

FOSTER PEPPER PLLC
Attention: Thomas J. Parkes
1111 Third Avenue, Suite 3400
Seattle, Washington 98101

DECLARATION
OF
RESTRICTIVE COVENANTS, CONDITIONS,
RESTRICTIONS, RESERVATIONS AND EASEMENTS
FOR
POINT RUSTON
Town of Ruston and City of Tacoma, Washington

Grantor:	POINT RUSTON, LLC, a Washington limited liability company
Additional names on pg.:	N/A
Grantee:	POINT RUSTON, LLC, a Washington limited liability company
Additional names on pg.:	N/A
Abbreviated Legal Description:	
Complete legal description on:	Exhibit A
Assessor's Tax Parcel No.:	
Reference No.:	
Additional numbers on pg.	N/A/

This Declaration of Restrictive Covenants, Conditions, Restrictions, Reservations and Easements (this "Declaration") is made this ____ day of _____, 2008, by Point Ruston, LLC, a Washington limited liability company, 5219 N. Shirley, Suite 100, Tacoma, Washington _____ (hereinafter referred to as "Declarant").

Point Ruston MDP
Planning Commission
Exhibit J

Attachment 10

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ARTICLE 1 RECITALS

1.1 Ownership. Declarant owns certain real property in the Town of Ruston ("Ruston") and in Ruston and/or Tacoma of Tacoma ("Tacoma"), County of Pierce, State of Washington, more particularly described in Exhibit A (the "**Property**"). The Property is being developed as a master planned community commonly known as "Point Ruston" as further described in Section 1.3. Declarant reserves the right to add additional portions of the Overall Development Site to the Point Ruston development on the Property, all or some of which shall be subjected to this Declaration.

1.2 Intent and Purpose. Declarant intends to create provisions for the development of a collection of "Districts" within Point Ruston that define unique areas and uses throughout the Property; to assure the proper and efficient development, operation and maintenance of Point Ruston, including a circulation system, View and Access Corridors and areas for public and private parking; to create provisions for the construction, maintenance and operation of future uses within Point Ruston that will include a wide range of public amenity, commercial and residential land uses; to provide for view corridors and design guidelines that preserve and protect the Districts and their unique defining traits; and to make certain other covenants and agreements relating to the Property as more specifically set forth in this Declaration for the benefit of Declarant and future owners and occupants of land within the Property as well as the general public.

1.3 Overall Plan of Development. Point Ruston is a master planned community designed as a pedestrian-oriented, mixed use village with extensive public access and open space with linkages to the waterfront and to Ruston and Tacoma as depicted in the Site Plan attached hereto as Exhibit C. Declarant intends that Point Ruston be maintained as an attractive setting and waterfront destination for maritime, residential, office, retail, and other consistent uses with ample landscaped areas and attractive high-quality structures. As presently envisioned, the overall Point Ruston development will consist of approximately 1,000 units and 1,070,600 square feet of residential development and approximately 228,000 square feet of commercial development including maritime, office, retail, and other consistent uses. The initial phase of Point Ruston on the Property will likely consist of residential development on Lots 2A and 2B, which will have a two-building mixed-use condominium containing 143 residential units and 30,000 square feet of commercial/retail space. However, Declarant reserves the right to alter or amend its development plan and/or the timing of any particular development in either the initial or later phases of the Point Ruston development in Declarant's sole discretion.

1.4 Binding Site Plan[s]. The Property is subject to that certain Binding Site Plan dated _____ and recorded under Pierce County Auditor's File No. _____.

1.5 Development Agreement[s]. The Property is subject to that certain Development Agreement dated _____ and recorded under Pierce County Auditor's File No. _____.

1.6 Consent Decree. The Property is subject to that certain Consent Decree dated _____ and entered in Pierce County Superior Court Cause No. ____, as amended from time to time.

ARTICLE 2 GENERAL PROVISIONS

2.1 Establishment of Restrictions and Covenants. Declarant, as owner of the Property, hereby declares that the Property and each Lot and Unit therein is now held and shall be transferred, sold, leased, conveyed and occupied subject to the covenants, conditions, restrictions, reservations and easements herein set forth, which shall inure to the benefit of and bind and pass with each and every Lot and Unit on the Property.

2.2 Restrictions Operate as Covenants. Each Owner of any Lot or Unit or any portion thereof on the Property covenants and agrees with Declarant, its successors and assigns, to use the Property only in accordance with the restrictions herein set forth, to refrain from using the Property in any way inconsistent with or prohibited by any provision of this Declaration, and to comply with the covenants, terms, and provisions hereof.

2.3 Interpretation. The provisions of this Article 2 shall be used by the Declarant and the owners' association as a general standard in interpreting the provisions of this Declaration and judging performance hereunder, in the preparation and revisions of the Guidelines, in approving or disapproving specific development within Point Ruston and in the overall development of the Property.

2.4 Definitions.

2.4.1 Beneficiary. The beneficiary under the terms of a deed of trust or a mortgagee under the terms of a mortgage.

2.4.2 Binding Site Plan. Binding Site plan dated _____ and recorded under Pierce County Auditor's File No. _____.

2.4.3 Building. Any structure constructed on a Lot for occupancy by the Owner, its tenants, or other designated occupants.

2.4.4 Bylaws. The Bylaws of Point Ruston Owners Association, as the same may be amended from time to time.

2.4.5 Common Expenses. The costs and expenses incurred by the PROA in the maintenance of the Common Maintenance Areas, including but not limited to costs of personnel employed or independent contractors retained in connection therewith; supplies; materials; utilities; assessments; liability insurance and such other property or liability insurance as the PROA deems customary or necessary; environmental insurance, indemnity and/or bonds; and administrative expenses in an amount equal to ___% of the aggregate of the foregoing.

2.4.6 Common Maintenance Areas. Those portions of the Property now or hereafter designated as common maintenance areas by the PROA, including but not limited to all Streets, boulevards, alleys and service lanes, mews, surface parking areas and aisles, sidewalks, plazas, traffic and directional signage, landscaped and other open space areas, public pedestrian corridors and viewpoints, drainage and utility facilities within or serving Point Ruston, and any other designated common maintenance areas as the same may be expanded or withdrawn by the

PROA from time to time. The actual location and dimensions of the Common Maintenance Areas may not be determined until the improvements to be constructed within the Common Maintenance Areas within one or more phases of Point Ruston are completed. Common Maintenance Areas shall not include any of the foregoing items located on any Lot or Unit which is the maintenance responsibility of a third party such as the Building Owner, tenant or a condominium association. In addition, Common Maintenance Areas shall not include any of the maintenance or capital repairs associated with the Waterwalk or the [Public Amenity], except as otherwise expressly set forth herein.

2.4.7 Community-Wide Standards. A standard that all uses and activities (including repair, replacement and maintenance) on the Property shall be conducted in a first-class manner. The Board may adopt from time to time, by rule in accordance with Section 5.2, more specific Community-Wide Standards for the Public Area and, with the affirmative vote of Members holding not less than 67% of the total votes cast with respect to such issue, for all Units; provided that such additional standards do not derogate from the standard that activities be conducted in a first-class manner. Any such specific standards shall be kept on file with and available from the PROA.

2.4.8 Consent Decree. The court-approved Consent Decree dated _____, entered between _____ and _____ under Pierce County Superior Court Cause No. ____, as amended from time to time.

2.4.9 Development Agreement. Development Agreement dated _____ and recorded under Pierce County Auditor's File No. _____.

2.4.10 EPA. The Environmental Protection Agency. [OR DEPT OF ECOLOGY?]

2.4.11 Governmental Requirements. Any law, regulation, or order, including the Consent Decree, in effect from time to time of Ruston, of Tacoma, of Pierce County, of the State of Washington, of the United States, or of any other governmental body exercising jurisdiction over the Property.

2.4.12 Gross Floor Area. The area within each Building as shown on the schedule attached as Exhibit __ hereto which sets forth the approximate gross floor area of each Building anticipated to be constructed as part of the projected overall development of Point Ruston at complete build-out, but excluding garage areas and any other areas within each Building typically excluded from gross floor area calculations in accordance with commonly used industry standards. Upon completion of construction of each Building, and in the event of future construction of additional Buildings or alteration or reconstruction of existing Buildings, the stated gross floor areas on Exhibit __ shall be revised by the PROA by amendment hereto to reflect the actual gross floor area of each such Building, determined in accordance with this subsection 2.4.12.

2.4.13 Guidelines. The Point Ruston Guidelines dated _____ and approved by Ruston and/or Tacoma in conjunction with the master planned development of the Property, together with any standards, restrictions, regulations and criteria applicable thereto, as the same

may be modified or supplemented from time to time, which Guidelines shall be referred to by the PROA in interpreting the intent of this Declaration. A copy of the Guidelines shall be maintained in the offices of the PROA.

2.4.14 Interest. Interest calculated at a rate equal to the lesser of _____ percent (___%) per annum or the maximum rate permitted by applicable law.

2.4.15 Lot. A portion of the Property as divided and subdivided by Declarant on a recorded plat or binding site plan in accordance with Governmental Requirements.

2.4.16 Member. A Person admitted to membership in the PROA pursuant to Section ____.

2.4.17 Owner. One or more Persons who hold the record title to a Unit. Owner does not include (i) any Person whose interest in the Unit is that of a "unit owner" as defined in the Washington Condominium Act, RCW Chapter 64.34, or (ii) Persons holding an interest merely as security for the performance of an obligation. If a Unit is subject to the Washington Condominium Act, the association administering such Unit will be considered the Owner. If a recorded installment or conditional sale contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. If a Unit is partly subject to the Washington Condominium Act and partly not, the Owners of such Unit shall determine among themselves how voting and Assessment Points are allocated, but the Unit shall have only one Member. If a Unit is subject to a ground lease or the substantial equivalent of a ground lease, both the ground lessee and the fee owner will be Owners but the ground lessee will be considered the Member in the absence of an agreement between the lessee and the lessor to the contrary.

2.4.18 Person. A natural person, limited liability company, corporation, partnership, trustee or any other legal entity.

2.4.19 Point Ruston. Point Ruston, as shown on (a) Town of Ruston Binding Site Plan No. _____, recorded in Volume ____ of Binding Site Plans, pages _____, under Pierce County Recording No. _____, records of Pierce County, Washington, (b) City of Tacoma Binding Site Plan No. _____, recorded in Volume ____ of Binding Site Plans, pages _____, under Pierce County Recording No. _____, records of Pierce County, Washington, and (c) any amendments thereto.

2.4.20 Private Amenities. Units and the improvements and facilities located on or within any Unit, but excluding any View and Access Corridor, the Waterwalk or other similar easements for public use to such Unit is subject.

2.4.21 PROA. Point Ruston Owners Association, a Washington nonprofit corporation to be formed pursuant to this Declaration and the Bylaws, its successors or assigns.

2.4.22 Public Areas. _____ (FROM BSP, DEVELOPMENT AGT AND HEARING EXAMINER NOTES]

2.4.23 Overall Development Site. _____

2.4.24 Owner. The holder of record of fee title to any Lot or Unit, as applicable from the context of this instrument, and its heirs, assigns, successors, contract purchasers, ground lessee pursuant to a recorded ground lease, devisees or administrators, including Declarant. The Owner of a Lot on which a condominium has been created will be the Owners of the Units.

2.4.25 Property. The real property described in Exhibit A, as it may be amended by Declarant to withdraw a portion of the Property as provided herein or to add additional property thereto.

2.4.26 Public Amenities. [Insert description of all material public amenities to be developed and maintained on the Property (e.g., Waterwalk (as described above), etc.).]

2.4.27 Reserved Easements. Those easements reserved by Declarant in Article 14.

2.4.28 Sign. Any structure, device or contrivance, electric or non-electric, and all parts thereof which are erected or used for advertising purposes upon or within which any poster, bill, bulletin, printing, lettering, painting, device or other advertising of any kind whatsoever is used, placed, posted, tacked, nailed, pasted, or otherwise fastened or affixed.

2.4.29 Street. Private vehicular rights of way that serve the Property, as they may be relocated or altered from time to time by the PROA.

2.4.30 Structure. Any Building, wall, fence, pole, street, driveway, walkway, public parking area, outside fountain, sculpture, street furniture, lighting artwork or other above-grade improvement.

2.4.31 Turnover. _____ [Insert date, or event triggering turnover.]

2.4.32 Unit. A unit in a condominium created on any Lot, together with associated common and limited common areas or elements thereof.

2.4.33 View and Access Corridor. Designated easements on the Property which are intended to maintain line of sight and public access to the _____ Waterway and the Waterwalk.

2.4.34 Waterwalk. The walkway and related improvements which border the Overall Development Site along the edge of the shoreline and extend an average minimum of one hundred (100) feet back from such edge as depicted in the site plan attached hereto as Exhibit _____. The Waterwalk includes a twenty (20) foot travel lane for emergency vehicle access, as well as for walking and biking.

ARTICLE 3 POINT RUSTON OWNERS ASSOCIATION

3.1 Establishment. There shall be created an owners association called the "Point Ruston Owners Association", which shall be a nonprofit corporation formed and operated under the laws of the State of Washington.

3.2 Articles and Bylaws. Declarant will adopt Articles of Incorporation and will propose to the initial Board of Directors the adoption of Bylaws to supplement this Declaration and to provide for the administration of the Association and the Property and for other purposes not inconsistent with this Declaration. In the event of any conflict between this Declaration and the Articles for such nonprofit corporation, the provisions of this Declaration shall prevail. Bylaws for the administration of the Association and the Property, and to further the intent of this Declaration, shall be adopted or amended by the Owners at regular or special meetings; provided that the initial Bylaws shall be adopted by Declarant. In the event of any conflict between this Declaration and any Bylaws, the provisions of this Declaration shall prevail.

3.3 Board of Directors. The Association shall be managed by a Board of Directors who need not be Members of the Association. They shall be elected as set forth in the Articles of Incorporation and Bylaws of the Association.

ARTICLE 4 MEMBERSHIP AND VOTING RIGHTS

4.1 Membership. Each Unit shall have a membership in the PROA. No Unit shall have more than one membership. If a Unit has more than one Owner, all co-owners shall designate a single person to represent such co-owners as its Member. All Owners of a Unit shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. If the Owner of a Unit is not a natural Person, the membership rights of such Unit may be exercised only by the individual designated from time to time by such Owner in a written instrument provided to the Secretary of the PROA. The Declarant shall be a Member with a continuous membership right, regardless of whether it owns any Unit, and be entitled to not less than ten (10) voting Points (but no related Assessment Points) in the event that all Units currently in ownership, now or in the future, are sold or otherwise transferred to another Person.

4.2 Voting. Each Member shall have the number of votes assigned to the Unit it owns under the formula set out in Exhibit "C". If there is more than one Owner per Unit, the vote for such co-owners (including any condominium association) shall be determined among themselves and the co-owners' Member shall vote accordingly. Votes for a Unit may be split in accordance with any voting agreement among the Owners of a Unit. The membership vote for a particular Unit shall be suspended if more than one person seeks to exercise the vote for such Unit. The membership vote for a particular Unit may also be suspended pursuant to Section ____ of the Bylaws. Any Owner may assign its voting rights to a lessee of a Unit by written proxy filed with the Secretary of the PROA in accordance with the Bylaws. For purposes of calculating votes under this Declaration, the votes of a Unit shall not be counted to the extent the voting rights of such Unit have been suspended under this Declaration or the Bylaws.

ARTICLE 5 RIGHTS AND OBLIGATIONS OF THE PROA

5.1 Public Area. The PROA shall manage, control and perform routine maintenance on the Public Area and shall keep it in good, clean, attractive, and sanitary condition, order, and repair for the common use and enjoyment of the public, under the terms and conditions of this Declaration and consistent with the Community-Wide Standards. Ruston and/or Tacoma and Declarant hereby consent to such management, control and routine maintenance by the PROA.

Nevertheless, nothing herein is intended to abrogate the rights and obligations of Ruston and/or Tacoma and Declarant as an Owner of the Waterwalk and other Public Areas. The PROA shall have no right or ability to restrict public access to the Waterwalk and any other portion of publicly held Public Areas which may from time to time become subject to this Agreement, except to the extent such restriction is in connection with maintenance, repair or improvement of the Public Areas and is not inconsistent with policies of Ruston and/or Tacoma and PROA and other Legal Requirements relative to the use of the applicable Public Areas and with other laws applicable to public entities.

5.2 Rules. The PROA, through its Board, may make, modify and enforce reasonable rules governing the use of the Public Areas, consistent with the rights and duties established by this Declaration; provided, however, that such rules shall not be inconsistent with policies of Ruston and/or Tacoma and PROA and other Legal Requirements relative to the use of the applicable Public Areas and with other laws applicable to public entities. Such rules shall bind all Owners and Users until and unless repealed or modified in a regular or special meeting of the PROA.

5.3 Enforcement. From and after the Turnover Date, the PROA shall be responsible for enforcing the agreements and obligations of the Owners created by this Declaration and performing the obligations imposed on it by this Declaration (including collecting Assessments from the Owners). The PROA may impose sanctions for failure to pay Assessments when due or violation of any other duty under this Declaration, the Bylaws or PROA rules, including, without limitation, reasonable monetary fines, suspension of voting rights and/or recording a lien against the Unit. The PROA may exercise self-help remedies to cure such violations (specifically, including but not limited to the towing of vehicles that are in violation of parking rules), and may suspend any services it provides to any Unit or Owner that is 30 days or more delinquent in paying any Assessment or other charge due to the PROA. The PROA may seek relief in any court for violations or to abate nuisances. Actions by the PROA to impose or seek sanctions shall be governed by the Bylaws. Until the Turnover Date, the Declarant shall enforce such obligations and may exercise all such remedies.

If the PROA fails to enforce or perform the agreements and obligations created hereunder, Declarant may enforce or perform the agreements and obligations hereunder on behalf of the PROA after written notice to the PROA and a reasonable opportunity to cure. All costs incurred by the Declarant in enforcing or performing agreements and obligations hereunder on behalf of the PROA shall be reimbursed to Declarant by the PROA upon demand.

5.4 Implied Rights. The PROA and Declarant may exercise any right or privilege given to it expressly by this Declaration or the Bylaws, or that may be reasonably implied from, or reasonably necessary to effectuate, any such right or privilege.

5.5 Governmental Interests. Declarant and Ruston and/or Tacoma may designate any sites it owns within the Property for fire, police, utilities, public schools and parks, and other public facilities. Development of such sites shall be subject to the applicable zoning and land use regulatory codes as well as the architectural standards under design guidelines; however, neither the PROA nor the Owners may object to the use of such sites for the designated public purposes.

5.6 Estoppels. PROA agrees that within thirty (30) days of written request by an Owner (but not more often than three (3) times in any 12-month period), it will issue to such Owner or its prospective mortgagee or successor an estoppel certificate stating, as of the date of such certificate, (i) that it is not aware of any default (including any unpaid Assessments) under this Declaration by the requesting Owner (or if there are known defaults, specifying the nature thereof), (ii) whether this Declaration is in full force and effect, and (iii) that this Declaration has not been amended or modified in any way by it (or if so, listing same). The issuance of an estoppel certificate shall in no event subject the PROA to any liability for the negligent or inadvertent failure to disclose correct information, but shall estop PROA from making assertions contrary to those set forth in the certificate for the period covered by the certificate.

5.7 Security. The PROA may provide security service for some or all of the Property. Nevertheless, NONE OF THE PROA, DECLARANT, OR RUSTON AND/OR TACOMA SHALL IN ANY WAY BE CONSIDERED USURERS OR GUARANTORS OF SECURITY WITHIN THE PUBLIC AREA. NEITHER THE PROA NOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. EACH USER OF ANY UNIT ACKNOWLEDGES THAT THE PROA AND ITS BOARD, DECLARANT, AND ANY COMMITTEE OF THE BOARD DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM, SYSTEM, OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY DECLARANT OR ANY COMMITTEE MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY FIRE PROTECTION OR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE; NOR THAT FIRE PROTECTION OR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH USER ACKNOWLEDGES AND UNDERSTANDS THAT THE PROA, ITS BOARD, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS. EACH USER FURTHER ACKNOWLEDGES THAT THE PROA, ITS BOARD, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY USER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

5.8 Private Amenities. Access to and use of any Private Amenities is strictly subject to the rules and procedures of the Owner of such Private Amenities, and no Person shall gain any right to enter or to use those facilities by virtue of membership in the PROA or ownership or occupancy or use of a Unit. This Declaration does not grant or bestow any public rights to the Private Amenities, nor does it alter or affect any other agreement by any Owner to grant or bestow public rights with respect to such Owner's Unit.

5.9 Professional Management. The PROA may, but is not obligated to, employ a professional management agent or agents as described in the Bylaws.

5.10 Event Planning. The PROA may, but is not obligated to, plan, organize, present and supervise events within any Public Area for the general benefit of the Property, Owners and the public using the Property. Such events shall be approved by affirmative vote of Members representing a majority of the votes cast with respect to such matter, and shall be funded as part of Common Expenses in accordance with Section ___ or as a Special Assessment in accordance with Section ___. The Board or its agents shall obtain the prior written approval of Ruston and/or Tacoma prior to submitting any event to the vote of the Members and shall be responsible for complying with all Legal Requirements, obtaining any necessary permits, insurance, licenses and additional security, and taking such actions and entering into such contracts as may be necessary or advisable in connection with any event. Each of Ruston and/or Tacoma and Declarant may, but is not obligated to, sponsor, plan, support and approve other events within the Public Area at any time without the consent of or consultation with the PROA, provided that PROA shall have no obligation to pay any costs of such other events without its prior consent.

5.11 Other Property Under PROA's Control. The PROA may, from time to time, purchase, lease or otherwise acquire real and personal property in connection with its obligations and duties hereunder. Such property shall be solely under the control of the PROA and no Owner shall have any right with respect thereto. The PROA may budget for the acquisition such property and include the costs thereof as a Common Expense, or make a Special Assessment in accordance with the terms hereof and the Bylaws, provided that if such cost exceed ten percent (10%) of the then current PROA budget, they shall not be included in Assessments without the affirmative vote or written consent, or any combination thereof, of Members holding at least 67% of the total votes in the PROA responding with respect to such matter.

ARTICLE 6 MAINTENANCE, REPAIR AND REPLACEMENT

6.1 PROA's Responsibility. The PROA shall maintain and keep in good repair the Public Areas, subject to the obligation of Ruston and/or Tacoma under Section 4.4 regarding major structural improvements and replacements. Unless otherwise specifically provided in Section 4.4 of this Declaration or in other instruments creating and assigning such maintenance responsibility, maintenance shall include responsibility for the upkeep and repair of the Public Areas (including public restrooms and water fountains located on the Public Areas), and for the routine replacement (with items of equal or better quality, and of a style and/or theme substantially similar, to the item being replaced) of all landscaping and streetscaping and similar capital expenditures (such as street fixtures, furniture, lighting, art, signs, benches, planters and other enhancements) in the Public Area, as necessary to prevent major capital replacements of such items.

The PROA shall be relieved of its responsibilities under this Section 4.1 to the extent they are assumed by Ruston and/or Tacoma or any other local, state or federal government entity, or any other entity, except that the PROA may provide any additional maintenance for the Public Area if the Board determines that such additional maintenance is necessary or desirable to maintain the Community-Wide Standards.

Except as otherwise specifically provided, all costs for maintenance, repair and replacement of the Public Area shall be a Common Expense, allocated among all Units as part of the Base Assessment without prejudice to the PROA's right to seek reimbursement from Persons

responsible for such work by declaring a Specific Assessment of Special Assessment.

6.2 Owner's Responsibility. Each Owner shall construct, maintain or secure its Unit, including, without limitation, all structures, parking areas, View and Access Corridors and other improvements comprising its Unit consistent with the Community-Wide Standards, unless such maintenance responsibility is assumed by or assigned to the PROA pursuant to a meeting at which such maintenance is approved by a vote of Members holding at least 67% of the total votes cast with respect to such matter. In addition to any other enforcement rights, if any Owner fails to properly maintain its Unit, the PROA may perform such maintenance and assess the costs against the Unit and the Owner under Article VI. The PROA shall give the Owner reasonable notice and an opportunity to perform such maintenance, unless the Board determines that maintenance is needed on an emergency basis in which case Owner must reimburse PROA within a reasonable time period.

6.3 Standard of Performance. All work under this Article IV shall be performed consistent with the Community-Wide Standards. Neither Ruston and/or Tacoma, nor Declarant in their public capacity shall be liable for any damage or injury occurring on or arising out of the acts or omissions of the PROA or the condition of Maintenance Property.

6.4 Capital Expenditures. Except as otherwise expressly provided in this Declaration, the PROA shall not be responsible for (i) initial development of the Public Areas (such as building the new Esplanade or replacing the existing Esplanade structure, sidewalks along Dock Street and any new railing system, installed on Public Areas), (ii) performing replacements of and improvements to major structural portions of the Public Areas or (iii) repairs necessary to correct original design defects or latent defects in the construction or the materials or equipment used to perform, work under causes (i) or (ii). Ruston and/or Tacoma, at its cost, intends to perform replacements of and improvements to major structural portions of the Public Areas, as needed.

ARTICLE 7 INSURANCE AND CASUALTY LOSSES

7.1 PROA Insurance. The PROA, acting through its Board or its duly authorized agent, shall obtain blanket "all-risk" property insurance for all insurable interests in the improvements, fixtures and equipment comprising the Public Area and any other portions of the Property for which it has specifically assumed responsibility for maintenance, repair and/or replacement. If blanket "all-risk" coverage is not generally available at reasonable cost, fire and extended coverage insurance, including coverage for vandalism and malicious mischief, shall be obtained. The face amount of the policy shall be sufficient to cover the full replacement cost of insured improvements, fixtures and equipment.

The Board also shall obtain a comprehensive general liability policy covering the Public Area, insuring the PROA for all damage or injury caused by the negligence of the PROA, any of its Members, its employees, agents, or contractors acting on its behalf.

The Board shall also obtain directors and officers liability insurance coverage, if reasonably available, insuring the PROA and its officers, directors and committee members

(former, present and future) from liability for any actions or decisions for which the PROA would have the duty to indemnify them pursuant to the Bylaws. The Board also shall obtain, as a Common Expense, worker's compensation and employer's liability insurance, if and to the extent required by law, and such other insurance, as it deems necessary or advisable.

The policies may contain reasonable deductibles, and in the event of an insured loss, deductible shall be treated as a Common Expense in the same manner as premiums for the applicable insurance. However, if the Board reasonably determines, after notice and an opportunity for Members to be heard under the Bylaws, that the loss resulted from negligence or willful misconduct of one or more Owners, the Board may assess the full amount of such deductible against such Owners and their Units under Section 6.4.

Any insurance, indemnification or bond required under the Consent Decree which is the responsibility of the PROA shall be treated as a Common Expense of PROA in the same manner as premiums for all other insurance required in this Section. The insurance, indemnification or bond required by the Consent Decree may either be obtained by the Board on behalf of the PROA or obtained by the Declarant and assigned to PROA, which coverage shall list and identify the Declarant as an "additional insured" under the policy, indemnification or bond.

All insurance coverage obtained by the Board on behalf of the PROA shall be acceptable to Declarant, including the amounts and deductibles thereunder. Insurance coverage shall be reviewed; and approved by the PROA and Declarant not less than annually. The costs of all insurance obtained by PROA shall be a Common Expense.

Each Owner, the PROA, the Declarant, and Ruston and/or Tacoma releases and relieves the others and waives its entire right of recovery for loss or damage covered under its first party property insurance policy to the extent that the loss or damage either (a) is actually covered by the injured party's insurance, or (b) would have been covered by insurance the injured party is required to carry under this Article 5, whichever is greater. This waiver applies regardless of the cause or origin of the claim, including without limitation loss due to the negligent acts or omissions of a party, or its respective officers, directors, employees, agents, contractors, or invitees. Each party shall (as applicable) have its insurer endorse the applicable insurance policies to reflect the foregoing waiver of claims, provided however, that the endorsement shall not be required if the applicable policy of insurance permits the named insured to waive rights of subrogation on a blanket basis, in which case the blanket waiver shall be acceptable.

7.2 Owners Insurance. By taking title to a Unit subject to this Declaration, each Owner acknowledges that the PROA has no obligation to provide any insurance for any portion of the Units other than as set forth above. Each Owner covenants and agrees with all other Owners and with the PROA to carry blanket "all-risk" property insurance on its Unit and structures constructed thereon and a commercial general liability policy with regard to its Unit. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, if reasonably available; including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of all improvements or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. These policies shall be in effect at all times, unless the Declarant, in its sole and absolute

discretion, elects to waive such coverage. Ruston and/or Tacoma funds a program of self-insurance (which may or may not be supplemented by commercial insurance coverage) and such program shall be deemed to satisfy the requirements of this Section 5.2.

Each Owner further covenants and agrees that in the event of damage to or destruction of improvements on its Unit, the Owner shall promptly repair or reconstruct the damaged improvements in a manner consistent with the original construction or other plans and specifications approved by Declarant. Alternatively, if not rebuilt, the Owner may clear its Unit of all debris and ruins and thereafter maintain its Unit in a neat and attractive, landscaped condition consistent with design guidelines. Additional covenants and more stringent standards may be established for clearing and maintaining Units if the improvements are not rebuilt or reconstructed.

7.3 Damage and Destruction.

7.3.1 Immediately after damage by fire or other casualty to all or any part of the Public Areas and any other part of the Property which the PROA has specifically agreed to maintain that are covered by insurance written in the name of the PROA, the Board or its agent shall file all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Public Area. Repair or reconstruction, as used in this Section, means repairing or restoring the Public Area to substantially the condition existing prior to the damage, with any changes needed to comply with applicable building codes and other applicable legal requirements.

7.3.2 Any damage to the Public Area shall be repaired or reconstructed unless, within 60 days of the loss, each of the Declarant and the Members (by affirmative vote of those holding a majority of the total votes cast with respect to such issue) elect to construct alternative improvements, subject to consent by Ruston and/or Tacoma (which shall not be unreasonably withheld or delayed) and Legal Requirements.

If either the insurance proceeds or reliable, detailed estimates of the cost of repair or reconstruction are not available to the PROA within the 60-day period, then the period may be extended for not more than 60 additional days.

7.3.3 If it is determined that the damage to the Public Area shall not be repaired or reconstructed and no alternative improvements on the affected portion of the Public Area is authorized, in each case by the affirmative vote of Members representing a majority of the total vote of the PROA actually cast with respect to such issue and with the consent of Declarant, the affected area shall be cleared of all debris and ruins and thereafter maintained by the PROA as applicable, in a neat and, with respect to the Public Area, attractive, landscaped condition consistent with the Community-Wide Standards.

7.4 Disbursement of Proceeds. Any insurance proceeds remaining after paying for repair or reconstruction of Public Area or, if no repair or reconstruction is made, after settlement as is necessary and appropriate with the affected Owners and holders of any Mortgage as their interests may appear, shall be retained by the PROA and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of any Unit and may be enforced

by such Mortgagee.

7.5 Repair and Reconstruction. If insurance proceeds are insufficient to pay for repairing or reconstructing the damage to the Public Area, the Board may, during and following the completion of any repair or reconstruction and without membership approval, levy Special Assessments to pay for such repair or reconstruction.

ARTICLE 8 ASSESSMENTS

8.1 Creation of Assessments. This Declaration creates three types of Assessments for PROA expenses: (a) Base Assessments to fund Common Expenses for the general benefit of all Units; (b) Special Assessments as described in Section 6.3; and (c) Specific Assessments described in Section 6.4. Each Owner is deemed to covenant and agree to pay these Assessments as levied from time to time by the PROA.

8.2 Computation of Base Assessment. At least 120 days before the beginning of each biennium budget cycle for Declarant, the Board shall prepare a budget for the estimated Common Expenses of the PROA during the coming biennium. The PROA shall include in its budget for Common Expenses any Contribution to Ruston and/or Tacoma for the purpose of increasing Ruston and/or Tacoma's capacity to provide municipal services (such as police and fire protection services) within the Property and any contribution to City for major structural replacements and improvements described in Section 4.4 above to which the PROA has agreed. In addition, the PROA shall establish any reserve fund upon which the PROA and Declarant or City have agreed, for future unspecific contributions toward such replacement and improvements. Contributions to such reserve fund shall be included in the Common Expenses. The Board shall include in Base Assessments funds in amounts sufficient to meet these projected Common Expenses.

The Base Assessments against each Unit shall be calculated in aggregate amounts reasonably expected to produce income equaling the total budgeted Common Expenses. In determining assessments, the Board may consider other sources of funds, including anticipated receipts under any future covenant to share costs.

Declarant may, but is not obligated to, reduce Base Assessments for all or any Unit by paying a subsidy (which may be either a contribution, an advance against future Assessments due from Declarant, or a loan), at Declarant's sole and absolute discretion. Any such subsidy shall be disclosed as a line item in the Common Expense budget. Payment of any subsidy shall not obligate Declarant to continue subsidies in the future.

The Board shall send to each Member a copy of the budget and notice of the amount of the Base Assessment against the applicable Unit at least 60 days before the beginning of the relevant biennium. The budget and Base Assessment shall be effective unless disapproved at a meeting by a vote of the Members holding at least 67% of the total votes cast with respect to such issue. There shall be no obligation to call a meeting to consider the budget unless a petition of the Members, as provided for in the Bylaws with respect to special meetings, is presented to the Board within ten days after delivery of the notice of Assessments, in which event a meeting

shall be called within 30 days.

If a proposed budget is disapproved or the Board fails to determine the budget for any year, until a budget is determined, the budget for the preceding fiscal year shall continue. Failure to agree upon a budget shall not relieve the PROA or the Owners of their obligations under this Declaration.

Assessments shall be collected and paid not less than quarterly on a schedule to be determined by the Board.

8.3 Special Assessments. In addition to other authorized Assessments, the PROA may levy Special Assessments from time to time to cover expenses greater or different than those budgeted, including Special Assessments for events approved pursuant to Section 3.10 hereof. Special Assessments shall be levied against the entire membership. Except as otherwise specifically provided in this Declaration, Special Assessments must be approved by the affirmative vote or written consent of Members holding at least a majority of the total votes responding with respect to such issue. Special Assessments shall be paid in a manner and by dates fixed by the Board. The Board may allow payment in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.4 Specific Assessments. The Board may specifically assess against a particular Unit expenses incurred by the PROA to provide special benefits, items or services (a) on request of the Owner of such Unit; (b) made necessary by the conduct of such Owner or its Users; or (c) necessary to bring such Unit into compliance with this Declaration, the Articles, the Bylaws, or PROA rules. The Board may levy such Specific Assessments after notice to the relevant Owner(s) and an opportunity for hearing as provided in the Bylaws.

8.5 Calculation of Assessments. Each Unit shall be assessed separately and as a whole Unit; assessments will not be allocated by PROA among Owners of a Unit. Nevertheless, Unit co-owners may agree among themselves as to such allocation. All Owners of a Unit are jointly and severally liable for the assessments against each Unit. Each Unit's share of each Base Assessment and Special Assessment shall be determined as a function of such Unit's Points as a percentage of all Assessment Points. If only certain Units are subject to a Specific Assessment, the share of each Unit subject to a Specific Assessment shall be determined as a function of such Unit's Points as a percentage of all Assessment Points of the Units subject to the Specific Assessment.

8.6 Payment of and Lien for Assessments. Assessments shall be paid within the time periods specified by the Board or in the Bylaws. PROA shall be entitled to impose a lien upon any Unit for any Assessment not paid when due on such Unit subject to the delinquent assessment. The lien shall arise from the time that the PROA records a notice of lien in the real property records. This lien may be foreclosed as a mortgage or foreclosed as a deed of trust under RCW 61.24, as now existing or hereafter amended. Prior to imposition of such lien, the Board shall provide notice to the relevant Owner(s) and an opportunity for a hearing as provided in the Bylaws.

8.7 Initial Capitalization of Common Expenses. The Declarant shall have the right to

establish an initial one-time payment of \$5,000 per Unit for the establishment of adequate startup funding of the PROA. The one-time payment shall only apply to the initial membership of any given Unit in the PROA and shall be credited against assessments initially accruing against such Unit. An Owner of multiple Units shall not be required to pay more than \$15,000 in the aggregate under this Section 6.7.

8.8 Declarant Approval. The biennium budget of the PROA and all Assessment rates must be approved by the Declarant. The Declarant can either accept the proposed assessments and budgets or reject the same on the basis of inadequate funding in its reasonable business judgment. The Declarant will provide a written explanation of its reasons for rejection.

ARTICLE 9 SUBMISSION AND WITHDRAWAL OF PROPERTY

9.1 Submission Without Approval of Membership. At any time prior to the Turnover Date, Declarant may subject to the provisions of this Declaration any property (including marinas and other in-water improvements) that is adjacent to the Property or in the same vicinity and along the _____ Waterway as Units or additional Public Area. Such submissions shall be accomplished by, and effective upon, recording of a supplemental declaration submitting such property in this Declaration in the public records of Pierce County, Washington. Such supplemental declarations do not require consent of the Owners, but require consent of the fee owner of such property if not Declarant and any ground lessee, provided that if Declarant desires to submit, in the aggregate, more than 43,560 square feet of property (expressly excluding property for the Esplanade or for any sidewalk along Dock Street) to Public Area pursuant to this Section 7.1, Declarant shall first obtain the affirmative vote of Members holding at least 67% of the total votes cast with respect to such matter.

9.2 Submission With Approval of Membership. After the Turnover Date, the Declarant or the PROA may submit property (including marinas and other in-water improvements) to the provisions of this Declaration (i) as Units, with the consent of the fee owners and any ground lessee of such property, or (ii) as additional Public Area with (a) consent of the fee owners and any ground lessee of such property, (b) the affirmative vote of Members holding at least 67% of the votes cast with respect to such issue at a Meeting duly called for such purpose and (c) the consent of the Declarant. Such submissions shall be accomplished by, and effective upon recording of a supplemental declaration submitting such property in the public records of Pierce County, Washington.

9.3 Withdrawal of Erroneously Included Property. Declarant reserves the right to amend this Declaration unilaterally at any time, with concurrent notice to the PROA (if formed), for the limited purpose of redesignating a portion of a Unit as Esplanade in connection with a lot line adjustment or removing portions of the Property from the provisions of this Declaration to the extent originally included in error.

ARTICLE 10 USES

10.1 Permitted Uses. Subject to the Guidelines and to the development standards set forth in _____ and the other provisions of this Declaration, each Lot and Unit

within various Districts of the Property is restricted to residential, office, retail, restaurant, hotel, other commercial uses, recreational uses, and such other uses as may be approved from time to time by the PROA. The foregoing shall not, however, prevent Declarant from constructing, owning, operating, leasing or conveying real property with the Property for service facilities consistent with the purposes of this Declaration.

10.2 Prohibited Uses. The Lots and Units shall not be used for: manufacturing activities; medical laboratory; food processing except as expressly approved by the PROA; telemarketing call center; video arcade or other similar form of amusement center; massage parlor; dyeing or rug cleaning plant; jail; taxidermy shop; pet shop or animal clinic; work release center, drug rehabilitation center or social service agency, or any other use prohibited by the Guidelines.

10.3 View and Access Corridors. The intent of the View and Access Corridors is to provide public access and sight lines from the public street and at select designated points to the public shoreline and private and/or publicly held properties. The View and Access Corridors are not, however, part of the Public Area to be maintained by the PROA pursuant to this Agreement, unless and until any View and Access Corridor is added to the Public Areas by consent of the PROA, the Declarant and the relevant Owner of the View and Access Corridor.

10.4 Occupants Bound. All provisions of this Declaration, applicable supplemental declarations, the Bylaws and PROA rules governing conduct of Owners adopted by the Board shall also apply to their Users. All leases for any portion of the Property shall bind lessees to the provisions of this Declaration, applicable supplemental declarations, the Bylaws, and the rules of the PROA adopted by the Board. The Owner shall cause all Users of its Unit to comply with these provisions. Every Owner shall be responsible for all violations of this Declaration, applicable supplemental declarations, the Bylaws and PROA rules and all damage to the Public Area caused by such Users.

10.5 Unightly or Unkept Conditions. All portions of a Unit outside enclosed structures shall be kept clean and tidy. Nothing shall be done, maintained, stored or kept outside enclosed structures that the Board finds to cause an unsightly, unclean, unhealthy, or untidy condition. Any structures, equipment or other items permitted on the exterior portions of Units shall be kept in a neat and attractive condition and promptly be repaired or removed if the Board finds they have fallen into disrepair.

Except as may be allowed by the Board and applicable law, no Owner or User shall dump yard or other waste on the Property or in the _____ Waterway.

10.6 Hazardous Materials. Except as may be otherwise expressly permitted pursuant to any agreement with Declarant dealing specifically with hazardous materials, no Owner shall use, generate, store, or dispose of hazardous materials on the Property or discharge or release any hazardous material on, above, or under the Property, or in the adjacent _____ Waterway except in compliance with all applicable laws, regulations, ordinances and permits. "Hazardous materials" means materials, substances, gases, or vapors identified as hazardous, toxic, flammable, dangerous, polluting or radioactive by any applicable federal, state or local laws,

regulations or ordinances.

Except, as may be otherwise expressly permitted pursuant to any agreement with Declarant dealing specifically with hazardous materials, each Owner shall:

10.6.1 disclose to the Board or its designee all hazardous materials proposed to be stored, used or generated on a Unit (other than ordinary cleaners and maintenance supplies kept in reasonable quantities in accordance with law);

10.6.2 permit inaction by the Board or its designee of those portions of a Unit where hazardous materials, are stored, used, or generated to assure proper management of them;

10.6.3 provide all equipment and facilities in the Unit necessary to participate in any mandatory point of origin collection service for hazardous materials;

10.6.4 comply with all applicable laws and regulations and rules adopted by the Board regarding maintenance, operation and monitoring of hazardous materials management systems, including procedures followed in case of accidental spills; and

10.6.5 be responsible for all hazardous materials releases and spill cleanup. In connection with such financial responsibility, each Owner hereby agrees to hold the PROA, its officers, directors, and employees harmless for any financial, responsibility, costs, or expenses related to any spill or spill cleanup of hazardous materials taking place on the Owner's Unit or elsewhere within the Property if such spill resulted from the acts or omissions of the Owner or its Users.

10.7 Rules and Regulations. The PROA shall have the authority to adopt rules and regulations with respect to use of the Common Maintenance Areas.

10.8 Governmental Requirements. The uses permitted by Section 3.1 and the other provisions of this Declaration are subject to Governmental Requirements. In any instance in which Governmental Requirements are more restrictive than the provisions of this Declaration, Governmental Requirements shall apply.

10.9 Waivers by PROA. The PROA may afford waivers or variances of the provisions of this Article 10 at any time so long as such waivers or variances will not materially detract from the overall environment of the Property as reasonably determined by the PROA.

ARTICLE 11 ENVIRONMENTAL RESTRICTIONS

11.1 Consent Decree. The Property was the subject of a final court-approved Consent Decree which requires [that restrictive covenants be recorded against the Property governing specific upkeep and maintenance procedures for the Property in order to protect public health, the environment and the integrity of the remedial actions that have been taken on portions of the Property.] – INSERT REQUIRED COVENANTS PURSUANT TO CONSENT DECREE; NEED COPY OF CONSENT DECREE.

ARTICLE 12 CONDOMINIUM DEVELOPMENT

Within Point Ruston there will be one or more Lots intended for development of residential condominiums. These condominiums will have separate underground parking not available to other Owners or occupants within Point Ruston, as well as separate common and limited common areas which shall not constitute Common Maintenance Areas. The Owner of any Unit and any association of such Owners shall be responsible for maintenance, repairs and capital expenses of such underground parking and separate common and limited common areas according to the provisions of any applicable condominium declaration, but shall comply with and be subject to the covenants conditions, reservations and easements contained in this Declaration.

ARTICLE 13 ARCHITECTURAL CONTROLS

13.1 Approval of Structures and Landscaping. All Structures (including, without limitation, buildings, kiosks, concrete or masonry walls, rockeries, driveways, fences, hedges, or other improvements) to be constructed, erected, placed or altered within the Property, all exterior alterations of any Structures on the Property, and any construction or alteration of landscaping on the Property must be approved by the PROA in accordance with this Section 5.1.

13.1.1 Prior to commencing construction of any Structure, the Owner or proponent of such Structure shall submit two copies of such plans and specifications and any contemporaneous or subsequent revisions or amendments thereto or subsequent alterations thereto which affect the exterior materials or appearance of such Structure to the PROA for its review and approval. The plans and specifications shall include a site plan showing the layout of any parking, external storage area, landscaping, and driveway areas. No construction or grading shall commence until such plans and specifications or such revisions or amendments thereto have been approved by the PROA.

13.1.2 The PROA will review submittals as to the quality of workmanship and consistency with the Guidelines and, as to location of the Building, with respect to topography, finish grade elevation and building setback restrictions, in accordance with the Guidelines and any other architectural guidelines adopted by the PROA.

13.2 Signs. Special purpose Signs used to give directions to traffic or pedestrians or identify the Property or areas thereof shall be designed by and located as determined by the PROA. The size, design and location of all Signs are subject to the approval of the PROA in its sole discretion and must comply with the Guidelines and any Government Requirements applicable to the Property. The PROA reserves the sole and exclusive right to establish and revise from time to time additional sign criteria, and to grant variances therefrom to accommodate particular uses according to Building scale, location, appearance, use and number of Building occupants.

13.3 Parking. The location and design of all public parking areas shall be subject to the approval of the PROA. The initial public parking areas shall be as set forth in the parking site plan attached hereto as Exhibit H. The PROA shall adopt specific parking

guidelines which set forth the location and regulation of all designated public parking as well as rules and regulations for on-street parking. All public parking areas shall be Common Maintenance Areas and maintained by the Owners as a Common Expense

13.4 Landscaping. The PROA shall be responsible for routine maintenance of all landscaping located within Common Maintenance Areas and within the Waterwalk. [IF REQUIRED BY RUSTON AND/OR TACOMA] All costs associated with such routine maintenance shall be a Common Expense.

13.5 Storage Areas. No portion of any Lot shall be used as a surface storage yard except on a temporary basis during construction or renovation of Structures. The PROA may impose reasonable requirements relating to any such storage area, such as sufficient landscape screening for the full height and length of anticipated storage so that no portion of any such anticipated storage or storage yard which is put into use after the date of recording of this Declaration may be seen from any Street, highway or adjacent property; provided, however, that storage shelters used for disaster preparedness, emergency response and the like shall not be subject to the foregoing screening requirement. Permanent exterior storage of vehicles, trailers or trucks shall not be permitted.

13.6 Refuse Containers. No dumpster, compactor or other refuse container shall be located outside of any Building unless enclosed and the location and plans have been approved by the PROA. The PROA may impose reasonable requirements, including but not limited to, complete visual screening, odor and rodent control. Each Owner shall be responsible at its sole cost for the disposal of its garbage.

13.7 Waterwalk Kiosks. As set forth in Section 14.4, Declarant reserves the right to place, erect, and otherwise locate commercial kiosks on the Waterwalk. Such kiosks may be leased by Declarant to tenants for commercial activity permitted by this Declaration and in accordance with the Guidelines, Governmental Requirements and any other applicable, laws, ordinances and regulations.

13.8 Utilities. All utility service lines, whether part of the primary service connections or secondary services to the Buildings or other facilities shall be entirely underground. No satellite dishes or other exterior communications equipment shall be permitted on the exterior or roof of a Building or otherwise located on any Lot without the approval of the PROA, which may prohibit or impose reasonable conditions on such installations. Declarant shall be responsible for construction of all utilities within Streets and the same shall be maintained and repaired thereafter as a Common Expense.

13.9 Nuisances; Illegal Activities. No Building or Lot shall be used in such a manner as to create a nuisance to any adjacent Building or Lot nor shall any activity be conducted or permitted on any Lot which, in the opinion of Declarant or PROA, may adversely affect the health, safety, or intended use of any other Lot, including but not limited to vibration, sound or dust (except during reasonable construction activity), electro-mechanical disturbance, electromagnetic, microwave or radiation emissions, air or water pollution, excessive emissions of smoke, steam or particulate matter, or emission of odorous, toxic or noxious matter. No activity shall be conducted or permitted which emits or

discharges any hazardous waste or noxious matter (as defined by Governmental Requirements or by such reasonable rules and regulations as the PROA from time to time may establish) onto any Lot, into any public utility, or into the air. Lots may not be used for any activity prohibited by Governmental Requirements.

13.10 Waivers by PROA. The PROA may afford waivers or variances of the provisions of this Article 5 at any time so long as such waivers or variances will not materially detract from the overall environment of the Property.

ARTICLE 14 EASEMENTS AND RESERVATIONS

14.1 Grant of Easements for Benefit of Lots/Units/Property. Declarant hereby establishes, grants and conveys, for the benefit of all of the Lots and Units within the Property, a permanent, non-exclusive easement in favor of each Lot or Unit within the Property for ingress, egress and the provision of all necessary or desirable utilities, over, under and across all Streets and other property owned by Declarant within the Property, including but not limited to the Waterwalk and [Public Amenity]. In addition, Declarant hereby reserves the right to establish from time to time for the benefit of all of the Lots and Units in the Property, and all Lots and Units in the Property shall be owned and conveyed subject to, easements for Point Ruston lighting and/or signage, which easements may be located by Declarant in such locations within the Property as do not unreasonably impair the use or value of the Structures and improvements situated on the subject Lot.

14.2 Reservation of Easements for Future Conveyance to Third Parties. Declarant hereby reserves, together with the right to convey the same, and all Lots and Units in the Property shall be owned and conveyed subject to, those easement areas designated as _____ on Exhibit I hereto, each of which shall be for the purpose designated on Exhibit I, each of which is anticipated to ultimately be granted for the use and benefit of the third party municipality or utility company identified on Exhibit I in connection therewith. In addition, Declarant hereby reserves, together with the right to convey the same, and all Lots and Units in the Property shall be owned and conveyed subject to (a) easements for telecommunications facilities and fiberoptic cables, natural gas and electrical power, and for such other utility services as Declarant may deem reasonably necessary or convenient from time to time, and (b) easements for utility services within all Streets located on the Property. The PROA may transfer and assign the Reserved Easements to third party municipalities, utility companies or other similar entities, on such terms as are then customary and pursuant to such instruments as the PROA deems appropriate from time to time.

14.3 Grant of Easements In Favor of Condominium Units. Declarant hereby establishes, grants and conveys, for the benefit of certain Buildings and Units within the Property, an underground easement lying beneath Streets within the Property in the locations depicted in Exhibit __, and for the benefit of the Building and/or Units described in Exhibit __, for the location of underground parking areas serving such Building and/or Units.

14.4 Grant of Rights In Favor of Declarant. Declarant hereby establishes and reserves for itself and its assigns, the exclusive right to erect, place, and otherwise locate;

maintain; operate and lease kiosks on the Waterwalk for any commercial activity permitted by this Declaration and in accordance with the Guidelines, Governmental Requirements and any other applicable, laws, ordinances and regulations. [MAKE SURE THIS IS PERMITTED IN DEVELOPMENT AGREEMENT WITH TOWN/CITY, AND ANY SEPARATE PUBLIC PLACE DEDICATION.]

14.5 Grant of Non-Exclusive Public Access Easement. Declarant hereby establishes, grants and conveys, for the benefit of the public, a permanent, non-exclusive easement for ingress and egress over and across all Streets within the Property, as well as for ingress and egress to and from the Waterwalk, the [Public Amenity] and such other portions of Point Ruston as are required by the Guidelines or other Governmental Regulations to be open to public access, subject to such rules as Declarant shall develop from time to time governing the public's access to and use of such areas. [IF A SEPARATE GRANT IS REQUIRED, AS IS SOMETIMES THE CASE, OR IF RESERVED ON FACE OF BSP, WE SHOULD REFERENCE HERE.]

14.6 Relocation of Easements by PROA. The PROA may at its option relocate or reconfigure any of the easements referenced in 6.1 through 6.4 above (collectively the "Easements" or individually an "Easement") from time to time by amended to this Declaration, provided (a) the relocated or reconfigured Easement complies with all applicable Governmental Requirements and reasonable engineering standards (b) the function for which such Easement was established is not impaired; (c) such relocation or reconfiguration does not materially impair the usefulness, value or aesthetic character of the Lot or Unit encumbered by such relocated or reconfigured Easement; and (d) such relocation or reconfiguration is carried out at the PROA's sole cost and expense; provided however that if such a relocation or reconfiguration of an Easement is necessitated by failure of the Easement to conform to then applicable Governmental Requirements or then applicable engineering standards, or otherwise by its failure to function as reasonably intended, such relocation or reconfiguration shall be a Common Expense.

14.7 General Terms Governing Easements. Each of the Easements shall be a perpetual, non-exclusive easement, and the Owner(s) of any Lot(s) or Unit(s) encumbered by such Easement (including the Declarant with respect to such Easements located on Declarant-owned property) is located shall not construct improvements over, or carry on any activities within, the area in which such Easement is located which would materially interfere with the intended use of the subject Easement. Each Lot and Unit shall be subject to the terms and conditions of such Easements as provided herein and in any written easement grant to a third party municipality, utility company or other easement grantee.

14.8 Further Actions. The Owners of any Lot or Unit shall, at such time and from time to time, when requested by Declarant, execute and deliver such further instruments as are necessary or appropriate in the PROA's judgment to effectuate the easements and reservations set forth in this Article 14. The PROA may, without liability to any party, barricade or otherwise prevent public access to any portion of the Property in such duration and at such times as PROA may deem necessary or advisable to prevent the public from acquiring any adverse or prescriptive interest or right of use thereto.

ARTICLE 15 ENFORCEMENT

15.1 Lien for Costs of Abatement and Suit. If the Owner of any Lot or Unit fails to maintain its Lot or Unit and Building and other Structures thereon, as required by this Declaration, or otherwise fails to comply with this Declaration for a period of 90 days following written notice from the PROA specifying such failure, or in the event of conditions injurious to persons or property within three days following written notice from the PROA, the PROA or its designee may enter upon the Lot or Unit without liability and cure such failure on a single or continuing basis. The Owner of the Lot or Unit involved shall be liable for the reasonable costs incurred by the PROA or by Owners of any other Lot or Unit by reason of such failure, and the PROA shall have a lien on the Lot or Unit for all such costs, including Interest thereon and costs of collection, including attorneys' fees.

15.2 Enforcement of Lien and Owner's Obligations. The liens created pursuant to Articles 8 and 9 hereof shall be subordinate only to the liens of general real estate taxes and assessments, and the liens of Beneficiaries given for value and held by financial institutions or other lenders regularly engaged in the business of making real estate secured loans. Such lien may be foreclosed in the manner provided for real estate mortgages under Chapter 61.12 RCW, but without any right of redemption. Recording of this Declaration constitutes record notice and perfection of the lien for Assessments; provided, however, that the PROA may at its option record notice of any lien under this Article with the Pierce County Office of Records and Elections. If requested in writing to do so, the PROA shall provide a copy to any Beneficiary with an interest encumbering any Unit of any notice given to the respective Owner for failure to comply with this Declaration. In addition to constituting a lien on a Lot or Unit, all sums assessed by the PROA and/or chargeable to any Lot or Unit pursuant to this Declaration shall be the joint and several personal obligation of the respective Owner or Owners of the Lot or Unit at the time the Assessment is made or the obligation incurred. Suit to recover a personal judgment for any delinquent Assessment or other monetary obligation of an Owner pursuant hereto shall be maintainable without foreclosing or waiving the liens securing such Assessment or other obligation. In addition to the right to cure granted above, this Declaration may be enforced by an action at law or in equity. So long as there is a PROA, it shall have the exclusive right to enforce a violation of this Declaration; provided, however, that an Owner whose Lot or Unit is adversely and materially affected by a violation may enforce this Declaration if the PROA fails to commence action to do so within 90 days after written notice is received by the PROA specifying the violation.

15.3 Attorneys' Fees. In any legal or equitable proceeding for the enforcement of or to restrain the violation of this Declaration or any provision hereof, the losing party or parties shall pay the costs and expenses, including attorneys' fees, of the prevailing party or parties, at trial and on appeal. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

15.4 Inspection. The PROA may from time to time at any reasonable hour or hours, enter and inspect any Lot, Unit or Building subject to this Declaration to ascertain compliance therewith.

15.5 Failure to Enforce Not a Waiver of Rights. The failure of the PROA or any other

Owner to enforce any restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other restriction or covenant hereof.

ARTICLE 16 TERM, TERMINATION AND MODIFICATION

16.1 Term. This Declaration, every provision hereof and every covenant and restriction contained herein, shall continue in full force and effect until terminated in accordance with Section 10.2.

16.2 Termination and Modification. This Declaration, or any provision hereof, may not be terminated, extended, modified or amended, as to the whole of the Property or any portion thereof, without the written approval of Declarant. No such termination, extension, modification or amendment shall be effective until a proper instrument in writing has been executed, acknowledged and recorded.

ARTICLE 17 DECLARANT'S RIGHTS

Any or all rights and obligations of Declarant may be transferred to another public entity or, with the consent of the PROA, a private entity, but the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the Bylaws and shall not be effective unless signed by Declarant and duly recorded in the public records of Pierce County, Washington.

Except for condominium declarations that do not conflict with this Declaration, so long as Declarant continues to have rights under this Article, no Person shall record any declaration of covenants, conditions and restrictions or similar instrument affecting any portion of the Property without Declarant's written consent. If Declarant's consent to a condominium declaration is required hereunder, it shall not be unreasonably withheld.

Nothing in this Declaration shall be construed to require Ruston, Tacoma or Declarant or any successor to develop any of the property described in Exhibit "A" in any manner whatsoever.

ARTICLE 18 DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

18.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The PROA, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Property, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Property, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, and the PROA rules (collectively "Claim"), except for those Claims authorized in Section 12.2, shall be resolved using the procedure set forth in Section 12.3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

18.2 Exempt Claims. The following claims ("Exempt Claims") shall be exempt from the provisions of Section 12.3:

18.2.1 any suit by the PROA against any Bound Party to enforce the provisions of Article VI;

18.2.2 any suit by the Declarant, or the PROA to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve Declarant's and the PROA's ability to enforce the provisions of Articles VIII and IX;

18.2.3 any suit between Owners (other than Declarant in its capacity as Declarant) seeking redress on the basis of a Claim that would constitute a cause of action under the laws of the State of Washington in the absence of a claim based on the Declaration, Bylaws, Articles or rules of the PROA; and

18.2.4 any suit by a Bound Party for declaratory or injunctive relief which seeks a determination as to applicability, clarification or interpretation of any provision of this Declaration.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 12.3, but there shall be no obligation to do so. The submission of an Exempt Claim involving the PROA to the alternative dispute resolution procedures of Section 12.3 shall require the approval of the PROA.

18.3 Mandatory Procedures For All Other Claims. All Claims other than Exempt Claims shall be resolved using the following procedures:

18.3.1 Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

18.3.1.1 the nature of the Claim, including date, time, location, Persons involved, and Respondent's role in the Claim;

18.3.1.2 the basis of the Claim (i.e., the provisions of this Declaration, the Bylaws, the Articles or rules or other authority out of which the Claim arises);

18.3.1.3 what Claimant wants Respondent to do or not do to resolve the Claim (whether money or action); and

18.3.1.4 that Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

18.3.2 Negotiation.

18.3.2.1 Each Claimant and Respondent (the "Parties") shall make

every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

18.3.2.2 Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes efforts will be beneficial to the Parties and to the welfare of the Property.

18.3.3 Final and Binding Arbitration.

18.3.3.1 If the Parties do not resolve the Claims through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties), the Claimant shall have 15 additional days to submit the Claim to arbitration, or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

18.3.3.2 If the Claimant duly submits the Claim to arbitration, this subsection (c) is an, agreement of the Bound Parties to arbitrate such Claim (except Exempt Claims) in accordance with the procedures described below and is specifically enforceable under the applicable arbitration laws of the State of Washington. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Washington.

18.3.3.3 If the parties are able to agree upon a single arbitrator within 20 days after Claimant duly submits its Claim to arbitration; then the dispute shall be submitted to and settled by that single arbitrator. Otherwise, either party (the demanding party) may send written notice to other (the noticed party) of its selection of an arbitrator and the noticed party shall within 10 days thereafter, appoint its arbitrator and notify the demanding party in writing of such appointment. Should the noticed party fail within such 10-day period to name its arbitrator, the arbitrator fee demanding party shall select an arbitrator for the noticed party so failing, and the arbitrator for the demanding party and the noticed party cannot agree on that selection, said arbitrator shall be appointed by the American Arbitration Association ("AAA") in compliance with the Rule of Appointment of Neutral Arbitrator upon written notice to all other parties. The arbitrators so chosen shall select one additional arbitrator to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by the AAA rules pursuant to the Rule for Appointment of Neutral Arbitrator. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) who chose that arbitrator, or the AAA, as appropriate, shall appoint another to act in such arbitrators place. Any arbitrator appointed by AAA hereunder shall possess knowledge or experience of the building and construction industry.

18.3.3.4 The arbitrator(s) shall determine the questions raised by the Claim within 10 days, unless a different period of time otherwise agreed upon by the parties. Said arbitrator(s) shall then give all parties reasonable notice of the time (which time shall be within 20 days of the arbitrator(s)' determination of the questions raised, unless a different period of time is otherwise agreed upon by the parties), and place (of which the arbitrator(s) shall

be the judge) of hearing evidence and argument. The arbitration shall be governed by the Washington State Rules of Civil Procedure Rules 26 through 37 and the Washington State Rules of Evidence Rules 103 through 1103. The books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s). After considering all evidence, testimony and arguments, said single arbitrator or a majority of the board of arbitrators shall, within 20 days of completion of the hearing provided, promptly state its decision or award in writing.

18.4 Allocation of Costs of Resolving Claims. Each Party shall bear its own costs incurred prior to and during the proceedings described in Section 12.3, including the fees of its attorney or other representative and shall share equally in the costs of conducting the arbitration proceeding, provided that if there is a finding by the arbitrator(s) that a party has acted in bad faith, the arbitrator(s) may include costs as a part of the Award.

18.5 Enforcement of Resolution. If the Claim is resolved through negotiation or arbitration in accordance with Section 12.3 and any Party thereafter fails to abide by the terms of such agreement or comply with such Award, as the case may be, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 12.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award including, without limitation, attorneys' fees and court costs.

ARTICLE 19 MISCELLANEOUS PROVISIONS

19.1 Covenants Run With Land. All restrictions, covenants and agreements contained herein shall create equitable servitudes upon each Lot and Unit in favor of every other Lot and Unit; and shall create reciprocal rights and obligations and privity of contract between the respective Owners of all Lots and Units on the Property.

19.2 Section Headings. Section headings are inserted for convenience only and are not intended to limit the scope or intent of the particular paragraphs or sections to which they refer.

19.3 Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

19.4 Constructive Notice and Acceptance. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired an interest in the Property.

19.5 Liability of Declarant and PROA. Neither Declarant nor the PROA shall be liable in damages to any Owner or to any other person for mistake in judgment, negligence or nonfeasance of itself, its agents or employees under this Declaration and each

Owner agrees by acquiring any Site that it will not bring any action or suit for damages against Declarant or the PROA.

19.6 Exhibit List. The Exhibits attached hereto and incorporated herein by reference are as follows:

- A Legal Description of Property;
- B Site Plan of Point Ruston;
- C [Public Amenity] Site Plan;
- D Waterwalk Site Plan
- E Schedule of Projected Gross Floor Areas
- F Public Parking Areas Site Plan
- G Reserved Easements In Favor of Third Parties
- H Schedule of Projected Gross Floor Areas

- I Formula for Assessments and Voting Rights

DECLARANT:

POINT RUSTON, LLC

By: _____
Its: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

THIS IS TO CERTIFY that on this ____ day of _____, 2008, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of _____ that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said for the uses and purposes therein mentioned, and on oath stated that said individual was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of
Washington, residing at _____

My appointment expires _____

Exhibit ____

Formula for Assessments and Voting Rights

Each Member shall have the right to cast votes and obligation to pay assessments based upon the number of points ("Points") assigned to that Unit in accordance with the following:

(a) Land Points. Each Property shall be assigned one point for each 10,000 square feet of land (rounded to the nearest 1,000 square feet) comprising the Property, net of any square footage contained within any part of the Waterwalk and/or any View and Access Corridors located on the Property ("Land Points").

(b) Building Points. Each Property shall be assigned three points for each 10,000 square feet of Gross Floor Area within the improvements located on the Property (rounded to the nearest 1,000 square feet) ("Building Points").

(c) Unit Factor. The total Land Points and Building Points for each Unit shall then be multiplied by a non-profit factor of .5, as described below, in proportion to the part of the Gross Floor Area, if any, devoted to one of the uses listed under NON-PROFIT below, and the balance of said Points shall be multiplied by a BASE or BULK factor to calculate the total Points as follow:

<u>Use Classification</u>	<u>Factor</u>
<i>BULK</i>	2.0
Retail/Restaurants	
Other Commercial	
<i>BASE</i>	1.0
Office	
Schools/Churches/Fraternal Organizations (excluding 501(c)(3) organizations)	
Structured Parking/Storage	
Residential	
<i>NON-PROFIT</i>	.5
501(c)(3) Organizations	

Each Owner shall deliver, upon 30 days' notice from the PROA, an annual statement, certified to be true and complete by an authorized officer, partner or member of such Owner, of the square footage of each Property, owned by such Owner, as applicable and Gross Floor Area of any improvements on each such Property. Such statement shall also certify the percentage of each Property falling within the various use classifications, allocating 100% of the gross square footage of such Property among such classifications.

The Declarant (until the Turnover Date), and thereafter the PROA, shall determine in its sole discretion the Use Classification for each Unit. For uses that do not fit within the above classifications, Declarant (until the Turnover Date), and thereafter the PROA, shall determine the

appropriate factor. If a Unit has multiple classifications (non-profit, mixed retail and condo, for example), the Land and Building Points shall be factored pro rata based upon the percentage of each type of use to the total gross square footage of the Property. Points shall be reviewed upon the addition of any Unit and at least annually in accordance with the Bylaws.

(d) Examples.

(1) A 100,000 square foot unimproved Unit shall be assigned ten Land Points (which would also equal the Points for that Unit).

(2) The same Unit improved with a 50,000 square foot retail building shall be assigned an additional fifteen Building Points for a total of twenty-five Land Points and Building Points. This Unit would then have fifty Points (twenty-five Land Points and Building Points multiplied by the Retail factor (two)).

(3) If, in the same example, the Unit is divided with 10,000 square feet of retail and 40,000 square feet of condominiums, the calculation should be as follows:

	<u>Retail</u>	<u>Condominium</u>
Land and Building Points	5	20
Multiplied by factor of:	2.0	1.0
TOTAL = 30 points	10	20

(4) If, in same example, the Unit is divided into 20,000 square feet leased to a 501(c)(3) organization, 20,000 square feet leased for office use and 10,000 square feet leased to a restaurant, the initial 25 Land and Building Points would be adjusted as follows:

	<u>Non-profit</u>	<u>Office</u>	<u>Restaurant</u>
Land and Building Points	10	10	5
Multiplied by factor of:	.5	1.0	2.0
TOTAL = 25 points	5	10	10