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\_\_\_\_\_ X  
CONCERNED OWNERS OF :  
ALEXANDRIA ASSOCIATION, : SUPERIOR COURT OF NEW JERSEY  
: : SOMERSET COUNTY:  
: : CHANCERY DIVISION  
: :  
Plaintiff, :  
--vs.-- : Docket No. C-12038-13  
: :  
ALEXANDRIA AT HILLSBOROUGH :  
CONDOMINIUM ASSOCIATION, and : Civil Action  
DARWESH SYED, in his capacity as :  
President of the Board of Trustees, :  
: **CONSENT ORDER**  
Defendants. : **RESOLVING ALL CLAIMS**  
\_\_\_\_\_ X

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Concerned Owners of Alexandria Association (“Plaintiff” or “Concerned Owners”) and Defendants Alexandria at Hillsborough Condominium Association and Darwesh Syed, President (hereinafter collectively referred to as “Defendants”) by and through undersigned counsel that:

**WHEREAS**, as a result of a dispute among the parties the following action has been filed between the Concerned Owners and Defendants in the Superior Court of New Jersey, Chancery Division, Somerset County, under Docket No.: SOM-C-12038-13;

**WHEREAS**, the parties are entering into this Consent Order to avoid further expense, inconvenience and delay, dispose of potentially burdensome and protracted litigation, and resolve the claims that have been asserted or could have been asserted in this litigation;

**WHEREAS**, the execution of this Consent Order is not an admission of any wrongdoing or liability by any party to this Settlement Agreement; and

**WHEREAS**, the parties now desire to finally and completely resolve, compromise and settle the disputes, claims and controversies between and among them pursuant to the terms and conditions set forth below:

**IT IS ON THIS \_\_\_\_\_ DAY OF MARCH, 2014 ORDERED:**

**A. Fair and Transparent Elections**

1. The Condominium Association and its President, Darwesh Syed, agree to hold an election of officers to the governing board no later than May 31, 2014 that is open, transparent and fair pursuant to statute and common law, and which accords with its ByLaws. Specifically, Defendants agree to:

- a. By April 7, 2014, retain retired Superior Court Judge Frank Gasiorowski (Ret., J.S.C.) to serve as an independent, impartial body, to supervise the entire election process of officers to the governing board, from selection and review of candidates to the counting of ballots. The Condominium Association agrees to obtain a retired judge, a good government organization such as the League of Women Voters, a locally elected official, or a group of homeowners who are independent from the Board of the Condominium Association to serve that same function for the 2015 elections. In 2016, the Board will then determine whether it will continue to use an independent overseer, a group of independent homeowners, to supervise its elections as the DCA guidelines regarding a fair and efficient election require.

- b. allow Judge Gasiorowski (or the neutral party in the 2015 and future elections) to ensure that notices are timely sent to all owners, ballots with information sheets about

candidates are properly prepared and mailed, eligibility of voters and candidates is properly determined and publicly recorded, and ballots are counted at an open meeting subject to the inspection of all unit owners;

c. give notice of the election of board members to all unit owners at least 30 days before the election, in accord with the By-Laws of the Alexandria Condominium Association, which must be given in order to give candidates sufficient time to announce their candidacy;

d. allow all eligible candidates to submit one-page of biographical information to the election supervisors, which must then be distributed by the impartial election supervisors to the voters at least 15 days before the election;

e. provide a process in which a unit owner may challenge the determination that he/she is not eligible to be a candidate or to be a voter;

f. permit only Judge Gasiorowski (or the election supervisor in the 2015 and future elections) to handle and count ballots. Ballots must be completely anonymous, and should either be placed by the voter manually in a box under the supervision of an impartial election supervisor at the election – so that unit numbers may be checked off to guarantee one vote per unit – or mailed to the election supervisor in a blank inner envelope, with an outer envelope containing unit number in order to protect anonymity. The inner envelope should also be placed in a box and not opened prior to the election at the same time as all other ballots are opened. The impartial election supervisor should open all the envelopes placed in the box, and count the votes at the election meeting which is open to all unit owners; and,

2. Judge Gasiorowski shall be paid by the Association at the rate of \$350.00 per hour for his services for the upcoming election. For future elections, attempts will be made to lower the rate of compensation to be paid the election supervisor by giving preference to a nonprofit organization, a volunteer group of homeowners or other person willing to serve at a pro bono rate or without compensation.

#### **G. Open Board Meetings**

3. The Condominium Association and its President, Darwesh Syed, agree to give advance notice of meetings of the Board to unit owners, and, in addition to being written, must be provided at least 48 hours in advance, giving the time, date, location, and to the extent known, the agenda of the meeting.

4. The notice shall be posted prominently in at least one place on the property that is accessible at all times to all unit owners and must be filed with the person responsible for administering the business office of the Condominium Association, and posting such notice on the Condominium Association's website.

5. There should be a time set aside before, during or after Board meetings at which time, owners should be entitled to ask questions or make comments from the floor.

6. Minutes of all Board meetings should be maintained and made available to all owners upon written request, and may be posted on the Condominium Association's website (see below).

#### **C. Access to Documents**

7. The Condominium Association and its President, Darwesh Syed, agree to make available all financial records related to the operation of the Condominium Association and make available all board meeting minutes for owners to access. Specifically, Defendants agree to:

**i. Board Meeting Minutes**

a. take minutes at Board meetings and make copies available to unit owners prior to the next Board meeting upon written request, or by posting on the Condominium Association's website, pursuant to the New Jersey Condominium Act, N.J.S.A. 46:8B-13(a), and Planned Real Estate Development Full Disclosure Act N.J.S.A. 45:22A-46a;

**ii. Financial Records**

a. adopt a financial disclosure policy and to make available for inspection financial documents that are required to be available to unit owners in accord with the New Jersey Condominium Act, N.J.S.A. 46:8B-14(g), and Art 3§ 14 of the Condominium Association's By-Laws;

b. make the Condominium Association's accounting records "open to inspection at reasonable times by unit owners," upon written request, pursuant to the New Jersey Condominium Act, N.J.S.A. 46:8B-14(g). Such records shall include, but are not limited to, invoices, checks, and contracts with vendors, which account for the income and expenses of the Alexandria at Hillsborough Condominium Association. Further, such records shall abide by the GAAP standards set forth by the AICPA for common-interest realty associations and shall include with detail, the exact names of any business, firm or other service

provider to which expenses were paid, and likewise shall include specific detail regarding the number of units charged assessments and other sources of income;

c. impose certain limitations to access in light of circumstances that are subject to change. Plaintiff acknowledges that the Association currently does not employ a full time staff person. Accordingly, Plaintiff agrees that each unit owner may be limited to two inspections per month, each for two hours. A reasonable request for financial documents encompasses documents no older than three years, unless "special need" for such documents is shown. Additionally, if the Association is requested to make copies of any documents for the unit owner, it may charge the unit owner ten cents per page.

d. provide unit owners, on an annual basis, a report with an "itemized accounting of the common expenses for the preceding year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget or assessments, and showing the net excess or deficit of income and other expenditures plus reserves," pursuant to Art 3§ 14 of the Condominium Association's By-Laws. Such a report must be consistent with the accounting records outlined in subsection b of this section;

e. provide unit owners, on an annual basis, with a proposed budget for each upcoming year, pursuant to Art 3§ 14 of the Condominium Association's By-Laws;

f. make public, upon written request of any member, a list of *all units* (not owners) that are in arrears, including the amount owed, pursuant to the New Jersey Condominium Act, N.J.S.A 46:8B-14(g). All owners who have a bonafide

dispute about such arrearages, (as determined by the election supervisor, who will be Judge Gasiorowski for the upcoming election) or who have already resolved such claims should be entitled to vote in any Board election.

**D. Alternative Dispute Resolution (“ADR”) procedures**

8. Pursuant to N.J.S.A. 46:8B-14(k) and N.J.S.A. 45:22A-44(c), the Condominium Association agrees to “provide a fair and efficient procedure for the resolution of housing-related disputes between individual unit owners and the association, and between unit owners, which shall be readily available as an alternative to litigation.”

9. Specifically, Defendants agree that the Association’s ADR policy and procedure shall be in writing and adopted by the Association in accordance with the Association’s by-laws and the requirements of the regulations governing open meetings of common interest communities, and the defendants agree to adopt the ADR policy reflected in the Policy Resolution Regarding Alternative Dispute Resolution attached hereto as part of this agreement.

**IT IS FURTHER ORDERED** that all Parties shall bear their own attorney’s fees and costs incurred in this litigation, and that for consideration of the provisions herein, they will not seek any payment or reimbursement from each other for the claims, counterclaims, third party claims and any and all claims for contribution and/or indemnification set forth in this agreement and Plaintiffs’ Amended pleadings, and mutually release all such claims with prejudice; and

**IT IS FURTHER ORDERED** that within one (1) day of execution of this Agreement, all counsel for the Parties will promptly execute Stipulations of Dismissal with Prejudice mutually dismissing any and all claims, brought in this litigation.

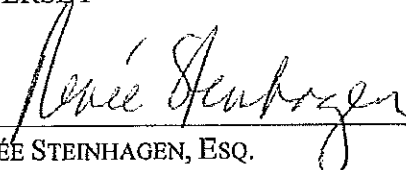
**SO ORDERED:**

\_\_\_\_\_  
Hon. Thomas C. Miller, J.S.C.


Dated: March 29, 2014

**WE STIPULATE AND AGREE TO THIS:**

PUBLIC INTEREST LAW CENTER OF  
NEW JERSEY

BY:   
RENÉE STEINHAGEN, ESQ.

Rutgers School of Law – Newark  
Constitutional Rights Clinic

BY:   
FRANK ASKIN, ESQ.

Attorneys for Plaintiff Concerned Owners of Alexandria Association

By:   
Craig Knaup, Esq.

Attorney for Defendants



**ALEXANDRIA AT HILLSBOROUGH CONDOMINIUM ASSOCIATION, INC.**  
**("ASSOCIATION") POLICY RESOLUTION NO. \_\_\_\_\_**  
**REGARDING ALTERNATIVE DISPUTE RESOLUTION ("ADR")**

**WHEREAS**, N.J.S. 46:8B-14(k) [N.J.S. 4S:22A-44(c)] requires the Association to provide a fair and efficient procedure for the resolution of housing related disputes between Unit Owners, Unit Owners and the Association, and between the Association and the Board of Trustees (hereinafter the "Board"), as an alternative to litigation (collectively, "ADR Procedure"); and

**WHEREAS**, the Board is given the authority in Article \_\_\_\_\_, Section \_\_\_\_\_ of the By-Laws for the Association to operate and manage the affairs of the Association, to act in the best interests of the Association, and to exercise all powers, duties, and authority necessary for the proper conduct and administration of the affairs of the Association pursuant to the Articles of Incorporation, the Master Deed ["Declaration"], the By-laws and the Rules and Regulations of the Association (collectively, the "Condominium Documents"), and applicable laws; and

**WHEREAS**, for the benefit of the Association and of the individual Unit Owners, the Board deems it necessary and desirable to establish procedures for dispute resolution in circumstances where there is a dispute among all interested parties regarding compliance with the Condominium Documents and applicable laws thereby attempting to minimize the necessity of judicial intervention and litigation; and

**WHEREAS**, the Board has the power to enforce all of the provisions and restrictions set forth in the Condominium Documents including the regulation, appearance, and use of the Units and Common Elements and has the authority to notify Unit Owners of activity which violates the Condominium Documents and to delegate its enforcement rights as herein provided; and

**WHEREAS**, in accordance with the mandates of New Jersey Law, the Board deems it necessary to adopt a uniform procedure for the resolution of disputes between Unit Owners, Unit Owners and the Association, and between the Association and the Board, through a process of negotiation, mediation, and non-binding arbitration prior to the institution of binding arbitration or litigation.

**NOW, THEREFORE BE IT RESOLVED** by the Board that the following ADR procedure be and it hereby is adopted, ratified, and confirmed:

## I. INITIAL EFFORTS TO RESOLVE DISPUTES

1. Any Unit Owner, Officer, Director, or agent of the Association has the authority to request that a Unit Owner, the Association, or the Board, cease or correct any act or omission which appears to be in violation of the Condominium Documents. Such informal request should be made before the formal ADR procedure is initiated.

2. The following ADR procedure, contained herein, shall apply to all housing related disputes and alleged violations of the Condominium Documents and Rules that arise between Unit Owners, Unit Owners and the Association, and between the Unit Owners and the Board. This ADR procedure does not cover disputes in which Unit Owners make a claim against the Board on behalf of the Association.

3. The Association, in compliance with this ADR procedure, the Condominium Documents, and applicable law, may make initial attempts to secure compliance with the Condominium Documents on its own initiative or upon the receipt of a formal written complaint from a Unit Owner, Officer, Director, or agent of the Association. Any such attempt by the Association to secure compliance with the Condominium Documents is an "Initial Notice," and shall state the time, date, place, and nature of the alleged violation, the provisions of the Condominium Documents which have allegedly been violated, and must set forth the time period in which the violation must be corrected.

4. After the receipt of the Initial Notice, the alleged violating party ("violating party") may elect to proceed to mediation to resolve the housing related dispute through a collaborative process (see *infra* Part "II. Mediation Option"). The violating party shall make such an election by sending written notice to the Association requesting mediation ("Request for Mediation").

5. In the event that the violating party disputes the allegations contained in the Initial Notice, the matter shall be referred to the ADR Committee for a hearing and decision pursuant to applicable Condominium Documents (see *infra* Part "III. ADR Committee Hearing and Decision"). The violating party shall make such an election by sending written notice to the Association requesting an ADR hearing ("Request for ADR Hearing"). If there is a written denial of such allegations and no election to proceed to mediation, the dispute shall be promptly referred to the ADR Committee. The ADR Committee shall be composed of wholly disinterested members from the Association (that is, the ADR Committee must be impartial; Board members, their family members, or any agent, servant or employee of the Association shall not serve on the ADR Committee). If the Board does not agree that there has been a violation, or believes it does not have the authority to correct the alleged violation, the matter will still be referred to the ADR Committee for a proceeding; the Board may not refuse to participate in such matters.

6. After the violating party has received Initial Notice of the alleged violation, but prior to mediation or ADR proceedings have commenced, the parties shall attempt in

good faith to resolve any controversy, claim, or dispute arising out of or relating to the Condominium Documents by negotiation between such parties. A Dispute shall not include issues relating to legitimate exercises of the Board's discretion including the establishment of assessments except if done contrary to the Condominium Documents. Should the parties fail to resolve the Dispute through negotiation within fifteen (15) days after the receipt of the Initial notice and the timely receipt of the violating party's Request for Mediation, or Request for ADR Hearing, then and in such event, the parties may proceed to mediation or ADR proceedings as provided hereafter.

7. If, within a fifteen (15) day period after receipt of Initial Notice, the violating party: (i) fails to make the election to proceed to mediation, (ii) failed to resolve the controversy in good faith as stated in Paragraph 6, or (ii) does not deny in writing the allegations set forth in the Initial Notice by submitting a Request for an ADR Hearing, all of the allegations contained in the Initial Notice shall be deemed admitted and the Board shall have the right to impose sanctions without any further hearings or proceedings. The Initial Notice shall also advise the violating party as to the consequences of this failure to respond.

## II. MEDIATION OPTION

8. The formal mediation process may be initiated upon by the written request of all parties to the Dispute or unilaterally by an individual Unit Owner, if the Association is a party to the Dispute, the form of which shall be provided by the Association. The Request for Mediation shall contain a brief statement generally setting forth the source and nature of the Dispute. The Request shall be accompanied with a deposit in the amount of \$50.00 to ensure the good faith participation of the parties and is fully refundable upon such participation. Said deposit shall be held in escrow by the Association's managing agent ("Escrow Agent"). Failure to tender the deposit with the Request for Mediation shall result in a rejection of the Request for Mediation by the Association.

9. All costs of the mediation, including but not limited to, the fees of the mediator, if any, are common expenses to be covered by the Association. Any expense that is incurred by an individual Unit Owner on his or her behalf is at that individual or entity's expense (i.e., attorney fees are not common expenses to be paid by the Association).

10. The mediation shall be conducted in accordance with rules adopted in accordance with the Uniform Mediation Act then in effect, and as modified by this Resolution. The mediator shall be a member of the ADR Committee or any other qualified mediator who is mutually acceptable to the parties or designated by the Chairperson of the ADR Committee if the parties cannot agree.

11. Promptly upon receipt of a Request for Mediation, together with the appropriate deposit, the Association shall provide the parties with the names and resumes of (i) those members of the ADR Committee who are available to mediate the Dispute or (ii) three impartial persons from a list of impartial persons maintained by the Association and

who would qualify as a mediator. If a member of the ADR Committee is not acceptable to all parties, the parties (i) shall attempt to select a mediator from the other names provided; or (ii) may agree on another person to act as mediator. If they are unable to agree on a mediator within five (5) days of the date of the Request for Mediation, the mediator shall be selected by the Chairperson of the ADR Committee. In the event of a Dispute between the Association and a Unit Owner, only the Unit Owner shall have the right to choose the mediator from the members of the ADR Committee, or the other names provided.

12. Each party to the mediation may prepare and submit to the mediator, no later than 48 hours prior to the time scheduled for the mediation session contemplated by Paragraph 13, a written statement setting forth in ordinary and concise language the acts or omissions from which the Dispute arose (the "Position Statement"). The Position Statement should specify the specific provisions of the Condominium Documents which have been violated, or law, if known, and/or the party's defense to the alleged violations. The Position Statement shall not (i) exceed three (3) type-written pages, (ii) be construed as a pleading nor (iii) limit the evidence the parties may later use in an arbitration proceeding or at a civil trial, if mediation does not result in settlement. No responsive or supplemental statements shall be permitted.

13. Within five (5) business days after the mediator has been selected, both parties and their respective attorneys, if any, shall meet with the mediator for one (1) mediation session of not more than two (2) hours. If the Dispute cannot be settled at such mediation session, or at any mutually agreed upon continuation thereof, the mediator may terminate the mediation at his or her sole discretion, or any party may give written notice to the others and the mediator declaring the mediation process at an end, in which event the Dispute shall be promptly referred to the ADR Committee for a hearing and a decision pursuant to the applicable Condominium Documents, this ADR procedure, and in accordance with applicable law.

14. The mediator shall manage the mediation proceedings as the mediator deems best so as to make the mediation expeditious, economical, and less burdensome than arbitration or litigation. The mediator shall be responsible for controlling the procedural aspects of the mediation proceedings. The mediator shall not have the authority to impose a settlement on the parties, but may make recommendations for settlement and assist the parties in trying to reach a satisfactory resolution of the Dispute.

15. If the parties agree to settle the Dispute as part of the mediation proceeding, such settlement shall be memorialized in a written agreement, signed at the conclusion of the mediation by each of the parties to the mediation (the "Settlement Agreement").

16. Mediation proceedings shall be conducted in private. Only the parties, their representatives and the mediator shall attend the proceedings, except as stated in Paragraph 22. Other persons may attend only upon the express consent of the parties and the mediator. All proceedings of, or writings generated in connection with, the mediation

conference, including the Position Statement, Settlement Agreement, mediator's settlement recommendations, and any statement made by any party, attorney or other participant, shall in all respects be considered as part of the settlement efforts and therefore privileged and non-admissible in a court of law or arbitration, and nothing said or disclosed, nor any document produced, which is not otherwise independently discoverable, shall be offered or received as evidence in any current or future arbitration proceedings or litigation, except that any party shall have the right to enforce the Settlement Agreement in accordance with its terms.

### **III. ADR COMMITTEE HEARING AND DECISION**

17. The ADR Committee should hold a hearing on any unresolved Complaint within thirty (30) days upon the receipt of (i) a Request for ADR Hearing by an alleged violating party, other than an aggrieved party's default, not to proceed to mediation, or (ii) the unsuccessful conclusion of mediation proceedings, whichever occurs first. In such event, all parties shall be given at least ten (10) days written notice of the right to be heard, with or without counsel, and the right to cross-examine witnesses with respect to the violations contained in the Initial Notice. At the conclusion of the hearing, the ADR Committee shall have the right to either dismiss the charges or to impose the sanctions or remedies according to the Condominium Documents and applicable law. If the Dispute is ultimately heard and a decision is rendered by the ADR Committee ("Decision") pursuant to the Condominium Documents, the Decision shall control unless an aggrieved party other than the Association initiates binding arbitration procedures or litigation within forty-five (45) days, if applicable, after receipt of written notice of the Decision. Moreover, the decision may not be appealed to the Board. If such proceedings or litigation are not formally commenced within such forty-five (45) day period, then a party may seek judicial review of the Decision upon the grounds that it was obtained through fraud, corruption or misconduct or in contradiction of the Condominium Documents or other applicable law.

18. If the Dispute is referred on a timely basis to binding arbitration after a Decision is rendered by the ADR Committee, it shall be heard by a sole arbitrator acceptable to the parties. Referral of a Dispute to arbitration shall be by a party aggrieved by the Decision other than the Association. Any issue as to whether or the extent to which the Dispute is subject to arbitration shall be decided by the arbitrator. Any expenses associated with binding arbitration subsequent to mediation or a hearing conducted by the ADR Committee are not common expenses, and any cost, if any, is the sole responsibility of the parties involved.

### **IV. GENERAL**

19. A tenant shall have the right to avail him or herself of the ADR procedure upon submission to the Association of written authorization by the Unit Owner of the Unit in which the tenant resides.

20. With respect to the use of a facility which may be in violation of the Condominium Documents, and where such use might endanger life, limb, property, or equity of the Association, any duly authorized agent of the Association may, without further notice, suspend for a period of not greater than seventy-two (72) hours the right of any Unit Owner to use such facility in that capacity, if an oral request to cease or correct the violation has not caused such violation to cease. Thereafter, the Board shall have the right to continue any such suspension until such time as the dispute is finally resolved.

21. Any member(s) of the ADR Committee who serves as a mediator shall seek and be bound by the advice of the Association's counsel regarding any substantive or procedural legal issues.

22. Counsel for the Association may be present at all mediation hearings conducted by a member(s) of the ADR Committee and may also act as the hearing officer if so designated by the Chairperson of the ADR Committee. Otherwise, the person presiding over each hearing shall be that member of the ADR Committee designated by the ADR Committee Chairperson.

23. Any inadvertent omission or failure to conduct an adversary proceeding in exact conformity with this Resolution shall not invalidate the results of such proceedings so long as a prudent and reasonable attempt has been made to ensure due process according to the general steps set forth herein.

24. The policy established in this Resolution shall become effective on \_\_\_\_\_, 2014, shall apply to the use of the Condominium property from and on after that date, and supersedes all prior Resolutions regarding Alternative Dispute Resolution.