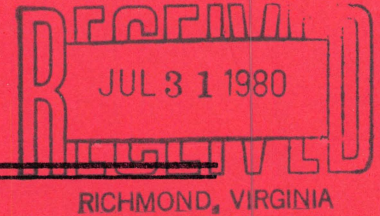


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CLERK
SUPREME COURT OF VIRGINIA



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 800171

HARRY F. GILLMAN
and
SAUNDRA K. GILLMAN,

v.

.....Appellants

UNIT OWNERS ASSOCIATION OF BUILDAMERICA-1,
a condominium, JOHN R. PFLUG, JR., TRUSTEE,
and BOARD OF MANAGERS OF THE UNIT OWNERS
ASSOCIATION OF BUILDAMERICA-1

.....Appellees

JOINT APPENDIX

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Counsel for Appellants

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TOLBERT, SMITH, FITZGERALD
& RAMSEY
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Counsel for Appellees

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FILED
IN CIRCUIT COURT
CLERK'S OFFICE

NOV 12 1977

JAMES E. HORTON, JR.
CLERK, FAIRFAX COUNTY, VA.
UNIT TAX PAID \$ 35
DEPOSIT. 25

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).

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

By

Counsel

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

By

Charles Henry Smith
Counsel for the Complainant

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 recodation of this Master Deed to submit the Land together with the improvements to be constructed thereon to the provisions of the Condominium Act;

TULBERT, SMITH, FITZGERALD & RAMSEY
2323 Columbia Pike
Arlington, Virginia 22204

NOW, THEREFORE,

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 the 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

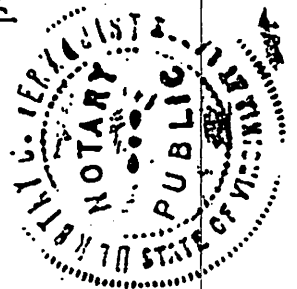
STATE OF

COUNTY OF Fairfax, TO-WIT:

I, Dorothy C. Veragius, 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. Veragius



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

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 day is a 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 ~~set~~ 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, operation 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 with-

out 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 of Managers 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 Condominium 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 con-

test 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 unreasonably 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 (hereinafter 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 sublease, 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 sublease, 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 D

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

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

EXHIBIT E

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 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:

_____(SEAL)
John R. Pflug, Trustee

_____(SEAL)
Carolyn R. Pflug

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

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 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.
President and Authorized Agent
Unit Owners Association of
BuildAmerica-1, a Condominium

STATE OF VIRGINIA

COUNTY OF _____, to-wit;

I _____ 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 ____ day of _____ 1978.

Notary Public

My Commission Expires _____

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 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.
President and Authorized Agent
Unit Owners Association of
BuildAmerica-1, a Condominium

STATE OF VIRGINIA

COUNTY OF _____, to-wit;

I _____ 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 ____ day of _____ 1978.

Notary Public

My Commission Expires _____

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 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.
President and Authorized Agent
Unit Owners Association of
BuildAmerica-1, a Condominium

STATE OF VIRGINIA

COUNTY OF _____, to-wit;

I _____ 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 ____ day of _____ 1978.

Notary Public

My Commission Expires _____

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 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.
President and Authorized Agent
Unit Owners Association of
BuildAmerica-1, a Condominium

STATE OF VIRGINIA

COUNTY OF _____, to-wit:

I _____ 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 Build-
America-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 ____ day of _____ 1978.

Notary Public

My Commission Expires _____

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

TOTAL:

\$4,500.00

4. DATE OF ISSUANCE:

October 18, 1978

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

STATE OF VIRGINIA

COUNTY OF _____, to-wit:

I _____ 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 Build-
America-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 ____ day of _____ 1978.

Notary Public

My Commission expires _____

MEMORANDUM OF LIEN FOR CONDOMINIUM

EXHIBIT K

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:	\$ 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

4. DATE OF ISSUANCE:

October 18, 1978

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

STATE OF VIRGINIA

COUNTY OF _____, to-wit:

I _____ 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 Build-
America-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 _____ day of _____ 1978.

Notary Public

My Commission expires _____

A N S W E R

COME NOW R. DENNIS McARVER, Trustee, and OSCAR W. SELLARS, Trustee, and in response to the Complainant's Bill to Enforce Condominium Lien and Petition for Injunctive Relief, respectfully state as follows:

1. These defendants admit the existence and content of all documents recorded among the land records of Fairfax County. Any alleged interpretations of such documents by the Complainant are neither admitted nor denied since interpretations require conclusions which are matters solely for the trier of fact. Any remaining allegations of Complainant's paragraphs one (1) through fourteen (14) are denied for lack of information.

COUNT I

These defendants repeat and incorporate herein by reference their responses to Complainant's paragraph one (1) through fourteen (14) above. Any remaining allegations of Complainant's paragraph fifteen (15) are denied.

1. Complainant's paragraphs sixteen (16) through twenty-two (22) do not state a claim against these defendants on which any money judgment could be entered against these defendants.

2. These defendants admit the existence and content of all documents recorded among the land records of Fairfax County. Any alleged interpretations of such documents by the Complainant are neither admitted nor denied since interpretations require conclusions which are matters solely for the trier of fact. Any remaining allegations of Complainant's paragraph

sixteen (16) are denied.

3. The allegations of Complainant's paragraphs seventeen (17), eighteen (18), and nineteen (19) are denied for lack of information.

4. These defendants admit the existence and content of all documents recorded among the land records of Fairfax County. Any remaining allegations of Complainant's paragraph twenty (20) and twenty-one (21) are denied.

COUNT II

These defendants repeat and incorporate herein by reference their responses to Complainant's paragraphs one (1) through nineteen (19) above. Any remaining allegations of Complainant's paragraph twenty-three (23) are denied.

1. Complainant's paragraph twenty-four (24) through twenty-nine (29) do not state a claim against these defendants on which any money judgment could be entered against these defendants.

2. These defendants admit the existence and content of all documents recorded among the land records of Fairfax County. Any alleged interpretations of such documents by the Complainant are neither admitted nor denied since interpretations require conclusions which are matters solely for the trier of fact. Any remaining allegations of Complainant's paragraph twenty-four (24) are denied.

3. The allegations of Complainant's paragraph twenty-five (25) and twenty-six (26) are denied for lack of information.

4. These defendants admit the existence and content of all documents recorded among the land records of Fairfax County. Any remaining allegations of Complainant's paragraphs twenty-seven (27) and twenty-eight (28) are denied.

5. The allegations of Complainant's paragraph twenty-nine (29) are denied as inappropriate and not pertinent to these defendants.

COUNT III

These defendants repeat and incorporate herein by reference their responses to Complainant's paragraphs one (1) through nineteen (19) above. Any remaining allegations of Complainant's paragraph thirty (30) are denied.

1. The allegations of Complainant's paragraphs thirty-one (31) and thirty-two (32) are denied for lack of information.

2. These defendants admit the existence and content of all documents recorded among the land records of Fairfax County. Any remaining allegations of Complainant's paragraphs thirty-three (33) and thirty-four (34) are denied. -

3. The allegations of Complainant's paragraph thirty-five (35) are denied as inappropriate and not pertinent to these defendants.

COUNT IV

These defendants repeat and incorporate herein by reference their responses to Complainant's paragraphs one (1) through fourteen (14), seventeen (17), eighteen (18), and thirty-one (31) above. Any remaining allegations of Complainant's paragraph thirty-six (36) are denied.

1. The allegations of Complainant's paragraphs thirty-seven (37), thirty-eight (38), and thirty-nine (39) are denied for lack of information.

WHEREFORE, these defendants pray that the Complainant's Bill of Complaint be dismissed as to these defendants and they awarded their costs expended including attorney's fees.

R. DENNIS MCARVER, Trustee
OSCAR W. SELLARS, Trustee

By Counsel

BOOTHE, PRICHARD & DUDLEY
4085 University Drive
Fairfax, Virginia 22030

By J. Jay Corson, IV
J. Jay Corson, IV
Counsel for Defendants
McArver and Sellars

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Answer has been furnished, by U. S. mail, postage prepaid, this 17th day of November, 1973, to CHARLES HENRY SMITH, ESQ., Tolbert, Smith, FitzGerald & Ramsey, 2300 Ninth Street, South, Arlington, Virginia 22204.

J. Jay Corson, IV
J. Jay Corson, IV



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

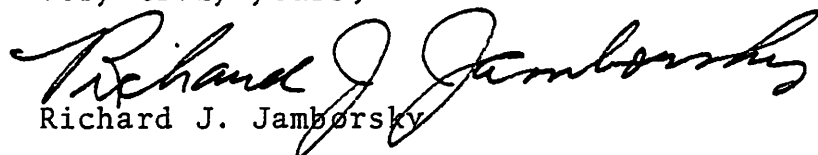
Gentlemen:

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

JUN 22 1979

ANSWER AND CROSSBILL

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

COME NOW THE DEFENDANTS Harry F. and Saundra K. Gillman, by Counsel to answer Complainants' Bill as follows:

1. Admit.

2 through 5, admit the wording quoted, but state that such provisions are valid only in so far as they comply with the Virginia Condominium Act in regard to promulgation, interpretation, and execution; and that in any case any authority claimed by Complainants, even if within the law and provided by the Virginia Condominium Act, must be executed in a reasonable manner.

6. Admit existence of wording, but state that said wording is vague and arbitrary and unreasonable, and thus unenforceable as a matter of law.

7. Admit the existence of such Deed, but state further that any terms and conditions therein are enforceable only so far as they are allowed by law and/or are not vague, arbitrary, or unreasonable.

8. Admit.

9. Admit existence of Deed and incorporate the limitation on the effectiveness of any terms and conditions stated in paragraph 7), above, and state further that Complainants at the time of delivery of this Deed knew of the nature of Defendants' use of the property by virtue of their use of the first property conveyed during the preceding year; Defendants state further that Complainants' named agent, John R. Pflug, Jr., in addition to the knowledge of Complainants' generally, had personal and direct knowledge of Defendants' use even before conveyance of the first property stated in Complainants' paragraph 7), and said Pflug did

invite and induce Defendants to purchase the property to the extent of offering to hold, and in fact doing so, a second trust on Defendants property which is the subject of paragraph 9) in Complainants Bill, and that said Pflug encouraged Defendants to make false representations by way of omission to the lender on the first trust for said property.

10. Admit.

11. Admit in part, but state that trucks are no longer cleaned on premises and have not been since late summer of 1978 as far as washing is concerned, this operation now being done on a regular basis elsewhere; admit such cleaning on premises as so far as regular disinfectant spraying may be called cleaning.

12. Deny.

13. Deny repeated requests, deny noxious smells, and state there are none to eliminate and state further that trucks are cleaned as stated in 11), above;; admit refusal to park trucks elsewhere and state further that the parking of the trucks is a vested property right which neither Complainants nor even this honorable Court may abrogate.

14. Deny and state further that by failing to raise objection to Defendants' use of property for more than two years, with knowledge of such use, and by knowingly conveying Unit 21 to Defendants, Complainants have by their actions shown that Defendants use of the property cannot be considered a violation of the stated By-laws; and state further that annoyance and nuisance are subjective terms which as a matter of law must be defined within the context of the nature of the location, zoning, and surrounding uses of the property where such alleged acts are said to take place.

15. Responses 1 - 14 are incorporated herein.

16. Neither admit nor deny, but state that all grounds

of defense contained in all papers heretofore filed by Defendants in this cause are incorporated into this response and the legality of such fines is denied specifically on these grounds; and in the alternative Defendants state that any such fines are unreasonable and lack reasonable procedures for their enactment.

17. Admit letter, deny stench, and state further that the rectification Complainants refer to was a single directive for Defendants to surrender their property rights by removing their trucks under a threat of force which included the theft of Defendants' property.

18. Admit refusal to remove trucks under threat of force, deny trucks were not clean, and state further that at a hearing held on June 16, 1979, this Court, the Honorable Judge Jennings presiding, denied the temporary injunction Defendants sought against Complainants' threats on the grounds of failing to find irreparable harm to Defendants herein, but did admonish Complainants' that their acts might leave them open for certain liabilities, and admonished both parties to "work out the problem". Whereupon Complainants', by Counsel, agreed to restrain themselves while Defendants undertook an intensive, and regular, extra disinfectant spraying program (which has been maintained to date).

19. Admit letter, deny any nuisance as alleged, deny legality of fines on basis of all reasons stated in paragraph 16) above, and further state that the letter of August 10, 1978 contained unconscionable and intentional false misstatements of law designed to intimidate, coerce, harass, and frighten Defendants, and which indeed did cause them great and irreparable anguish and distress, and interfered with the conduct of their business.

20. Deny the lien legally filed, and incorporate all objections thereto contained in papers previously filed in this matter.

21. Deny the legality of the lien, deny the legality

of the so-called "assessment", and deny the legality of filing an enforcement action for reasons stated in, and incorporated herein, all papers previously filed in this case by Defendants.

22. Neither admit nor deny, but state relief requested cannot be granted due to illegalities in Complainants acts as stated above.

23. Responses 1 - 22 are incorporated herein.

24. Deny legality of fines for all reasons previously stated or incorporated herein by reference.

25. Admit non-payment on grounds of illegality of fines and for all reasons stated in paragraph 24) above.

26. Neither admit nor deny, but incorporate herein all objections to legality of fines heretofore stated.

27. Deny legality of all actions stated herein for all reasons stated above.

28. Deny legality of all actions stated herein for all reasons stated above.

29. Neither admit nor deny, but deny legality of relief requested for all reasons contained in paragraph 22, above.

30. Responses 1 - 19 are hereby incorporated herein.

31. Deny existence of any nuisance or that any truck on the premises is "odoriferous" as the word is use here.

32. Neither admit nor deny actions of Board of Managers and demand specific proof; specifically deny any vile odors from trucks, deny legality of fines for all reasons previously stated.

33. Deny legality of actions herein for all reasons previously stated.

34. Deny legality of actions herein for all reasons previously stated.

35. Neither admit nor deny, but state relief requested cannot be granted due to illegalities in Complainants' acts as stated above.

36. All previous paragraphs are incorporated herein.

37. Deny any nuisance at any time and state further that Defendants use of the property is one permitted by law, and permitted by the acquiescence of Complainants for a period of more than two years, and specifically permitted by the act of Complainants' agent Pflug in conveying Unit 21 to Defendants; Defendants state further that no olfactory nuisance exists that would not, absent zoning laws, be well within the tolerances of nuisance in a residential area and is thus certainly not a nuisance in an area of zoning and use which is only one category from the bottom (in the context that residential zoning is the highest) as is the case with the zoning at BuildAmerica - 1.

38. Deny that trucks leak oil any more than is normal for any similar vehicle (oil as used here includes motor oil, brake fluid, transmission fluid, lubricating grease, engine coolant, air-conditioning fluids or gas, and gasoline), and state further that such leakage as there is is in no sense of the words "severe and permanent" and state further that such damage has an adequate remedy at law and injunctive relief is inappropriate.

39. Deny and demand specific proof.

40. All allegations not specifically admitted are denied.

41. Defendants incorporate as part of this answer all defenses raised in papers of Demurrer, Memorandums of Law, and Memorandums in Response.

CROSSBILL

COME NOW THE DEFENDANTS above named, by Counsel, and by way of Crossbill state as follows:

1. All pleadings and papers filed by Complainants and Defendants in this cause are incorporated herein by reference.
2. That the Complainants herein are two or more persons.
3. That one member of Complainants is John R. Pflug, Jr.
4. That Complainants have combined together to injure Defendants in their trade and business for the purpose of wilfully and maliciously interfering with Defendants' business and compelling them to perform acts against their will and to prevent them from performing lawful acts.
5. Such acts by Complainants have included, but are not necessarily limited to, threats of force against Defendants' property, threats and acts calculated to intimidate and force Defendants to refrain from legal use of their property against their will, the withholding of sums justly due Defendants, the threats of imposition of exorbitant legal fees, the infliction of mental and physical distress upon Defendants by groundless and unconscionable threats of legal action for the purpose of intimidating Defendants, and by the bringing of unfounded legal actions against Defendants; all of which acts have greatly interfered with Defendants in their business and caused them damages.
6. That such acts are a violation of the provisions of Sec. 18.2-499 of the 1950 Code of Virginia as amended and that

Defendants are entitled to an award of costs, reasonable attorney's fees, and three-fold damages pursuant to Sec. 18.2-500 of the 1950 Code of Virginia as amended.

WHEREFORE Defendants pray that this Court dismiss the Bill brought by Complainants, and restrain and enjoin them from continuing the acts complained of by Defendants, and award Defendants damages of \$45,000 plus costs and attorney's fees as provided by law, and that this Court, in order to effectuate its judgment, order that Complainants indemnify Defendants from any contribution to payment of such judgment as would otherwise be required of them by way of assessment under the Virginia Condominium Act and/or the Bylaws of BuildAmerica-1, and to grant such further relief as this Court may deem appropriate.

Harry F. Gillman, by Counsel

Saundra K. Gillman, by Counsel

Fredrick H. Goldbecker
Attorney for Defendants
Box 517
Fairfax, Virginia 22030

Certificate of Service

I hereby certify that a copy of the foregoing Answer and Crossbill was mailed postage prepaid to Charles Henry Smith, Counsel for Complainants, Tolbert, Smith, FizGerald & Ramsey, 2300 Ninth Street, South, Arlington, Virginia 22204, this ____ day of January, 1979.

Fredrick H. Goldbecker

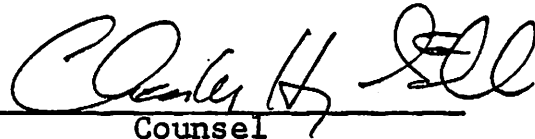
ANSWER TO CROSSBILL

COMES NOW the Complainant, and respectfully answers the Crossbill as follows:

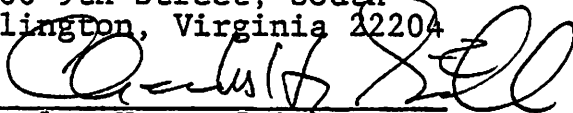
1. The Complainant neither admits nor denies the allegations of Paragraph 1, and demands strict proof in support thereof.
2. The Complainant denies the allegations of Paragraph 2.
3. The Complainant denies the allegations of Paragraph 3.
4. The Complainant denies the allegations of Paragraph 4.
5. The Complainant denies the allegations of Paragraph 5.
6. The Complainant denies the allegations of Paragraph 6.

WHEREFORE, the Complainant moves this Court to dismiss the Crossbill, enter judgment in its favor, and award costs and a reasonable attorneys fee in its favor.

UNIT OWNERS ASSOCIATION OF
BUILDAMERICA-1, A CONDOMINIUM

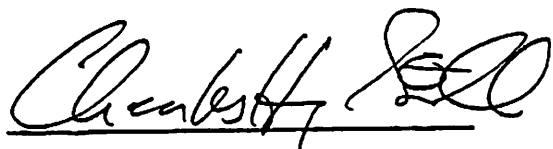
By 
Counsel

TOLBERT, SMITH, FITZGERALD & RAMSEY
2300 9th Street, South
Arlington, Virginia 22204

By 
Charles Henry Smith
Counsel for the Complainant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Answer was mailed, postage pre-paid, to all counsel of record this 17th day of February, 1979.



BILL FOR DECLARATORY JUDGMENT

FILED
NOV 3 1978
JAMES E. HOOFNAGLE
Clerk of the Circuit Court
of Fairfax County, Va.

TO THE HONORABLE JUDGES OF THIS COURT:

COME NOW THE COMPLAINANTS, by Counsel, to seek an adjudication, under Sections 8.01-189 to 191, of the 1950 Code of Virginia, as amended, of an actual and present controversy existing between Complainants and Defendants in this cause, which involves the interpretation of certain writings and also of certain statutes of this Commonwealth, and to pray this Court to grant injunctive and further relief.

THE FACTS IN THIS CONTROVERSY your Complainants represent as follows:

1. Complainants are the owners of Units 17 and 21 in the "industrial park" Condominium known as BuildAmerica - I.

2. Defendants are the Declarant and the duly organized governing body of said BuildAmerica - I, which was submitted to the Virginia Condominium Act on August 16, 1974.

3. Complainants bring this Bill by virtue of their standing as set out in Section 55-79.53 of the 1950 Code of Virginia, as amended.

4. Complainants own and operate a fleet of trash collection trucks and in August 1976 purchased Unit 17 for the purpose of storing and maintaining this fleet of trucks. The purpose was clearly stated to Defendants prior to executing the contract of sale, and the intended use commenced immediately after purchase and has continued, with no change, to the present time.

5. In August 1977, Complainants sought more space and were offered Unit 21 by one of the Defendants, John R. Pflug,

Jr., and his agent. To assist Complainants in their purchase of this unit, the Defendant Pflug offered to, and did, take back a second trust on the unit in his own right. Use of Unit 21, identical to that of 17 which Complainants had pursued for a year, was begun immediately after purchase and has continued without change to the present time.

6. At no time prior to June 7, 1978, was there any formal complaint about Complainants' operation.

7. On June 7, 1978, almost two years after commencing their use and operation at BuildAmerica - I, Complainants received notice from Defendants, that the Defendants had decided that Complainants' operation was a "noxious (and) offensive activity" and a "nuisance" under the condominium Bylaws. The Defendants, further, presented the ultimatum that if Complainants did not remove their vehicles from BuildAmerica - I and terminate their operation in, and use of, their units by the following Monday, June 12, 1978, Defendants would resort to unilateral force and cause the vehicles of Complainants to be seized and removed.

8. Complainants sought a temporary injunction from this Court and, among other things, stated that the action threatened by Defendants at that time was illegal, beyond the powers conferred by the Virginia Condominium Act, and that in any event, Complainants were not in violation of any Bylaw.

9. The request for temporary injunctive relief was not granted on the basis of finding no irreparable harm; however the judge admonished Counsel for Defendants that carrying out the threats would expose Defendants to certain risks and liabilities.

10. On or about July 11, 1978, Complainants received a bill from Defendants in the amount of \$790.65 which was the

amount charged by Defendants' Counsel for issuing the letter of June 7, for his brief appearance on June 16 at the hearing, and for certain preparatory work and follow-through relating to the matters and questions raised.

11. On or about July 16, 1978, Defendants renewed their threats of force against Complainants' property.

12. Following notification by Counsel for Complainants that the action threatened was illegal, a theft of property, and would be treated as such within the confines of the law, the Defendant Pflug told the Complainant Saundra K. Gillman that he had " . . . seen the light" and would fine the Complainants on a daily basis.

13. By letter dated August 10, 1978, Counsel for Defendants notified Complainants that because of their alleged Bylaw violation, Defendants owed \$8000 in fines retroactive to June 7, 1978 which if not paid within 10 days would result in another \$8000 fine. This letter added threats of foreclosure proceedings by Defendants against Complainants' units and added that following filing of a memorandum of lien, Defendants would notify the Complainants' lender on the units and that this would trigger a foreclosure action from the lender.

14. Counsel for Complainants notified Counsel for Defendants that levying fines, like seizing property, were not permitted by the Condominium Act which set out resort to the Courts as the remedy for Bylaw violations. Defendants' Counsel was further informed that the threatened foreclosure by the Defendants was a power non-existent in this Commonwealth, and the threat of foreclosure by the lender for the reasons stated was totally erroneous.

15. At about this same time, the end of August 1978, an inspection was made without advance notice by the Virginia

Department of Health of Complainants' units with the result that no violations were found, of the nature Defendants allege.

16. On or about August 31, 1978, Defendants enlarged their campaign of harrassment and conspiracy to deprive Complainants of the use of their property, and to compel them to refrain from exercising their legal rights therein, by issuing resolutions and threats to deny Complainants use of the common elements, specifically, the parking places.

17. On October 18, 1978, Defendants caused to be recorded among the land records of Fairfax County several memoranda of liens against Complainants; the aggregate total apparently being \$49,000.

18. At every juncture since June 7, 1978, Complainants have maintained that they have violated no Bylaw of Build-America - I, and have urged Defendants to proceed as provided by law in the Virginia Condominium Act to seek a hearing before this Court. Defendants, however, have steadfastly refused to follow the law and have elected to conspire to conduct a campaign of harrassment, intimidation, and threats, which have included deliberate fabrications and misstatements of the law of this Commonwealth; a campaign which has interfered with Complainants' business and has caused them damages.

COMPLAINANTS NOW PRAY THIS COURT ADJUDGE THAT:

A. The Virginia Condominium Act, Section 55-79.53 1950 Code of Virginia as amended, exclusively mandates recourse to this Court for enforcement of, or remedy for violation of, Condominium Bylaws and instruments; that a Condominium Regime, or Management, has no capacity unilaterally or by agreement to create procedures or remedies in such matters, since the statute has conferred upon this Court the exclusive power and jurisdiction to adjudge and remedy such violations, and any

statement or agreement to the contrary in any condominium Bylaw or instrument is thus void within the meaning of Section 55-79.52(a) 1950 Code of Virginia as amended.

B. By pursuing a course of action not permitted by the Virginia Condominium Act, and refusing to proceed as directed under the Act, Defendants are in violation of said Act and in violation of BuildAmerica I Bylaw Article XII(1).

C. The words "noxious activity" or "offensive activity" as used in the Bylaws and relied upon by Defendants are so extremely subjective as to render them arbitrary, capricious, and vague, and thus unenforceable.

D. Complainant's activity in BuildAmerica I cannot be termed noxious, offensive, or a nuisance, since Defendants with foreknowledge accepted the operation in 1976, and aided in its expansion in 1977; thus, without a showing in the evidence that the operation is not what it was represented to be by Complainants, or known to be by Defendants, Defendants cannot be heard now to allege that the operation is a violation of the Bylaws.

E. Complainants rights in the common elements, specifically the parking spaces, are set by Section 55-79.55 of the 1950 Code of Virginia as amended, and vested in Complainants at purchase, and are not subject to change, restriction, or abrogation by any act of the Defendants.

F. The term "assessments" as used in the Virginia Condominium Act refers only to common expense expenses incurred in the maintenance, preservation, or improvement of the Condominium, but in any case cannot be interpreted to mean "assessment of fines".

G. The legal expenses incurred by Defendants on

and about June 16, 1978, while assessable pro rata as common expenses, are not, without order of this Court to the contrary, assessable only against Complainants.

H. Defendants' actions against Complainants as set out are a malicious campaign of harrassment, are part of a conspiracy to interfere with Complainants' business, and are an attempt to force Complainants to do acts against their will, or to refrain from doing legally permitted acts.

I. That the acts in paragraph (H), above, threaten Complainants with irreparable harm, that said acts disrupt the status quo, and that Complainants have no adequate remedy at law.

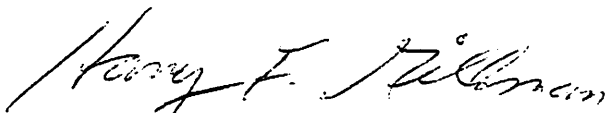
WHEREFORE Complainants respectfully pray that this Court:

1. Find for Complainants in the issues addressed in paragraphs A through I above;

2. Enjoin Defendants from further threats or acts which this Court in this proceeding finds to be contrary to or not permitted by law;

3. Entertain a motion for additional relief for Complainants and award Complainants attorney's fees, and treble damages for all provable damages sustained by Complainants due to Defendants actions in this controversy since June 6, 1978, and further order Defendants to indemnify Complainants for all legal and other costs to Defendants which have arisen since June 1, 1978, in respect to this controversy and which would otherwise be assessable in part to Complainants as common expenses under the Bylaws.


Respectfully submitted,



HARRY F. GILLMAN, Complainant



SAUNDRA K. GILLMAN, Complainant



FREDRICK H. GOLDBECKER
Counsel for Complainants
Box 517
Fairfax, Virginia 22030
Te. (703) 978-4453

ANSWER

COMES NOW the Defendant, JOHN R. PFLUG, JR., TRUSTEE, and files this Answer to the Bill for Declaratory Judgment.

1. This Defendant neither admits nor denies the allegations of Paragraph 1.

2. This Defendant neither admits nor denies the allegations of Paragraph 2.

3. This Defendant neither admits nor denies the allegations of Paragraph 3.

4. This Defendant neither admits nor denies the allegations of the first sentence of Paragraph 4. This Defendant specifically denies the allegations of the second sentence of Paragraph 4.

5. This Defendant admits that he sold Unit 21 to the Complainants in July, 1977, that he received a purchase money note secured by a secured deed of trust as partial consideration therefor, and that the Complainants appear to use Unit 21 in the same manner as they use Unit 17. All other allegations of Paragraph 5 are denied.

6. This Defendant denies the allegation of Paragraph 6 and states that the Complainant received numerous complaints from other Unit owners and representatives of the Board of Managers of the Condominium.

7. This Defendant admits that by letter dated June 6, 1978, counsel for the Board of Managers of the Condominium notified the Complainants that they were in violation of the Bylaws and Rules and Regulations of the Condominium as a result of storage of trucks on the common elements which, because of their filth and stench, had become an intolerable annoyance and nuisance to other Unit

owners. Further, the Board of Managers, by counsel, instructed the Complainants to remove the source of the noxious odors from the premises, but did not order them to terminate operation in or use of their Units. This Defendant denies the other allegations of Paragraph 7.

8. This Defendant denies the allegations of Paragraph 8.

9. This Defendant admits that the Complainants were denied temporary injunctive relief because there was no finding of irreparable harm. This Defendant, however, specifically denies that the judge admonished this Defendant or his counsel in any way, nor did he suggest in any way that any action proposed by the Defendants was wrongful or in violation of law.

10. This Defendant neither admits nor denies the allegations of Paragraph 10, and demands strict proof in support thereof.

11. This Defendant denies any threat of force as alleged in Paragraph 11.

12. This Defendant neither admits nor denies the allegations of Paragraph 12.

13. This Defendant admits that a letter dated August 10, 1978 was sent by counsel for the Board of Managers whereby notice was given of assessment of a fine, but denies the other allegations of Paragraph 13, and specifically any threat of foreclosure by the lender on the Units.

14. This Defendant neither admits nor denies the allegations of Paragraph 14, demanding strict proof in support thereof.

15. This Defendant lacks sufficient knowledge or information to respond to the truth or veracity of the allegations contained in Paragraph 15, and therefore denies them.

16. This Defendant denies the allegations of Paragraph 16.

17. This Defendant denies that he has recorded any memoranda of lien as alleged in Paragraph 17.

18. This Defendant denies the allegations of Paragraph 18.

19. This Defendant denies all other allegations not specifically admitted herein.

WHEREFORE this Defendant moves for entry of judgment in its favor, dismissal of this action with any award of costs and attorneys fees to this Defendant, and such other relief as this Court may deem appropriate.

John R. Pflug, Jr., Trustee
By Counsel

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

By _____
Charles Henry Smith
Counsel for Defendants

Certificate of Service

I hereby certify that a copy of the foregoing Answer was mailed first class mail, postage prepaid, to Fredrick H. Goldbecker Esq., Counsel for Complainants, Box 517, Fairfax, Virginia 22030, this ____ day of December 1978.

Charles Henry Smith

ANSWER

COMES NOW the Defendant, BOARD OF MANAGERS OF THE UNIT OWNERS ASSOCIATION OF BUILDAMERICA-I, A CONDOMINIUM, and files this Answer to the Bill for Declaratory Judgment.

1. This Defendant neither admits nor denies the allegations of Paragraph 1.

2. This Defendant neither admits nor denies the allegations of Paragraph 2.

3. This Defendant neither admits nor denies the allegations of Paragraph 3.

4. This Defendant neither admits nor denies the allegations of the first sentence of Paragraph 4. This Defendant specifically denies the allegations of the second sentence of Paragraph 4.

5. This Defendant admits that Unit 21 was sold to the Complainants in July, 1977, but lacks sufficient knowledge or information to respond to the truth or veracity of the remaining allegations contained in Paragraph 5, and therefore denies them.

6. This Defendant denies the allegation of Paragraph 6 and states that the Complainant received numerous complaints from other Unit owners and representatives of the Board of Managers of the Condominium.

7. This Defendant admits that by letter dated June 6, 1978, counsel for the Board of Managers of the Condominium notified the Complainants that they were in violation of the Bylaws and Rules and Regulations of the Condominium as a result of storage of trucks on the common elements which, because of their filth and stench, had become an intolerable annoyance and nuisance to other Unit

owners. Further, the Board of Managers, by counsel, instructed the Complainants to remove the source of the noxious odors from the premises, but did not order them to terminate operation in or use of their Units. This Defendant denies the other allegations of Paragraph 7.

8. This Defendant denies the allegations of Paragraph 8.

9. This Defendant admits that the Complainants were denied temporary injunctive relief because there was no finding of irreparable harm. This Defendant, however, specifically denies that the judge admonished this Defendant or his counsel in any way, nor did he suggest in any way that any action proposed by the Defendants was wrongful or in violation of law.

10. This Defendant neither admits nor denies the allegations of Paragraph 10, and demands strict proof in support thereof.

11. This Defendant denies any threat of force as alleged in Paragraph 11.

12. This Defendant neither admits nor denies the allegations of Paragraph 12.

13. This Defendant admits that a letter dated August 10, 1978 was sent by counsel for the Board of Managers whereby notice was given of assessment of a fine, but denies the other allegations of Paragraph 13, and specifically any threat of foreclosure by the lender on the Units.

14. This Defendant neither admits nor denies the allegations of Paragraph 14, demanding strict proof in support thereof.

15. This Defendant lacks sufficient knowledge or information to respond to the truth or veracity of the allegations contained in Paragraph 15, and therefore denies them.

16. This Defendant denies the allegations of Paragraph 16.

17. This Defendant admits filing memoranda of lien but denies the other allegations of Paragraph 17.

18. This Defendant denies the allegations of Paragraph 18.

19. This Defendant denies all other allegations not specifically admitted herein.

WHEREFORE this Defendant moves for entry of judgment in its favor, dismissal of this action with any award of costs and attorneys fees to this Defendant, and such other relief as this Court may deem appropriate.

15/

Board of Managers of the Unit
Owners Association of BuildAmerica-1
a Condominium
By Counsel

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

By 15/

Charles Henry Smith
Counsel for Defendants

Certificate of Service

I hereby certify that a copy of the foregoing Answer was mailed first class mail, postage prepaid, to Fredrick H. Goldbecker, Esq., Counsel for Complainants, Box 517, Fairfax, Virginia 22030, this 1 day of December 1978.

15/

Charles Henry Smith



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

Charles Henry Smith, Esq.
Frederick H. Goldbecker, Esq.
Page 2
September 18, 1979

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.

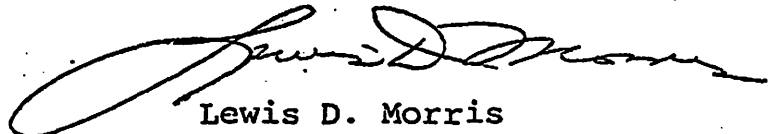
6. The relief prayed for by the Gillmans in their Bill for Declaratory Judgment in Chancery No. 59884 is denied.

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.

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 Saundra 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 Saundra 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.

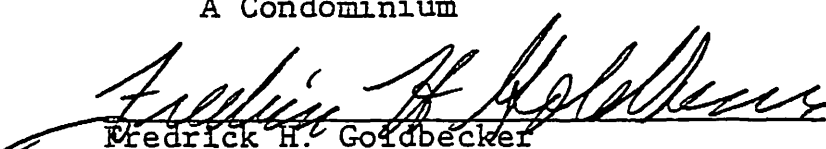
Entered this 3 day of November 1979.

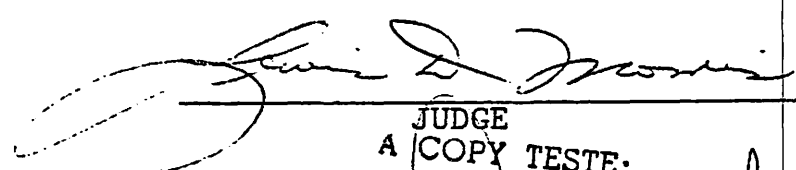
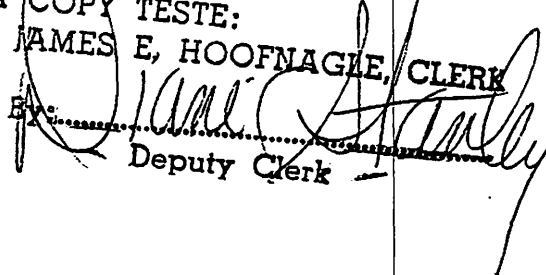
SEEN AND OBJECTED TO:

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
Saundra K. Gillman


JUDGE
A COPY TESTE:
JAMES E. HOOFNAGLE, CLERK
By 
Deputy Clerk

ASSIGNMENTS OF ERROR

1. The Chancellor erred in failing to give proper legal construction to the condominium Bylaws, Rules, and Regulations as they applied to Gillmans.
2. The Chancellor erred by not applying the equitable defenses of laches and estoppel against the Condominium Association.
3. The Chancellor erred in granting two injunctive orders which even he admitted lacked standards for compliance or ascertainable scope, and which in his opinion could only be defined in the course of repeated, future litigation.

COMPLAINANT'S WITNESS CARL MOOREFIELD

Direct Examination

1. Mr. Moorefield testified that he was the owner of Units 1 and 2 of the condominium known as BuildAmerica-1, had owned these Units from approximately 1975, and had been a member of the Board of Managers of the Condominium since 1976.

2. BuildAmerica-1 is an industrial condominium containing a single large structure, which is comprised of numerous small warehouse units surrounded by a parking area. The parking area, which is a common element of the condominium, is designed to allow vehicles to drive around the entire length of the condominium structure and to facilitate reasonable on-site parking.

3. Mr. Moorefield's Units are on the east side of the condominium, and the two Units owned by the Gillmans are on the west side.

4. Mr. Moorefield presented five snapshots (Complainant's Exhibits 5a-5e) which he had taken of Gillman trucks on the common elements, the parking area and driveway, of the condominium.

The exhibits of the Unit Owners Association of BuildAmerica-1, a Condominium, John R. Pflug, Jr., Trustee and Board of Managers of the Unit Owners Association of BuildAmerica-1 are referred to as Complainant's Exhibit ____.

The exhibits of Harry F. Gillman, et al., et ux. are referred to as Defendants' Exhibit ____.

COMPLAINANT'S WITNESS CARL MOOREFIELD

Direct Examination (Cont.)

5. Mr. Moorefield testified that he had regularly seen nine to eleven of the Gillman trucks parked on the common elements during the day in such manner as to prevent vehicular access around the condominium structure.

6. Mr. Moorefield testified that the garbage trucks owned by the Gillmans carried an obnoxious odor, which could be smelled from the east side of the condominium.

7. On warm days, and despite an allergy, Mr. Moorefield could smell rotting garbage from the front of his Units, even when the Gillman trash trucks were not on the premises.

8. Mr. Moorefield testified that the Gillman trucks leaked oil and hydraulic fluid and had caused damage to the surface of the pavement of the parking and driveway areas.

9. Mr. Moorefield testified that, by virtue of his position on the Board of Managers, he made a daily inspection of the common elements and had consistently found the conditions testified to regarding Gillman parking, leakage of oil, etc., and damage. These inspections occurred not only on week days, but almost every weekend as well.

COMPLAINANT'S WITNESS CARL MOOREFIELD

Cross Examination

1. Mr. Moorefield testified that to his knowledge every Unit owner had the right to use four parking spaces per Unit.

2. Mr. Moorefield, despite repeated questioning, was unable to locate precisely the exact location of one of Gillman's Units.

3. Mr. Moorefield testified that he had occasionally seen other heavy vehicles on the common elements of the condominium.

4. Mr. Moorefield testified that he had been a member of the Board of Managers for every year since coming to the condominium except for 1976 due to the personal decision of John R. Pflug, Jr.; this was possible, the witness elaborated, because, in Mr. Moorefield's words, "John's a dictator."

5. Mr. Moorefield, when questioned about the current composition of the Board of Managers, could not correctly identify all members.

6. Mr. Moorefield testified that he routinely had ten or eleven employee automobiles associated with his operation parked on the common elements of the condominium during the day.

7. Mr. Moorefield testified Gillman was washing the trucks on the common elements of the condominium.

COMPLAINANT'S WITNESS CARL MOOREFIELD

Cross Examination (Cont.)

8. Mr. Moorefield testified that the condominium does not have assigned parking spaces.

9. Mr. Moorefield testified that the Board of Managers passed a regulation in August, 1978, which would prohibit an excessive number of vehicles over ten thousand pounds on the parking areas.

10. Mr. Moorefield testified that he was not pleased with the decision of the Board of Managers to pursue legal remedies against Gillman; that the imposition of fines better served the purpose of getting Gillman out of the condominium since the only way this could be accomplished, in Mr. Moorefield's own words, was to "Ruin them."

COMPLAINANT'S WITNESS THOMAS ASCHE

This witness, a professional photographer, presented a series of photographs he had made at the request of counsel for the Unit Owners Association showing Gillman trucks on various portions of the common elements (Complainant's Exhibits 6a-6u). This witness testified as to his personal observations at the time the photographs were taken. He varified that two of the photographs accurately portrayed an oil-like substance dripping from different locations on Gillman trash trucks. He testified that Gillman employees were washing a vehicle at the time the photographs were taken, and that water from this activity was running into the ground through cracks in the pavement. He further testified that the condition of the pavement on the west side of the condominium where the trash trucks were parked at the time of his inspection was in much worse condition than the pavement on the rest of the parking area.

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 ROGER THORNTON

Direct Examination (Cont.)

5. Prior to the sale of Unit 17, Mr. Thornton talked with Mr. Pflug and several other Unit owners about a sale to a garbage service. Upon rehearing Gillman's representation that the Unit would be used only for repairs and not for storage, no objection was raised by these other owners.

6. Mr. Thornton testified he understood that Gillman also would park their trucks in Woodbridge, Prince William County, on a lot they rented.

7. Mr. Thornton testified that the declarant, John R. Pflug, Jr., was a "stickler for esthetics".

8. Mr. Thornton testified that in 1977 he was approached by Gillman about purchasing an additional Unit for investment purposes.

9. Mr. Thornton testified that he had prepared a letter on behalf of Gillman in June 1976 addressed to the lender bank requesting financing for the first Unit acquired, which letter stated that the property was to be used for the storage and maintenance of trash collection vehicles.

10. Mr. Thornton testified that he prepared a similar letter in 1977, drafting the letter by penciling in corrections on a carbon copy of the 1976 letter, to obtain financing of the second Unit (Defendants' Exhibit 1).

COMPLAINANT'S WITNESS ROGER THORNTON

Cross Examination

1. Mr. Thornton testified he helped Gillman obtain a second trust from the developer John R. Pflug, Jr. when cash flow problems caused Gillman to hesitate in going ahead with the purchase of a second Unit.

2. Mr. Thornton testified that he advised Gillman not to tell the lender bank of the second trust arrangement lest first trust financing be jeopardized.

3. Mr. Thornton testified that although he had prepared the two letters to the bank stating that the properties would be used for the storage and maintenance of trash collection vehicles, he understood that the vehicles actually were not to be parked on the condominium premises, but on the public street, or at a lot in Woodbridge, Prince William County.

4. Mr. Thornton testified that the ratio of parking spaces on the common elements was four per Unit.

COMPLAINANT'S WITNESS WILLIAM CRAWFORD

Direct Examination

1. Mr. Crawford testified that he owned Unit 16 next to Gillman and had owned it since 1974 or 1975.

2. Mr. Crawford produced a calendar (Complainant's Exhibit 7) upon which he had marked the number of Gillman garbage trucks parked on the condominium common elements upon various days from August, 1978, through October, 1978. Further, and to his knowledge, at least five trucks were parked on the premises every day.

3. Mr. Crawford testified that the Gillman trucks were leaking oil and hydraulic fluid over the parking area. Not only did this result in damage to the asphalt surface, but inevitably he and his customers tracked the oily residue across the carpeting of his condominium Unit.

4. Mr. Crawford complained that the large trash trucks often were parked and repaired in the driveway area, preventing other vehicles from passing or parking near his own Unit.

5. Mr. Crawford observed a Gillman trash truck back into a parking lot light pole in April, 1979, bending the entire pole to an angle.

6. Mr. Crawford complained of the odor emitted from the trucks and added that there had been maggots on the pavement and once even inside his Unit--which he attributed to Gillman's trucks.

COMPLAINANT'S WITNESS WILLIAM CRAWFORD

Direct Examination (Cont.)

7. Mr. Crawford testified that because of the conditions stated above, it was his opinion that his Unit's value had been affected and the Unit would be difficult to sell.

8. Mr. Crawford testified that he was one of the Board of Managers.

9. Mr. Crawford testified that he first became aware of Gillman trucks "about a year ago".

Cross Examination

1. Mr. Crawford testified that there were no assigned parking spaces the previous years at the condominium, but he thought action had been taken in January of 1979 to provide such marking.

2. Mr. Crawford testified that the ratio of spaces per Unit was four.

3. Mr. Crawford was unaware of any weight restrictions.

4. Mr. Crawford testified that the Board of Managers consisted of himself, Moorefield, Pflug, and Robert Morrison.

5. Mr. Crawford testified that the business operated in his Unit regularly involved the use of seven parking spaces.

COMPLAINANT'S WITNESS WILLIAM RYDELL

Direct Examination

1. Mr. Rydell testified that he had been the owner of Unit 22 since March, 1977, operating a retail automobile glass shop.

2. Mr. Rydell testified that the smell of the garbage trucks was offensive, but it bothered his customers, who often would complain about it, more than it bothered him.

3. Mr. Rydell testified that the Gillman trucks sometimes leaked oil and hydraulic fluid, but added that this is not unusual in any vehicle, that his own trucks leaked some of the same, that Gillman's trucks being larger would produce larger spots of leakage in ratio to the size of the vehicle.

4. Mr. Rydell testified that Gillman's trucks caused congestion but added that everyone at the condominium caused congestion to the others at some time or another.

Cross Examination

1. Mr. Rydell testified that the number of parking spaces per Unit was four.

2. Mr. Rydell testified that in his business he often uses seven or eight trucks. These trucks are not regularly parked during the day on the parking area, although some are parked there at night.

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.

COMPLAINANT'S WITNESS JOHN R. PFLUG, JR.

Direct Examination (Cont.)

12. Mr. Pflug further testified that the leaking oil and hydraulic fluid, as well as the excessive weight and number of the trash trucks, had severely damaged the parking area and that Gillman trash trucks have damaged light poles on the west side of the condominium.

13. Mr. Pflug testified that he had discussed the Gillman purchases with Mr. Thornton and understood that the Gillman trucks would not be parked overnight at the condominium, but in Woodbridge, Prince William County, and would come onto the condominium premises only to enter the repair bay of one of the Gillman Units.

14. Mr. Pflug testified that even though he owned one Unit, it was now rented and his business did not often bring him to the condominium; however, at about the time he alleged a problem of odor arose, he visited the condominium and said that the odor " ... damn near made me puke"; his overall observation of the Gillman trucks being that " ... they stink".

Cross Examination

1. Mr. Pflug testified that when the condominium was built, 1975, and for a period thereafter, he had trouble selling the Units because of what he termed "the recession".

COMPLAINANT'S WITNESS JOHN R. PFLUG, JR.

Cross Examination (Cont.)

2. Mr. Pflug then testified that the Units are "selling like hotcakes" and cited his own example of having sold all he personally owned except one.

3. Mr. Pflug testified that a rider to the 1976 sales contract with Gillman had been executed, under the terms of which, Mr. Gillman was allowed to take possession of the property six weeks prior to settlement (Defendants' Exhibit 3).

4. Mr. Pflug admitted that the Master Deed (Complainant's Exhibit 1, at page 7, section 8f) and the Bylaws (Complainant's Exhibit 4, at page 19) placed responsibility and sole authority for making repairs to the common elements in the Association, and where such repairs were necessitated by the negligence of a Unit owner, that Unit owner would be billed for the repairs; however, no repairs have been undertaken or contemplated by the Association, other than forwarding to Mr. Gillman a bill for one damaged light pole.

5. Mr. Pflug stated without reservation that until just recently, i.e. inclusive of the time Gillman purchased each Unit, that by virtue of his ownership of a large number of Units, he, Mr. Pflug, " ... was the Unit Owners Association".

COMPLAINANT'S WITNESS JOHN R. PFLUG, JR.

Cross Examination (Cont.)

6. Mr. Pflug, when queried about the structure and strength of the pavement in question and its subsurface stated that the subsurface was "bank run gravel" going down "about 50 feet" with a two to two and one-half inch asphalt topping.

7. Mr. Pflug admitted he regretted selling any Units to Gillman, that the sale was " ... a bad deal ... the worst one I've ever made."

COMPLAINANT'S WITNESS WARREN BERRY

This testimony was submitted by deposition de bene esse, and has been made a part of the record in its entirety by agreement of counsel.

DEFENDANTS' WITNESS JOHN T. SUMMERS

Due to the lateness of the hour and the inconvenience to Mr. Summers' personal schedule should he have to return another day, this witness was called first by counsel for Gillman.

Direct Examination

1. Mr. Summers testified that he was an inspector for the Fairfax County Health Department and had been so for twelve years (Summers was accepted as an expert witness).

2. Mr. Summers testified that he was first called upon to inspect the situation at Gillman's in mid-summer of 1978.

3. Mr. Summers, relying on his notes, read to the Court the number of times he had inspected Gillman's operation between August 1, 1978, and the time of trial (a verbatim account of these visits up through May 30, 1979--some 25 visits--and the findings are in the attachment to Defendants' Response to Interrogatories filed in this case).

DEFENDANTS' WITNESS JOHN T. SUMMERS

Direct Examination (Cont.)

4. On two occasions, Mr. Summers testified, he had found maggots in the general area of the Gillman trucks, but had not found any actually on the trucks; while unable to attribute this to Gillman, Mr. Summers spoke to him about his findings, and at the same time cautioned Gillman not to wash the trucks on the parking area due to the sunken condition of the surface which would cause water pooling and a potential health menace vis-a-vis mosquitoes.

5. Mr. Summers testified that the two times maggots were seen were the only times anything approaching a violation was found by him and that the situation quickly disappeared and has not reoccurred.

6. Mr. Summers testified that Gillman has cooperated fully with the health department.

7. Mr. Summers testified that Gillman is obviously washing the trucks, but that this is, in his opinion, not being done at the condominium, since despite numerous visits, he has found no evidence of such washing being done there.

8. Mr. Summers testified that when he responded to one complaint that Gillman trucks were being washed at the condominium, he immediately went to the condominium, but found the Gillman shop locked up and no evidence of any washing having been done.

DEFENDANTS' WITNESS JOHN T. SUMMERS

Direct Examination (Cont.)

9. Mr. Summers, when asked to evaluate the cleanliness of Gillman trucks in comparison to other such companies stated they " ... were no better nor no worse" than other trash trucks.

10. Mr. Summers testified that on some warm, humid days he had noticed some odor from the trucks, but this was only when one was close up to the trucks, and even then he found the odor slight.

11. One abiding problem, and a possible health hazard found by Mr. Summers was the disrepair of the pavement where sunken areas formed pooling areas for water and potential insect breeding.

Cross Examination

1. Mr. Summers testified that finding maggots on asphalt, as he did on two occasions, was unusual and he discussed it with his superior.

2. Mr. Summers testified that maggots are fly larva, which have hatched from eggs layed in decaying vegetable matter, typical of the garbage hauled by Gillman garbage trucks.

3. Mr. Summers testified that there was no garbage on the parking lot, but neither were maggots to be found on the Gillman trucks, thus he could not conclude that the trucks were the source.

DEFENDANTS' WITNESS JOHN T. SUMMERS

Cross Examination (Cont.)

4. Mr. Summers acknowledged that one of the photographs taken by Mr. Asche apparently showed Gillman employees washing a Gillman service vehicle on the common elements in front of one of Gillman's Units.

Second Day of Trial - Monday, June 18, 1979

Due to Friday, June 15, 1979, being reserved for Motions in the Fairfax County Circuit Court and the ensuing weekend, proceedings could not be resumed until Monday, June 18, 1979.

Due to the great emphasis on the condition of the parking lot and the specific statements made by the witness, John R. Pflug, Jr., as to the composition of the lot, Gillman on Friday retained the services of Charles J. Gaylord, P.E. to make tests on the surface and subsurface of the parking lot and to give expert testimony as to his findings. Counsel for Gillman, in accordance with Rule 4 of the Supreme Court of Virginia gave notice to counsel for the Unit Owners Association of the addition of an expert witness on June 17, 1979.

At the beginning of the proceedings on June 18, counsel for Gillman informed the Court of the addition of an expert witness. Objection was raised, but overruled with the provision that counsel for the Unit Owners Association and the Association's agent at trial, John R. Pflug, Jr., could interview the proposed expert for at least twenty minutes. Such was done and the proceedings resumed.

DEFENDANTS' WITNESS SAUNDRA GILLMAN

Direct Examination

1. Mrs. Gillman testified that she was the wife of Harry F. Gillman, that they were Co-Defendants in this trial and that they were the sole owners of Gillmans Five Star Trash Service, and the Units 17 and 21 at BuildAmerica-1. (Complainant's Exhibit 15 and 16).

2. Mrs. Gillman testified that due to zoning difficulties Gillman had to move its trucks from where they had been located in 1975 to a temporary rented lot in Woodbridge, Prince William County, while seeking appropriate facilities in a properly zoned area (in the course of testimony, the Court took notice of the Fairfax County zoning ordinance which permitted operations such as Gillman's at the condominium BuildAmerica-1).

3. Mrs. Gillman testified that Gillman looked at 10 to 15 locations and in both Fairfax and Prince William Counties before coming onto a brochure about BuildAmerica-1.

4. Mrs. Gillman testified that Gillman negotiated the contract of sale with Complainant's witness Roger Thornton and that the latter was fully aware that the Unit was being purchased not only as a repair shop, but also for the 4-1/2 parking spaces--as Mr. Thornton represented the number--which went with the Unit and which Gillman planned to use to park the trucks and sometimes, if necessary, repair them.

DEFENDANTS' WITNESS SAUNDRA GILLMAN

Direct Examination (Cont.)

5. Mrs. Gillman testified no objection was raised, the contract was executed, and, moreover, a Rider was executed allowing them to bring their trucks onto the condominium before settlement (Defendants' Exhibit 3), which Gillman did do.

6. Mrs. Gillman testified that the business grew quickly and new trucks were added; however, when the County barred parking on the public street, which Gillman had used for parking the additional trucks, they faced a problem.

7. Mrs. Gillman testified that Complainant's witness Roger Thornton suggested they acquire more parking by buying a second Unit; he suggested further that they could use the extra parking--bringing their allowed spaces to nine--and rent the extra Unit or merely hold it for investment.

8. Mrs. Gillman testified that when Gillman hesitated due to cash flow problems, Mr. Thornton helped arrange second trust financing with John R. Pflug, Jr., but cautioned Gillman not to disclose this to the lender lest it upset the first trust financing.

9. Mrs. Gillman testified that as in 1976 at the purchase of the first Unit, Mr. Thornton prepared the necessary letter to the bank stating the purpose of the Unit to be the storage and maintenance of trash collection vehicles.

DEFENDANTS' WITNESS SAUNDRA GILLMAN

Direct Examination (Cont.)

10. Mrs. Gillman testified that parking and congestion were mounting problems for everyone at the condominium and that she had discussed the problem with Complainant's Witnesses William Crawford and John R. Pflug, Jr.; these persons pointed out the Bylaws were silent on the number of parking spaces, and showed disinclination to mark off assigned parking spaces.

11. Mrs. Gillman testified that there was a general disregard of proper use of the common elements as directed by the Bylaws and introduced recent photographs of the conditions existing at the condominium, most of the photos having been made the day before Defendants' Exhibits 5a-5q, showing vehicles blocking the firelane, wrecked, untagged trucks and automobiles, heavy equipment, etc.

12. Mrs. Gillman testified there was one time the pavement by the Gillman Units had been repaired in late 1977 and this had been promptly paid for by Gillman (Defendants' Exhibit 4).

13. Mrs. Gillman testified that there had been no major problem with the operation at the condominium until after purchase of the second Unit in August 1977; the problems grew until when in June 1978, Gillman was told to remove the trucks or have them towed away.

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.

DEFENDANTS' WITNESS HARRY F. GILLMAN

Direct Examination

1. Mr. Gillman testified that he is the Co-Defendant and Co-Owner of Gillmans Five Star Trash Service.

2. Mr. Gillman testified that he is the chief mechanic and working supervisor of the shop.

3. Mr. Gillman testified that the trash compactors when unloading have a piston-like action which effects a form of self-cleaning as far as solid matter goes and that this piston-like action actually scrapes the interior of the compactor to white metal.

4. Mr. Gillman testified that the trucks are routinely washed under a high-pressure hose in Woodbridge, Prince William County, and sprayed with disinfectant.

5. Mr. Gillman testified that the trucks were washed occasionally at the condominium until 1978; but since then, in accordance with the instructions from the representative of the Board of Health (Defendants' Witness John T. Summers) the trucks have not been washed there.

6. Mr. Gillman testified that all vehicles leak some oils and fluids and just as his trucks require more such oils and fluids, so can they be expected to leak more than smaller vehicles.

DEFENDANTS' WITNESS HARRY F. GILLMAN

Direct Examination (Cont.)

7. Mr. Gillman testified that until parking was banned on the public street, Fullerton Road, in front of the condominium, he occasionally parked some of his trucks on that street during daylight hours when congestion was at its worst at the condominium, but that he ordinarily, since 1976, used his Units' parking spaces.

8. Mr. Gillman testified that in only two instances would a Gillman truck loaded with garbage come onto the condominium; when such truck had sudden mechanical difficulty and could not proceed to the landfill, but had first to be repaired, and; when collecting trash from the condominium itself under a service agreement.

9. Mr. Gillman testified that repair of vehicles in a parking space is not usual procedure, but does happen from time to time in an emergency situation, as when the truck cannot move itself.

Cross Examination

1. Mr. Gillman testified that while spraying appeared adequate by his own standards and by those of the Health Department, the trucks continued to smell after the use of the disinfectant. It was his opinion that spraying could never remove all of the odor.

DEFENDANTS' WITNESS HARRY F. GILLMAN

Cross Examination (Cont.)

2. Mr. Gillman testified that he cannot allow large leaks of oil or fluid to go unchecked since this means something is mechanically wrong and will only get worse and cost more to fix.

DEFENDANTS' WITNESS GAYLORD

Direct Examination

1. Mr. Gaylord presented his credentials to the Court and qualified himself as an expert in the area of soils and paving.

2. Mr. Gaylord testified that he had, on June 16, and June 17, visited the condominium known as BuildAmerica-1 and taken samples of the soil underlying the parking lot and driveway areas and that such samples were taken at varying depths, up to several feet. (Defendants' Exhibits 11a-d, 12a and b, 13a-c, 14a and b).

3. Mr. Gaylord located on a site plan of the condominium (Defendants' Exhibit 10) where the various samples had been taken.

4. Mr. Gaylord testified that only one sample came close to being bank-run gravel; the others definitely were not.

5. Mr. Gaylord found only one sample which appeared to have any compaction as is necessary for firm subsurfaces to paving intended for vehicular use.

6. Mr. Gaylord testified that the broken pavement shown in Complainant's exhibits and observed by Mr. Gaylord first hand were not the only conduits for water to erode the subsurface and pointed to the sloping hillside immediately behind where Gillman parked, the sloping storm drain which is a part of the parking area, and the open "garden areas" between the building and the pavement.

DEFENDANTS' WITNESS GAYLORD

Direct Examination (Cont.)

7. Mr. Gaylord testified that in the corner of the parking lot showing the worst cracking and sinking he had found loose organic material in the soil strata.

8. Mr. Gaylord testified that he had to make several tests since the nature of soil can change dramatically within as little as five feet.

9. Mr. Gaylord testified that in his opinion the subsurface was not gravel of any sort, that the subsurface had not been properly compacted and was not even suited for lasting civilian automobile use.

10. Mr. Gaylord testified that although the asphalt surface seemed to meet engineering requirements for such a lot and its industrial use, the key to durability is the nature and preparation of the subsurface and this subsurface did not meet engineering requirements or standards.

Cross Examination

1. Mr. Gaylord testified that leaking oil has the effect of a solvent in breaking down the bonding agent in asphalt paving. This weakened asphalt, when subjected to excessive weight, will crack and disintegrate. Once cracked, water from either rain or vehicle washing can pass through the subsurface soil, thus

DEFENDANTS' WITNESS GAYLORD

Cross Examination (Cont.)

destroying the compaction of that soil. This loss of compaction may result in depressions under the pavement.

2. Mr. Gaylord acknowledged from a review of the developer's plats presented to him (Complainant's Exhibit 20b) that these plats required 95% soil compaction over the parking lot area.

COMPLAINANT'S REBUTTAL WITNESS JOHN R. PFLUG, JR.

John R. Pflug, Jr. testified not as an expert witness, since he had no qualifications therefor, but as the developer who received various engineering reports and county inspection approvals.

Direct Examination

1. Mr. Pflug testified that prior to construction of the condominium, he had received engineering reports showing the soundness and strength of the soil beneath the wall footings of the building (Complainant's Exhibits 20a and b, and 21).

2. Mr. Pflug testified that the lot had met all Fairfax County requirements, which included 95% compaction, as witnessed by a memo of inspection and the release of his bond (Complainant's Exhibits 22 and 23).

Cross Examination

1. Mr. Pflug testified that the soil tests for the wall footings were conducted on soil located 30 to 50 feet from the areas of pavement damage and where Mr. Gaylord had taken his samples, but didn't think soil changed in that distance and suggested Mr. Gaylord didn't go deep enough for his samples.

2. Mr. Pflug testified that he was aware that scientific reports of compaction were required on final inspection by Fairfax County, but he didn't have copies of those reports in his files, but that they should be in "Abe Brault's building" [the Fairfax County records center].

COMPLAINANT'S REBUTTAL WITNESS JOHN R. PFLUG, JR.

Cross Examination (Cont.)

3. Mr. Pflug testified that the only way to remedy the damage to the pavement of the parking lot was to "get rid of all" of Gillman's trucks.

P R O C E E D I N G S

(COURT REPORTER SWORN.)

THE COURT: THIS IS JUST ON MOTION FOR ENTRY
OF THE DECREE; IS THAT RIGHT?

MR. SMITH: THAT'S MY MOTION, YOUR HONOR, AND
IT BASICALLY IS THE SAME ARGUMENT. NEITHER OF US IS HAPPY
WITH THE FORM OF THE OPINION LETTER, YOUR HONOR.

THE COURT: WELL, WHICH ONE WANTS TO GO FORWARD;
WHOSE MOTION ARE WE GOING ON?

MR. SMITH: IT'S MY MOTION FOR NOTICE OF THE
ENTRY OF THE DECREE, YOUR HONOR.

MR. GOLDBECKER: MY ARGUMENT AGAINST THE ENTRY
WOULD, OF COURSE, BE THE SAME AS MY ARGUMENT TO VACATE,
THE POINTS I DON'T LIKE.

THE COURT: TRUE.

MR. SMITH: GOOD MORNING, YOUR HONOR, I APPEAR
BEFORE YOU THIS MORNING IN ACCORDANCE WITH YOUR REQUEST
THAT I DRAFT AN ORDER IN ACCORDANCE WITH YOUR LETTER
OPINION OF SEPTEMBER 18, '79, REGARDING THIS MATTER.

THE COURT HEARD THIS CASE TWO DAYS IN JUNE. IF
THE COURT RECALLS, ONE OF THE TERMS OF YOUR LETTER OPINION,
IT REFERS TO AN EARLIER RULING BY JUDGE JAMBORSKY, AND IN
YOUR REVERSAL YOU TOOK THE POSITION THAT THE CONDOMINIUM

1 ASSESSMENTS, THE FINES, AND THAT THE FILING OF A LIEN TO
2 FORCE THE ASSESSMENT --

3 THE COURT: THAT WOULD BE ASSESSMENT OF THE FINE?

4 MR. SMITH: WELL, THE ASSESSMENT OF THE FINE AND
5 THE FILING OF A LIEN. .

6 THE COURT: TO ENFORCE THE ASSESSMENT OF THE
7 FINE?

8 MR. SMITH: ENFORCE THE ASSESSMENT.

9 THE COURT: WE'RE JUST DEALING WITH THE FINE
10 ONLY, NOT THE ASSESSMENT. YOU WEREN'T UNDER THE IMPRESSION
11 THAT I WAS SAYING THAT ANY LIEN FILED THERE WAS PROPERTY
12 ASSESSED -- IN OTHER WORDS, BY VIRTURE OF THAT CHARGE FOR
13 THE USE, OR DEVELOPMENT, OR MAINTENANCE OF THE COMMON UNIT.
14 I CERTAINLY DIDN'T --

15 MR. SMITH: I UNDERSTAND THAT THE COURT DRAWS A
16 LINE BETWEEN --

17 THE COURT: FINE AND ASSESSMENT.

18 MR. SMITH: THAT'S RIGHT.

19 THE COURT'S OPINION LETTER, HOWEVER, APPEARS --
20 APPARENTLY TO ME DOES NOT SEPARATE THE DIFFERENCE BETWEEN
21 FILING OR ASSESSMENT OF A FINE, AND FILING OF A LIEN TO
22 ENFORCE THE ASSESSMENT.

23 THE COURT: I BELIEVE NEAR THE END OF ONE OF THE

1 PARAGRAPHS I SAID: NOW HAD THIS BEEN A PROPER ASSESSMENT
2 THE SITUATION WOULD HAVE BEEN DIFFERENT, I THINK, SOMETHING
3 LIKE THAT.

4 MR. SMITH: WELL, YOUR HONOR, I BELIEVE THE COURT'S
5 OPINION IN BOTH INSTANCES IS THAT SUCH AN ACT, EITHER THE
6 ASSESSMENT OR THE FILING OF A LIEN TO ENFORCE THE ASSESS-
7 MENT, IS UNCONSTITUTIONAL BECAUSE IT REPRESENTS A DEPRAVA-
8 TION OF DUE PROCESS. IT REPRESENTS A DEPARAYATION OF
9 PROPERTY WITHOUT DUE PROCESS.

10 IT'S OUR POSITION THAT CERTAINLY THE ASSESSMENT
11 OF THE FINES THEMSELVES DO NOT, WHEN THESE INDIVIDUALS,
12 MR. GILLMAN'S CLIENTS -- MR. GOLDBECKER'S CLIENTS PURCHASED
13 THE CONDOMINIUM UNITS, THEY PURCHASED THE PROPERTY SUBJECT
14 TO THE DECLARATION AND BYLAWS. AND THEIR TESTIMONY WAS
15 THAT THEY RECEIVED COPIES OF BOTH WHEN THEY SETTLED ON THE
16 UNITS.

17 THE DECLARATION AND BYLAWS UNDER THE ACT CONSTITUTE
18 A RESTRICTIVE COVENANT UNDER COMMON LAW PROPERTY CONCEPTS,
19 AS WELL AS A CONTRACTURAL OBLIGATION, AND THE DECISION,
20 THEREFORE, TO BUY UNITS WHICH MAY THEN SUBJECT THEM TO
21 FINES, YOUR HONOR, WE THINK THAT THAT WAS A TACIT ASSENT
22 ON THEIR PART.

23 THE ASSESSMENT OF A FINE IS NO DIFFERENT THAN ANY

1 CLAIM BETWEEN ANY TWO PARTIES. AND THE ASSESSMENT ITSELF,
2 IF A CONDOMINIUM LIEN IS NOT FILED, DOES NOT BECOME A LIEN
3 AGAINST REAL PROPERTY UNTIL IT IS ADJUDICATED AS IT WAS LAST
4 JUNE, SO WE THINK THAT THE ASSESSMENT ITSELF CAN BE
5 SEGREGATED VERY MUCH FROM THE CONCEPT THAT THE COURT RAISED
6 IN ITS LETTER OPINION THAT THE ASSESSMENT ITSELF DENIED
7 DUE PROCESS.

8 WE THINK UNTIL IT IS ADJUDICATED, IT IS NOT A
9 LIQUIDATED CLAIM THAT CONSTITUTES A LIEN AGAINST PROPERTY,
10 AND THEREFORE, THE ADJUDICATION ITSELF MEETS THE DUE
11 PROCESS REQUIREMENT.

12 GENERALLY WITH REGARD TO THE LIEN ITSELF, THE
13 COURT WAS OF THE OPINION, AGAIN, THAT THE FILING OF THE
14 LIEN WAS A DENIAL OF PROPERTY RIGHTS, AND OUR POSITION,
15 AMONG THE VARIOUS POSITIONS WE TOOK, WAS THAT EVEN IF NO
16 HEARING WAS GRANTED, AND OUR POSITION WAS THAT A HEARING,
17 IN EFFECT, WAS BEING GRANTED BEFORE THE COURT THAT DAY,
18 THAT THERE WAS AN ADJUDICATION AFTER THE FILING OF THE
19 LIEN.

20 IF THE COURT TAKES THE POSITION THAT THE FILING
21 OF THE LIEN AND THE SUBSEQUENT ADJUDICATION STILL CONSTITUTES
22 AN UNCONSTITUTIONAL DEPRIVATION OF PROPERTY, THE COURT
23 NECESSARILY MUST SAY THAT THE MECHANICS' LIEN STATUTE OF

1 VIRGINIA IS EQUALLY UNCONSTITUTIONAL.

2 THE COURT: WELL, ISN'T THAT ABOUT THE ARGUMENT
3 THAT YOU ADVANCED DURING THE TRIAL?

4 MR. SMITH: WELL, THAT'S CORRECT, YOUR HONOR.

5 THE COURT: LET'S NOT ARGUE THAT OVER AGAIN; I'VE
6 HEARD THAT ONCE.

7 MR. SMITH: WELL, YOUR HONOR, RESPECTFULLY, I
8 THINK THE COURT'S ARGUMENT IS SOMEWHAT CIRCULAR.

9 THE COURT HOLDS THAT BECAUSE THERE WAS A DENIAL
10 OF DUE PROCESS THE FILING OF THE LIEN IS ILLEGAL, AND
11 BECAUSE IT IS ILLEGAL THE HEARING BEFORE THE COURT, THERE-
12 FORE, DOES NOT CONSTITUTE THE DUE PROCESS HEARING TO RECTIFY
13 THE PROBLEM.

14 THE COURT: I'M SAYING, NUMBER ONE, THAT I DON'T
15 THINK THE LEGISLATURE INTENDED TO GIVE ANY CONDOMINIUM UNIT
16 OWNERS' ASSOCIATION THE RIGHT TO FINE PEOPLE FOR FINES.
17 THEY CAN ASSESS ALL THE CHARGES THEY WANT AS LONG AS IT'S
18 FOR THE COMMON USE AND COMMON MAINTENANCE. I COULDN'T FIND
19 ANYTHING IN THE HISTORY OF THE ACT, OR ANYTHING IN THE ACT
20 ITSELF, AND I WENT OVER THAT ACT VERY THOROUGHLY AND I
21 SPENT A LOT OF TIME BECAUSE THIS THING WAS HEARD BACK IN
22 JUNE, AND I COULDN'T FIND ANYTHING THAT WOULD LEAD ME TO
23 BELIEVE THAT THE LEGISLATURE INTENDED FOR THESE CONDOMINIUM

1 OWNERS TO SET UP THEIR OWN LITTLE DOMAIN AND START FINING
2 PEOPLE FOR DOING CERTAIN THINGS. I JUST DON'T BELIEVE THAT
3 WAS EVER IN THERE.

4 AS FAR AS ASSESSING THEM FOR MAINTENANCE AND
5 COST OF MAINTAINING THE COMMON ELEMENTS, AS LONG AS THAT'S
6 DONE, THEY CERTAINLY HAVE A RIGHT TO ASSESS THEM. THEY
7 HAVE A RIGHT TO FILE THE LIEN. BUT IF THEY DON'T HAVE A RIGHT
8 TO ASSESS THE FINE, HOW DO THEY HAVE A RIGHT TO FILE THE
9 LIEN? THAT'S THE BASIS FOR THE FINE, SO THAT'S THE BASIS,
10 THAT'S MY RULING.

11 THAT'S WHAT I'M GOING TO ENTER AN ORDER FOR
12 TODAY, THAT I DO NOT FEEL THAT THEY HAVE THE AUTHORITY,
13 NUMBER ONE, TO ASSESS A FINE AS SUCH. I HAVE NO QUIBBLE,
14 NO QUESTION, OF THEIR RIGHT TO FILE AN ASSESSMENT FOR
15 CHARGES FOR MAINTAINING THE COMMON ELEMENTS, ANY COST OF
16 REPAIRS, WHATEVER IT MIGHT BE, OR ANY IMPROVEMENTS THEY
17 WANT TO MAKE, OR ANYTHING OF THAT SORT.

18 ONCE THEY MAKE THAT ASSESSMENT, THEY ASSESS
19 THE PERSON, THEY'VE CERTAINLY GOT A RIGHT TO FILE A LIEN.
20 THE STATUTE IS VERY CLEAR ON THAT. BUT THE STATUTE, IN
21 MY OPINION, DOESN'T SAY ANYTHING ABOUT GIVING THEM A RIGHT
22 TO FINE SOMEBODY FOR DOING SOME ACT.

23 THAT MAY BE THE CONDOMINIUM OWNERS, I MEAN YOU

1 YOU GET -- MY FEELING IS THIS, THAT IF IT'S GOING TO GIVE
2 THEM THAT AUTHORITY THEN YOU COULD GET SOMEBODY IN THERE,
3 AND IT MAY BE SOMEBODY WHO MAY HAVE A LITTLE PARTY ONCE A
4 WEEK OR SOMETHING LIKE THAT, NEXTDOOR NEIGHBOR HAPPEN TO
5 BE ON THE BOARD OF DIRECTORS, HAVE SOME INFLUENCE AND WOULD,
6 THEREFORE, BE IN A POSITION TO SAY WELL, I'M GOING TO GET
7 THAT RASCAL OUT OF HERE.

8 I MEAN THIS MAN BOUGHT SOME PROPERTY THERE.
9 HE'S GOT CERTAIN RIGHTS THERE. BUT IF YOU GIVE THESE
10 PEOPLE A RIGHT TO FINE SOMEBODY, THEN YOU'RE SETTING UP
11 SORT OF A DOMAIN THERE; A LITTLE GOVERNMENT OF ITSELF,
12 YOU MIGHT SAY, FROM THE STANDPOINT OF AT LEAST ADJUDGING
13 SOMEONE'S CONDUCT, PLACING A FINE, AND ASSESSING A FINE,
14 AND ULTIMATELY DEPRIVING A PERSON OF HIS PROPERTY IF HE
15 DOESN'T PAY THE FINE, SO I DON'T THINK THE LEGISLATURE
16 EVER INTENDED -- THE SUPREME COURT MIGHT SAY I'M WRONG;
17 THAT'S WHAT I WANT TO FIND OUT. I WANT TO FIND OUT WHETHER
18 I'M RIGHT OR WRONG.

19 MR. SMITH: YOUR HONOR, I PRESUME THE COURT
20 READ OUR RESPECTIVE BRIEFS ON THE DEMURRER LEVEL, ALL
21 THAT JUDGE JAMBORSKY HAD AN OPPORTUNITY TO READ.

22 THE COURT: I READ THOSE, READ THE CASES YOU
23 CITED AND I WENT THROUGH -- I SPENT A LOT OF TIME WITH

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

1 FOR AN INJUNCTIVE ORDER TO ISSUE. THERE MUST BE FIRST A
2 FINDING OF THE RIGHT IN THE COMPLAINANT, THE PARTY SEEKING
3 SUCH INJUNCTION, AND THE FINDING OF A VIOLATION OF THAT
4 RIGHT BY THE PARTY ENJOINED.

5 NUMBER TWO, I FEEL IT IS VERY NECESSARY, AND I
6 THINK THE AUTHORITIES CONCUR, THAT THE INJUNCTIVE ORDER
7 ITSELF MUST BE PHRASED WITH SPECIFICITY; IT MUST NOT LEAVE
8 ANYTHING TO THE ENJOINED PARTY'S CONJECTURE SO THAT HE
9 MUST PROCEED AT HIS PERIL. IT MUST ALSO BE COINED SO
10 CLEARLY SO AS TO AVOID NEEDLESS LATER DISPUTES.

11 OUR FEELING HERE IS THAT AS THE ORDER -- WELL,
12 THE ORDER REFLECTS THE LETTER OPINION, BUT THIS ORDER
13 FAILS TO MEET THESE TWO CRITERIA. WE'RE NOT LOOKING TO
14 TAKE ANOTHER DAY IN COURT; WE'RE TRYING TO AVOID IT SOME-
15 WHERE DOWN THE ROAD.

16 FIRST OF ALL AS REGARDS THE RIGHT, WE REVIEWED THE
17 EVIDENCE, THE RIGHT OF THE COMPLAINANT; WHAT RIGHT WAS
18 THERE? WE ARE TALKING ABOUT A NUISANCE HERE.

19 THE NUISANCE LAW OF VIRGINIA, THE CASE LAW THAT
20 I'VE BEEN ABLE TO FIND SO FAR, RELATES TO A RESIDENTIAL
21 RIGHT OF THE INVASION OF THE HOME, THE INVASION OF THE
22 PRIVACY, ET CETERA, THAT A PERSON, A PARTY, DOES NOT HAVE
23 TO TOLERATE IN A LIVING ABODE.

1 HERE, HOWEVER, WE'RE DEALING WITH AN INDUSTRIAL,
2 NON-RESIDENTIAL CONDOMINIUM, TO BE PRECISE, WHICH IS ZONED
3 I-5 WHERE THE GILLMAN'S USE IS PERMITTED AS A MATTER OF
4 ZONING LAW. THE GILLMANS WENT THERE WITH THE KNOWLEDGE OF
5 THE OTHER PARTIES, KNOWLEDGE THAT THE OTHER PARTIES HAD,
6 KNOWLEDGE OF THE OPERATION, WHAT WAS GOING TO BE TAKING PLACE
7 THERE. AND ALSO THE PARTY, THE COMPLAINANTS, HERE
8 ACQUIESCED IN GILLMAN'S USE FOR SOME TWO YEARS BEFORE
9 BRINGING ANY KIND OF ACTION.

10 ONE THING THAT IS CONCERNING US, TOO, IS THAT
11 THE EVIDENCE WHICH WAS PRESENTED HERE IN TRIAL IN JUNE,
12 EVIDENCE IN THE FORM OF TESTIMONY FROM GILLMAN, THE RECORD
13 IN THIS CASE WHICH IS IN THE FORM OF A PLEA TO THE ANSWER
14 TO THE SUIT BY COMPLAINANTS, AND ALSO IN DISCOVERY, SHOWS
15 THAT GILLMAN HAS BEEN WASHING IT, DISINFECTING, SPRAYING
16 THESE TRUCKS SINCE LAST JUNE. IN OTHER WORDS, THEY HAVE
17 BEEN DOING WHAT THE COURT IS NOW ORDERING THEM IN THIS ONE
18 INJUNCTION.

19 OF COURSE, WE HAVE A QUESTION OF THE STANDARD
20 HERE. WHAT STANDARD CAN APPLY? I THINK IT'S OBVIOUS
21 THAT A RESIDENTIAL STANDARD CANNOT APPLY; THEREFORE, WHAT
22 ARE WE LEFT WITH?

23 I WISH TO DRAW THE COURT'S ATTENTION TO THE

1 TESTIMONY OF MR. JOHN T. SUMMERS, WHO IS ON HAND HERE
2 TODAY, AND I WOULD OFFER MR. SUMMERS IF NECESSARY TO THE
3 COURT, AS THE COURT'S WITNESS IF THE COURT WISHES TO
4 INQUIRE FURTHER.

5 THE COURT: I DON'T WISH TO HEAR FROM HIM. I
6 THINK I'VE HEARD HIS TESTIMONY IN THE CASE; I'VE MADE MY
7 DECISION.

8 I THINK WE'RE HERE TODAY ON A QUESTION OF WHETHER
9 OR NOT -- WHICH ORDER I'M GOING TO ENTER, WHETHER IT'S TO
10 BE MR. SMITH'S OR YOUR ORDER, OR WHETHER I'M GOING TO
11 MAYBE MAKE SOME MODIFICATIONS, SOME CHANGES, IN EITHER
12 ONE OF THEM.

13 MR. GOLDBECKER: WELL, I DON'T HAVE ANY; I'M
14 SEEKING MODIFICATIONS.

15 GILLMAN HAS NOT BEEN FOUND IN VIOLATION BY THE
16 BOARD OF HEALTH. THERE WERE A COUPLE OF INSTANCES WHICH
17 WERE REMEDIED VERY, VERY QUICKLY. THERE IS NO VIOLATION
18 THERE; THEREFORE, I THINK IT IS FAIR TO SET THE BOARD OF
19 HEALTH, FAIRFAX COUNTY BOARD OF HEALTH, THEIR STANDARD FOR
20 INDUSTRIAL USE, GILLMAN'S USE OF THAT PROPERTY, AS THE
21 STANDARD BY WHICH GILLMAN MUST BE GUIDED.

22 THEREFORE, WE END UP WITH THE RESULT THAT GILLMAN
23 IS ALREADY IN COMPLIANCE WITH WHAT THE COURT IS REQUESTING

1 OR ORDERING, RATHER ORDERING, GILLMAN TO DO IN THE ORDER.
2 I FEEL THAT THE ORDER, TO BE A VALID INJUNCTION, THERE SHOULD
3 BE, THERE HAS TO BE, A FINDING OF NUISANCE ON THE PART OF
4 GILLMAN; AND I DON'T THINK THE EVIDENCE IN THIS CASE
5 SUPPORTS SUCH A FINDING.

6 IF THERE IS SUCH A FINDING BY THE COURT, AND IF
7 THERE ARE TO BE SPECIAL MEASURES TAKEN WHICH GILLMAN MUST
8 TAKE ABOVE AND BEYOND WHAT THE BOARD OF HEALTH, WHICH I
9 SUBMIT IS THE ONLY OBJECTIVE STANDARD WE'VE GOT HERE --
10 THEN WE ARE IN THE POSITION THAT GILLMAN IS BEING SINGLED
11 OUT FOR -- A DUTY IS BEING PUT UPON GILLMAN WHICH IS NOT
12 PUT UPON ANYONE ELSE IN A SIMILAR SITUATION, IN OTHER
13 WORDS, A SIMILAR FLEET OPERATOR AS GILLMAN, IN THIS COUNTY,
14 OR FOR THIS COMMONWEALTH, AS FAR AS I KNOW.

15 AND I SUBMIT THAT WOULD DENY GILLMAN EQUAL
16 PROTECTION UNDER THE LAW.

17 THEN LET US MOVE TO THE INSTRUCTION OF THE COURT
18 WHICH STATES THAT GILLMAN MAY NOT BRING, WELL, "HEREBY
19 ENJOINED FROM MAINTAINING, PARKING, OR RETAINING THEIR TRASH-
20 COLLECTING VEHICLES ON THE PREMISES OR COMMON AREAS UNTIL
21 THE TRUCKS HAVE BEEN WASHED THOROUGHLY WITH A DISINFECTANT,"
22 IT'S DISINFECTANT, INSECTICIDE SUBSTANCE, ET CETERA.

23 WHAT IS "WASHED THOROUGHLY"? THIS, I THINK, IS

1 GOING TO OPEN THE DOOR FOR A LOT OF PROBLEMS. WE'RE GOING
2 TO BE HERE CONCEIVABLY EVERY FRIDAY ON A RULE TO SHOW
3 CAUSE. WHO IS TO SAY WHAT IS THOROUGH WASHING, IN OTHER
4 WORDS, HERE? WHAT GUIDELINE CAN GILLMAN FOLLOW TO KNOW THAT
5 HIS TRUCKS ARE THOROUGHLY WASHED?

6 I THINK THAT THE COURT SHOULD, AND I BELIEVE I
7 HAVE SUPPORT, AND SOME AUTHORITIES HERE, HAS TO CONSIDER
8 THE CIRCUMSTANCES OF THE CASE. IF THE COURT WILL RECALL THE
9 TESTIMONY OF MR. PFLUG, MR. PFLUG, SITTING THERE IN THAT
10 VERY CHAIR, SAID THAT HE WOULD NOT BE SATISFIED UNLESS THE
11 TRUCKS WERE ALL GONE. MR. MOOREFIELD, "RUINED" WERE
12 MR. MOOREFIELD'S EXACT WORDS.

13 THERE IS A LOT OF, LET'S SAY, EVIL FEELING DOWN
14 THERE, IF I COULD USE THAT EXPRESSION.

15 MR. SMITH: I OBJECT TO THAT REPRESENTATION,
16 YOUR HONOR, I BELIEVE --

17 MR. GOLDBECKER: THEN, I'LL WITHDRAW IT.

18 THE COURT: I THINK IN THE EVIDENCE --

19 MR. GOLDBECKER: LET US SAY THERE IS NOT --
20 ACRIMONY, ACRIMONY.

21 THE COURT: THEY'RE NOT THE BEST OF FRIENDS. I'LL
22 TAKE JUDICIAL NOTICE OF THAT.

23 MR. GOLDBECKER: WE HAVE SEEN THAT THE, LET US

1 SAY, FEELING OF THESE COMPLAINANTS TOWARDS MY DEFENDANTS
2 GILLMAN THOROUGHLY WASHING THE TRUCKS ISN'T GOING TO BECOME
3 A MATTER FOR THEM TO DECIDE. THEN WHAT HAPPENS IN THE
4 SHOW CAUSE, THEY SAY ONE DAY THAT THIS TRUCK, EVEN THOUGH
5 MR. SUMMERS OF THE HEALTH DEPARTMENT, OR ANY OTHER INSPECTOR,
6 WOULD SAY WELL, THESE TRUCKS ARE ADEQUATELY MAINTAINED FOR
7 HEALTH STANDARDS.

8 OBVIOUSLY, TO BE QUITE HONEST, I WOULDN'T WANT
9 GILLMANS' TRUCK IN THE BEST OF CONDITIONS PARKED IN MY
10 PARKING LOT, BUT THAT'S NOT WHAT WE'RE TALKING ABOUT HERE.
11 WE'RE TALKING ABOUT AN INDUSTRIAL AREA. WE WILL HAVE THESE
12 PEOPLE SETTING A STANDARD, SO, THEY'RE GOING TO SAY ON DAY
13 "X" THIS WASN'T A CLEAN TRUCK; THEN WE'RE GOING TO COME INTO
14 COURT HERE. WHAT'S THE STANDARD GOING TO BE? HOW ARE YOU
15 GOING TO -- WILL THEY COME IN AND SAY WE DIDN'T LIKE THE
16 SMELL; HOW DO WE GRADUATE? HOW MUCH SMELL IS ALLOWED? IN
17 OTHER WORDS, THERE'S A QUESTION IN MY MIND: WHAT IS A
18 CLEAN GARBAGE -- HOW CLEAN CAN A GARBAGE TRUCK BE; THAT'S
19 WHAT WE'RE GETTING DOWN TO. THAT IS WHY I KEEP COMING
20 BACK TO THE -- I THINK THE ONLY THING WE CAN DO IS RELY
21 UPON THE OBJECTIVE STANDARD OF THE HEALTH AUTHORITIES.

22 AS I SAY, WE HAVE EVERYTHING ELSE -- I THINK THE
23 AUTHORITY OF THE ORDER WOULD BE TO THROW THE DETERMINATION

1 OF "THOROUGHLY CLEANING" TO THE COMPLAINANTS. WE'RE GOING
2 TO HAVE CONTINUED LITIGATION IN THIS, AND, AS I SAY, I FEEL
3 THAT GILLMAN IS IN COMPLIANCE WITH WHAT I THINK THE COURT
4 WANTS GILLMAN TO DO, NAMELY, NOT UNREASONABLY INVADE THE
5 PROPERTY RIGHTS OF OTHERS. AND I SUBMIT GILLMAN IS IN
6 COMPLIANCE WITH THE COURT'S ORDER, AND I'D BE THE FIRST
7 TO STATE HERE, AND I THINK GILLMAN CERTAINLY IF THEY WERE
8 HERE, WOULD SAY THE SAME THING, THAT THEY'RE NOT LOOKING
9 FOR LICENSE TO DO WHAT THEY WANT TO.

10 NOW, THEY KNOW THEY'VE GOT TO BE IN COMPLIANCE
11 AND THE EVIDENCE DID SHOW THEY HAVE ON TWO SEPARATE OCCASIONS
12 IMMEDIATELY COMPLIED WITH A VERBAL DIRECTIVE FROM THE HEALTH
13 DEPARTMENT. SO, THEREFORE, TO SUM UP HERE, I FEEL THAT THE
14 ORDER MUST CONTAIN A FINDING OF NUISANCE PERPETRATED BY
15 GILLMAN, BUT I DON'T THINK THE EVIDENCE CAN SUPPORT SUCH A
16 FINDING.

17 I FEEL THE RECORD IS CLEAR, AND IT WAS UNREBUTTED
18 BY THE COUNSEL FOR COMPLAINANT, THAT GILLMAN HAD NOT BEEN
19 CLEANING. THERE WAS SOME QUESTION IN CROSS EXAMINATION
20 ABOUT WHAT SIZE HIS SPRAYER WAS AS I RECALL, OR SOMETHING
21 LIKE THAT, BUT GILLMAN HAS NOT BEEN REBUTTED AS FAR AS
22 THEIR PLEADING, AND I THINK THAT THEY ARE CLEANING IN, LET
23 US SAY, A WORKMANLIKE FASHION, AS SUBSTANTIATED BY THE FACT

1 THAT THE HEALTH DEPARTMENT HAS NOT FOUND ANY VIOLATION.

2 I ALSO -- I ALSO SUBMIT THAT THE ORDER, IF IT IS
3 ENTERED AS IT STANDS NOW, WILL LEAVE GILLMAN WITH TWO
4 ALTERNATIVES. ONE WILL BE TO REMOVE THEIR TRUCKS ENTIRELY
5 FROM THE PREMISES, WHICH I SUBMIT WOULD BE THAT KIND OF
6 TAKING OF PROPERTY WITHOUT DUE PROCESS WHICH THIS COURT
7 SO RIGHTLY CONDEMNED IN THE LIEN ASSESSMENTS PART OF THIS
8 CASE. OR, AS I SAID, WE WILL BE BACK IN HERE, PEOPLE
9 POINTING FINGERS AT ONE ANOTHER.

10 THERE IS NO GUIDELINES, THAT'S WHAT I'M SAYING,
11 AS TO THAT.

12 I WOULD LIKE TO MOVE ON NOW TO THE NEXT INJUNCTIVE
13 ORDER.

14 THE COURT: ALL RIGHT.

15 MR. GOLDBECKER: THIS, REFERRING HERE THAT GILLMAN
16 IS "ENJOINED FROM HAVING, KEEPING, PARKING, OR MAINTAINING
17 AT ANY GIVEN TIME ANY VEHICLES IN ANY UNIT OR COMMON AREA
18 OF BUILDAMERICA-1 CONDOMINIUM IN EXCESS OF THE NUMBER
19 PERMITTED BY THE RULES AND REGULATIONS OF THE CONDOMINIUM."

20 THE QUESTION HERE IS THAT WHEN GILLMAN CAME TO
21 THE CONDOMINIUM AND ASSUMED A VESTED RIGHT OF PARKING IN
22 THESE -- WHICH I THINK ALSO IS GUARANTEED BY THE VIRGINIA
23 CONDOMINIUM ACT -- THE BYLAWS, RULES AND REGULATIONS MADE

1 NO MENTION OF NUMBER OF VEHICLES. IN FACT, THERE IS ONLY
2 ONE MENTION OF NUMBER OF VEHICLES TO MY KNOWLEDGE, AND THAT
3 IS AN AMENDMENT WHICH WAS PASSED BY THE BOARD OF MANAGERS,
4 I BELIEVE, ON AUGUST 31, 1978, WHICH LIMITS USE -- WHICH
5 LIMITS THE NUMBER OF VEHICLES OVER 10,000 AXLE WEIGHT TO
6 THREE PER UNIT.

7 NOW, THERE WAS SOME TALK AT TRIAL -- THERE WAS
8 SOME QUESTION HERE AT TRIAL, RATHER AS TO HOW MANY PARKING
9 SPACES DID PEOPLE HAVE. SOME SAID FOUR, SOME SAID FOUR AND
10 A HALF. THERE SEEMS TO BE A CONSENSUS IN FAVOR OF FOUR.

11 I WOULD ALSO POINT OUT, THAT HAVING SAID THAT,
12 THE COMPLAINANT'S VERY OWN WITNESSES ALL TESTIFIED, ALL
13 THE COMPLAINANTS OVER THERE ACTUALLY DOING BUSINESS AT
14 THE CONDOMINIUM ALL TESTIFIED, THAT THEY ARE OVER-PARKING
15 IN THE SAME RATIOS GILLMAN IS.

16 GILLMAN ADMITTEDLY HAS BEEN PARKING MORE, BUT
17 I SUBMIT THAT THIS IS NOT -- THAT THIS IS NOT ENJOINABLE
18 ACT UNLESS THE CONDOMINIUM ITSELF FIRST PUTS FORTH A
19 CLEAR AND EXPLICIT STATEMENT OF HOW MANY VEHICLES CAN
20 BE PARKED DOWN THERE. THERE IS THIS VAGUENESS IN THE
21 RULES AND REGULATIONS AND THE AMENDMENT OF AUGUST 10,
22 OR RATHER AUGUST 31, 1978, WAS PASSED TWO YEARS AFTER
23 GILLMAN HAD BEGUN THE USE IN THE FIRST UNIT, ONE YEAR AFTER

1 HE HAD BEGUN THE USE OF THE SECOND.

2 I FEEL THAT THIS AMENDMENT CERTAINLY CANNOT
3 APPLY TO GILLMAN. THEY HAD A VESTED AND CONTINUING USE
4 IN THE UNIT, AND THE AUGUST AMENDMENT COULD NOT RESTRICT
5 THAT USE; THAT WOULD BE, SO TO SPEAK, GRANDFATHERED, WHICH
6 I THINK IS THE USUAL PROCEDURE.

7 SO ON THE BASIS OF THE ARGUMENT I'VE MADE HERE,
8 I RESPECTFULLY REQUEST THE COURT TO RECONSIDER, MODIFY,
9 VACATE THESE INJUNCTIVE ORDERS.

10 THANK YOU.

11 THE COURT: MR. GOLDBECKER, I'LL SAY THIS. AT
12 THE TIME I WROTE THIS THERE WAS NO QUESTION IN MY MIND,
13 I REALIZED THAT IT'S GOING TO BE RATHER DIFFICULT TO
14 FRAME AN INJUNCTIVE ORDER THAT SETS FORTH STANDARDS. I
15 DON'T KNOW WHAT KIND OF STANDARDS -- YOU'RE GOING TO SAY
16 THIS STINKS, THIS STINKS MORE, THAT STINKS A GREAT DEAL
17 MORE OR SOMETHING LIKE THAT. I REALIZE THAT.

18 AT THE SAME TIME, I THINK THESE PEOPLE HAVE GOT
19 A RIGHT UNDER THE RULES AND REGULATIONS SET FORTH THERE
20 WITH RESPECT TO THESE STINKING VEHICLES; SO THAT WAS A
21 PROBLEM, I REALIZE.

22 YOU'RE GOING TO HAVE TO -- I SUPPOSE IT'S A QUESTION
23 OF SEMANTICS, WHICH WORD YOU'RE GOING TO USE, AND TRY TO

1 COME UP WITH SOMETHING. BUT MY MAIN PURPOSE WAS TO DRIVE
2 HOME THE MESSAGE AND HAVE AN ORDER ENTERED THAT THESE
3 PEOPLE ARE NOT GOING TO BE ALLOWED TO JUST KEEP THESE
4 TRASH TRUCKS THAT HAVE THIS TERRIBLE ODOR AND SO FORTH
5 AROUND THERE, AND THAT'S A PROBLEM.

6 THERE'S NO DOUBT IN MY MIND, BUT DID YOU COME
7 OUT AND SAY WELL, IF I DIDN'T ENJOIN THEM FROM THAT, I
8 DON'T KNOW WHAT YOU'RE GOING TO ENJOIN -- THEY'RE JUST
9 BRINGING THEM ON AND DO NOTHING WITH THEM. I MEAN I THINK
10 THESE PEOPLE HAVE RIGHTS TOO, AND I THINK THE UNIT OWNERS
11 HAVE, CERTAINLY HAVE, RIGHTS TO ENJOY THEIR PROPERTY WITHOUT
12 HAVING THESE STINKING TRASH TRUCKS AROUND THERE.

13 IN OTHER WORDS, MY FEELING WAS THAT WE'RE GOING
14 TO HAVE TO ARRIVE AT SOME LANGUAGE AND I WAS HOPING THAT
15 COUNSEL WOULD BE ABLE TO COME UP WITH THE APPROPRIATE
16 LANGUAGE. IF YOU CAN'T, THEN WE'LL JUST HAVE TO FRAME IT
17 AS BEST WE CAN. BUT I'M SATISFIED THEY'RE ENTITLED TO
18 AN INJUNCTION TO ENJOIN THEM FROM KEEPING THESE -- THESE
19 TRASH TRUCKS THAT HAVE THIS ODOR -- NOW, HOW YOU'RE GOING
20 TO DETERMINE THE DEGREE OF ODOR AND SO FORTH, JUST BE ONE
21 OF THESE THINGS THAT IF THEY KEEP COMING BACK INTO COURT,
22 AND I CAN REALIZE, AND I CAN UNDERSTAND WHY THERE MIGHT BE
23 HEARINGS THAT WOULD BE PROJECTED BY VIRTUE OF ONE COMING AND

1 SAYING, WELL, HE HAD FOUR OR FIVE TRUCKS I COULDN'T STAND
2 THE ODOR OF; AND GILLMAN COME AND JUDGE, I JUST WASHED
3 THOSE DOWN MYSELF WITH SOAP AND WATER A HALF AN HOUR AGO,
4 SO HOW COULD THEY HAVE IT?

5 WELL, IT COULD GET TO THE POINT WHERE THE COURT
6 WILL PROBABLY JUST HAVE TO IRON THAT OUT, BUT THERE'S GOING
7 TO HAVE TO BE SOME TERMINOLOGY. I FELT THAT THEY'RE
8 ENTITLED TO INJUNCTIVE RELIEF ALONG THOSE LINES, AND IT'S
9 JUST A QUESTION, YOU KNOW, OF TRYING TO ARRIVE AT SOMETHING
10 THAT WOULD SET UP SOME KIND OF A FAIR STATEMENT THAT THEY
11 WOULD BE CONTROLLED BY. THAT'S SOMETHING WE'LL HAVE TO
12 SEE IF WE CAN DO.

13 MR. GOLDBECKER: WELL, THIS IS THE PROBLEM WE
14 CAN FIND.

15 THE COURT; AND I CAN UNDERSTAND IT, BUT IF I
16 DIDN'T ENJOIN HIM FROM BRINGING THESE TRUCKS WITH THIS
17 ODOR AND SO FORTH ON THERE, THEN THEY'D HAVE A RIGHT TO
18 BRING THEM ON IN ANY CONDITION, SO I THINK THESE PEOPLE
19 HAVE A RIGHT TO NOT HAVE THESE TRUCKS SITTING OUT THERE
20 THAT ARE STINKING TO HIGH HEAVEN. AND THERE'S NO DOUBT
21 IN MY MIND. I'M SATISFIED IN MY MIND THAT THIS WAS A
22 PROBLEM THERE, AND I THINK IT WAS A VIOLATION OF THE RULES.

23 THAT WAS THE CONCLUSION I DREW BASED UPON THE

1 EVIDENCE, AND THAT'S THE ORDER I'M GOING TO ENTER. BUT
2 IT'S GOING TO BE -- I'M GOING TO TRY TO FRAME IT AS BEST
3 I CAN TO TRY TO SET SOME STANDARD THERE. BUT THAT WAS --
4 I REALIZED THIS AND THIS IS A RATHER UNIQUE CASE. I
5 THINK IT'S SOMETHING THAT WE WILL PROBABLY BE MAKING SOME
6 NEW LAW AS FAR AS THE CONDOMINIUM IS CONCERNED.

7 BUT I THINK IT OUGHT TO BE CLARIFIED.

8 LET ME HEAR FROM MR. SMITH, NOW.

9 MR. SMITH: YOUR HONOR, WITH REGARD TO MR.
10 GOLDBECKER'S REQUEST THAT YOU FIND A NUISANCE, I THINK
11 THE COURT HAS ALREADY INDICATED THAT WHETHER OR NOT
12 THERE WAS A NUISANCE, WE CERTAINLY CONTEND THAT THERE
13 WAS.

14 BUT THE COURT'S INJUNCTIVE RELIEF CAN BE
15 SUPPORTED BY VIOLATION OF THE RULES AND REGULATIONS AND
16 THE BYLAWS OF THE CONDOMINIUM.

17 THE COURT: THAT'S WHAT I BASED IT ON, AND I
18 CONCLUDED THAT THEY HAD VIOLATED THOSE. IN OTHER WORDS,
19 I THINK THAT THE UNIT OWNERS ARE ENTITLED TO PROTECTION,
20 AND THAT WAS THE FINDING THAT I MADE.

21 MR. SMITH: I THINK IF YOUR HONOR WILL REMEMBER
22 WE ARGUED THAT THE TRUCKS SHOULD BE BARRED FROM THE PREMISES
23 ALL TOGETHER. I BELIEVE THAT THE COURT'S DECISION IN THIS

1 CASE REPRESENTS A REASONABLE COMPROMISE BETWEEN THE TWO
2 VIEWS. WHENEVER AN INJUNCTION IS ENTERED BY THE COURT,
3 THERE ALWAYS IS A PROBLEM OF ENFORCEMENT. IT ALWAYS COMES
4 DOWN TO A FACTUAL ISSUE, AND I HAVE NO PROBLEM WORKING
5 WITH OPPOSING COUNSEL IN THE COMING MONTHS TO TRY TO
6 RESOLVE THE PROBLEM AS BEST WE CAN WITHOUT THE ASSISTANCE
7 OF THE COURT, BUT I DON'T HAVE ANY PROBLEM WITH THE
8 LANGUAGE THAT THE COURT HAS OFFERED IN ITS LETTER, AND
9 THE ORDER THAT I WOULD PRESENT TO THE COURT TODAY PARROTS
10 EXACTLY THAT LANGUAGE.

11 I THINK IT WOULD BE VERY DIFFICULT FOR MR.
12 GOLDBECKER AND I TO AGREE ON ANY LANGUAGE THAT'S DIFFERENT
13 FROM WHAT YOU HAVE OFFERED BECAUSE OF OUR POSITIONS; THEY
14 ARE SO DIAMETRICALLY OPPOSED.

15 BUT I WOULD THEN TENDER THE ORDER UNLESS THE
16 COURT HAS -- I MEAN THE COURT HAS INDICATED WHAT ITS
17 POSITION IS; IT'S GOING TO STAND BY ITS OWN ORDER.

18 THE COURT: I DON'T HAVE ANY QUESTION ABOUT THAT.
19 I'M NOT GOING TO CHANGE MY ORDER.

20 THERE IS ONE OTHER PROBLEM WE MIGHT HAVE HERE
21 WITH RESPECT TO THE LIMITATION OF THE NUMBER OF VEHICLES
22 BEING ON THE PROPERTY. NOW, THAT DOESN'T MEAN THAT FOR
23 INSTANCE, IF A TRUCK PULLS THROUGH THERE AND HAPPENS TO BE

1 ONE EXTRA VEHICLE OR SOMETHING LIKE THAT; IT'S GOT TO BE
2 THERE FOR A REASONABLE LENGTH OF TIME OR SOMETHING.

3 THEY'RE GOING TO HAVE TO BE, FOR INSTANCE, IF
4 THE RULES SAY THEY CAN HAVE FOUR VEHICLES THERE, WELL,
5 SUPPOSE A FIFTH VEHICLE COMES THROUGH TO PICK UP TRASH
6 ALONG THERE, OR COMES THROUGH THERE, THAT CERTAINLY
7 WOULDN'T BE A VIOLATION IF IT'S JUST MORE OR LESS TRANSVERSING,
8 I GUESS -- I SUPPOSE, THE PROPERTY OR SOMETHING.

9 BUT THE IDEA IS -- I'M TALKING ABOUT MAINTAINING
10 AND KEEPING THEM ON THERE FOR ANY UNREASONABLE LENGTH OF
11 TIME. IN OTHER WORDS, I THINK WE HAVE TO TALK IN TERMS
12 OF MAYBE SETTING A TIME LIMIT IN THE EVENT THERE IS A
13 SITUATION THERE. BUT THEY'RE NOT GOING TO BE ALLOWED TO
14 HAVE ANY SEVEN OR EIGHT TRUCKS THERE PARKED ON THE COMMON
15 AREA ANY LENGTH OF TIME, FOR OVERNIGHT OR ANYTHING OF THAT
16 SORT. SO THIS -- AND THIS IS ANOTHER PROBLEM THAT I SENSED
17 AT THE TIME, AND I DIDN'T MEAN THAT THERE WASN'T A GIVEN
18 TIME WHEN THEY COULDN'T HAVE MAYBE ONE OR TWO VEHICLES OVER
19 THE NUMBER PERMITTED THERE, BUT NOT TO REMAIN THERE, IN
20 OTHER WORDS.

21 SO, I THINK IN TERMS OF A TIME LIMITATION I
22 SUPPOSE --

23 MR. SMITH: I DON'T THINK THE ENFORCEMENT OF THAT

1 WOULD BE ANY PROBLEM, YOUR HONOR. MR. GOLDBECKER MAY RAISE
2 THE SPECTER OF WHAT HAPPENS WHEN THE RULES AND REGULATIONS
3 WHEN A RULE IS PASSED SAYING THAT NO TRUCKS OVER 10,000
4 POUNDS CAN COME ON THE PREMISES, BUT I BELIEVE THAT THE
5 COURT SHOULD CONSIDER THAT WHEN AND IF SUCH A RULE IS EVER
6 PASSED.

7 THE COURT: WELL, WE'LL WAIT AND WE'LL CROSS THAT
8 ROAD WHEN WE GET THERE, IN OTHER WORDS; BUT I'M SPEAKING
9 ABOUT WHERE I SAID THEY WOULD NOT BE ALLOWED TO HAVE ANY
10 EXCESS OF THE NUMBER AUTHORIZED BY THE RULES AND REGULATIONS.

11 AND, OF COURSE, HIS ARGUMENT WAS NUMBER ONE, THAT
12 THEY HAD A VESTED INTEREST--I SHOULDN'T EVEN HAVE ENTERED
13 THAT. I'M STICKING BY THAT PARTICULAR ASPECT OF THE ORDER.
14 I JUST WANT IT UNDERSTOOD THAT WHEN I SAID "IN EXCESS," I
15 DIDN'T MEAN THAT IF A TRUCK CAME OVER, SAY FOR A MINUTE,
16 FOR A FEW MINUTES, AN EXTRA TRUCK CAME OVER, OVER AND ABOVE
17 THE LIMIT, JUST DROVE THERE FOR SOME REASON OR ANOTHER OR
18 CAME BY THE SHOP TO PICK UP SOMETHING OR SOMETHING OF THAT
19 SORT, BUT IF IT STAYS THERE AN EXTENDED PERIOD OF TIME,
20 THEN IT WOULD CERTAINLY BE IN VIOLATION IF IT EXCEEDS THE
21 NUMBER -- EXCEEDS THE NUMBER.

22 MR. GOLDBECKER: THE QUESTION I HAVE IN MY MIND,
23 IF I COULD ASK THE COURT, IS THE COURT FINDING -- HOLDING

1 THAT THE BYLAWS MAY FROM TIME TO TIME BE AMENDED TO RESTRICT
2 THE NUMBER OF VEHICLES?

3 THE COURT: I'M SAYING AT THE TIME, WHATEVER THE
4 BYLAWS SAY AT THE TIME. I'M NOT RULING THAT HE HAD A
5 VESTED RIGHT TO HAVE FIFTEEN, TWENTY VEHICLES ON THERE
6 BECAUSE OF THE TIME. IN OTHER WORDS, I THINK AS
7 LONG AS THOSE BYLAWS ARE VALIDLY PASSED AS FAR AS I'M
8 CONCERNED, I THINK THEY CAN RESTRICT THE LIMITATIONS.
9 SO I THINK IT'S A QUESTION OF WHETHER OR NOT THE BYLAWS
10 ARE PASSED, THEREBY THE OWNERS HAVE A RIGHT TO BE HEARD
11 ON IT, SO THAT'S MY POSITION.

12 MR. SMITH: I HAVE NOTHING FURTHER, YOUR HONOR.

13 THE COURT: MR. GOLDBECKER, DID YOU HAVE A
14 PROPOSED ORDER?

15 MR. GOLDBECKER: NO, SIR, MY PROPOSED ORDER WAS
16 THE ABSENCE OF THE TWO INJUNCTIONS.

17 THE COURT: ALL RIGHT, WELL, IF YOU WANT TO
18 JUST NOTE THAT, I'M SURE THAT BOTH OF YOU PROBABLY HAVE
19 EXCEPTIONS TO THE COURT'S RULING. YOU COULD NOTE THOSE
20 ON THE ORDER. YOU'RE TO LEAVE A BLANK SPACE FOR THE
21 ATTORNEY'S FEE.

22 MR. SMITH: YES, YOUR HONOR, I DID.

23 THE COURT: MAYBE WE'LL GET SOMETHING DEFINITIVE

1 FROM THE SUPREME COURT ON THIS.

2 MR. SMITH; THANK YOU, YOUR HONOR.

3 THE COURT; IT'S SORT OF AMAZING, OUT OF THE
4 WHOLE COUNTRY THIS PARTICULAR POINT, BUT I DON'T KNOW
5 ABOUT YOU ALL, BUT MY CLERK FIND -- NONE OF US COULD
6 FIND ANY LAW ON THIS ONE.

7 MR. SMITH; THAT'S RIGHT, THEY'RE NO RECORDED
8 CASES.

9 THANK YOU, YOUR HONOR.

10 THE COURT; OKAY.

11 (THEREUPON, AT 12:44 P.M., THE HEARING IN THE
12 ABOVE-ENTITLED MATTER WAS CONCLUDED.)

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MAY 15, 1977

June 22, 1976

6315 The Northern Virginia Bank
1615 Backlick Road
Springfield, Virginia 22150

Attention: Mr. James R. Lewis

Dear Mr. Lewis:

We hereby request a loan from The Northern Virginia Bank for the purchase of a condominium warehouse at 7646 - @ Fullerton Road Springfield, Virginia.

The purchase price is ~~\$52,500.00~~ ^{\$53,500.00}. We are making an all cash down payment of ~~\$13,125.00~~ ^{\$18,375.00} and request a First Trust loan in the amount of ~~\$39,375.00~~ ^{\$40,125.00} for a period of 25 years at an interest rate not to exceed 9.75% and we agree to pay one point for loan placement.

The property will be purchased in the names of Harry F. Gillman and Saundra K. Gillman.

The intended use of this property is for a ^{STORAGE} repair facility for our own commercial vehicles used in our business. ^{AND TRASH RECEPTILES}

Our need is immediate and your prompt attention to this matter will be appreciated.

Very truly yours,

Harry F. Gillman

Harry F. Gillman

Saundra K. Gillman

Saundra K. Gillman

Def Exh #1

6/14/79

Judge: *DM*

RIDER TO A SALES CONTRACT
FOR BUILDAMERICA ONE CONDOMINIUM

This Rider to a Sales Contract ("Contract") dated the
~~XXXX~~ 26th. day of ~~XXXXXXXXXX~~ June, 1976, by
and between Pflug Enterprises, hereinafter called the "Seller"
and ~~Harry F. and Sandra K. Gillman and XXXXXXXXXXXXXXXXXX~~
~~XX~~
hereinafter called "Buyer."

In consideration of the mutual promises contained herein,
the Sales Contract referred to above is amended as follows:

1) The Contract purchase price does not include and the
Seller shall have no obligation to provide any office improve-
ments shown on Exhibit "L" to the Master Deed.

2) The Buyer may occupy this unit prior to settlement
under the following terms and conditions:

a) Buyer shall pay to the Seller \$ N/A
dollars for each month or portion of a month during which the
premises are used or occupied by the Buyer.

b) The Buyer shall apply for all required utilities
and permits and shall be responsible for payment of all charges
lawfully assessed or imposed on the unit for water, gas, elec-
tricity, sewage and fuel and if not so paid Seller may, if he
elects, pay the same and the amount so paid shall be considered
as additional rent for the unit and payable forthwith.

c) The Buyer shall occupy the unit in accordance
with the terms of the Master Deed, By-Laws and Rules and Regula-
tions of the Condominium and in accordance with the Fairfax

County ordinances. Seller shall have all rights granted the Unit Owners Association or its agents until settlement takes place.

d) The Buyer agrees to the extent permitted by law to assume all risks of every kind whether related to property or person in connection with his occupancy of the unit even if these risks arise from defects latent or patent in connection with the building or other parts of the premises and whether or not the same were known by the Seller at the time of making this Contract and were not disclosed by the Seller at the time or at any subsequent time, and the Buyer further agrees to carry liability insurance insuring against all risks referred to above, in form and amounts satisfactory to the Seller but not less than \$250,000.00 Bodily Injury per occurrence and \$50,000.00 Property Damage per occurrence.

e) If the Buyer violates any covenant or condition or rule or regulation found in the Master Deed, the By-Laws, Rules and Regulations of the Condominium, or any covenant or condition found in this Contract or for any reason whatsoever fails to settle on or before Thirty (30) days, Buyer agrees that Buyer will immediately vacate the unit and the Seller shall have the right to immediate possession of the unit. If Buyer fails to vacate the unit, the Seller shall have the right, in addition to all other rights and remedies under the Contract or law, to enter the unit and take possession of the unit without the necessity of prior legal proceedings or notice to the Buyer. The Buyer hereby waives its right

to notice or legal proceedings prior to such entry. No such entry shall deprive the Seller of any other actions the Seller may have for damages or for payments due under the Contract. Buyer shall be responsible for and pay all legal fees and other costs involved in any proceeding resulting from a breach of the Contract or any other obligation of the Buyer to the Seller.

f) In the event settlement does not take place, any improvements made to the unit shall belong to the Seller and the Buyer shall have no right to remove any such improvements from the unit but shall have the duty to remove such improvements if so requested by the Seller. The Unit shall be left in as good condition as when originally occupied, normal wear and tear excepted.

WITNESS the following signatures:

PFLUG ENTERPRISES

Douglas W. Elton

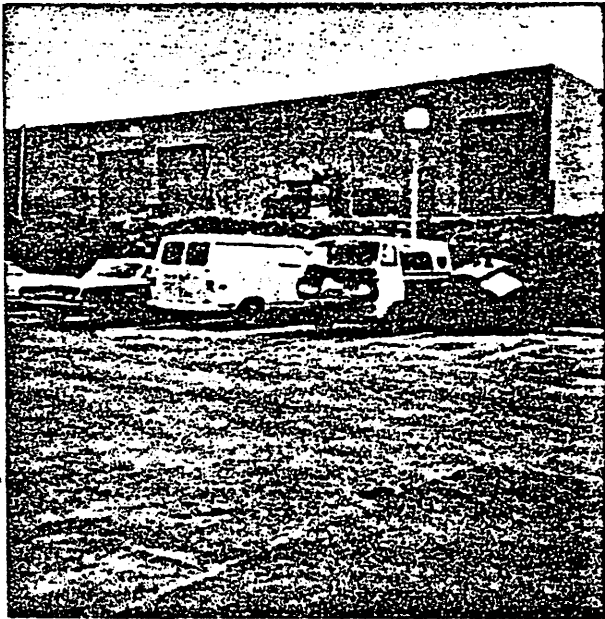
By: John R. Pflug, Jr.

Roger C. Houston

By: Harry F. Gillman
Harry F. Gillman

Sandra K. Gillman

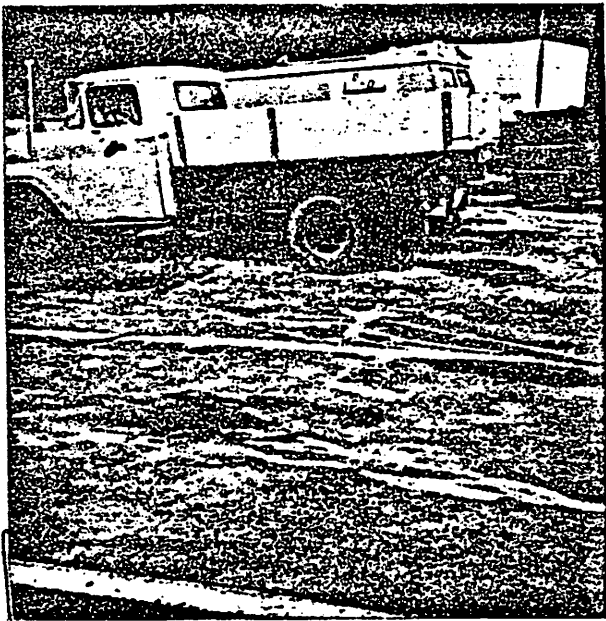
By: *Sandra K. Gillman*
Saundra K. Gillman



DEFENDANT'S EXH. 5A



DEFENDANT'S EXH. 5B



DEFENDANT'S EXH. 5C



DEFENDANT'S EXH. 5D



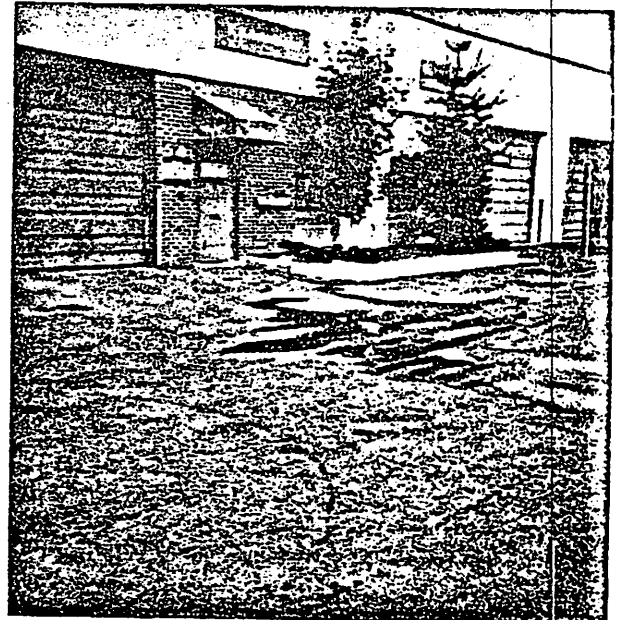
DEFENDANT'S EXH. 5E



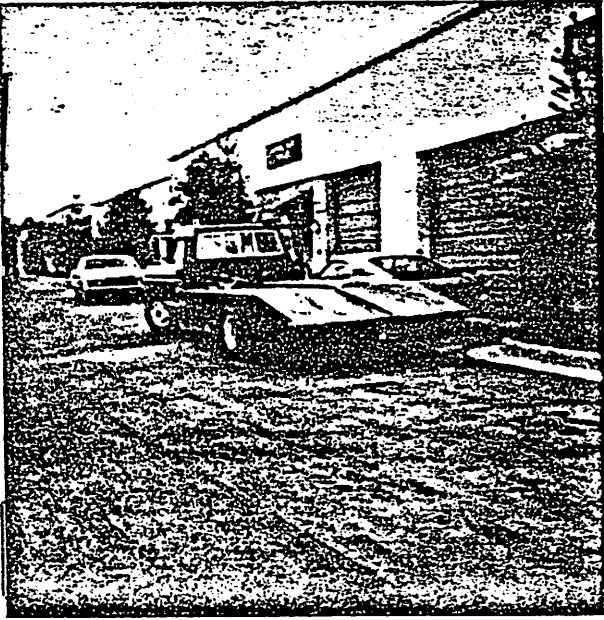
DEFENDANT'S EXH. 5F



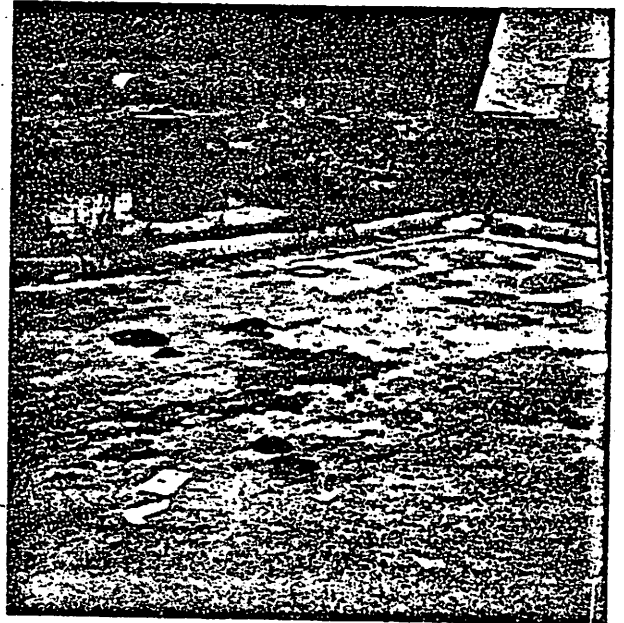
DEFENDANT'S EXH. 5G



DEFENDANT'S EXH. 5H



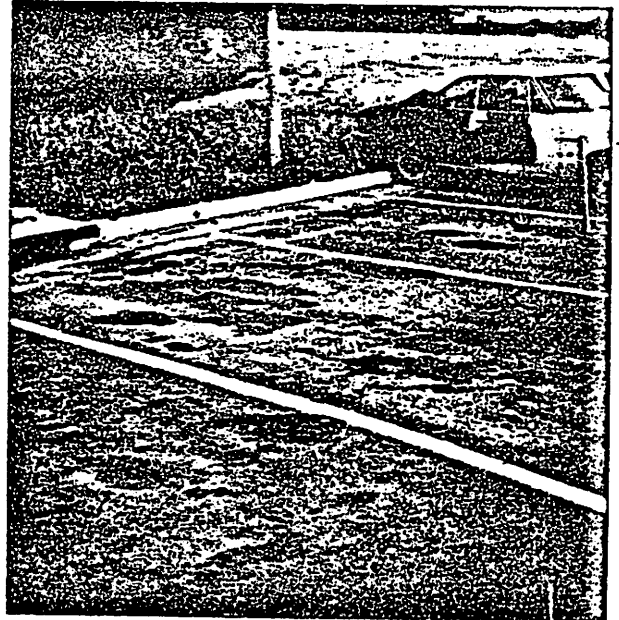
DEFENDANT'S EXH. 5I



DEFENDANT'S EXH. 5J



DEFENDANT'S EXH. 5K



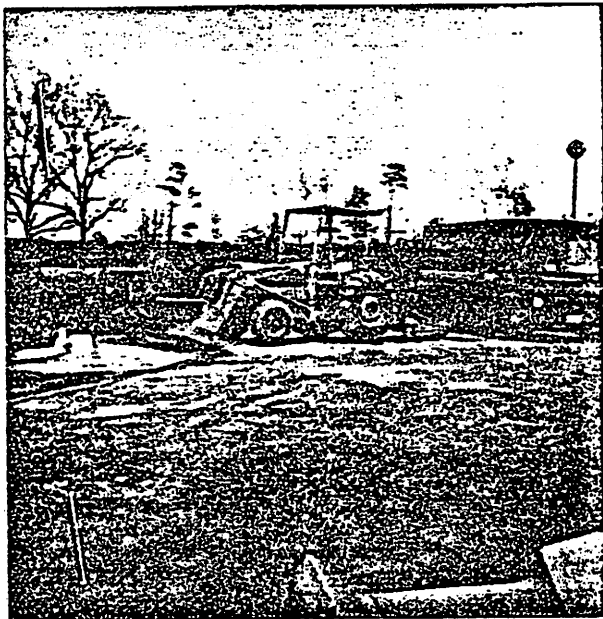
DEFENDANT'S EXH. 5L



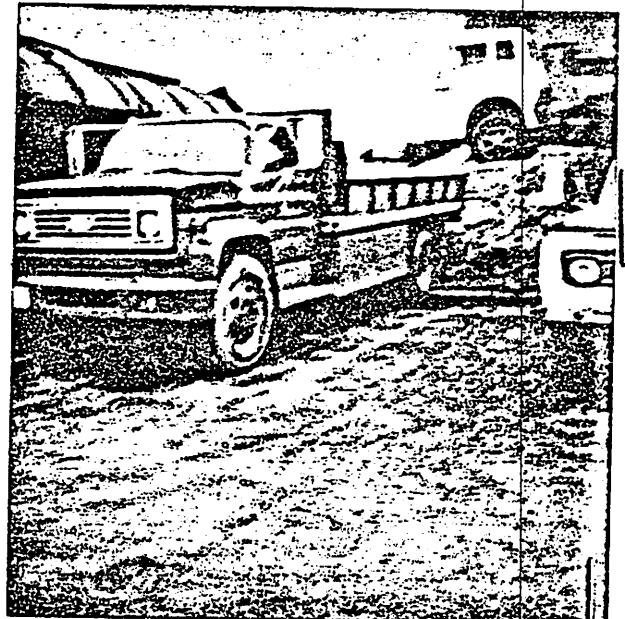
DEFENDANT'S EXH. 5M



DEFENDANT'S EXH. 5N



DEFENDANT'S EXH. 5O



DEFENDANT'S EXH. 5P



DEFENDANT'S EXH. 5Q

MINUTES of the Special Board of Managers Meeting for the BuildAmerica 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.

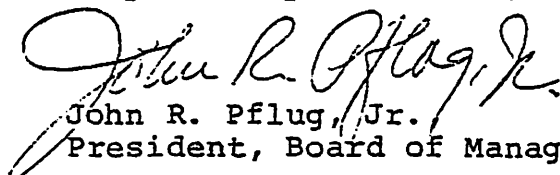
Mr. Crawford motioned that we make a rule that any major contributor of damage to the common elements in the amount of \$75.00 or more should individually be assessed for repairs and not assess the Unit Owners totally for someone else's damages. This motion was seconded and unanimously agreed to. Mr.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

CREDIT CARD NUMBER 56305 - PERMIT NUMBER 207 DEFENDANT'S EXH. 7NAME & ADDRESS Gillmans Trash, 8905 OX Rd. Lorton Va 22079Vehicle Description 72 Ford TruxmoreVehicle Registration Information N80FVP55997

Water Tight Body - Packer

- Hoppers--plugs installed ☒Water Tight Body--Converted Body ☐Open Bodies--Covered ☐

Tow Hooks:

- Mounted on Frame or Solid Base ☒- Good position for towing ☒

Roll-offs:

- Cover on right rear of packer set up ☐- All openings covered ☐Container trucks have approved numbered sticker on the container ☐

Name, Address & Phone No.:

- Painted on both sides ☒- Color contrasting from color of truck ☒- Permanently affixed on truck ☒- Letters large enough to be easily read by scale operator ☒

Credit Card Number:

- Placed on both sides of truck on the doors ☒- Numbers large and clear ☒- Color contrasting from color of truck ☒- Number of credit card same as printed on truck ☒

Defects noted:

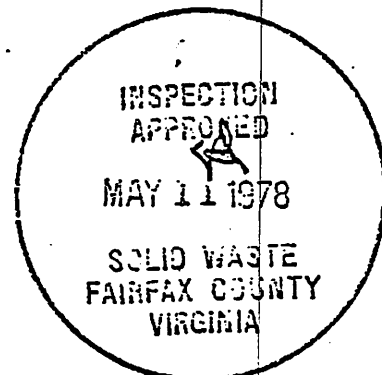
GENERAL INFORMATION:

Condition of Tires (snow or mud): goodMechanical Condition (any defects): NONECleanliness of Truck: okTruck Tare Weight 19,960

County, Town, City Sticker

Present ☐Absent ☒State Inspection Sticker ☒State License Number T 390099

COMMENTS:



The above truck passes the Division of Solid Waste Inspection for the collection and/or transportation of refuse in the County of Fairfax.

Signature of Inspector Ken A. SmithDate 5-11-78

CREDIT CARD NUMBER

56866 1037

- PERMIT NUMBER

208

NAME & ADDRESS

GILLMAN'S Trash 8905 Ox Rd Lorton VA 22079

Vehicle Description

74 GMC TRUX

Vehicle Registration Information

TCE6141558916

Water Tight Body - Packer

- Hoppers--plugs installed

Water Tight Body--Converted Body

Open Bodies--Covered

Tow Hooks:

- Mounted on Frame or Solid Base

- Good position for towing

Roll-offs:

- Cover on right rear of packer set up

- All openings covered

Container trucks have approved numbered sticker on the container

Name, Address & Phone No.:

- Painted on both sides

- Color contrasting from color of truck

- Permanently affixed on truck

- Letters large enough to be easily read by scale operator

Credit Card Number:

- Placed on both sides of truck on the doors

- Numbers large and clear

- Color contrasting from color of truck

- Number of credit card same as printed on truck

Defects noted:

GENERAL INFORMATION:

Condition of Tires (snow or mud):

good

Mechanical Condition (any defects):

None

Cleanliness of Truck:

ok

Truck Tare Weight

14980

County, Town, City Sticker

Present

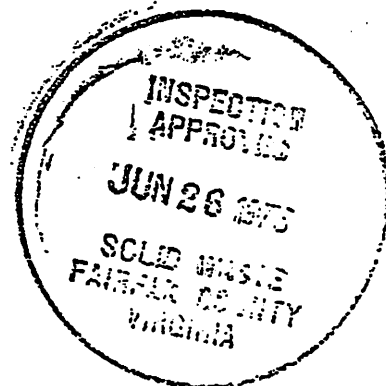
Absent

State Inspection Sticker

State License Number

T247809

COMMENTS:



The above truck passes the Division of Solid Waste Inspection for the collection and/or transportation of refuse in the County of Fairfax.

Signature of Inspector

Anthony Porese

Date

6/26/78

PRIVATE COLLECTOR TRUCK INSPECTOR

CREDIT CARD NUMBER 56422 - PERMIT NUMBER 209NAME & ADDRESS Gillman Trash Svc 8905 Ox Rd. Loudon, Va. 22079Vehicle Description 74 Ford TruxmoreVehicle Registration Information F70EVR91031

Water Tight Body - Packer

- Hoppers--plugs installed ☒Water Tight Body--Converted Body ☐Open Bodies--Covered ☐

Tow Hooks:

- Mounted on Frame or Solid Base ☒- Good position for towing ☒

Roll-offs:

- Cover on right rear of packer set up ☐- All openings covered ☐Container trucks have approved numbered sticker on the container ☐

Name, Address & Phone No.:

- Painted on both sides ☒- Color contrasting from color of truck ☒- Permanently affixed on truck ☒- Letters large enough to be easily read by scale operator ☒

Credit Card Number:

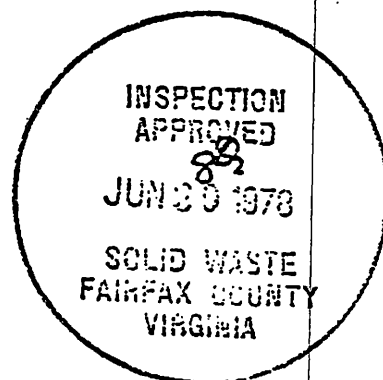
- Placed on both sides of truck on the doors ☒- Numbers large and clear ☒- Color contrasting from color of truck ☒- Number of credit card same as printed on truck ☒Defects noted: ☐

GENERAL INFORMATION:

Condition of Tires (snow or mud): goodMechanical Condition (any defects): NONECleanliness of Truck: okTruck Tare Weight 15,280County, Town, City Sticker Present ☒ Absent ☐State Inspection Sticker ☒ ☐State License Number 393226

COMMENTS:

The above truck passes the Division of Solid Waste Inspection for the collection and/or transportation of refuse in the County of Fairfax

Signature of Inspector John A. DriedDate 6-30-78

'PRIVATE COLLECTOR TRUCK INSPECT'

CREDIT CARD NUMBER 56154 - PERMIT NUMBER 210

NAME & ADDRESS Gillmans Trash 8905 OX Rd. Lorton, Va. 22079

Vehicle Description 75-GMC TRUXMORE

Vehicle Registration Information TC&675V558890

Water Tight Body - Packer		Name, Address & Phone No.:	
- Hoppers--plugs installed	<u>✓</u>	- Painted on both sides	<u>✓</u>
Water Tight Body--Converted Body	<u> </u>	- Color contrasting from color of truck	<u>✓</u>
Open Bodies--Covered	<u> </u>	- Permanently affixed on truck	<u>✓</u>
Tow Hooks:		- Letters large enough to be easily read by scale operator	<u>✓</u>
- Mounted on Frame or Solid Base	<u>✓</u>	Credit Card Number:	
- Good position for towing	<u>✓</u>	- Placed on both sides of truck on the <u>doors</u>	<u>✓</u>
Roll-offs:		- Numbers large and clear	<u>✓</u>
- Cover on right rear of packer set up	<u> </u>	- Color contrasting from color of truck	<u>✓</u>
- All openings covered	<u> </u>	- Number of credit card same as printed on truck	<u>✓</u>
Container trucks have approved numbered sticker on the container	<u> </u>	Defects noted:	

GENERAL INFORMATION:

Condition of Tires (snow or mud): good

Mechanical Condition (any defects): NONE

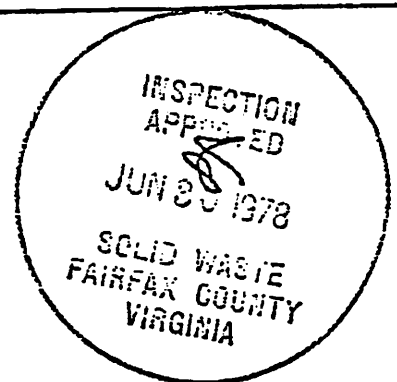
Cleanliness of Truck: ok

Truck Tare Weight 15980

County, Town, City Sticker Present ✓ Absent

State Inspection Sticker ✓

State License Number T 247814



COMMENTS:

The above truck passes the Division of Solid Waste Inspection for the collection and/or transportation of refuse in the County of Fairfax.

Signature of Inspector

[Handwritten Signature]

Date 6-30-78

CREDIT CARD NUMBER 56022 - PERMIT NUMBER 211NAME & ADDRESS Gillman's Trash 8905 Ox Rd Lorton, Va. 22079Vehicle Description 68 GMC TruckVehicle Registration Information HM70AD056087

Water Tight Body -- Packer

- Hoppers--plugs installed ✓Water Tight Body--Converted Body —Open Bodies--Covered —

Tow Hooks:

- Mounted on Frame or Solid Base ✓- Good position for towing ✓

Roll-offs:

- Cover on right rear of packer set up —- All openings covered —Container trucks have approved numbered sticker on the container —

Name, Address & Phone No.:

- Painted on both sides ✓- Color contrasting from color of truck ✓- Permanently affixed on truck ✓- Letters large enough to be easily read by scale operator ✓

Credit Card Number:

- Placed on both sides of truck on the doors ✓- Numbers large and clear ✓- Color contrasting from color of truck ✓- Number of credit card same as printed on truck ✓Defects noted: —

GENERAL INFORMATION:

Condition of Tires (snow or mud): goodMechanical Condition (any defects): NONECleanliness of Truck: OKTruck Tare Weight 18,880

County, Town, City Sticker

Present ✓Absent —State Inspection Sticker ✓State License Number T 381766

COMMENTS:

The above truck passes the Division of Solid Waste Inspection for the collection and/or transportation of refuse in the County of Fairfax.

Signature of Inspector James A. SmithDate 6-21-78

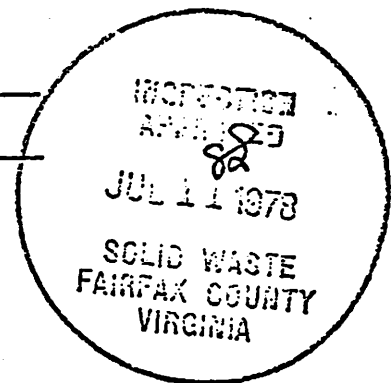
CREDIT CARD NUMBER 56304 - PERMIT NUMBER 254NAME & ADDRESS Gillmans Trash P.O. Box 175, Lorton, Va. 22079Vehicle Description 74 Chev. Trux.Vehicle Registration Information CCF614V106513

Water Tight Body - Packer	Name, Address & Phone No.:
- Hoppers--plugs installed <u>✓</u>	- Painted on both sides <u>✓</u>
Water Tight Body--Converted Body <u>—</u>	- Color contrasting from color of truck <u>✓</u>
Open Bodies--Covered <u>—</u>	- Permanently affixed on truck <u>✓</u>
Tow Hooks:	- Letters large enough to be easily read by scale operator <u>✓</u>
- Mounted on Frame or Solid Base <u>✓</u>	Credit Card Number:
- Good position for towing <u>✓</u>	- Placed on both sides of truck on the <u>doors</u> <u>✓</u>
Roll-offs:	- Numbers large and clear <u>✓</u>
- Cover on right rear of packer set up <u>—</u>	- Color contrasting from color of truck <u>✓</u>
- All openings covered <u>—</u>	- Number of credit card same as printed on truck <u>✓</u>
Container trucks have approved numbered sticker on the container <u>—</u>	Defects noted: <u>—</u>

GENERAL INFORMATION:

Condition of Tires (snow or mud): goodMechanical Condition (any defects): NoneCleanliness of Truck: okTruck Tare Weight 16,300County, Town, City Sticker Present ✓ Absent —State Inspection Sticker —State License Number T 357-025

COMMENTS:



The above truck passes the Division of Solid Waste Inspection for the collection and/or transportation of refuse in the County of Fairfax.

Signature of Inspector [Signature] Date 7-11-78

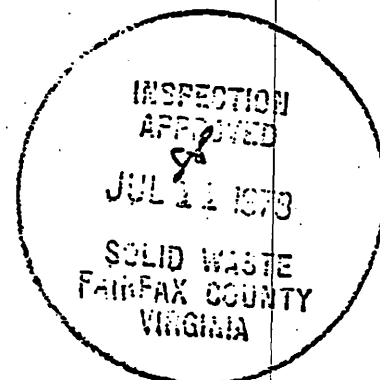
CREDIT CARD NUMBER 56646 - PERMIT NUMBER 255NAME & ADDRESS Gillmans Trash P.O. Box 175, Lorton, Va. 22079Vehicle Description 72 Int. TruckVehicle Registration Information 1066201323554

Water Tight Body - Packer	Name, Address & Phone No.:	
- Hoppers--plugs installed <u>✓</u>	- Painted on both sides	<u>✓</u>
Water Tight Body--Converted Body <u>—</u>	- Color contrasting from color of truck	<u>✓</u>
Open Bodies--Covered <u>—</u>	- Permanently affixed on truck	<u>✓</u>
Tow Hooks:	- Letters large enough to be easily read by scale operator	<u>✓</u>
- Mounted on Frame or Solid Base <u>✓</u>	Credit Card Number:	
- Good position for towing <u>✓</u>	- Placed on both sides of truck on the <u>doors</u>	<u>✓</u>
Roll-offs:	- Numbers large and clear	<u>✓</u>
- Cover on right rear of packer set up <u>—</u>	- Color contrasting from color of truck	<u>✓</u>
- All openings covered <u>—</u>	- Number of credit card same as printed on truck	<u>✓</u>
Container trucks have approved numbered sticker on the container <u>—</u>	Defects noted:	

GENERAL INFORMATION:

Condition of Tires (snow or mud): goodMechanical Condition (any defects): NoneCleanliness of Truck: okTruck Tare Weight 15,880County, Town, City Sticker Present ✓ Absent —State Inspection Sticker ✓ —State License Number 7 357022

COMMENTS:



The above truck passes the Division of Solid Waste Inspection for the collection and/or transportation of refuse in the County of Fairfax.

Signature of Inspector [Signature]

Date

7-11-78

PRIVATE COLLECTOR TRUCK INSPECT

CREDIT CARD NUMBER 56514 - PERMIT NUMBER 262NAME & ADDRESS GILLMAN TRASH 8905 OX RD Lorton, VA. 22079Vehicle Description 72 Chevy TruckVehicle Registration Information CCE632V153250

Water Tight Body - Packer

- Hoppers--plugs installed ✓Water Tight Body--Converted Body —Open Bodies--Covered —

Tow Hooks:

- Mounted on Frame or Solid Base ✓- Good position for towing ✓

Roll-offs:

- Cover on right rear of packer set up —- All openings covered —Container trucks have approved numbered sticker on the container —

Name, Address & Phone No.:

- Painted on both sides ✓- Color contrasting from color of truck ✓- Permanently affixed on truck ✓- Letters large enough to be easily read by scale operator ✓

Credit Card Number:

- Placed on both sides of truck on the doors ✓- Numbers large and clear ✓- Color contrasting from color of truck ✓- Number of credit card same as printed on truck ✓Defects noted: —

GENERAL INFORMATION:

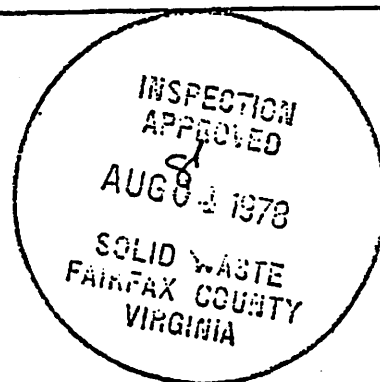
Condition of Tires (snow or mud): goodMechanical Condition (any defects): NoneCleanliness of Truck: okTruck Tare Weight 18,280

County, Town, City Sticker

Present —Absent ✓State Inspection Sticker ✓State License Number T 417470

COMMENTS:

The above truck passes the Division of Solid Waste Inspection for the collection and/or transportation of refuse in the County of Fairfax.

Signature of Inspector Glen A. SmithDate 8-4-78

NAME OF REFUSE REMOVAL COMPANY:

Gillman's

PART B

VEHICLE INSPECTION

1. DOES VEHICLE DESCRIBED BELOW HAVE A WATER-TIGHT BODY COMPLETELY ENCLOSED AND COVERED?
YES X NO
2. IF VEHICLE HAS NON-WATER-TIGHT BODY, DOES IT HAVE A BUILT-IN COVER OR TARPAULIN EQUALLY EFFECTIVE COVER?
YES NO
3. DOES VEHICLE HAVE SECURED AND COVERED WATER-TIGHT CONTAINERS FOR ALL LIQUID OR SEMI-SOLID MATERIAL?
YES X NO
4. IF NO, DOES VEHICLE HANDLE SOLID REFUSE ONLY?
YES NO
5. DOES VEHICLE HAVE PERMANENTLY AFFIXED ON BOTH DOORS OF THE CAB, OR AT THE FARTHEST POINT FORWARD ON THE TRUCK BODY THE APPLICANT'S NAME, ADDRESS, TELEPHONE NUMBER AND PERMIT NUMBER IN LETTERS AND NUMBERS NOT LESS THAN 4 INCHES HIGH WITH THE EXCEPTION OF PERMIT NUMBER WHICH IS TO BE 4 INCHES HIGH, NO MORE OR LESS.
YES X NO
6. IS THE ABOVE IDENTIFICATION PAINTED IN A CONSPICUOUS COLOR CONTRASTING WITH THAT OF THE VEHICLE?
YES X NO
7. IS VEHICLE PROVIDED WITH A FIRE EXTINGUISHER PROPERLY MOUNTED AND SECURED?
YES X NO
3. ARE SUBSTANTIAL TOW HOOKS PROVIDED?
YES X NO

MODEL	YEAR	TYPE	BODY #	CAPACITY CU. YD.	LICENSE #	PERMIT #
1	2	3	4	5	6	7

1	2	3	4	5	6	7
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REASONS FOR DENIAL:

IN ACCORDANCE WITH SECTIONS 10-19, 10-20 PRINCE WILLIAM COUNTY CODE, THE SUBJECT COMPANY HAS MADE APPLICATION TO THIS OFFICE FOR A PERMIT TO OPERATE A REFUSE REMOVAL SERVICE. REVIEW OF HIS APPLICATION AND INSPECTION OF THE VEHICLE NOTED INDICATES ALL TO BE IN COMPLIANCE WITH REQUIREMENTS OF THE COUNTY REFUSE REMOVAL ORDINANCE.

DATE:

6-31-78

SANITARIAN'S SIGNATURE:

Lynn Jan

NAME OF REFUSE REMOVAL COMPANY:

Gillman's

PART B

VEHICLE INSPECTION

1. DOES VEHICLE DESCRIBED BELOW HAVE A WATER-TIGHT BODY COMPLETELY ENCLOSED AND COVERED?
YES X NO
2. IF VEHICLE HAS NON-WATER-TIGHT BODY, DOES IT HAVE A BUILT-IN COVER OR TARPAULIN EQUALLY EFFECTIVE COVER?
YES NO
3. DOES VEHICLE HAVE SECURED AND COVERED WATER-TIGHT CONTAINERS FOR ALL LIQUID OR SEMI-SOLID MATERIAL?
YES X NO
4. IF NO, DOES VEHICLE HANDLE SOLID REFUSE ONLY?
YES NO
5. DOES VEHICLE HAVE PERMANENTLY AFFIXED ON BOTH DOORS OF THE CAB, OR AT THE FARTHEST POINT FORWARD ON THE TRUCK BODY THE APPLICANT'S NAME, ADDRESS, TELEPHONE NUMBER AND PERMIT NUMBER IN LETTERS AND NUMBERS NOT LESS THAN 4 INCHES HIGH WITH THE EXCEPTION OF PERMIT NUMBER WHICH IS TO BE 4 INCHES HIGH, NO MORE OR LESS.
YES X NO
6. IS THE ABOVE IDENTIFICATION PAINTED IN A CONSPICUOUS COLOR CONTRASTING WITH THAT OF THE VEHICLE?
YES X NO
7. IS VEHICLE PROVIDED WITH A FIRE EXTINGUISHER PROPERLY MOUNTED AND SECURED?
YES X NO
3. ARE SUBSTANTIAL TOW HOOKS PROVIDED?
YES X NO

MODEL	YEAR	TYPE	BODY #	CAPACITY CU. YD.	LICENSE #	PERMIT #
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<u>Ford</u>	<u>76</u>	<u>Truck</u>	<u> </u>	<u>23</u>	<u>T247-731</u>	<u>13</u>
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REASONS FOR DENIAL:

IN ACCORDANCE WITH SECTIONS 10-19, 10-20 PRINCE WILLIAM COUNTY CODE, THE SUBJECT COMPANY HAS MADE APPLICATION TO THIS OFFICE FOR A PERMIT TO OPERATE A REFUSE REMOVAL SERVICE. REVIEW OF HIS APPLICATION AND INSPECTION OF THE VEHICLE NOTED INDICATES ALL TO BE IN COMPLIANCE WITH REQUIREMENTS OF THE COUNTY REFUSE REMOVAL ORDINANCE.

DATE:

8-30-76

SANITARIAN'S SIGNATURE:

Lyn Farn

NAME OF REFUSE REMOVAL COMPANY:

GILLYAN'S 5 STAR TRASH SERVICE

PART B

VEHICLE INSPECTION

1. DOES VEHICLE DESCRIBED BELOW HAVE A WATER-TIGHT BODY COMPLETELY ENCLOSED AND COVERED?
YES ☒ NO ☐
2. IF VEHICLE HAS NON-WATER-TIGHT BODY, DOES IT HAVE A BUILT-IN COVER OR TARPAULIN EQUALLY EFFECTIVE COVER?
YES ☐ NO ☐
3. DOES VEHICLE HAVE SECURED AND COVERED WATER-TIGHT CONTAINERS FOR ALL LIQUID OR SEMI-SOLID MATERIAL?
YES ☐ NO ☐
4. IF NO, DOES VEHICLE HANDLE SOLID REFUSE ONLY?
YES ☐ NO ☐
5. DOES VEHICLE HAVE PERMANENTLY AFFIXED ON BOTH DOORS OF THE CAB, OR AT THE FARTHEST POINT FORWARD ON THE TRUCK BODY THE APPLICANT'S NAME, ADDRESS, TELEPHONE NUMBER AND PERMIT NUMBER IN LETTERS AND NUMBERS NOT LESS THAN 4 INCHES HIGH WITH THE EXCEPTION OF PERMIT NUMBER WHICH IS TO BE 4 INCHES HIGH, NO MORE OR LESS.
YES ☒ NO ☐
6. IS THE ABOVE IDENTIFICATION PAINTED IN A CONSPICUOUS COLOR CONTRASTING WITH THAT OF THE VEHICLE?
YES ☒ NO ☐
7. IS VEHICLE PROVIDED WITH A FIRE EXTINGUISHER PROPERLY MOUNTED AND SECURED?
YES ☒ NO ☐
3. ARE SUBSTANTIAL TOW HOOKS PROVIDED?
YES ☒ NO ☐

MODEL	YEAR	TYPE	BODY #	CAPACITY CU. YD.	LICENSE #	PERMIT #
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Chevy	72	TRUCK	102	23	T357-023	14
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REASONS FOR DENIAL:

IN ACCORDANCE WITH SECTIONS 10-19, 10-20 PRINCE WILLIAM COUNTY CODE, THE SUBJECT COMPANY HAS MADE APPLICATION TO THIS OFFICE FOR A PERMIT TO OPERATE A REFUSE REMOVAL SERVICE. REVIEW OF HIS APPLICATION AND INSPECTION OF THE VEHICLE NOTED INDICATES ALL TO BE IN COMPLIANCE WITH REQUIREMENTS OF THE COUNTY REFUSE REMOVAL ORDINANCE.

DATE: 8-31-78

SANITARIAN'S SIGNATURE: J.C. R.

NAME OF REFUSE REMOVAL COMPANY:

GILLMAN'S TRASH SERVICE

PART B

VEHICLE INSPECTION

1. DOES VEHICLE DESCRIBED BELOW HAVE A WATER-TIGHT BODY COMPLETELY ENCLOSED AND COVERED? YES ☒ NO ☐
2. IF VEHICLE HAS NON-WATER-TIGHT BODY, DOES IT HAVE A BUILT-IN COVER OR TARPAULIN EQUALLY EFFECTIVE COVER? YES ☐ NO ☐
3. DOES VEHICLE HAVE SECURED AND COVERED WATER-TIGHT CONTAINERS FOR ALL LIQUID OR SEMI-SOLID MATERIAL? YES ☐ NO ☐
4. IF NO, DOES VEHICLE HANDLE SOLID REFUSE ONLY? YES ☒ NO ☐
5. DOES VEHICLE HAVE PERMANENTLY AFFIXED ON BOTH DOORS OF THE CAB, OR AT THE FARTHEST POINT FORWARD ON THE TRUCK BODY THE APPLICANT'S NAME, ADDRESS, TELEPHONE NUMBER AND PERMIT NUMBER IN LETTERS AND NUMBERS NOT LESS THAN 4 INCHES HIGH WITH THE EXCEPTION OF PERMIT NUMBER WHICH IS TO BE 4 INCHES HIGH, NO MORE OR LESS. YES ☒ NO ☐
6. IS THE ABOVE IDENTIFICATION PAINTED IN A CONSPICUOUS COLOR CONTRASTING WITH THAT OF THE VEHICLE? YES ☒ NO ☐
7. IS VEHICLE PROVIDED WITH A FIRE EXTINGUISHER PROPERLY MOUNTED AND SECURED? YES ☒ NO ☐
3. ARE SUBSTANTIAL TOW HOOKS PROVIDED? YES ☒ NO ☐

MODEL	YEAR	TYPE	BODY #	CAPACITY CU. YD.	LICENSE #	PERMIT #
CHEVY Chevy	74	C-60	CCE632V 153250	23	T-417-460	P.W-17

REASONS FOR DENIAL:

IN ACCORDANCE WITH SECTIONS 10-19, 10-20 PRINCE WILLIAM COUNTY CODE, THE SUBJECT COMPANY HAS MADE APPLICATION TO THIS OFFICE FOR A PERMIT TO OPERATE A REFUSE REMOVAL SERVICE. REVIEW OF HIS APPLICATION AND INSPECTION OF THE VEHICLE NOTED INDICATES ALL TO BE IN COMPLIANCE WITH REQUIREMENTS OF THE COUNTY REFUSE REMOVAL ORDINANCE.

DATE: 11-15-78

SANITARIAN'S SIGNATURE: D.C. Miller

NAME OF REFUSE REMOVAL COMPANY: _____

PART B

VEHICLE INSPECTION

1. DOES VEHICLE DESCRIBED BELOW HAVE A WATER-TIGHT BODY COMPLETELY ENCLOSED AND COVERED? YES ☒ NO ☐
2. IF VEHICLE HAS NON-WATER-TIGHT BODY, DOES IT HAVE A BUILT-IN COVER OR TARPAULIN EQUALLY EFFECTIVE COVER? YES ☐ NO ☒
3. DOES VEHICLE HAVE SECURED AND COVERED WATER-TIGHT CONTAINERS FOR ALL LIQUID OR SEMI-SOLID MATERIAL? YES ☒ NO ☐
4. IF NO, DOES VEHICLE HANDLE SOLID REFUSE ONLY? YES ☐ NO ☐
5. DOES VEHICLE HAVE PERMANENTLY AFFIXED ON BOTH DOORS OF THE CAB, OR AT THE FARTHEST POINT FORWARD ON THE TRUCK BODY THE APPLICANT'S NAME, ADDRESS, TELEPHONE NUMBER AND PERMIT NUMBER IN LETTERS AND NUMBERS NOT LESS THAN 4 INCHES HIGH WITH THE EXCEPTION OF PERMIT NUMBER WHICH IS TO BE 4 INCHES HIGH, NO MORE OR LESS. YES ☒ NO ☐
6. IS THE ABOVE IDENTIFICATION PAINTED IN A CONSPICUOUS COLOR CONTRASTING WITH THAT OF THE VEHICLE? YES ☒ NO ☐
7. IS VEHICLE PROVIDED WITH A FIRE EXTINGUISHER PROPERLY MOUNTED AND SECURED? YES ☒ NO ☐
3. ARE SUBSTANTIAL TOW HOOKS PROVIDED? YES ☒ NO ☐

MODEL	YEAR	TYPE	BODY #	CAPACITY CU. YD.	LICENSE #	PERMIT #
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FORD 800	72	TRUCK	N80FVP5599	27	T390099	153
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REASONS FOR DENIAL:

IN ACCORDANCE WITH SECTIONS 10-19, 10-20 PRINCE WILLIAM COUNTY CODE, THE SUBJECT COMPANY HAS MADE APPLICATION TO THIS OFFICE FOR A PERMIT TO OPERATE A REFUSE REMOVAL SERVICE. REVIEW OF HIS APPLICATION AND INSPECTION OF THE VEHICLE NOTED INDICATES ALL TO BE IN COMPLIANCE WITH REQUIREMENTS OF THE COUNTY REFUSE REMOVAL ORDINANCE.

DATE: September 8, 1978 SANITARIAN'S SIGNATURE: Robert W. Hicks

NAME OF REFUSE REMOVAL COMPANY:

Gillman
PART B

VEHICLE INSPECTION

1. DOES VEHICLE DESCRIBED BELOW HAVE A WATER-TIGHT BODY COMPLETELY ENCLOSED AND COVERED?
YES X NO
2. IF VEHICLE HAS NON-WATER-TIGHT BODY, DOES IT HAVE A BUILT-IN COVER OR TARPAULIN EQUALLY EFFECTIVE COVER?
YES NO
3. DOES VEHICLE HAVE SECURED AND COVERED WATER-TIGHT CONTAINERS FOR ALL LIQUID OR SEMI-SOLID MATERIAL?
YES X NO
4. IF NO, DOES VEHICLE HANDLE SOLID REFUSE ONLY?
YES NO
5. DOES VEHICLE HAVE PERMANENTLY AFFIXED ON BOTH DOORS OF THE CAB, OR AT THE FARTHEST POINT FORWARD ON THE TRUCK BODY THE APPLICANT'S NAME, ADDRESS, TELEPHONE NUMBER AND PERMIT NUMBER IN LETTERS AND NUMBERS NOT LESS THAN 4 INCHES HIGH WITH THE EXCEPTION OF PERMIT NUMBER WHICH IS TO BE 4 INCHES HIGH, NO MORE OR LESS.
YES X NO
6. IS THE ABOVE IDENTIFICATION PAINTED IN A CONSPICUOUS COLOR CONTRASTING WITH THAT OF THE VEHICLE?
YES X NO
7. IS VEHICLE PROVIDED WITH A FIRE EXTINGUISHER PROPERLY MOUNTED AND SECURED?
YES X NO
8. ARE SUBSTANTIAL TOW HOOKS PROVIDED?
YES X NO

MODEL	YEAR	TYPE	BODY #	CAPACITY CU. YD.	LICENSE #	PERMIT #
EMC	68			.	T381-766	151

REASONS FOR DENIAL:

IN ACCORDANCE WITH SECTIONS 10-19, 10-20 PRINCE WILLIAM COUNTY CODE, THE SUBJECT COMPANY HAS MADE APPLICATION TO THIS OFFICE FOR A PERMIT TO OPERATE A REFUSE REMOVAL SERVICE. REVIEW OF HIS APPLICATION AND INSPECTION OF THE VEHICLE NOTED INDICATES ALL TO BE IN COMPLIANCE WITH REQUIREMENTS OF THE COUNTY REFUSE REMOVAL ORDINANCE.

DATE: 9-6-78

SANITARIAN'S SIGNATURE: [Signature]

Gilman's Trash Service

NAME OF REFUSE REMOVAL COMPANY: _____

PART B

VEHICLE INSPECTION

1. DOES VEHICLE DESCRIBED BELOW HAVE A WATER-TIGHT BODY COMPLETELY ENCLOSED AND COVERED? YES ☒ NO ☐
2. IF VEHICLE HAS NON-WATER-TIGHT BODY, DOES IT HAVE A BUILT-IN COVER OR TARPULPIN EQUALLY EFFECTIVE COVER? YES ☐ NO ☐
3. DOES VEHICLE HAVE SECURED AND COVERED WATER-TIGHT CONTAINERS FOR ALL LIQUID OR SEMI-SOLID MATERIAL? YES ☐ NO ☐
4. IF NO, DOES VEHICLE HANDLE SOLID REFUSE ONLY? YES ☐ NO ☐
5. DOES VEHICLE HAVE PERMANENTLY AFFIXED ON BOTH DOORS OF THE CAB, OR AT THE FARTHEST POINT FORWARD ON THE TRUCK BODY THE APPLICANT'S NAME, ADDRESS, TELEPHONE NUMBER AND PERMIT NUMBER IN LETTERS AND NUMBERS NOT LESS THAN 4 INCHES HIGH WITH THE EXCEPTION OF PERMIT NUMBER WHICH IS TO BE 4 INCHES HIGH, NO MORE OR LESS. YES ☒ NO ☐
6. IS THE ABOVE IDENTIFICATION PAINTED IN A CONSPICUOUS COLOR CONTRASTING WITH THAT OF THE VEHICLE? YES ☒ NO ☐
7. IS VEHICLE PROVIDED WITH A FIRE EXTINGUISHER PROPERLY MOUNTED AND SECURED? YES ☒ NO ☐
8. ARE SUBSTANTIAL TOW HOOKS PROVIDED? YES ☒ NO ☐

MODEL	YEAR	TYPE	BODY #	CAPACITY CU. YD.	LICENSE #	PERMIT #
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Chery	1974	BACKER	TRUX 4020	18	1357-025	24
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REASONS FOR DENIAL:

IN ACCORDANCE WITH SECTIONS 10-19, 10-20 PRINCE WILLIAM COUNTY CODE, THE SUBJECT COMPANY HAS MADE APPLICATION TO THIS OFFICE FOR A PERMIT TO OPERATE A REFUSE REMOVAL SERVICE. REVIEW OF HIS APPLICATION AND INSPECTION OF THE VEHICLE NOTED INDICATES ALL TO BE IN COMPLIANCE WITH REQUIREMENTS OF THE COUNTY REFUSE REMOVAL ORDINANCE.

DATE: 8-28-78

SANITARIAN'S SIGNATURE: *Fred C. Ring*

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

/lmm

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

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

No. 764296

SENT TO		Mr. & Mrs. Harry Gillman
STREET AND NO.		P. O. Box 175
P. O. STATE AND ZIP CODE		Lorton, Virginia 22079
POSTAGE		\$.13
CERTIFIED FEE		.60
OPTIONAL SERVICES		
RETURN RECEIPT SERVICE		
SHOW TO WHOM AND DATE DELIVERED		.60
SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY		
SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY		
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.

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

/lmm

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:lem

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 Grantees and their successors, heirs and administrators, executors

Grantee's Address:

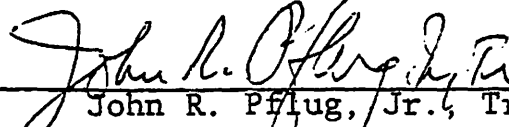
7646 C Jackson Rd
Springfield, VA 22150

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 13th day of July, 1976, by John R. Pflug, Jr., Trustee, and Carolyn R. Pflug.

My commission expires:

November 11, 1978



Notary Public

Tax Paid
Sec 58-54 78.75
Sec 58-65.1 26.75
Sec 58-64.1 52.50



In the Clerk's Office of the Circuit Court of
Fairfax County, Virginia AUG 12 1976 at 2:37pm

This instrument was received and, with the
certificate annexed, admitted to record

Teste:

Clerk

James E. Hoofnagle

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

A012332

V.O. 175

Grantor, W. 22078

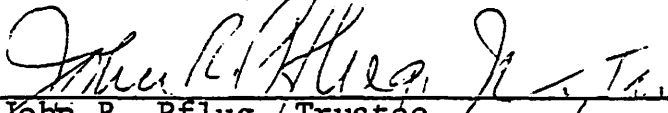
Grantee's Address:

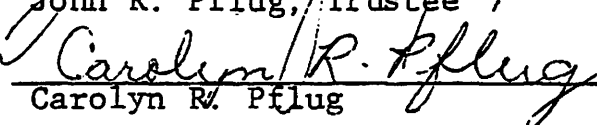
which are accepted by the Grantees as binding and to be binding on the Grantees and their successors, heirs and administrators, executors and assigns or the heirs and assigns of the survivor of them, as the same may be.

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 8th day of ^{August, 1977} ~~July, 1976~~, by John R. Pflug, Jr., Trustee
and Carolyn R. Pflug.

My commission expires:

Dec. 21, 1980

Linda M. McLain
Notary Public

Tax Paid
Sec 58-54 8.25
Sec 58-65.1 26.75
Sec 58-54.1 53.50
Consideration 53,500.00

This instrument with certificate annexed,
admitted to record-Office of Circuit Court

Fairfax County, Va. AUG 11 1977 at 1:54 PM

Teste:

James E. Hopfinger Clerk

TOLBERT, SMITH, FITZGERALD & RAMSEY

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

2300 NINTH STREET, SOUTH
ARLINGTON, VIRGINIA 22204

TELEPHONE
(703) 521-5252

August 10, 1978

CHARLES 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. ✓