

- 5.3 The Association and Engineer, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party and to this Agreement. Neither party to this Agreement can assign the contract as a whole without written consent of the other, except that Association may assign it to any financial institution or entity at any time financing the Project, either directly or indirectly.
- 5.4 This Agreement is governed by the laws of the State of New Jersey. All disputes will be decided in the Superior Court of New Jersey, in Hudson County, to the jurisdiction of which court the parties submit. The parties may, however, submit any dispute to mediation or arbitration, if they both agree in writing to submit that dispute to an alternate method of, or forum for dispute resolution. Service of process will be by certified mail, return receipt requested.
- 5.5 The Engineer has no responsibility for the identifying, discovering, handling, removing or disposing of, or the exposure of any person to hazardous materials in any form at the Project site. It does, however, have a duty to promptly notify the Association of its discovery or observation of any hazardous material.
- 5.6 Nothing contained in this Agreement creates a contractual relationship with, or cause of action in favor of, any third party against either the Association or Engineer.

ARTICLE 6

PAYMENTS AND COMPENSATION TO THE ENGINEER

- 6.1 The Association will compensate the Engineer for services to be provided under Sections 1.1, 1.2, 1.3 and 1.5A and B upon completion of each Phase and subphase as follows:

Section 1.1 . . . . .	\$ 15,500
Section 1.2 . . . . .	\$ 5,000
Section 1.3 . . . . .	see Section 6.2
Section 1.4A . . . . .	\$ 6,000
Section 1.4B . . . . .	hourly at the rates set forth in Section 6.5
Section 1.5A . . . . .	see Section 6.3
Section 1.5B . . . . .	\$ 9,500

- 6.2 The Engineer's fee for services described in Section 1.3 will not exceed \$130,000. The fees for those services will be based on services actually rendered, billed at the hourly rates listed in Section 6.5.

6.3 The Engineer's fee for services described in Section 1.5.A shall be based on an hourly rate of \$120 per hour. The Engineer estimates that if a project is a 6-month project, there will be 52 site visits (2 per week) for a total of 16 hours per week. This number of site visits translates into an estimated fee for a 6-month project of \$99,840. Should the Contract period be 18 months, then the Engineer estimates that there will be 156 site visits (2 per week), for a total of 16 hours per week and an estimated fee of \$299,520. The actual number of site visits made each week will be determined jointly by the Association and the Engineer based on the progress and quality of the contractor's work. No more than one Engineer (who must have full knowledge of the Project) will attend any site visit or job meeting beyond those described in Section 1.5.A, without Association's prior authorization.

6.4 The Engineer's fees for additional professional services, i.e., including, for example, any services relating to a automatic fire suppression system, or the services of any special consultant) shall be billed on an hourly basis at the rates set forth in Section 6.5. Other additional services will include scanning existing architectural drawings of the Condominium, provided by the Association, in order to create an architectural background for each of the Towers and Mall, if the drawings are not provided in AutoCAD format. These services will be provided and billed at a rate of \$152 per floor, for a maximum additional fee of \$26,000.

6.5 Hourly rates for professional services, including those authorized for work or services not covered by, or exceeding those described in Sections 1.1, 1.2, 1.3, 1.4 and 1.5, will be charged and billed at the following rates:

Principal . . . . .	\$150
Professional Engineer/Registered Architect . . . . .	\$120
Engineer/Architect . . . . .	\$100
AutoCAD Services . . . . .	\$76
Fieldwork . . . . .	\$76
Clerical . . . . .	\$30

6.6 The Engineer may not accept any commission, fee, compensation, payment or anything of value from any contractor or supplier with which the Association contracts for any services of materials which are or are to become a part of the Project, and each must execute and deliver to the Association whenever requested a certification averring that Engineer has not violated this covenant.

- 6.7 If the Engineer is offered, or by custom or other arrangement may receive any commission, fee, compensation, payment or anything of value from, or a discount in any form as a consequence of the Association's contracting for any services or material for the Project, the Engineer must tell the Association and apply the full value of that commission, fee, compensation, payment of other thing of value against the Engineer's compensation.
- 6.8 For attendance at any meeting described in Section 1.1, 1.2 or 1.3 in excess of 4, the Engineer will be compensated at the rates described in Section 6.5 for each Engineer attending, but no more than one Engineer will attend any additional meeting without the Association's prior authorization.
- 6.9 Included in the Engineer's fee for Section 1.3 is one signed and sealed copy of the Engineer's drawings, specifications and materials lists for distribution to each prospective bidder, plus 3 copies for retention in the Association's records. Any additional copies required by the contractor selected by the Association in order to obtain permits for the work will be provided to the contractor by the Engineer at no cost.
- 6.10 The Engineer will be reimbursed for actual expenses incurred in any of the categories listed below and those other expenses for which the Engineer has obtain prior approval of the Association: Filing, microfilm, asbestos and messenger and blueprint fees and travel.
- 6.11 Payments are due and payable upon receipt of the Engineer's invoice. Amounts unpaid 30 days after invoice date will bear interest from that date at the rate of one percent (1%) per month.
- 6.12 The hourly rates, per occurrence rates, and other charges, fees and compensation anywhere described in this Agreement will remain in effect until January 1, 2005, after which date the Engineer may increase those rates. If any increased rate is not acceptable to Association, then the Association may terminate this Agreement.

#### ARTICLE 7

##### CONTRACT ADMINISTRATION

- 7.1 The Engineer designates Alberto J. Custodio, a principal, to act in the Engineer's behalf with respect to the Project and this Agreement.

- 7.2 The Engineer's services are to be performed in character, sequence and timing so that they will be coordinated with those of the Association, its General Manager and with other engineers, architects, consultants, and contractors, and Association's own forces performing services or work at the Condominium.
- 7.3 The Engineer is not responsible for the acts or omissions of the Association or its General Manager, engineers, architects or consultants, contractors or subcontractors, any of their agents or employees, the Association's own forces, or any other persons performing any work or services for the Association.
- 7.4 The Engineer must perform the services as expeditiously as is consistent with professional skill and care and the orderly operation of the Condominium.
- 7.5 The Association's General Manager will advise the Engineer of the identity of any other engineers, architects, consultants, contractors, subcontractors, or the Association's own forces coming in or about the Condominium, or on the Association's property, and the scope of their inspections, services or work.
- 7.6 Records of the Engineer's services must be kept by the Engineer on the basis of generally accepted accounting principles and must be made available to the Association or its General Manager on demand for inspection and copying.

#### ARTICLE 8

#### INSURANCE

- 8.1 The Engineer must effect and maintain insurance to protect itself from claims arising out of the performance of professional services under this Agreement and caused by any error, omission or negligent act for which it is legally liable. The Engineer must maintain this insurance in force, if available, for 2 years after the completion of professional services under this Agreement until the expiration of any applicable statutes of limitations.
- 8.2 Unless otherwise agreed, the Engineer must affect and maintain insurance to protect itself from claims under workers' or workmen's compensation acts; from claims for damages because of bodily injury, including personal injury, sickness, disease, or death of any employees or of any other person; from claims for damages because of injury to or destruction of property, including loss of use resulting therefrom; and from damage to or destruction of property,

including valuable papers and records coverage and including loss of use resulting therefrom.

8.3 The insurance required by Sections 8.1 and 8.2 must be in the higher of the minimum limits required by law or as follows:

(i) Professional Liability: \$1,000,000.00  
\$500,000.00 per incident  
\$1,000,000.00 aggregate

(ii) Workmen's Compensation. As required by laws of the State to whose jurisdiction the Engineer and Design Consultant is subject.

(iii) Public Liability:  
\$1,000,000.00 per claim  
\$2,000,000.00 aggregate

(iv) Property Damage:  
\$1,000,000.00 per claim  
\$2,000,000.00 aggregate

8.4 The Engineer must indemnify and hold and save harmless Association, its General Manager and employees, its members, Directors, officers, or any of them, from and against any and all lawsuits, liabilities, damages, judgments, expenses (including, but not limited to, attorneys' fees), losses, claims, penalties and fines (of an administrative, criminal or civil nature) incurred by or made against Association which arise out of, or which are attributable to:

- The Engineer's material breach of this Agreement, which results in a claim being made by someone other than Association;

- The negligent, reckless, malicious, criminal, willful or intentionally wrongful acts or omissions of the Engineer, or any of its employees for which the Engineer is liable at law; or

- The violation of any local, state, federal or other governmental ordinance, regulation, statute or other law by the Engineer, or by any of its employees, for which the Engineer is liable at law.

This Section 8.4 is not to be construed as an admission by the Engineer to any breach of this Agreement which is at any time alleged to have occurred, or as an admission of liability, culpability or responsibility for any act, omission, or course of

The parties have each caused this Agreement to be signed by a principal or proper corporate officer on the date written opposite those signatures. ;

THE GALAXY TOWERS CONDOMINIUM ASSOCIATION

Dated: 1/17/03, 2002 By: Martha W. Norget  
Martha Norget, President

Engineer

Dated: 1-14, 2002 By: \_\_\_\_\_