

BACKGROUND EVIDENCE

1.

Landmark Apartments, Inc., the developer, in 1974 began to market the Landmark Condominiums for ownership by conversion from apartments to condominiums.

2.

At the time that the Landmark Apartments were constructed, a parking deck for tenant parking was also constructed adjacent to the structure. Landmark Apartments, Inc. owned both the parking garage and the condominium structure. The parking garage was used by it for parking for all unit owners. It retained ownership of the parking garage while selling off the condominium units.

3.

Following the dedication of the property to condominiums, Realty Growth Investors Trust (hereinafter "RGI") became the owner of the Landmark Condominiums and the parking garage. It remained a majority owner of the Landmark Condominiums until 1979.

4.

In 1979 a majority of owners were comprised of condominium unit owners.

5.

In 1974, when Landmark Apartments, Inc. first commenced sale of the condominium units, it charged unit owners a lesser

rate per month to park than it charged tenants. It charged unit owners \$10.00 per month for uncovered spaces and \$15.00 per month for covered spaces in 1974.

6.

In 1983 the Amended and Restated Declaration of Condominium was submitted by RGI and certain parking rights, which had been provided for in the original Declaration of Condominium, were recited and preserved.

7.

Jo Kaplan and Jim Williams have been longtime tenants and condominium unit owners in Landmark Condominium. Mrs. Kaplan in 1984 was president of the Landmark Condominium Association, Inc.

8.

In 1989 RGI transferred its ownership in the parking garage adjacent to the Landmark Condominium to Chemical Bank in lieu of foreclosure which it took in the name of Landmark Holding Corp.

9.

In June 1989 Landmark Holding Corp. conveyed by warranty deed and by transfer and assignment all its right, title and interest in the parking garage to Jo Kaplan and Jim Williams.

10.

In August 1980 RGI entered into an agreement with the Chase Manhattan Bank, N.A., The Bank of Nova Scotia, and The

Toronto-Dominion Bank and The Marine Midland Bank, N.A. in which they agreed to "The terms of the Declaration with respect to the grant by the Trust of parking rights to the unit owners, as such terms may be hereafter amended from time in the manner provided for in the Declaration, shall be binding upon the successors and assigns of the Trust as owners of the premises until the Declaration shall be terminated . . . ". The banks had taken deeds to secure debt on condominium units and wished to have RGI reaffirm the granted parking rights in the parking garage.

11.

The 1974 Declaration of Landmark Apartments, Inc. at Article III, Section 8 reads:

"Section 8. Parking Rights. The Developer is the owner of adjacent property to the property which is the subject of this Declaration and parking shall be provided to all the owners on the adjacent property. The Developer, at time of conveyance of the Unit to an Owner, shall grant a revocable license for a parking space to each Owner. The license agreement shall be in form and substance as shown on Exhibit "G", attached hereto and made a part hereof and shall be executed in a manner suitable for recording. Furthermore, any Owner shall have the right to freely assign or transfer his parking space to another Owner; but under no circumstances will an Owner be allowed to assign, sublease, or convey his parking space to any person who is not an Owner of a Unit at the Landmark. Notwithstanding, in the event an owner leases his unit to a Lessee, he may lease his parking space to said Lessee of his Unit.

The Owner shall have the right to park said vehicle in the designated parking space and said license shall not be revoked by Developer unless and until one of the following occurs:

a) The failure of the Owner to pay the monthly charge after the expiration of said notice period pursuant to paragraph 6 of said License Agreement. The initial amount of