JOHN FITZGERALD
W. FORBES RAMSEY
JOHN H. ARIAIL, JR.
PETER K. STACKHOUSE

CHARLES HENRY SMITH
DAVID C. CANFIELD
JOHN E. HARRISON

June 6, 1978

CERTIFIED MAIL/
RETURN RECEIPT REQUESTED

Mr. and Mrs. Harry Gillman
Gillman's 5 Star Trash Service
Post Office Box 175
Lorton, Virginia 22079

Dear Mr. and Mrs. Gillman:

This firm has been retained by the Board of Managers of the Unit Owners Association of the BuildAmerica-1, a Condominium to enforce the Rules and Regulations promulgated by the Board.

Specifically, Regulation 15 states as follows:

No noxious or offensive activity shall be carried on in any Unit or in the common elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or occupants.

Further, Article V, Paragraph 11 (c) states:

No nuisances shall be allowed on the Condominium nor shall any use or practice be allowed which is a source of reasonable annoyance or which unreasonably interferes with the peaceful possession or proper use of the Condominium by its owners and occupants.

The odor emanating from your trash trucks has become intolerable to the other Unit Owners of the Condominium. Your storage of the trucks on the common elements of the

Mr. and Mrs. Harry Gillman
Page 2
June 6, 1978

Condominium interferes with the other owners' use and enjoyment of their respective units, in violation of both the By-Laws and the promulgated Rules and Regulations. While the noxious odors have been an annoyance for some time, the warm weather has made the stench unbearable.

Unless these vehicles are removed from the Condominium on or before June 12, 1978, the Board of Managers will exercise its right under the Master Deed, By-Laws, and Rules and Regulations, by having the trucks physically removed from the premises and assessing your unit for the cost of such removal. In the event that such special assessment is not paid, of course, it will become a lien on your unit.

I thank you for your attention in this matter.

Very truly yours,

Charles Henry Smith

CHS/dmw

cc John R. Pflug, Jr.

August 8, 1977

Gillman's 5 Star Trash Service
7646-C Fullerton Road
Springfield, Virginia 22153

CERTIFIED-RETURN RECEIPT

Attn: Mr. Harry Gillman

Re: Unit 7646-C
BuildAmerica One

Dear Mr. Gillman:


This letter is to notify you that we have received several complaints against the occupants of the subject unit as follows:

1. Occupants have been observed washing dirt and grease out of the unit onto the parking lot and into the gutters.
2. Occupants wash trash containers in the driveway area.
3. Trucks owned by occupants leak an excessive amount of oil onto the parking area and occupants have been seen draining hydraulic oil directly onto the parking area.

The above violations create unsanitary conditions in the parking lot and are a nuisance to the rest of the tenants and should cease immediately.

4. Occupants have placed small air compressor against the common wall with Unit 7646-B which causes a loud hammering noise in Unit 7646-B. This violation could easily be corrected if you would please relocate your air compressor away from the wall.

The above are in direct violation of Article V, Section 11, of the By-Laws of the BuildAmerica One Unit Owners Association. It is not very often that we receive complaints of this nature. However, when we do, we expect that after tenants have been informed of their violations that they will remedy the situation to the satisfaction of the Unit Owners Association. We would appreciate your cooperation in resolving the above items.

P1 Exh #13
6/14/78
Judge: 

Gillman's 5 Star Trash Service
August 8, 1977
Page 2

If you have any questions regarding the aforementioned, we would be happy to discuss the matter with you. If you prefer, we can meet you at your building. Please call us at 354-2200.

Sincerely yours,

BUILDAMERICA MANAGEMENT COMPANY

Linda M. McLain
Property Management

September 1, 1977

Mr. Harry Gillman
Gillman's 5 Star Trash Service
7646-C Fullerton Road
Springfield, Virginia 22153

Dear Mr. Gillman:

It has come to my attention that the odor from your garbage trucks is getting out of hand. I have been at the project several times and the smell from your trucks carries around the building and is especially bad in this hot weather. I am sure this is most obnoxious to several of the tenants and something will have to be done as soon as possible.


I would appreciate if you would advise me in writing as soon as possible as to your solution to this problem, or you may contact me by telephone (354-2200) to set up a meeting so that we may come to a mutual decision as to what should be done.

Sincerely yours,

BUILDAMERICA MANAGEMENT COMPANY

John R. Pflug, Jr.,
President

JRPJr:lmm

Pl Exh #14
6/14/79
Judge: 

TOLBERT, SMITH, FITZGERALD & RAMSEY

2300 NINTH STREET, SOUTH

ARLINGTON, VIRGINIA 22204

EDWARD M. SMITH
C. WYNNE TOLBERT
HENRY ST. JOHN FITZGERALD
W. FORBES RAMSEY
JOHN H. ARIAIL, JR.
PETER K. STACKHOUSE

TELEPHONE
(703) 521-5252

August 10, 1978

C. AMES HENRY SMITH
DAVID C. CANFIELD
JOHN E. HARRISON

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mr. and Mrs. Harry Gillman
Gillman's Five Star Trash Service
Post Office Box 175
Lorton, Virginia 22079

Dear Mr. and Mrs. Gillman:

On behalf of the Unit Owners' Association of BuildAmerica-1, a Condominium, I hereby notify you of the imposition of fines on the Units you own at the Condominium for continuing violations of the Bylaws and Rules and Regulations.

Article III, Section 2(m) of the Bylaws vests in the Board of Managers the power to:

[Levy] fines against Unit owners for violation of the Rules and Regulations established by it to govern the conduct of the Unit owners, provided, however, that no fine may be levied in an amount in excess of \$25 for any one violation. But for each day a violation continues after notice, it shall be considered a separate violation.... Where a Unit owner is fined for an infraction of the Rules and Regulations and fails to pay the fine within 10 days after notification thereof, the Board may levy an additional fine or fines to enforce payment of the initial fine.

You received notice on June 7, 1978 that the intolerable odor emanating from each of your trash trucks was in violation of Article V, paragraph 11(c) of the Bylaws, and of Regulation 15 of the Rules and Regulations.

The Board of Managers has imposed a fine of \$25.00 against each truck for each day that such truck has produced noxious odors on the Common Elements of the Condominium. Because the smell from each truck has continued every day since that notice, the daily fine for five trucks is \$125.00. From the day of your receipt of that notice, through the date of this letter, the total of the fines amounts to \$8,000.00. In the

Mr. and Mrs. Harry Gillman
Page 2
August 10, 1978

event that this amount is not paid in full within 10 days of this notice, the Board will impose an additional fine of \$25.00 for each of the fines previously levied, for a total of an additional \$8,000.00.

Further, you are hereby given notice that from the date hereof, the Board of Managers will impose a similar \$25.00 fine on each truck for each day that such truck continues to generate an intolerable odor while parked on the Common Elements. In the event that each additional fine is not paid within 10 days of imposition, an additional fine of \$25.00 per violation of Regulation 15 will be imposed.

As provided in the Bylaws, these fines will be assessed against your Units, and, in the event they are not timely paid, a lien against the Units will be filed among the land records of Fairfax County. The institutional lender which has financed your purchase of the Units will be notified of the lien. Recordation of any such lien generally constitutes a default under the terms of the Deed of Trust securing the loan, which may result in the foreclosure of your Units by that lender. Once such a lien has been filed against your Units, the Unit Owners' Association also shall have the right to foreclose on your Units based upon your failure to pay that lien.

I thank you for your attention in this matter.

Very truly yours,

Charles Henry Smith

CHS/jch

cc: Mr. John R. Pflug, Jr.
Fredrick H. Goldbecker, Esq.

MINUTES of the Special Board of Managers Meeting for the Build-America One Unit Owners Association held August 31, 1978, 9:00 a.m., at 5501 Cherokee Avenue, Alexandria, Virginia:

Attendees:

John Pflug, President
William Crawford, Vice President
Carl Moorefield, Member
Robert Morrison, Member
Charles Henry Smith, Attorney
Linda McLain, Secretary of meeting

Mr. Pflug called the meeting to order. The major purpose of this special meeting was to discuss the problems related to Gillman's Trash Company, a tenant at BuildAmerica One.

John Pflug made a motion that we ratify and confirm all actions necessary and represented to have been taken in the letter written by Mr. Smith on our behalf dated August 10, 1978 because those items have all been discussed by us on many occasions and while we have previous resolutions regarding this matter, we would like to have one resolution to resolve it. This motion was seconded and carried by unanimous vote of the Board of Managers with Mr. Pflug abstaining.

A letter dated August 23, 1978 to Mr. Smith written by Mr. Fredrick H. Goldbecker, Gillman's attorney, was distributed to all present to review.

Mr. Smith explained the Condominium Act to everyone regarding the right of assessment and the right to lien for failure to pay assessments based on the unit owners pro rata portion of condominium expenses. He stated that the contract documents form a contractual obligation between the parties and that by signing these documents, a unit owner agrees to abide by the rules and regulations and bylaws of the condominium. Mr. Smith said it's a matter of Gillman's attorney's theory versus our theory of the condominium act. We have a sound foundation for assessing against Gillman's and the cost of attorney's fees if we do prevail.

Mr. Moorefield moved to continue the process of assessments against Gillman's that we have already started, including attorney's fees in the assessment. Mr. Crawford seconded the motion and it was carried by unanimous vote. Mr. Pflug abstained from voting.

Mr. Moorefield moved that an additional rule be added to the existing Rules and Regulations of the condominium that no unit owner be allowed to maintain on the property more than three trucks per unit with an empty weight of 10,000 lbs. or over. This is due to the fact that anything more than this is damaging to the parking lot because of the wear and tear to the asphalt and is expensive to the Unit Owners to repair the parking lot because of an excess of trucks. This motion was seconded and carried by unanimous vote. Mr. Pflug abstained.

Mr. Crawford stated that he had called the Fairfax County Health Department because of the noxious odor from Gillman's trash trucks and informed them that if they didn't do anything he would call the Virginia State Health Department. Fairfax County said they would take care of it within ten days. To date they have done nothing so Mr. Crawford said he would call the Va. State Health Department soon.

Mr. Moorefield also asked to have established as an additional rule that anyone whose activity causes trash including glass to be left on the parking lot should clean up their mess and not leave it lying in the lot. This motion was seconded by Mr. Crawford and carried by unanimous vote. Mr. Pflug abstained.

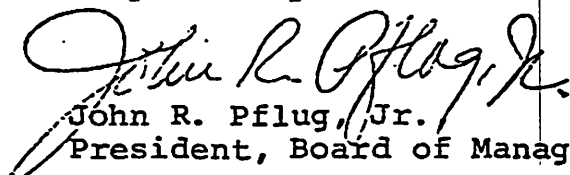
Mr. Crawford motioned that we make a rule that any major contributor of damage to the common elements in the amount of \$75.00 or more should individually be assessed for repairs and not assess the Unit Owners totally for someone else's damages. This motion was seconded and unanimously agreed to. Mr. Pflug abstained.

It was agreed by the Board of Managers that a copy of these minutes would be sent to all Unit Owners of BuildAmerica One.

The members of the Board of Managers asked that they be informed within 14 days of the outcome of this situation with Gillman's.

Mr. Moorefield moved to adjourn the meeting and the motion was seconded and carried.

Respectfully submitted,


John R. Pflug, Jr.
President, Board of Managers

cc: Mr. Charles Henry Smith

FILED

OCT 23 1979

JAMES E. HOOFFNAGLE
Clerk of the Circuit Court
of Fairfax County, Va.

VIRGINIA

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

----- X

UNIT OWNERS ASSOCIATION OF
BUILDAMERICA-1, A CONDOMINIUM,

COMPLAINANT,

VS.

IN CHANCERY NO. 59858

HARRY F. GILLMAN, ET AL,

DEFENDANTS.

AND

HARRY F. GILLMAN, ET UX,

COMPLAINANTS,

VS.

IN CHANCERY NO. 59884

JOHN R. PFLUG, JR., TRUSTEE

AND

BOARD OF MANAGERS OF THE UNIT
OWNERS ASSOCIATION OF BUILD-
AMERICA-1,

DEFENDANTS.

(CONSOLIDATED CASES.)

----- X

FRIDAY, OCTOBER 19, 1979

FAIRFAX, VIRGINIA

THE ABOVE-ENTITLED CAUSE CAME ON TO BE HEARD

BEFORE THE HONORABLE LEWIS D. MORRIS, A JUDGE FOR THE

CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA, IN COURTROOM 3,

1 THIS.

2 MR. SMITH: YOUR HONOR, I WON'T TAKE ANY MORE
3 TIME ON THE ARGUMENT THEN. I WOULD SAY, YOUR HONOR, --
4 REPRESENT TO THE COURT THAT I HAVE 179 HOURS IN THE CASE.
5 I'M PREPARED TO SUBMIT A STATEMENT, AND UNDER THE TERMS OF
6 YOUR LETTER OPINION, I'M ENTITLED TO AN AWARD OF ATTORNEY'S
7 FEES.

8 THE COURT: ALL RIGHT, YOU CAN SUBMIT THAT. DO
9 YOU HAVE A STATEMENT OF HOURS?

10 MR. SMITH: YES, YOUR HONOR.

11 THE COURT: THEN YOU HAVE, I ASSUME, A COPY OF
12 A PROPOSED DECREE ALONG WITH IT.

13 MR. SMITH: YES, BUT I WOULD PREFER NOT TO
14 TENDER THAT UNTIL AFTER MR. GOLDBECKER'S ARGUMENT.

15 THE COURT: OKAY, THAT'S ALL RIGHT, FINE.

16 MR. GOLDBECKER?

17 MR. GOLDBECKER: FIRST OF ALL, YOUR HONOR, WE
18 OBVIOUSLY ARE IN CONCURRENCE WITH THE COURT'S FINDING IN
19 REGARD TO THE LIENS, THE ASSESSMENTS. WHAT IS CONCERNING
20 US HERE IS THE FORM OF THE TWO INJUNCTIVE ORDERS WHICH ARE
21 INCLUDED IN THE LETTER OPINION OF SEPTEMBER 18TH.

22 TO BEGIN WITH, THE FORM OF AN INJUNCTIVE ORDER,
23 I SUBMIT THAT TWO THINGS, BASIC THINGS, WOULD BE NECESSARY

OUR CLIENT	ADVERSE PARTY	FILE NO.
BUILDAMERICA ONE CORP ASSOCIATES adv.		3312
Gillman, Harry F. et al.		

RESP. ATTY. JHA CHS

Page 1

Date	Client Name/Matter	File No. Non-Billable or Code	Description of Service Rendered (Include Other Attorneys Involved)	By (Initials)	Time Hours Tenth	BILLS & RECEIPTS		
						Costs	Amt. Date & Code	Balance
11/27	B.A. I v. Gillman	2 3312	Set case at term day	JEH	.8			
11/27	Pflug 1-5 RV statutory basis of claim, Begin draft of answer for Pflug, Trustee	3312	RV motions for Decl. Judgment,	CHS	1.3			
12/1	Pflug	3147 3312	R&A preliminary injunction and standards for impositions.	CHS	.6			
2/1	Pflug declaratory judgment for Pflug T/E and Board of Managers.	3312	Dr & RV answer to Motion for	CHS	1.2			

CHS # 59858

*Jed
10/19/79
JED*

*6/19/79 cc 3/22/79 150.00
w/3191 8/1/79*

BILLING MEMO		TIME
OUT	IN	Unbilled Hours
Date	✓	Balance
11/27	✓	
11/27	✓	
12/1	✓	
2/1	✓	

BUILDAmericA-1 Re: Unit Owners Association 3147

RESP. ATTY.

JH/CHS

Date	Client Name/Matter	File No. Non-Billable or Code	Description of Service Rendered (Include Other Attorneys Involved)	By (Initials)	Time Hours/Tenths	B L	COSTS		BILLS & RECEIPTS		BILLING MEMO		TIME
							Amt. Date & Code		Amt. & Date	Balance	OUT	IN	Unbilled Hours
6/9	Build America I-Gillman	3147	TC with Judge Middleton re entry of TRO and right of oral agreement; TC with Pflug re preparation for argument; review Va. Code on TRO requirements.	CHS	.8								
6/6	BuildAmerica 4 condo docs from earlier projects; TC with Pflug; TC with Pflug re nuisance created by parked garbage trucks and remedy, review B.A.1 Condo docs & rules & regulations.	3147	review forms of warehouse condos	CHS	2.6								
	to Gillman re removal of trucks												
6/12	BuildAmerica -Gillman for entry of Temporary restraining order	3147	research and analyse criteria and preliminary injunction in state courts.	CHS	.7								
6/13	Gillman injunctive relief in state Court; several defense to motion for injunction; review authority, power of Board of Managers; review pleadings filed with the Court praying for temporary injunction.	3147	research and analyse rights to TC with L. McLain re preparation of Condo documents for documentation of	CHS	2.4								
6/14	BuildAmerica I-Gillman considered by the Court in hearing preliminary injunction, draft Affidavits for Board of Managers execution, draft Affidavits for Unit Owners execution; research and analyse Va. case law on injunctive relief; draft & prepare argument for Ct. appearance; several conferences with Linda McLain re efforts to obtain execution of affidavits.	3147	research and analyse evidence	CHS	4.6								
6/15	BuildAmerica I-Gillman and case law on preliminary injunctive relief pending outcome of suit.	3147	research and analyse statutory	CHS	1.5								
6/16	BuildAmerica I-Gillman preliminary injunction, appearance before Hon. Bernard Jennings in opposition to motion; TC with Pflug, L. McLain re disposition of motion; resolution of problems	3147	prepare opposition to Motion for	CHS	4.9								
6/20	BA 4 - Gillman preliminary injunction	3147	draft Decree denying motion for	CHS	.4								

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6/20 ✓

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Build America

3147

RESP. ATTY.

Page 5

Date 1979	Client Name/Matter	File No. Non-Billable or Code	Description of Service Rendered (Include Other Attorneys Involved)	By (Initials)	Time Hours Tenth	B L	COSTS		BILLS & RECEIPTS	
							Amt. Date & Code		Amt. & Date	Balance
3/12	BA I- Gillman hearing from docket, Dr letter to Goldbecker re setting trial date.	3147	TCW Clerk of Ct. re removal of	CHS	.3					
3/20	BA-1 Gillman office & all counsel; dr letters continuing date.	3147	Set trial date; confirm w/Clerk's	CHS	.4					
3/9	Pflug-BA I- Gillman of preliminary injunction; arranging trial date.	3147	TCW Goldbecker re withdrawal	CHS	.3					
5/16	Gilman development of evidence.	3147	Cf CHS re trial strategy & the	PKS	7					
5/14	BA I- Gillman production of docs & request for admissions.	3147	RW Interrogs, Request for p	CHS	.4		6/11/83			
5/16	BA I - Gillman Discuss w/PKS trail strategy; DR request for production of docs & answers to Interrogs.	3147	RW interrogs, Request for Prod.	CHS	2.5		6/11/83			
5/18	BA I - Gillman	3147	TCW Linda McLean re trial prep	CHS	.3		6/11/83			
5/21	Gillman (BA I) Request for Prod., & request for answers; TCW Pflug re same; RW docs provided for answers;	3147	TCW Linda McLain re prep of Interrogs	CHS	1.6					
5/30	BA I v Gillman	3147	DR response to Request for admissions.	CHS	1.5					
5/31	BA I v. Gillman response to request for Production of Docs;	3147	DR Answers to Interrogs; DR	CHS	3.2					
6/4	BA I- Gillman	3147	TCW Maddox; Berry; Draft Decrees to counsel; DR notice of depo.	CHS	1.0					
6/7	BA I - Gillman photos of Gillman's trash service and condominium.	3147	Meet w. photographer and take	CHS	1.5					
6/8	BA I- Gillman Discuss testimony of Barry w/the witness; Depose Barry for testimony at trial; Fred Goldbecker re trial prep, possibility of settlement.	3147	PR for Barry de bene esse depo	CHS	3.2					

BILLING MEMO		TIME
OUT	IN	Unbilled Hours
Date	✓	Balance
4/20	✓	
5/30	✓	
6/21	✓	

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Build America 3147

RESP. ATTY.

Build America - - - 3147

RESP. ATTY.

B I L L						COSTS		BILLS & RECEIPTS	
Date	Client Name/Matter	File No. Non-Billable or Code	Description of Service Rendered (Include Other Attorneys Involved)	By (Initials)	Time Hours/Tenths	B	Amt. Date & Code	Amt. & Date	Balance
6/12	BA I - Gillman prep;	3147	R&A Va. Condo Act, General trial	CHS	4.4		COPIES 1179 88.50		
6/13	BA I - Gillman estoppel; waiver; Review pleadings.; CW prospective witnesses, prep-of-witness-examination; Prep of witness testimony; Prep of exhibits & trial materials Pr of witness' presentation Dr opening statement; General trial prep.	3147	TR prep; RW law on issues of & trial materials Pr of witness' presentation	CHS	8.5		FILE CHS 6/19/13 11		
6/14	BA I - Gillman Cir. Ct of Fairfax Co. for trial on the merits	3147	Pr for trial; Appearance before	CHS	9.5				
6/15	BA I- Gillman	3147	PR closing Argument;	CHS	1.0				
6/16	BA I- Gillman plan & Co. approvals; Appearance before on the merits.	3147	Meet w/John Pflug to review cite Judge Morris, Fairfax Circuit Ct. for trial	CHS	9.5				
6/19	Gillman BA I- Gillman	3147	DR statement of facts	CHS	2.2				
6/11	BA I- Gillman	3147	R&A Va. Condo Act, General trial preparation.	CHS	2.0				
6/27	BA I- Gillman exhibits introduced; Dr statement of facts	3147	RW testimony of all witnesses &	CHS	5.5				
6/29	BA I- Gillman	3147	DR Memorandum	CHS	4.5				
7/2	BA I-Gillman ment of liens & injunctive relief; Tr to Fairfax for filing;	3147	DR&RV memo in support of enforce-CHS	CHS	7.5				
7/3	BA I- Gillman legal arguments; DR Response Memoranda.	3147	RW Brief of Gillman's and analyse CHS	CHS	4.0				
9/19	BA I-Gillman	3147	TCW Goldbecker re letter opinion of Judge Morris; TCW Pflug re same.	CHS	.6				
9/20	BA I-Gillman TCW Pflug re same; TCW Goldbecker re same & discussion of final Order form; R&A whether one circuit judge can overrule or reverse another; R&A basis for attorney's fee award.	3147	RW letter opinion of Judge Morris re same & discussion of final Order form; R&A whether one circuit judge can overrule or reverse another; R&A basis for attorney's fee award.	CHS	2.0				

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3147

RESP. ATTY.

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Build America - 1

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RESP. ATTY.

							B I L L	COSTS		BILLS & RECEIPTS	
Date	Client Name/Matter	File No. Non-Billable or Code	Description of Service Rendered (Include Other Attorneys Involved)	By (Initials)	Time Hours Tenths	B		Amt. Date & Code	Amt. & Date	Balance	
12/11	Pflug-BA I Gillman Unit Owners Assoc. has right to assess fines and file lien to enforce, absent express statutory authority, R&A case law in other jurisdictions.	3147	R&A legal basis for argument that CHS	CHS	7 .2	B		11/11/79 TJE \$120 B			
12/12	Pflug-BAI Gillman	3147	Dr memorandum in opposition to demurrer.	CHS	9 .5	B		12-11-79 TJE \$112 B			
12/13	Pflug-BA I Gillman Act to remove , Draft & revise memorandum.	3147	R&A Committee Report on Condo	CHS	4 .7	B		12-13-79 TJE \$232 B			
12/19	Pflug BA I Gillman Linda McLain re execution of affidavits, TCW Roger Thornton, Warren Barry re rental of units.	3147	DR&RV affidavits, several TCW TCW Roger Thornton, Warren Barry re rental of	CHS	2 .0	B		copies 12/11/79 (42) 5.24 B 1-30-79 copies 1-30-79 904 ✓			
12/20	Gillman BA I	3147	RW memo filed by Defendants TCW Linda McLain re affidavit.	CHS	1 .0	B		copies 104 3-5-79 B			
12/15	Pflug BA I injunction.	3147	Dr Motion for preliminary	CHS	2 .5	B		2/79 copies \$312 ✓			
12/21	Pflug -Gillman law in support of preliminary injunctions.	3147	Pr argument, RW condo docs, case	CHS	1 .5	B		copies B.m.S. 604 Assoc. B. 1/30/79 B			
12/22	Pflug-Gillman and Jaworski for preliminary injunction, arrange date for motion.	3147	Appearance before Judges Millsap	CHS	1 .8	B		12/15/79 copies B.m.S. + Assoc. B. \$102 B			
1/4	Gillman	3147	RW letter of Opinion of Judge Jamborski permitting reasonable fines	CHS	.4	B					
1/5	Gillman	3147	Dr motion for entry of Decree and notice	CHS	.6	B					
1/12	Pflug-BA I Gillman for entry of Decree overruling demurrer	3147	Appearance before Judge Jembosky	CHS	3 .0	B					
1/23	Pflug-Gillman	3147	RW answer & Crossbill	CHS	.4	B					
1/14	BA I Gillman	3147	DR, RV, Type & Mail answer to Counterclaim	CHS	1 .2	B					
2/28	Gillman - BA I	3147	Several TCW Goldbecker re motion to consolidate.	CHS	.4	B					

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