

IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

JAN 25 2011

PINNACLE MUSEUM TOWER )	CASE NO. S186149
ASSOCIATION, )	Frederick K. Ohlrich Clerk
)	
Plaintiff/Respondent, )	[Fourth District Court Deputy
)	of Appeal, Division One,
)	Case No. D055422]
v. )	[San Diego County
)	Superior Court Case No.
PINNACLE MARKET )	37-2008-00096678-
DEVELOPMENT (US), LLC, et al., )	CU-CD-CTL,
)	Hon. Ronald L. Styn]
Defendants/Appellants. )	
)	

REQUEST FOR JUDICIAL NOTICE

An Appeal from a Judgment of  
the Honorable Ronald L. Styn,  
San Diego County Superior Court

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LLC; Pinnacle Market Development (Canada), Ltd.;  
Michael De Cotiis; and Apriano Meola

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

<b>PINNACLE MUSEUM TOWER ASSOCIATION,</b>	)	<b>CASE NO. S186149</b>
	)	
<b>Plaintiff/Respondent,</b>	)	<b>[Fourth District Court of Appeal, Division One, Case No. D055422]</b>
	)	
<b>v.</b>	)	
	)	<b>[San Diego County Superior Court Case No. 37-2008-00096678- CU-CD-CTL, Hon. Ronald L. Styn]</b>
<b>PINNACLE MARKET DEVELOPMENT (US), LLC, et al.,</b>	)	
	)	
<b>Defendants/Appellants.</b>	)	
	)	
	)	<b>REQUEST FOR JUDICIAL NOTICE</b>
	)	

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**MOTION**

Appellants respectfully ask the Court to take judicial notice of the fact that Respondent PINNACLE MUSEUM TOWER ASSOCIATION (the “Association”) was formed on April 18, 2003.

(A) This fact is relevant because the Association has claimed that it was not formed until after the subject “Project CC&Rs” (as described in Appellants’ briefs) were recorded, and therefore could not have agreed to the Project CC&Rs. This fact shows that the dates are otherwise.

(B) This matter was not presented to the trial court.

(C) This matter does not relate to proceedings occurring after the order that is the subject of the appeal, but it does relate to an appellate argument of the Association.

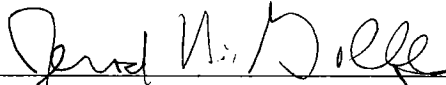
Appellants themselves have noted that resolution of this appeal should not depend on this fact. (Reply Brief on the Merits, page 3, footnote 1.)

However, the Association has raised this point in support of its position, so it could conceivably matter to this Court.

In support of the notice sought, Appellants have attached copies of the “Articles of Incorporation for Pinnacle Museum Tower Association,” showing their filing with the Secretary of State of the State of California on April 18, 2003, and of the Secretary of State’s “Certificate of Status” showing a “formation date” of April 18, 2003. If the Court finds this matter relevant, judicial notice would be appropriate pursuant to EVIDENCE CODE §452(c) (official acts). Both documents have been certified pursuant to EVIDENCE CODE §1530, §1531, and §1532; the certification for the “Articles” is on the back of the last page of the original provided the Court.

Dated: 1/21/11

**HECHT SOLBERG ROBINSON GOLDBERG &  
BAGLEY LLP**

By:   
\_\_\_\_\_  
JEROLD H. GOLDBERG  
Co-counsel for Defendant/Appellants Pinnacle  
Market Development (US), LLC; Pinnacle  
International (US), LLC; Pinnacle Market  
Development (Canada), Ltd.; Michael De Cotiis;  
and Apriano Meola

**PROOF OF SERVICE**

At the time of service I was over 18 years of age and not a party to this action. My business address is Hecht Solberg Robinson Goldberg & Bagley LLP, 600 West Broadway, 8th Floor, San Diego, California 92101. On January 24, 2011, I served the following documents:

Request for Judicial Notice

I served the document on the person below, as follows:

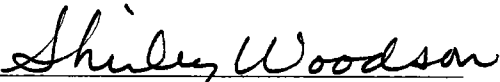
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Pinnacle Museum Tower Association

Superior Court of San Diego County  
Hon. Ronald L. Styn  
330 West Broadway, Dept. 62  
San Diego, CA 92101

Clerk of the California Court of Appeal  
Fourth District, Division One  
750 "B" Street, Suite 300  
San Diego, CA 92101

I enclosed the document in a sealed envelope or package addressed to the persons at the addresses above and placed each envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 24, 2011, at San Diego, California.

  
SHIRLEY WOODSON

**EXHIBIT "1"**

“Articles of Incorporation for Pinnacle Museum Tower Association”

2295591

**FILED**

In the office of the Secretary of State  
of the State of California

APR 18 2003

  
KEVIN SHELLEY, SECRETARY OF STATE

**ARTICLES OF INCORPORATION**  
**FOR**  
**PINNACLE MUSEUM TOWER ASSOCIATION**

**ARTICLE I**

The name of this corporation is PINNACLE MUSEUM TOWER ASSOCIATION.

**ARTICLE II**

This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such Law. More specifically, this corporation is being formed to manage a common interest development under the Davis-Stirling Common Interest Development Act and this corporation will provide such management, administration and maintenance for Common Area and Association Property (if any) within a condominium project located in the City of San Diego, County of San Diego, California; and will fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the Declaration (hereafter defined), and will promote the health, safety and welfare of all of its members who shall be owners of Condominiums (as defined in the Declaration) within the above-described property and any additions thereto which may be brought within the jurisdiction of this corporation for these purposes.

The corporation may also exercise the powers granted to a nonprofit mutual benefit corporation enumerated in Section 7140 of the California CORPORATIONS CODE and to an association by Section 383 of the CODE OF CIVIL PROCEDURE and by the Davis-Stirling Common Interest Development Act (CIVIL CODE Section 1350 *et seq.*).

**ARTICLE III**

Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of this corporation.

#### **ARTICLE IV**

The name and address in this state of the corporation's initial agent for service of process is Michael De Cotiis, 205 West Market Street, San Diego, California 92101. As of the date of filing of these Articles, the corporation does not have a business or corporate office. The common interest development for which the corporation is being formed fronts on Market Street at the intersection of Front Avenue; and the zip code for the location of the common interest development is 92101-6701.

#### **ARTICLE V**

Every person or entity who is a record owner of a fee or undivided fee interest in any Condominium which is subject by covenants of record to assessment by this corporation shall be a member of this corporation. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Condominium which is subject to assessment by this corporation.

#### **ARTICLE VI**

This corporation shall have two classes of voting membership as set forth in the Declaration and the Bylaws.

#### **ARTICLE VII**

Amendment to these Articles of Incorporation shall require (a) the assent (by vote or written consent) of members representing sixty-seven percent (67%) or more of the voting power of each class of members of this corporation, together with (b) a resolution to amend adopted by at least a bare majority of the Board of Directors; provided, however, that after conversion of the Class B membership to Class A membership, amendment to these Articles of Incorporation shall require (i) the assent (by vote or written consent) of (1) sixty-seven percent (67%) or more of the total



voting power of members of this corporation, and (2) sixty-seven percent (67%) or more of the voting power of members of this corporation other than Declarant (as defined in the Declaration), and (ii) a resolution to amend adopted by at least a bare majority of the Board of Directors.

DATED: 4-18-03

  
\_\_\_\_\_  
Susan L. Daly, Incorporator

I declare that I am the person who executed the above Articles of Incorporation and that this instrument is my act and deed.

  
\_\_\_\_\_  
Susan L. Daly



I hereby certify that the foregoing transcript of 3 page(s) is a full, true and correct copy of the original record in the custody of the California Secretary of State's office.

DEC 29 2010 *m*

Date: \_\_\_\_\_

*Debra Bowen*  
DEBRA BOWEN, Secretary of State

**EXHIBIT “2”**  
**“Certificate of Status”**

**State of California**  
**Secretary of State**

CERTIFICATE OF STATUS

ENTITY NAME:

PINNACLE MUSEUM TOWER ASSOCIATION

FILE NUMBER: C2295591  
FORMATION DATE: 04/18/2003  
TYPE: DOMESTIC NONPROFIT CORPORATION  
JURISDICTION: CALIFORNIA  
STATUS: ACTIVE (GOOD STANDING)

I, DEBRA BOWEN, Secretary of State of the State of California,  
hereby certify:

The records of this office indicate the entity is authorized to  
exercise all of its powers, rights and privileges in the State of  
California.

No information is available from this office regarding the financial  
condition, business activities or practices of the entity.



IN WITNESS WHEREOF, I execute this certificate  
and affix the Great Seal of the State of  
California this day of December 13, 2010.

*Debra Bowen*

**DEBRA BOWEN**  
Secretary of State